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
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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.

Komai v Minister of Justice et al [1989] LRSC 40; 36 LLR 518 (1989) (14 July 1989)

JOHN KOMAI, Appellant, v. **THE MINISTERS OF JUSTICE** and **PUBLIC WORKS**, and **JOHN WULU**, Director of The Unity Conference Center, Appellees.

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE DENYING THE PETITION FOR A WRIT OF PROHIBITION.

Heard: June 15, 1989. Decided: July 14, 1989.

1. The Ministry of Justice, as the principal legal advisor to the Government of Liberia, has the proper authority to warn a squatter upon government's property to leave.

2. Prohibition is a special proceeding to obtain a writ, ordering the respondent to refrain from further pursuing a judicial action or proceeding as specified therein.

3. Prohibition will not lie when the act complained of is neither wrong nor illegal, but ratherd within the scope of authority of the person or office complained against.

On June 14, 1988, the Ministry of Justice addressed a letter to appellant, informing him that the **land** he occupied in the vicinity of the Unity Conference Center had been acquired by and belonged to the Government of Liberia. Appellant was requested to submit any and all documents in support of his ownership to said property to the Ministry of Justice on or before June 22, 1988, for scrutiny. He was also informed that upon his failure to do so, the Ministry of Justice will be left with no choice but to institute the appropriate legal action against him in order to protect the interest of the Government of Liberia.

Upon the receipt of this letter, the appellant fled to the Chambers Justice for a writ of prohibition on the grounds that he was the owner of the property which he was occupying, and that he had at no time sold said property to the Government of Liberia. He claimed that the government was about to take his property from him without just compensation as required by the Liberian Constitution.

Upon hearing of the petition, the Chambers Justice quashed the alternative writ and denied the petition for the writ of prohibition. From this ruling of the Chambers Justice, appellant appealed to the Supreme Court *en ham* for final determination.

In affirming the ruling of the Chambers Justice, the Supreme Court held that prohibition will not lie because no wrong had been done by the Ministry of Justice, and that the said Ministry, being the principal legal advisor to the Government of Liberia, had the proper authority to warn squatters occupying government property to leave or establish their legitimate ownership. The petition was therefore *denied* and the ruling of the Chambers Justice *affirmed.*

J. Laveli Supuwood appeared for the appellant. *Francis S. Korkpor* appeared for the appellees.

MR. JUSTICE BELLEH delivered the opinion of this Court.

This is an appeal from a ruling on a petition for a writ of prohibition by the Chambers Justice, Mr. Justice Junius, who presided over the Chambers during the October Term, A. D. 1988 of this Court. According to records certified to this Court, the original proceeding was provoked by a letter addressed to petitioner by an officer of the Ministry of Justice as follows:
"REPUBLIC OF LIBERIA
MINISTRY OF JUSTICE MONROVIA, LIBERIA
June 14, 1988

Dear Mr/Mrs/Madam Komai:

As the **land** you are now occupying was acquired by the Government of Liberia for the Unity Conference Center, you are hereby requested to submit any and all documents in support of your ownership to the said property on or before June 22, 1988, to the Ministry of Justice for scrutiny."

Please note that upon your failure to submit said documents on the date mentioned above, this Ministry will have no other alternative, but to institute the appropriate legal action against you, in order to protect government's interest. Meanwhile you are strongly advised to desist from any and all constructions on the premises.

Please cooperate so as to spare yourself any future embarrassment."

Appellant, considering this letter as an attempt by government to deprive him of his property without just compensation as provided for under our Constitution, filed an eight-count petition for a writ of prohibition before the Chambers Justice on July 28, 1988. For the benefit of this opinion, we hereunder quote word-for-word petitioner's petition:

"1. That he acquired certain property from Mr. William H. Washington in 1983. Mr. Washington, the grantor, purchased the property from the Government of Liberia (GOL) in 1955.

2.That neither Mr. Washington, the grantor, nor Mr. John Komai has at any time sold said property or any portion thereof to GOL or anyone for that matter. Attached hereto is a copy of the deed of said tract of **land** marked exhibit 'A" to form part of this petition.

3. That Mr. John Komai is not the only individual owning **land** in the area or near the OAU Center. Notwithstanding, Mr. John Wulu, the director of the Unity Conference Center has singled out Petitioner Komai herein as having acquired his **land** within the OAU area and hence, he, the petitioner, must relinquish said **land**; although the grantor, Mr. Washington, has shown evidence of prior ownership to Mr. John Wulu, the Ministers of Justice and Public Works. Attached hereto is a copy of the grantor's deed, issued by the Republic of Liberia marked exhibit "B" and made a part hereof.

4. That he at no time sold his **land** to GOL (Government of Liberia) for public use nor did he receive payment from GOL or anyone as required by law.

5. The petitioner contends that under the Constitution of Liberia private **land** cannot be taken for public use without just compensation; but in contravention of this constitutional provision, the Minister of Justice and the director of the Unity Conference Center have authorized the Minister of Public Works to illegally enter the premises of petitioner, Mr. Komai, with a bull dozer to demolish his concrete dwelling house in which his family is living.

6. That this petition is not filed for dilatory purpose.

7. Those respondents are without jurisdiction to evict and oust any person or persons whomsoever without benefit of the due process of law. Hence, respondents are usurping the functions of the court, quite repugnant to the doctrine of separation of powers.

8. That no judgment has been rendered to be enforced and petitioner gives notice that he will produce other evidence to substantiate his case.

Wherefore, petitioner prays this Honourable Court to issue the writ of prohibition against the respondents restraining and prohibiting them from perpetrating their illegal act complained of herein above and to grant other relief to petitioner as Your Honour may deem fair and proper to the ends of justice.

On the strength of the foregoing petition, the Chambers Justice ordered issuance of the alternative writ, which was served and returned served by the marshal of this Court. Having entertained arguments *pro et con*, the Chambers Justice ruled, denying the petition. The Justice held that "respondents have not taken an action neither have they committed the act complained of. It is only fear that has brought petitioner before this Court and as such prohibition will not lie.

The petitioner was dissatisfied with the ruling of the Chambers Justice and therefore appealed to this Court *en bane.* Upon careful perusal of the records certified to us, and after arguments on both sides, we are convinced that the sole issue here is whether or not prohibition will lie. Our answer to this question is no.

As we indicated earlier in this opinion, the petition for a writ of prohibition was applied for by appellant upon receiving a letter from the Ministry of Justice, which letter we have earlier quoted in this opinion.

We believe appellant and his counsels had taken the said letter out of context to mean that government was taking away petitioner's property without just compensation, as our Constitution requires.

In fact the Ministry of Justice's letter was only a warning to appellant that if he failed to comply with the Ministry of Justice request: "this Ministry will have no other alternative but to institute the appropriate legal action against you in order to protect Government's interest. Meanwhile, you are strongly advised to desist from any and all construction on the premises.

There was nothing threatening in this letter to the effect of illegal seizure of private property by the government. The Ministry of Justice informed appellant that upon his failure it would have no alternative *"but to institute the appropriate legal action against you, in order to protect government's interest."* (Emphasis ours). This clearly shows that whatever action the government intended to take or ever takes would have been in keeping with law and consistent with due process. Prohibition cannot therefore lie where the action is in keeping with law and due process.

The Ministry of Justice, as the principal legal adviser to the Government of Liberia, has the proper authority to warn a squatter upon government property to leave. Anyone receiving such warning and knowing that he is not a squatter, but rather a legitimate owner of said property may submit his title document to the Ministry of Justice for inspection as has been requested by the appellee.

From the foregoing, we are convinced that prohibition will not lie in this case as prohibition is "a special proceeding to obtain a writ ordering the respondent to refrain from further pursuing a judicial action or proceedings specified therein." Civil Procedure Law, Rev. Code 1: 16.21(3). The act to be restrained must be wrong or illegal.

There is nothing that the appellees have done or are doing at the moment that is wrong or illegal; and therefore there is nothing to be restrained by us.

It is therefore our considered conclusion in this matter that the ruling of the Chambers Justice appealed from be and the same is hereby affirmed. And it so ordered.

Petition denied.

Freeman v Caine [1976] LRSC 73; 25 LLR 352 (1976) (19 November 1976)

A. KINI FREEMAN for himself and the people of Mani, Grand Cape Mount County, Appellants, v. GEORGE B. CAINE, et al., Appellees.
APPEAL
FROM THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT, GRAND CAPE MOUNT COUNTY.

Argued November 2, 3, 8, 1976. Decided November 19, 1976,* 1. Where, on remand of a case to the lower court by a Supreme Court Justice in chambers, the ruling of the lower court judge does not obey the mandate of the Justice and creates uncertainty as to the procedure to be followed to resolve the case, the Supreme Court on appeal will again remand with instructions to correct the error.

This case was previously before the Supreme Court on a petition for a writ of error based on failure of petitioners to receive notice of assignment for hearing in the matter of their objections to probation and registration of a public land grant to respondents. The Justice in chambers to whom the case was referred denied the writ of error for lack of a required affidavit, but doubting proper service by the sheriff of notice of assignment, directed the Circuit Court judge to investigate whether the questioned service had in fact occurred and to correct the error if the investigation revealed that service was lacking. On remand, the lower court judge concluded after investigation that no notice of assignment had been served on petitioners and, in accordance with the mandate of the Supreme Court, ordered "the proceedings . . . to be corrected." Respondents in the former proceedings excepted to the judge's ruling and appealed, objecting principally to the judge's omission of any directive as to what corrections should be made. The Supreme Court decided that inasmuch as the judgment of the lower court judge did not carry out the mandate of the Justice in

· Mr. Chief justice Pierre did not participate in this decision.

chambers, and created uncertainty, the case should be remanded to be handled in accordance with its instructions.
The judgment was reversed.
M. Fahnbulleh Jones for appellants. nell for appellees. Nete-Sie Brow-

MR. JUSTICE Court.

HORACE

delivered
the opinion of the

Some years ago--the record before us does not show exactly when--petitioner obtained from the Government a public
land grant for 2,325 acres of land situated in Garwalar Chiefdom, Grand Cape Mount County. When the deed was offered for probate,

application was made by the caveator to interpose objections, but the judge presiding over the Fifth Judicial Circuit Court, Grand Cape Mount County, overruled the application and ordered the deed probated and registered. On appeal to the Supreme Court, the judgment was reversed and the case remanded to give caveator the statutory time allowed him to interpose his objections. Caine v. Freeman, [1968] LRSC 5; 18 LLR 238 (1968). After the caveator had filed his objections, respondents filed an answer and simultaneously filed a motion to dismiss. The case was taken up by Honorable Alfred B. Floino, the judge presiding over the February 1971 Term of the Circuit Court for the Fifth Judicial Circuit, Grand Cape Mount County. The record shows that an assignment was allegedly made for the case to be heard on March 3, 1971, and a radiogram was sent to Counsellor Nete-Sie Brownell, counsel for respondents notifying him of the assignment. He replied asking for postponement of the case stating the reasons for his request. The trial judge never sent a reply to Counsellor Brownell's radiogram, but he took up the matter on the assigned day and dismissed the objections of respondents in these proceedings.

 Having heard of the action taken against his clients, counsel for respondents on April 21, 1971, filed an application for a writ of error before the full bench of the Supreme Court. Because of a decision taken by us that all remedial processes must originate in the chambers of the Justice presiding at the time application is made, this matter was referred to the chambers of Mr. Justice Henries, who after a hearing entered his ruling on May 24, 1974. Freeman V. Kini, [1974] LRSC 68; 23 LLR 413 (1974) · We quote from that ruling as follows : "Plaintiffs in error applied for a writ of error on the ground that they had not had their day in court in an action concerning objections to the probation and registration of a public land grant for 2,325 acres of land in the Garwalar Chiefdom, Grand Cape Mount County, filed on February 26, 1969, in the Fifth Judicial Circuit Court of that County, presided over by Hon. Alfred B. Flomo, Assigned Circuit Judge. Incidentally this case was first heard by this Court in 1968. See Caine v. Freeman, [1968] LRSC 5; 18 LLR 238 (1968) . The plaintiffs in error denied being served with notice of assignment after that of May 1, 1970, until the disposal of their objections in a ruling adverse to them by the trial judge on March 3, 1971, and, therefore, contended that the sheriff's return on the notice of assignment issued on February 23, 1971, was false. The sheriff's return has been quoted : " 'By virtue of the within Notice of Assignment, I have duly served same on the within named Seku Freeman, Varney Manoballah, Lasini Manoballah, with the exception of George B. Caine who is dead. And now have them before this Court. Dated this 2nd day of March, 1971. " `[Sgd.] S. M. DAVID, Deputy Sheriff, 5th Judicial Circuit Court, Grand Cape Mount County, R.L.'

.

"The plaintiffs in error, after

the disposition of the case, filed an affidavit on April zo, 1971, swearing the sheriff's return was false. "This was the situation as it existed when they filed their application for a writ of error on April 21, 1971. "The defendants in error filed returns consisting of three counts. . . . "3. Respondents hereby refute the facts stated in the petition that the petitioners were not served with process. The records belie this assertion and the attention of this court is respectfully drawn to the return of the sheriff and the certificate of the clerk of court. "We shall resolve the issues raised in the returns in reverse order. Count 3 of the returns refers to the sheriff's return, which we have already quoted above, and the certificate of the clerk of court, which is totally irrelevant to the issue of service. "More important, however, is the sheriff's return which shows service of process. This Court has consistently held that a sheriff's return is presumed to be correct, Perry v. Ammons, [1965] LRSC 11; 16 LLR 268 (1965) . . . that in an application for reargument, the sheriff's return is proof of service unless shown to be false. It is our opinion that the affidavit of the plaintiffs in error raised a doubt as to service of notice of assignment which should warrant an investigation for three reasons: (I) the tract of land which is the subject of the action is very large, 2,325 acres, and a judgment thereon should be thoroughly considered before rendition; (2) the parties to the action are two or more clans composed of persons perhaps numbering in the hundreds, in Grand Cape Mount County, all having a keen interest in the land and, therefore, should not be unjustly deprived of the right to enjoy all of the uses and benefits that can accrue from the land ; and (3) in order to be just the service of the notice of assignment should be conclusively established. . . .

"Finally, as to first count, which relates to the absence of an affidavit to the petition for a writ of error verifying that the application was not made for the purpose of mere harassment, it must be stated that there is none, even though plaintiffs in error contend that they did file one. "This Court can only take cognizance of the record before it, and therefore, much to our regret must give credence to what appears before us in the record and not the verbal assurance of counsel for the plaintiffs in error. . . . "In view of the foregoing, we must deny the issuance of the writ of error on the application as filed. However, relying on Kanawaty v. King, [1960] LRSC 66; 14 LLR 241 (196o) , it is our opinion in the interest of justice that the question of the service of the notice of assignment should be looked into in order to establish clearly that the plaintiffs in error were not denied their day in court. It is, therefore, our orders that the Clerk of this Court send a mandate to the court below, commanding the judge assigned therein to resume jurisdiction over the action and to investigate whether or not the notice of assignment was actually served on the plaintiffs in error. If, after the investigation, it is found that there was no service of notice of assignment, the court will proceed to correct this error in the interest of justice. If the sheriff's return to service is correct, then the court will proceed to enforce its judgment." In keeping

with this ruling, His Honor Galimah Baysah, presiding over the May 1975 Term of the Fifth Judicial Circuit Court, investigated the matter of the return of the sheriff, and the conclusion of his findings was as follows : "The court therefore rules and adjudges that there was no service of notice of assignment in these proceedings and the action taken by the former sheriff is criminal in nature and according to the mandate of the Supreme

Court the proceedings are hereby ordered to be corrected. And it is hereby so ordered." Being dissatisfied with the judge's ruling, appellants took exceptions and announced an appeal to this Court. The case is now before us for review on a ten-count bill of exceptions. Most counts deal with exceptions taken to rulings of the trial judge overruling objections of appellees to questions put to witnesses on the cross-examination. For the purpose of this opinion we think it necessary to consider only count 9 of the bill of exceptions : "9. And also because Your Honor ruled that the proceedings are hereby ordered corrected without stating what corrections should be made. Hence respondents-appellants excepted to said ruling and findings." Both appellants and appellees filed exhaustive briefs on the whole case. But we are not considering the whole case as such. The point for consideration is whether or not Judge Baysah carried out the instructions of Justice Henries in the investigation conducted by him. We have carefully examined the record of the investigation and we must say that we find some merit in count 9 of the bill of exceptions. To our mind the investigation was properly conducted up to a point, and that point is the concluding part of the trial judge's ruling. Mr. Justice Henries specifically instructed in his ruling that "it is, therefore, our orders that the Clerk of this Court send a mandate to the court below, commanding the judge assigned therein to resume jurisdiction over the action and to investigate whether or not the notice of assignment was actually served on the plaintiffs in error. If, after the investigation, it is found that there was no service of notice of assignment, the court will proceed to correct this error in the interest of justice. If the sheriff's return to service is correct, then the court will proceed to enforce its judgment." Those instructions were very clear. From the findings of the trial judge, it is obvious that

he concluded from the investigation that no notice of assignment was actually served on the appellees. Instead of proceeding to correct the error in the interest of justice as commanded by the Justice in chambers, he merely stated that "the proceedings are hereby ordered corrected." We wonder who was being ordered to correct the proceedings, when his specific instructions were to correct the error if he found that no notice of assignment was actually served on the appellees. In their arguments at this forum, appellants contended that the

investigating judge erred both in his conduct of the investigation and ruling and therefore the ruling should be reversed and the judgment enforced in their favor, that is, the probation and registration of the deed nunc pro tune should be upheld. Appellees on their part argued that the ruling of the investigating judge should be confirmed and the appeal dismissed. We find it impossible to grant either of these contentions in their entirety.

We agree, however, that Judge Baysah's ruling did not set the matter at rest as was intended by the instructions of the Justice in chambers. To our mind if he found that no notice of assignment had been served, as he said he did, then he should have either proceeded to hear and pass on the law issues of the objections de novo, or instructed the clerk of court to re-docket the case for disposition of the law issues. His mere statement that the error is to be corrected left an element of uncertainty as to what was to be actually done. Taking all the circumstances into consideration, we have no alternative but to uphold count 9 of the bill of exceptions. As to the other counts of the bill of exceptions we need only state that assignment by radiogram is one of the ways of making assignments in this jurisdiction, but where the return to a notice of assignment stated definitely that the notice had been served on the parties--not the counsel only--and that they were before court, but

then turned out to be false, we must conclude that the parties were not served with the notice of assignment. We hold, therefore, that inasmuch as the investigating judge did not carry out the instructions of the Justice in chambers, his ruling is set aside, and any judge assigned to that circuit shall proceed to carry out these instructions, that is, reconduct the investigation ordered by Mr. Justice Henries, and upon its conclusion either correct the error as hereinabove indicated, or enforce the judgment if no error has been committed ; 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 hereby so ordered. Reversed and remanded.

BP Midwest Africa (Liberia) Ltd v Kromah [1984] LRSC 13; 32 LLR 58 (1984) (10 May 1984)

BRITISH PETROLEUM MIDWEST AFRICA (LIBERIA) LTD., Appellant, *v.* **MAMADEE KROMAH**, Appellee.

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

Heard: March 21-22, 1984. Decided: May 10, 1984.

1. He who is silent when he should speak assents.

2. A license coupled with interest in real property confers the right, not just permission, as in the case with a mere license, to perform an act or acts upon the property, thereby being irrevocable and constituting an interest in the **land** itself.

3. A license coupled with interest in real property becomes an "invitation" where it is shown that the premises were used for the intended purpose, the owner acquiesced in acts and conduct of the occupant, and that the business operated for the benefit of both parties.

4. A license to use real property is irrevocable where it is shown that the licensee has made expenditures on the said property. The licensee is entitled to compensation for said expenditures.

5. Having a license to use real property is not a defense in an action of summary ejectment.

The appellant and appellee, by letter dated April 8, 1975, entered into what they termed a Trial Dealership Agreement, allowing the appellee to operate appellant's petroleum products service station for a period of four months on a trial basis. The appellee, among other things, was required to buy all his petroleum products from the appellant, hire and pay his own staff, obtain license to operate, and pay all utility bills. The appellee was to receive six cents per U.S. gallon on all appellants' products, as well as two cents commission on all the appellant customers' gas slips. At the end of the trial period, appellant was to confirm or discontinue the agreement, neither of which appellant did. Consequently, the appellee continued to operate the service station for the next seven years, making worthwhile repairs and improvements on the premises. Then in November, 1982 the appellant accused the appellee of buying petroleum products from third parties and, thereupon, terminated the agreement. Shortly thereafter, appellant filed an action for summary ejectment in the Civil Law Court of the Sixth Judicial Circuit of Montserrado County against the appellee. The trial court dismissed the action on the grounds that the appellee was a "contractor tenant", not an ordinary tenant, who had occupied the premises on

mutual understanding growing out of a business relationship. The plaintiff appealed the ruling. The Supreme Court *reversed and remanded*.

Christian D. Maxwell for plaintiff/appellant. *Nelson Broderick* for defendant/appellee by brief.

MR. CHIEF JUSTICE GBALAZEH delivered the opinion of the Court.

On April 8, 1975, British Petroleum Midwest Africa (Liberia) Ltd. (BP), plaintiff, by a letter of understanding called Trial Dealership, appointed Mamadee Kromah, defendant, a trial dealer to manage and operate its petroleum products service station on Bushrod Island for a period of four (4) months.

According to said dealership understanding, defendant was to purchase on cash down basis all petroleum products from plaintiff's company. In return, defendant was to receive six cents (6¢) per U.S. gallon on all BP products purchased, as well as two cents (2¢) commission on BP customers' gas slips. Defendant was also responsible to employ and pay his own staff as well as obtain license to operate the facilities, and pay all utility bills accruing in the course of his operations. After the four-month trial period, it was the understanding that the plaintiff would either confirm or rescind the agreement. However, after the trial period, no confirmation or rejection of defendant's position came from the plaintiff but, instead, for seven (7) years the defendant managed and operated the station successfully until November 15, 1982, when plaintiff accused defendant of purchasing petroleum products from third parties. Whereupon, plaintiff reportedly wrote a letter to defendant notifying him of the revelations and, subsequently, terminated the dealership contract on February 18, 1983. It is noteworthy that the said letter is not before this court, same having previously been denied admission into evidence.

Following the purported termination of the dealership agreement, plaintiff filed this suit of summary ejectment against the defendant in the Civil Law Court of the Sixth Judicial Circuit, Montserrado County, to recover said service station. Pleadings progressed as far as the reply and rested.

On July 1, 1983, during the disposition of the law issues, the court dismissed the plea of *lis pendens* and ruled the case to trial on the facts, to which defendant excepted and later filed a motion to consolidate the three (3) causes of action, namely: action of damages for trespass,

action of damages for breach of contract and action of summary ejectment. The motion was resisted and denied, whereupon the trial was held and the court entered final judgment dismissing the action of summary ejectment on the grounds that the defendant was a "contractor tenant" and, as such, he was not an ordinary tenant, but one who had occupied the premises on a mutual understanding growing out of a business relationship. To this final judgment, plaintiff/appellant excepted and filed both its bill of exceptions and brief, maintaining that the judge committed a reversible error when he dismissed the summary ejectment action and referred to the relationship created by the dealership agreement as a "contractor tenant," thereby implying that such a relationship is a valid defense in a summary ejectment action, unlike that of a tenant-at- will.

In the appellee's brief, he acknowledged that both the **land** and the service station belong to appellant, but strongly maintained that he was neither a tenant-at-will nor an intruder who had entered the premises illegally, therefore summary ejectment was not the proper action since it did not afford him notice in view of the attending circumstances of the dealership agreement, nor take into account the fact that improvements were made on the premises by appellee. Therefore, the appellee further contended, the question of ownership should not be taken alone as the determining factor.

The issues which this Court considers pertinent for the determination of this case are:

1. What is the legal relationship between the parties as created by the dealership understanding in respect of the subject matter, the service station?

2. Whether or not such a relationship is a valid defense in an action of summary ejectment.

Before directing our attention to the first issue, let us take a glance at the "Trial Dealership Agreement" for the benefit of this opinion:
"EXHIBIT D/1''
Mr. M. Kromah
c/o BP LMS
Bushrod, Island
Monrovia, Liberia
75/PL-31/266

Dear Sir:
TRIAL DEALERSHIP
We write to confirm our decision to appoint you as the provincial dealer of our BP L.M.S. Service Station situated at Jamaica Road, Bushrod Island for a trial period of four months from 8th April, 1975.

The stock taken was completed and signed by you on 8th April 1975 and payment in cash for the cost of petroleum products handed over to you on 8th April, 1975 is due by close of business on 9th April 1975.

All supplies of petroleum products will be purchased from BP (West Africa) Ltd, and will be on cash with order basis.

You will receive a gross margin of 6 cents per USG on main products namely BP Premium Motor Spirit, BP Regular Motor Spirit, BP Automotive Bus Oil (ACO) and BP Kerosene.

On supplies of BP main products supplied to BP slip customers, you will receive a commission of 2 cents per USG, plus the replacement of the product on presentation of properly authorized and completed BP slip.

You are responsible for the employment and payment of the appropriate number of staff to operate the BP station.

You are responsible for the prompt payment of all bills for power and water, plus the appropriate license to operate the station. At the end of the trial period a decision will be taken as to whether you will be confirmed as the dealer or not and the company's decision will be final.

Yours faithfully,
Signature not clear
MANAGER - LIBERIA"
Certified true and correct copy. Clerk, Civil Law Court.

The trial judge described the legal relationship between the parties as one of "contractor tenants", but being at a loss to understand said non-legal jargon, we are constrained to believe that His Honour meant to say that appellee was not an ordinary tenant but one who had come onto the premises as a result of a written contractual understanding between the parties. On the other hand, the appellant, in its brief, chides the ruling and strongly maintains that the relationship between the two parties was nothing but a license to use certain facilities provided by it for their mutual benefits in the business of selling petroleum pro-ducts. The appellee apparently has no quarrel with the latter definition of his relationship with the appellant, and maintains that title to said premises is not in dispute. Appellee, however, maintains that appellant has no right to remove him from the premises by summary ejectment, without notice and compensation.

Since the trend of reasoning in defining the relationship between the litigants seems to point in the direction of a license, we shall proceed to examine and define the word "license" in order to ascertain whether it would properly categorize the relationship established by the dealership agreement. A license in real property is a personal and unassignable revocable privilege conferred either by writing or parole to do one or more acts on **land** without possessing any interest therein. 33 AM. JUR. *Licensee,* § 91.

According to the dealership agreement and the contentions of both parties, it appears that appellee was a licensee on said property. He admittedly had no property interest in the **land**, and his relationship with appellant was personal. He was to hold and maintain said premises for the business interests of both parties. The dealership agreement stipulated that appellee was to occupy said premises, buy petroleum products only from appellant, employ and pay staff to operate the service station, pay all business expenses to government and customers, and at the same time receive BP gas slips on behalf of the appellant. The petroleum products obtained from appellant were at a reduced rate, and commission was paid on service slips received by the appellee.

From the foregoing, it is clear that the agreement by which appellee occupied the premises of appellant was in writing. Moreover, the requirements that appellee buys all his petroleum products solely from the appellant and at the same time promote the appellant’s business and satisfy its customers, could be interpreted as consideration given to secure the license. Additionally, after the trial period of four months, appellee made such worthy repairs and improvements on the premises to enhance the viability of the service station, as shown by the evidence adduced at the trial. While all of the foregoing activities occurred, the appellant did nothing but, instead, acquiesced in the conduct of the business by appellee until the filing of the suit seven years later. He who is silent when he should speak, assents. *Clark et al.* v. *Lewis*[1929] LRSC 5; , 3 LLR 95 (1929).

Considering the situation analyzed above, it is proper to say that the relationship between said parties over the seven-year period had gone beyond a mere license, and can rightly be described as “a license coupled with interest", or an "invitation". BALLENTINE’S LAW DICTIONARY 736 (3d ed.) defines a license coupled with interest as "a license in real property which confers the right, not the mere permission, to perform an act or acts upon the property, thereby being irrevocable and constituting an interest in the **land** itself." Other competent authorities hold that where a license assumes the above characteristics it automatically becomes what is termed an "invitation". According to Black's Law Dictionary:

"An 'invitation' is inferred where there is a common interest or mutual advantage, or where an owner or occupant of premises, by acts or conduct, leads another to believe the premises or something thereon were intended to be used by such other person, that such use is not only acquiesced in by the owner or occupant, but is in accordance with the intention or design for which the way, place, or thing was adapted or prepared or allowed to be used, while a license is implied where the object is the mere pleasure, convenience, or benefit of the person enjoying the privilege." BLACK’S LAW DICTIONARY 1069 (4th ed.)

The relationship between the parties takes the form of an "invitation," considering that the appellee came on said premises not to simply enjoy the facilities provided by the appellant at the service station, but to use such station freely in the best interest of both parties, and for their mutual advantage. According to the records certified to us, there is sufficient evidence to show that during the seven (7) years the appellee made improvements on the property, consistent with the purpose for which it was intended. As part of the improvement, he reclaimed the backyard from a swamp and added a garage to the station to make it more serviceable to customers.

Regarding the second issue, that is, whether or not the existence of a license between the parties can be used as a defense in action of summary ejectment against the appellee, the lower court answered in the negative. That court determined that the relationship was based on a contract, culminating in what it called a "contractor tenant" in referring to the appellee. Appellant disagrees and maintains that the action will lie, leaving appellee with the right to sue for damages for injuries sustained thereby. Appellee, for his part, does not agree with the appellant’s contention and maintains that appellant should first compensate him before attempting to eject him from the property and, even then, he should first be served adequate notice. The dealership agreement is silent as to the manner of eviction of the appellee, even when the appellee purchases products from elsewhere in violation of the instrument. We therefore look to the substantive law for guidance.

According to the American Jurisprudence, where expenditures are made by license, the rule is that such a license is irrevocable:

"In many jurisdictions where a licensee has entered under a parole license and has expended money or its equivalent in labor, it becomes irrevocable and the licensee acquires a right of entry on the lands of the licensor for the purpose of maintaining his structures, or, in general, his rights under the license, and the license will continue for so long a time as the nature of it calls for. This rule is particularly applicable where the licensee is engaged in the business of serving the public and could otherwise have used its rights to acquire property by condemnation.

The cases holding to this rule as to irrevocability of certain licenses proceed on two distinct theories, one theory being that when the licensee expends large sums of money in making the improvement, and such expenditure is made without opposition by the licensor, the license becomes executed and, as such irrevocable; and that, in fact, what was at its inception a license becomes, in reality, a grant. The other theory, and the reason most frequently given, is that after the execution of the license, it would be a fraud on the licensee to permit a revocation; that the principle of equitable estoppel is invoked to prevent what would work a great hardship in many instances. This is especially true where a licensor not only grants the right to the licensee to go on his **land**, but joins in the enterprise and accrues the benefits of the licensee's labor and expense." 33 AM. JUR. *Licensee*, § 103, under caption "Where expenditures are made by licensee–Rule that license is irrevocable."

The exposition made above clearly explains the law of license in real property where expenditures are made by the licensee. The license becomes irrevocable and special means have to be resorted to for terminating it. The licensee who makes such expenditures under the license is entitled to compensation for said expenditures. 33 AM. JUR. *Licensee*, § 106.

From these legal and factual circumstances it can be gathered that a license is not a legal defense to an action of summary ejectment, because failure to evict appellee will create a permanent interest in the property subject of this litigation, contrary to the basic elements of a license, even though great injustice will be done to appellee if he were to be evicted from the premises without notice or just compensation. Therefore, the judgment in this case is hereby *reversed* and the case remanded. Costs to abide final determination. It is so ordered.

Judgment reversed.

Holder et al v Dunbar et al [1947] LRSC 26; 17 LLR 719 (1947) (11 December 1947)

SUPPLEMENT A CASE PREVIOUSLY ADJUDGED
IN THE

SUPREME COURT OF THE REPUBLIC OF LIBERIA
SAMUEL HOLDER, JAMES A. HOLDER, RICHARD N.
HOLDER, SARAH HOLDER, RICHARD I. HOLDER, et al., Appellants, v. JOSEPH F.
DUNBAR, Priest-in-Charge, J. E. MURRY, Senior Warden, SAMUEL
H. HARDY, Junior Warden, ALBERT PORTE, Recording Secretary, SARAH E. DUNBAR
and LOUISE H. PORTE, Vestrywomen, All Being Officers
of Christ Church, Crozierville, Appellees.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT,

MONTSERRADO COUNTY.

Argued
November 11, 12, 1947. Decided December 11, 1947. A corporation not formally organized or chartered de jure may be deemed to exist
de facto. 2. The existence of a de facto corporation can be questioned only by the state in a direct proceeding and cannot be collaterally
attacked. 3. When the Government has granted land to officers of an unincorporated church, the grant will be deemed to have been
made to the church as a de facto corporation. 4. A de facto corporation may acquire and hold title to real property. 5. A license
given by a church for burial of members of another church in its cemetery is revocable absent a binding agreement to the contrary.
6. The amount of indemnification of an injunction bond is discretionary with the court. 1.

On appeal from a decree granting an injunction
on application by officers of a church against members of an719

720

LIBERIAN LAW REPORTS

other church, forbidding the latter
from continuing to enter petitioners' cemetery for purposes of burial of dead after revocation of permission to do so, the injunction
decree was affirmed. pellants. MR. Court.
Benjamin G. Freeman and 0. Natty B. Davis for apT. Gyibli Collins for appellees.
JUSTICE
SHANNON

delivered the opinion of the

The present appellees, as plaintiffs in the court below, instituted an action of injunction
against the present appellants, as defendants below, on the 26th day of November, 1946. The said defendants, having appeared, filed
their answer on the 21st day of December and the pleadings progressed to the surrejoinder of the plaintiffs. The case came up for

hearing before His Honor Judge Edward J. Summerville, then presiding by assignment over the Circuit Court of the Sixth Judicial Circuit, Montserrado County, at its March 1947 term. The injunction was perpetuated in a decree entered on the 8th day of April following.
To this decree, the defendants excepted and prayed an appeal to this Court. The bill of exceptions presents for our consideration one count which reads as follows : "Defendants, after arguing the law pleadings and making certain citations, submitted. His Honor the trial judge reserved his ruling on the said law pleadings (see records of court). The ruling on the said law pleadings was made on the 8th day of April, 1947, when the injunction was perpetuated. Defendants took exceptions to the ruling referred to and prayed an appeal to the Supreme Court of the Republic of Liberia, sitting in its October term, 1947." Because of the condensation of the bill of exceptions to one count only, we consider ourselves, in the decision of

this appeal, restricted to the points presented in the appellants' brief. But before entering upon the consideration of the issues presented in that brief, we shall recapitulate a succinct history of the facts in the case as shown by the pleadings certified to us. In the year 1866, His Excellency Daniel B. Warner, then President of the Republic of Liberia, deeded to certain persons as wardens and vestry of Christ Church, Crozierville, a parcel of land situated on the Caryesburg road and containing 25 acres and also bearing the number 25, "to have and to hold the above granted premises with all and singular the buildings, improvements and appurtenances thereof and thereto belonging to the said wardens and vestrymen of said church and their successors in office." At the time of this grant from the Government, the said church was not an incorporated body according to the law of this country; but in the year 19133, the Legislature incorporated it, giving it the right to the acquisition, holding, and possession of property. From the time of the grant of this property in the year 1866, the said church has held and enjoyed undisturbed, undisputed, unquestioned, and quiet possession of same. It appears that in the year 1927, the vestry of said church passed resolutions wherein it is shown that a portion of this 25-acre grant was designated as a burial ground for the members of said church; but it having been forcefully brought to the attention of said vestry that the designated church cemetery was "being regarded and used as a public graveyard in so much so that some of the plots in it assigned to families of the church were already filled and others nearly so," they resolved further that immediately after the passage of these resolutions it should be expressly understood that "none but members of the Protestant Episcopal Church, communicant and baptized, are to be interred in the cemetery thus designated." It further appears from the pleadings that no allotment of a portion of this designated cemetery of said church has

been given or made to any family or families who are not members of Christ Church except
to Reverend Joseph R. Clarke of the Methodist Church who, upon his proper application made therefor, was granted the permission to
bury his dead within the designated area. In face of the above facts which are well known to the defendants, the plaintiffs, having
objected and refused to the defendants and their privies the privilege of continuing to bury their dead on said land, the defendants
have defiantly and in utter disregard of the rights and protests of plaintiffs continued to bury their dead on said premises. On
the basis of the foregoing alleged facts which the plaintiffs regarded as sufficient equitable reasons, they applied to the courts
for a writ of injunction against the defendants, their agents and privies, to enjoin and restrain them from entering upon the said
premises for the purpose of burying their dead or in any manner interfering with the quiet and peaceful possession of the plaintiffs.
Out of fairness it must be noted that the above facts have been gathered from the complaint of the plaintiffs, to which the defendants
filed an answer containing ten counts; but all these counts appear to raise issues of law and not of fact against the right of the
plaintiffs to maintain the action. Since, as we have already said, we consider ourselves restricted to the review of these points
only as presented in the appellants' brief, we do not propose to open up their answer in its entirety. And so we pass on to said
brief, Count z of which reads as follows : "Appellants submit that the mode in which actions of injunction are commenced is specifically
set forth by our statutes, and that appellees, plaintiffs in the court below, did not follow this mode because, in their complaint,
instead of praying for a writ of injunction in the manner prescribed by statute, they prayed for the issuance of a writ of summons."
Counsel's attention having been called to the fact that the issue contained in this count of the brief did not appear

to have been raised in the answer for the court below to have passed upon, yielded the point and waived said count.
However, upon inspection of the complaint, it is discovered that it prayed both for a writ of injunction and a writ of summons. Count
z reads as follows : "Appellants submit that the deed upon which appellees claim title to said property is not a deed that would
give them such title because said deed was executed long before appellees or the institution which they set themselves up as representing
was made a corporate body. It is a fundamental principal of law that only corporate bodies, whether religious or otherwise, can own
real estate; and until such a body has, by legislative enactment, been constituted as a corporate body or organization, it cannot own real estate, nor can it sue or be
sued. It follows then that since the deed in question was executed at the time and prior to said body being a corporate body, the

title sought to be vested by the said deed could not and cannot legally vest in appellees, because at such time they did not constitute a corporate entity." The contention set forth in this count is not that the title given Christ Church is questionable or that the present vestry are not what they profess themselves to be, that is, of the same church to which the grant was made in 1866 and natural successors, but rather that, the grant having been made at the time when Christ Church was not incorporated, the right of succession cannot legally inure to this present vestry who are functioning under an act of incorporation instituted after the grant of the land in question in 1866. In support of this contention, counsel cited the following authority, which we quote : "The doctrine in relation to de facto corporations does not prevent a collateral attack on the right of a corporation to exercise a franchise separate and distinct from the franchise of being a corporation; nor

does it prevent an attack upon the power of a corporation, assuming its corporate existence to exercise a particular power, such as the power to take and hold real estate, or upon the validity of a contract entered into by it." 14 C.J. 211-212 Corporations § 218. It does not appear to us that this citation of law has any relevant and pointed bearing upon the issue involved in Count z of appellants' brief. However, for the purpose of what we are counterposing, we deem it necessary to state that, generally, corporations are classed into two divisions : corporations de facto and corporations de jure; and the distinction made between them is as follows : "A corporation may exist in fact without being legally constituted. Such a corporation is called a corporation de facto, as distinguished from a corporation de jure. A corporation de jure is a corporation which is in all respects legal ; a body which has a right to corporate existence, and to exercise corporate powers, of which it cannot be deprived, even by the state in a direct proceeding, contrary to the terms of its charter. A de facto corporation, on the other hand, is an association which actually exists for all practical purposes as a corporate body, but which, because of failure to comply with some provision of the law, has no legal right to corporate existence as against a direct attack by the state. It may be ousted in a direct proceeding brought by the state for that purpose, but with a few exceptions which will be explained later it has a corporate existence even as against the state on a collateral attack, and as against individuals and other corporations, whether they attack its right to corporate existence collaterally or directly." 14 C.J. 204 Corporations § 215. Further, we have : "The general rule, supported by an almost unanimous consensus of judicial opinion, and sometimes expressly declared by statute, is that the legality of the

existence of a de facto corporation can be questioned only by the state in a direct proceeding, and cannot be collaterally attacked or litigated in actions or proceedings between private individuals or other corporations or between them and the alleged corporation itself. "The doctrine in relation to de facto corporations is based upon the principle that the state, which alone has the power to incorporate, may waive irregularities in the organization of corporations, and so long as the state remains inactive in the premises others must acquiesce." 14 C.J. 204-207 Corporations § 216. It follows therefore that in 1886, Christ Church, Crozierville, was a de facto corporation to which the State, which could only directly raise the issue of its legal character, granted property through her wardens and vestry with the right "to have and to hold the above granted premises with all and singular the buildings, improvements and appurtenaces thereof and thereto belonging to the said wardens and vestrymen of said Church and their successors in Office." If the said Christ Church, Crozierville, was at the time of the grant an unincorporated religious society or church, the state must have recognized its existence as a de facto corporation in making this grant and thereby it waived any and all possible irregularities in its organization ; and, as long as said state remains inactive in the premises, others must acquiesce. It is a legal conclusion that de facto corporations are capable of acquiring, holding, and possessing property both real and personal. "Since the legality of the existence of a de facto corporation cannot be questioned except in a direct proceeding by the state, a de facto corporation is a reality and has a substantial legal existence, and the general rule is that such a corporation can make contracts, purchase, hold, and convey property, incur liabilities ex contractu and ex delicto, and sue and be sued, to the same extent and in the same manner as if it were a cor-

poration de jure." 15 C. J. 208 Corporations § 217. Coming to count 3 of the appellants' brief, we have the following : "Appellants submit further that the deed upon which appellees claim title to said land is both voidable and void because said deed is contradictory, that is to say, in the premises of said deed the property was granted to certain persons named as wardens and vestrymen of Christ Church, Crozierville, which was not at the time a corporate body so as to give succeeding wardens and vestrymen of Christ Church a right to said title. Hence, if at all the grantees in said deed had any title, it was a life estate or an estate for as long as they were wardens and vestrymen of said Christ Church, Crozierville. But in the habendum of said deed, the grantees are not only shown to have been given title, but title with remainder to their successors, which conditions could not have legally obtained in face of the circumstances surrounding the execution of said deed, and which circumstances, the premises of said deed confirm and harmonize with." It is again difficult to understand what the

appellants seek to contend, in this count of their brief, which would harmonize with their answer and rejoinder on record. For this reason, after pointed questions to their counsel whilst arguing before this Court, the said count was not stressed. However, we desire to point out that since the existence of Christ Church, Crozierville, at the time of the granting of the deed in 1866, as a de facto corporation has been shown, this would warrant property grants to it. And it could hold such property through its wardens and vestrymen, with remainder of succession in them. The later incorporation by an act of the Legislature of the said de facto corporation indicates the lack of successors and a want of existence, or that, under the circumstances, a grant of land made by the government previous to the incorporation must subsequently and consequently revert to the Republic.

Further, under the law cited supra this Court cannot favorably pass upon attacks made collaterally upon the legal existence of Christ Church, Crozierville, in these proceedings. Count 4 reads as follows : "And also because appellants further submit that the ruling which discarded Counts 6, 7, 8, and 9 is erroneous because as appellants contended in said count : (I) the deed was executed contrary to the principle of law controlling the execution of deeds ; (2) appellees, plaintiffs below, were guilty of laches when they sat down for 5o years or more without objections; and (3) the bond executed by the appellees in the court below was insufficient to indemnify appellants, defendants below, since the sum of $200 named therein was far too small." Following the method of appellants' counsel who argued this case in disposing of such issues in reverse order, we say that the question of the bond given by the appellees, plaintiffs below, in point of indemnification is so unfounded and the principle involved so elementary, that even the trial judge declined passing upon it. In injunction proceedings, there is no set scale whereby the amount of an injunction bond to be given by a plaintiff is to be computed but, rather, the requiring and giving of said bond, together with the amount to be inserted as indemnification is left discretionary with the judge. It is therefore our opinion that if defendants considered the amount of $200 as named in the said bond insufficient to indemnify, they should have moved the court for justification of bail instead of moving the dismissal of the action because of this claimed defect or insufficiency. It does not appear to us that plaintiffs, now appellees, have been guilty of any laches in the manner asserted in defendants' answer and rejoinder. Plaintiffs took the position that defendants had buried their dead on the said tract of land with plaintiffs' consent, but that for reasons shown in their resolutions passed in the year 1927 and

pleaded in their complaint,
they subsequently decided to withhold the continuation of this permission and so informed the defendants. It cannot be said that
a person who has the right to grant a privilege or to give a permission has not the same right to withdraw said grant of privilege
or permission except where precluded by some contract or mutual
understanding. The contention that the deed in question was issued
and executed contrary to the principles of law controlling the issuance of deeds savors of a collateral attack upon the validity
of said deed, which is not permissible under the law and circumstances shown already in this opinion. The fact that appellants did
treat with the church in seeking to get permission to bury their dead on this tract of land which was deeded to said church by the
Government, as was pleaded but not controverted or denied, is sufficient to estop against said appellants from now questioning or
attacking the legal character of Christ Church at the time the grant was made to it through its wardens and vestrymen. Under the
circumstances, we feel ourselves with no alternative but to affirm the decree of the lower court perpetuating the injunction with
costs against appellants. And it is hereby so ordered.
Judgment affirmed.

OPENING ADDRESS OF CHIEF JUSTICE A. DASH WILSON, SR.,
AT THE MARCH TERM, 1965 BRETHREN OF THE BENCH AND GENTLEMEN OF THE BAR: Just about two months ago, in a spectacular, historymaking
event, the first Temple of Justice in the Nation was dedicated. This was followed by fraternal feasting among jurists and lawyers,
honored by the presence of President Tubman, who is also a lawyer and jurist, and by what appeared, most encouragingly, to be an
awakening of a renewed life in the National Bar Association. We desire to record here our appreciation and thanks for the noticeable
cooperation given to the President of the National Bar Association,
particularly by Counsellor C. L. Simpson, Sr. The dedication
ceremonies were marked by very important and illuminating addresses.
Highlighting them all was that made by President Tubman, in
his formal acceptance of this magnificent building from the Secretary of Public Works and Utilities and in turning same over to us.
These addresses were replete with commitments and promises, especially the address by us in which we pledged to use our best endeavors
to make this building worthy of the name it bears. Perhaps the congestion under which we were formerly compelled to work, the unsuitable
and inadequate office space and facilities, the lack of privacy even for conferences on major judicial matters, and the alarming
shortage of qualified personnel contributed in some degree to the v ery slow progress in the implementation of the many plans we have continuously recommended and suggested
731

over the seven years since our elevation to the position we now hold. Setbacks have not deterred us, but rather have inspired us to a new determination and a greater sense of responsibility ; and the enviable comfort we now enjoy in our new official home has actually more than compensated for the sacrifices and discomforts. Although we decided that the adjournment ceremonies of the October 1964 term of this Court should be suspended until after the dedication ceremonies took place, we meet today for the first time since occupying this building, to formally open a term of the Supreme Court and review en banc cases on appeal. The admonitions, warnings, and appeals for cooperation, with corresponding responses recorded at our dedication ceremonies are so fresh in our minds that there is no need for repetition in a lengthy opening address at this time. I can only express the hope that we will subordinate our personal desires, likes and dislikes, and cooperate in an unrelenting endeavor to make easy, cheap, and expeditious the avenue of social justice to all. This cannot be accomplished if our deliberations and decisions are swayed by interest either for or against a party. Syntax and prosody go to the classical amplification of the issues involved in a case; but the law and facts in the case go more substantially to a fair and impartial admeasuring of justice. This, I hope, will be our future guide and the banner under which we must operate in disposing of issues brought before us on appeal from our subordinate courts. Since our last adjournment, a situation has developed in our circuit courts which has brought under our consideration several complaints and requests for intervention. I refer to the Tenth Judicial Circuit, where jurors who served during the November 1964 term were again summoned into service at the February 1965 term (notwithstanding the statute which prohibits a citizen from

serving as a juror more than once in a year) because presentments made by the grand jury at the November term of court could not be finalized by return of the indictments drawn on these presentments. Since the presentments had not been timely returned to the county attorney after clearance by the Department of Justice at Monrovia before the adjournment of the November term, it was felt that only the grand jury which had made the presentments was authorized to present the indictments to court. In this confused state of affairs, the assigned judge at the February term (though the resident judge of the circuit) disclaimed responsibility and charged the blame to the judge who presided at the November 1964 term of court. Such accusations and counteraccusations did not serve to clear up the prevailing confusion. A very interesting and embarrassing situation could develop if a presentment was venued before the judge who presided over the November 1964 term of court and the indictment which was drawn on said presentment, but presented at the following term

of court, was venued, or could not but be venued, before a different judge presiding over the February 1965 term. I prefer not to make any further comment on this, since it is obvious that such a situation cannot but invite confusion and embarrassment to the circuit courts. Unless it is true, though denied by the judge who presided over the November term of court, that the judge, before retiring from his assignment, gave instructions that the same grand jurors must again be summoned to attend upon the February term of court, the clerk of court cannot escape responsibility for this situation since, because of many irregularities complained of to me against clerks of courts in summoning persons to attend upon court, they have been ordered and instructed to forward the proposed venire to our administrative office at least a month in advance of service so that, with the aid of records made in this office of previous venires, we can determine whether

or not any of the persons so listed are elibible to serve at that term of court. Some of the clerks have avoided complying with these instructions, obviously for the purpose of perpetuating some of the irregularities from which they materially benefit. I give this as a final warning; and 1 promise disciplinary measures against any clerk of court who neglects promptly and regularly to carry out the instructions previously given concerning the drawing of venires for attendance upon as jurors. Statistics furnished us by the clerk of the Supreme Court show that most of the cases determined at the last term of this Court have gone without returns on the calendar indicating whether or not the mandates of this Court have been carried out by judges of subordinate courts. This is an act of disobedience and therefore contemptuous. Circuit judges who have not made returns to mandates sent down to them since the adjournment of our last term of Court must have such returns in the

clerk's office before the end of the current month. Failure to do so will subject the delinquent judge to a penalty. Because of the creation of four additional counties and magisterial areas within those new counties and in some of the old counties, the volume of work in the service of judiciary has considerably expanded. According to a very comprehensive report by our statistician, James G. Mooney, the following situation exists.

There are four additional circuit courts added to the six that were already in existence, thereby bringing the number to ten, plus one tax court, operating in Monrovia. For the information of the public, it is only in the County of Montserrado that civil and criminal jurisdiction are exercised by separate circuit courts ; the circuit courts of all the other counties exercise both civil and criminal jurisdiction. The magisterial courts have now increased to zo in number--an increase of four over the previous year--although we understand that there are other magistrates function-

ing in areas about which we have not officially
been informed. The report of the statistician also discloses that clerks of courts in the four new counties have neglected sending
in reports as the rule requires and that this also applies to returns from some of the circuit judges in these counties. Our attention
has also been drawn to failure on the part of revenue justices to submit reports. It will become necessary, if this delinquency continues,
to hold up the salary checks of these officials until their reports are received. To give a correct picture of the trend in the disposition
· of cases docketed in our courts from September to December, 1964, we note the following : Criminal courts: cases docketed 829;
decided 43 ; still pending 786; fines $252. Civil cases docketed:2,183 ;
decided 92 ; pending 2,091; fines and taxes, $385.55. Magisterial
courts: cases docketed 499; decided 308; pending 191 ; fines $1,893.50.
Probate courts: cases docketed 993 ; decided 86o; pending
133 ; fines and taxes $24. Traffic courts: cases docketed 328; decided 273 ;
pending 55 ; fines $4,119.50. Revenue tax court: cases
docketed 839; decided 56; pending 781 ; fines and taxes $10,305.12. At the commencement of the October 1964 term of this Court, there
were 46 cases on our docket; 24 of them were disposed of ; 15 with opinions and judgments ; nine judgments without opinions ; leaving
still 22 cases which, when added to the cases that have since reached the Supreme Court, total 34 on the trial docket and four on
the motion calendar. The returns calendar lists 51 cases, most of them without returns from the subordinate judges; hence the warning
already struck in this opening address. Following the resignation of
Associate Justice James

A. A. Pierre, it pleased the President
of Liberia to prefer

and commission Counsellor Clarence L. Simpson, Jr. to fill this vacancy. In a very impressive
and formal ceremony, this very brilliant accession to the bench was gowned, was capped, and seated on the bench of the Supreme Court
on March 9, 1964. This was in the old building on Broad Street from which we moved into this Temple of Justice. For the short period
we have had the pleasure of associating with Mr. Justice Simpson, he has demonstrated qualities of studiousness, intelligence, and
humbleness of character ; a willingness to cooperate which has indeed contributed considerably in bringing about continued brotherhood
and friendly accord on this bench. I wish, for the members of the bench, and for myself in particular, to record our special appreciation
for this attitude of our colleague and entertain the hope that our association and brotherhood will become more closely cemented
and continue in an atmosphere that admits of no toward each other, but that we will cooperate continuously in the furtherance of
justice and thereby conserve the interest of the general public. Before closing this address, I wish to make special mention of the

extraordinary service performed in the fulfilment of his assignment by Mr. Justice Lawrence E. Mitchell who, in less than 5 weeks since his assignment as Chambers Justice, has reduced the Chambers docket by about 28 cases, the highest number of cases disposed of in such a short period of time by any Chambers Justice since my connection with this bench. Mr. Justice Mitchell is deserving of congratulations for the extraordinary time and labor put into this assignment whilst at the same time sacrificing the companionship of his relatives at home in the discharge of the duties that his loyalty to this administration, the judiciary service, and the general public demanded of him. The belated passage of the 1965 budget has delayed ascertainment of the exact amount that will be available for

the judiciary service for the current year. The staffing of this new building and the readjustment and reallocation of our staff remains yet to be completed ; but we hope to be able to do so very soon and in a manner that will secure greater efficiency. I call upon members of the bar to cooperate and promptly discharge their duties towards their clients and the Court so that this session will be characterized with speed, fairness, and impartiality. God save the State and prosper justice and fairness toward and amongst all men! I now declare the March 1965 term of the Supreme Court duly opened for the transaction of business.

Johnson et al v Early et al [1965] LRSC 24; 17 LLR 3 (1965) (15 June 1965)

CASES ADJUDGED
IN THE

SUPREME COURT OF THE REPUBLIC OF LIBERIA
AT

MARCH TERM, 1965. MARIE DAVIES-JOHNSON, MARY BRIGHT, and NANCY BRIGHT-KNIGHT, Appellants, v. LUCY EARLY, JEANNIE MINOR, JOHN MINOR, SARAH MINOR, J. PRINCE NELSON, JAMES H. MORGAN, MADLINE MORGANBOYMAH, MARY MORGAN, and HENRIETTE MORGAN, Appellees.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued
April 6, 1965. Decided June 15, 1965. 1. Absent abuse of discretion, the trial court's refusal to order that the jury be kept together until discharged is not reversible error. 1956 CODE 6 :536. Z Violation of the statutory requirement that a judge recuse himself for personal interest renders the judgment void. 1956 CODE 18 :65. 3. An unprobated deed is not necessarily void. 4. Fraud in the

execution of a deed may be asserted in an ejectment action.

On appeal from a judgment for defendants in an ejectment action, the judgment was affirmed.
0. Natty B. Davis for appellants. for appellees.

J. C. N. Howard

MR. JUSTICE
Court.

SIMPSON

delivered
the opinion of the

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LIBERIAN LAW REPORTS

On November 20, 1961, the appellants herein filed an action of ejectment in the
Circuit Court of the Sixth Judicial Circuit, Montserrado County, against the present appellees for the recovery of a 15-acre block
of land devised to appellants by the will of their father, W. 0. D. Bright, Sr. In support of their claim of title to this tract
of land situated at Old Congotown, Montserrado County, appellants made profert a warranty deed from appellees to appellants' father.
This deed was executed on January 22, 1931, and bore the names of Peter Minor, Lucy Early, and Jeannie Minor as grantors. The deed
shows that none of the purported grantors were lettered ; they presumably signed through agents. Their respective signatures were
witnessed by J. W. Duncan, J. S. B. Parsons, Sr., and W. Davies Jones.
Appellees in their amended answer alleged that some of the
necessary parties-defendant had been omitted from the writ issued with the complaint. Thereupon appellees proceeded to name the parties
who they contended should have been joined as defendants predicated upon their interests in the property. In addition, appellees
made profert a deed from the Republic dated May 21, 1865, conveying 5 acres
of land to Lewis Minor. Appellees alleged that no other
property which had not been sold had devolved to them. They took the position that in the premises the purported deed upon which
the action was founded constituted a fraudulent contrivance since neither their predecessor nor themselves had fifteen acres of land
to convey. In addition to the above defenses the appellees contended that the grantee named in the deed made profert by appellants
was the commissioner of probate and as such had personally presided over the court when this matter affecting his interest was adjudicated
although it was legally incumbent upon him to request the nearest stipendiary magistrate to preside over said proceeding. The most
strenuous point of contention on the part of

appellees was to the effect that they had neither signed nor authorized the placing of their signatures upon the deed made profert by their adversaries. Appellants contended that the allegations of appellees in respect of not having sold the properties were false and misleading. Judge Joseph P. Findley ruled upon the law issues raised in the pleadings and subsequently ruled the case to trial as to certain facts that had been dealt with in the pleadings at the commencement of the trial. Appellants' counsel requested the trial judge to have the empaneled jury kept together during the conduct of the trial. The trial judge denied this request, stating that there was no suitable accommodation available for the jurors' sleeping and eating and that therefore the court in its discretion would not order the jury to be held together in the courthouse. The appellants appealed this ruling to us and we shall pass upon its Correctness. At the trial of the case, testimony was adduced by appellants in support of their claim as laid in their complaint filed in the court below. Thereafter the witnesses of appellees testified that they never executed a deed to appellants' ancestor and that this would have been physically impossible because the deed in their possession for Block No. 10 (the block in which appellants contend the subject land is situated) conveyed only five acres and not 15 acres as contended by appellants. After parol and documentary evidence had been introduced by both parties, the jury returned a verdict in favor of appellees which was subsequently confirmed and final judgment rendered thereon by the trial court. Predicated upon exceptions taken to both the final judgment and the verdict of the jury upon which it was rendered, an appeal was taken to this Court of last resort for the review of the several rulings and judgment of the court below based upon a Tocount bill of exceptions. In our opinion, the following questions of law are involved in this appeal.

1. Should the trial judge have granted the request of appellants that the jury be kept together until final disposition of the case? 2. Is a warranty deed invalidated by the fact that the commissioner of probate, an interested party, presided over the probation of the deed, and was the trial court's charge to the jury on this point contrary to law? 3. May a defendant in an action at law avail himself of an equitable defense to serve as a collateral attack in bar of plaintiff's claim? The first question we shall treat upon firstly. Did the trial judge err in denying the request of appellants that the empaneled jury be kept together at the courthouse for the duration of the trial? In order to deal with this issue we refer to the statute controlling juries in civil causes. We shall quote the statute verbatim for the benefit of the present opinion : "Every jury, including the alternate jurors, shall be kept together from the time it is sworn or affirmed until it renders a verdict and is discharged ; provided, however, that only such alternate jurors as have been substituted for regular jurors according to the provision

of section 53o above shall participate in the jury's deliberations, and the other alternates shall be discharged when deliberations commence; and provided further that when a mixed jury is not engaged in hearing evidence or in deliberation, a room shall be provided for the female jurors separate from that for the male jurors. All jurors, including the alternate jurors until discharged, shall communicate only with the constable or bailiffs sworn to attend them. The judge at the trial may, however, dispense with any of these requirements. [Emphasis added.]

"Every jury, including the alternate jurors, shall be entitled to food, water, light, and such other necessities as the Court may direct." 1956 CODE 6 :536 It is evident that the above statute requires that juries in

civil causes be kept together from the time they are sworn until discharged. However, the same statute makes it discretionary with the judge to dispense with any of the requirements. In the present case the judge predicated his determination upon the unavailability of proper sleeping quarters and food for the jury. Since it has not been shown that the circumstances attending this conclusion were such as to admit of an assertion of abuse of discretion, the ruling of the trial judge must be affirmed. Let us now center our attention around the second main issue presented by appellants. It is contended that the title deed upon which the claim of appellants rested discloses that it was probated in the court presided over by W. 0. D. Bright, Sr., as commissioner of probate and that the law prescribes otherwise in instances wherein the judge presiding has a personal interest in the case. Since our statutes are explicit on this point, let us advert to them for guidance. We quote : "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. A justice of the peace or stipendiary magistrate who presides in a Monthly and Probate Court under this section shall receive two dollars per day as compensation." 1956 CODE 18:65. Since the controlling statute thus requires the probate commissioner to rescue himself and defer to a justice of the peace or stipendiary magistrate when the commissioner has a personal interest in a matter before the court over which he presides, what then is the legal effect (a) upon the particular proceeding over which he presides in violation of express statutory provision, and (b) upon the deed thus probated? In Ware v. Republic, 5 L.L.R. so, 54 (1935) , this Court quoted with approval the following language from Chambers v. Hodges, 23 Tex. 1o4:

"We conclude, that the presiding judge being interested, was absolutely incapacitated
to take cognizance of, or sit in the case. The consent of parties could not remove his incapacity, or restore his competency against
the prohibitions of the law; which was designed not merely for the protection of the party to the suit, but for the general interests
of justice. And, consequently, the judgment rendered by him was nullity and left the case remaining undisposed of, as completely
as if the judge had not been present at the court." The position assumed by this Court in the Ware case, supra, was confirmed in
Republic v. Harmon, [1935] LRSC 28; 5 L.L.R. 3 00 (1936), and in Howard v. Dennis, [1937] LRSC 5; 5 L.L.R. 375 (1937). In both of those cases this Court held that nothing less than the cold neutrality of an impartial judge must prevail at all
times. Having established that the act of the probate commissioner was a legal nullity, what effect did this have upon the validity
of the deed? In the estimation of this Court, the mere failure to probate and register a deed does not render same a totally void
instrument but only voidable as against a third-party bona fide purchaser for value who has only probated his deed and had same registered
in accordance with Section 6 of the Property Law (1956 CODE 29:6). In other words, the failure of a grantee to have his deed duly
probated and registered is not a defense available to his grantor in an action of ejectment. Before moving away from this question,
let us touch upon the objection by appellants to the judge's charge concerning the validity of the deed. First we shall quote the
relevant portion of appellants' brief. "Appellants submit that it was reversible error for the trial judge to have sustained the
attacks made by appellees, defendants below, on the deed in question . . . that the deed was ordered admitted to probate by appellants'
late father who was judge of the Monthly

and Probate Court, Montserrado County, at the time, and therefore
it was invalid." Let us turn to the judge's charge to the jury on this score, and we quote: "The evidence shows that this is a deed
that was sold to W. 0. Davies-Bright and that he as probate judge, probated said deed. Well, it is left with you to say whether he
has interest in his own deed or property that he bought; then he could not legally have entered the deed into probate as judge."
Nowhere did the trial judge charge the jury that the deed was invalid as a matter of law; therefore the contention of appellants
is neither legally nor factually sound. Having dealt with the foregoing issues, we shall now concentrate our efforts upon the one
given the most argument before us. May a deed be assailed in an action at law by the invocation of an equitable defense which ordinarily
should be employed in chancery? At first blush this appears to be a most difficult question; however, same should be dealt with by
having recourse to our statutes, the reported cases determined by this Court, and the general common law. In the present case, appellants

alleged in an action at law that they bought a certain tract of land from appellees or their privies. Appellees answered that they never sold their property to the ancestor of appellants and that the deed relied on by appellants was a fraudulent contrivance. Appellants thereafter contended that the defense of fraud is not available in an action at law and that therefore the instant action at law should first be determined, after which the appellees might petition a court of equity for relief against fraud by a bill for cancellation.
What does our Civil Procedure Law say about the pleading of defenses? We quote: "A defendant shall state in short and plain terms his defenses to each claim asserted by the plaintiff in his complaint and shall admit or deny the averments

on which the plaintiff relies." [Emphasis added.] 1956 CODE 6 :292. Here the plaintiffs have relied upon a deed which defendants contend is fraudulent and tainted by forgery. What has our Supreme Court said on this issue of fraud? The first reported case in which the issue of fraud was dealt with by this Court is Page v. Jackson, 2 L.L.R. 77 (1912). In that case we were concerned with 'a bill in equity for the cancellation of a lease. The moving party was the party against whom the fraud had been allegedly perpetrated. The second time that this issue in respect of fraud and the cancellation of an agreement was presented to this Court for adjudication was in Nassre v. Elias, 5 L.L.R. Io8 (1936), wherein Mr. Chief Justice Grimes, in delivering the opinion of the Court, expounded upon equity jurisdiction. It was then held that there are three classes of jurisdiction in respect of equity, namely : ( ) concurrent; (z) exclusive ; and (3) auxiliary or supplemental. Continuing, the Court held that not only was equity jurisdiction, as same relates to cancellation and reformation of contracts, exclusive to that division of law, but further, equity possesses the inherent power to grant relief either through the rescission of a contract or the cancellation or reformation of a written instrument. The facts in that case dealt with a bill in equity for cancellation of a contract and for relief against fraud. We should like to draw attention to the growth pattern of equity jurisprudence in this jurisdiction as regards fraud. The above-cited suits, together with Henrichsen v. Moore, 5 L.L.R. 6o (1936), were instituted in the equity for relief against fraud. The first time that we find a defendant availing himself of an equitable defense in respect of fraud in an action of ejectment, which is an action at law, is in Beysolow v. Coleman, [1946] LRSC 4; 9 L.L.R. 156 (1946), where the trial court disallowed the introduction of evidence by the defendant to establish the existence of

fraud allegedly perpetrated in the execution of a warranty deed. This Court speaking through Mr. Justice Russell in reversing and remanding the case held that when fraud is alleged a jury must pass upon the evidence in support of the allegation.

This constitutes the first recorded case in this jurisdiction wherein this Court sanctioned the invocation of an equitable defense in an action at law. The next case following the pattern begun in the Page case, supra, is Banks v. Hayes, 1c· L.L.R. 98 (1949).

Here again this Court was requested to affirm a judgment cancelling a warranty deed for fraud. Mr. Justice Reeves quoted with approval the following authority. "A court of equity will not permit one party to take advantage and enjoy the benefits of an ignorance or mistake of law, by the other, which he knew of and did not correct. While equity interposes under such circumstances, it follows a fortiori that when the mistake of law by one party is induced, aided, or accompanied by conduct of the other more positively inequitable, and containing elements of wrongful intent such as misrepresentation, imposition, concealment, undue influence, breach of confidence reposed, mental weakness, or surprise, a court of equity will lend its aid and relief from consequences of the error." 2 POMEROY, EQUITY JURISPRUDENCE 1727 § 847 (4th ed. 1918). Having now shown the growth pattern in our courts, let us turn to the common law of general application for a determination of whether or not our statutory promulgations and the pronouncements of this Court pursuant thereto are declarative or in derogation of the common law on this score. As a general principle of law, fraud is a defense available in a court of equity. "The common law rule excludes all defenses from an ejectment action except those that are legal, and this rule still obtains in the absence of statute, where the distinction between actions at law and suite in

equity is preserved, and was recognized in the Federal Courts. Under the Federal Rules of Civil Procedure adopted in 1938, a party may state as many separate claims or defenses as he has, regardless of consistency and whether based on legal or equitable grounds, or on both.

Where the common-law rule prevails, the defendant may not interpose the defense that the conveyance to the plaintiff was obtained by fraud or perjury or that a trust was created in the plaintiff for the defendant when plaintiff gave a title bond for the conveyance and the consideration was paid. In many of the states at the present time, however, either by reason of the abolition of the distinction between courts of law and equity or by virtue of express statutory provisions, equitable defenses may be made to the action ; and in some jurisdictions not only may an equitable defense be set up, but equitable relief may be demanded on the part of the defendant, against plaintiff. Even in those jurisdictions where equitable defenses are not permitted, circumstances may arise which require

their recognition. Thus it has been held that the owner of an equitable estate who has paid off a mortgage on his own account and for his own benefit may set up the outstanding mortgage as a defense to an action of ejectment." 18 Am. Just. 56-58 Ejectment § 6o. "On the other hand, there is authority to the effect that a deed produced to make title or relied upon by either party to the action as a link in the claim of title may be attacked for incapacity in the maker, and there would seem to be no question as to the right of either party to attack the deed under which his adversary claims by showing fraud in its execution, as where the instrument was misread to the party signing it or where his signature was forged or obtained by fraud." [Emphasis added.] 18 Am. JUR. 89 Ejectment §Iro. "The only fraud permissible to be proved at law is

fraud touching upon the execution of the instrument, such as misreading, the surreptitious substitution of one paper for another, or obtaining by some trick or other device an instrument which the party did not intend to give." Ibid., fn. zo, citing George v. Tate, [1880] USSC 68; 102 U.S. 564 (1880). This position in respect of the availability of a generally accepted equitable defense in an action at law where fraud in the execution is alleged is further buttressed at 28 C.J.S. 895 Ejectment § 44. The last point that we must deal with here is the question of forgery. The law states that clear and convincing proof is generally essential to justify the setting aside of a deed on the ground that it is a forgery, a mere preponderance of evidence being insufficient. Chapman v. Turner, 255 Ala. 423, 51 So. zd 867 (1951) ; 26A C.J.S. 71-72 Deeds § 203. Since the issue of the quantum of proof was not squarely raised in the bill of exceptions we shall not dwell further on this point. In closing, this Court would like to state in clear and unequivocal terms that ours is the task of reviewing legal issues properly preserved for our determination thereon. In accordance with the basic law of the land, the jury at the trial are the sole judges of the facts. Where the trial has been regular, the verdict true, and the facts presented to the jury sufficient in law for them to formulate an intelligent opinion thereon, this Court will not disturb the case by either remanding or reversing the same. Therefore the judgment of the court below is affirmed and the clerk of this Court is hereby commanded to send a mandate to the Circuit Court of the Sixth Judicial Circuit, Montserrado County, for enforcement of its judgment in conformity herewith. Costs are ruled against the appellants. And it is hereby so ordered. Judgment affirmed.

Van EE v Gabbidon [1952] LRSC 9; 11 LLR 159 (1952) (7 March 1952)

D. VAN EE, Agent for OOST AFRIKAANSCHE COMPAGNIE, a Dutch Firm transacting Mercantile Business in Monrovia, Appellant, v. SAMUEL B. GABBIDON, Natural Guardian for his Minor Son JOSHU.SA GABBIDON, Appellee.
,

APPEAL FROM THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued January 24, 28, 1952. Decided March 7, 1952. A party in privity with a lessor is estopped from having a contract for the lease of lands to a foreigner voided on a claim that such a contract is illegal.

On appeal from judgment canceling a lease for a foreigner for thirteen years with an option to renew for twenty years, judgment reversed.
R. F. D. Smallwood
ries for appellee.

for appellant. Richard A. Hendelivered the opinion of the

MR. Court.

JUSTICE SHANNON

The records certified to us in this case present the following facts: Oost Afrikaansche Compagnie, appellant, entered into a renewed lease agreement with T. L. Richardson and Deborah T. Stubblefield, heirs of the late Maria A. Richardson, for a parcel of land lying on Water Street in the Commonwealth of Monrovia. The appellee in these proceedings is the natural guardian of his minor son, Joshua Gabbidon, who, in turn, is the legatee to said property by will of T. L. Richardson, one of the lessors above-named. This renewed lease agreement was entered into on February 15, 1937, for a period of thirteen years with an op-

tion for a second term of twenty years after the expiration of the first, both terms having the same rental. It is also to be noted that, besides the monetary consideration of yearly rentals to be paid as stipulated, the lease agreement was executed "for and in consideration of a bonus of seven hundred and twenty dollars ($720.00) equal (then) to one hundred and fifty pounds sterling (ct 150.0.0.) paid to lessors by the lessee." The receipt thereof was duly acknowledged at the time of the execution of the lease agreement and also noted therein. The lessee, by virtue of this agreement, enjoyed quiet and peaceful possession of said demised premises for an unbroken period covering the first term of thirteen years, paying rental therefor as per terms and conditions of the lease. During this period both original lessors died ; but T. L. Richardson, one of the lessors who outlived his colessor, devised said premises by will to Joshua Gabbidon, his grandson and the minor son of the appellee in this case, in whose interest appellee appears herein. There is no record that the

legality of this lease agreement was ever contested, either by the original lessors, or by the legatee, until somewhere around the year 1950, just before the expiration of the first term, and after the lessee had given intimation of its desire to take advantage of the second term of twenty years as stipulated. Appellee, acting for his minor son, projected the question of the alleged illegality of the lease agreement together with his view of the state of the said agreement, which he considered closed. Because of disagreement on this issue, appellee, for his minor son, Joshua Gabbidon, filed a suit in equity against the Oost Afrikaansche Compagnie, lessors, for the cancellation of said lease agreement. The rejoinder of the respondents, now appellants, was the last pleading. The case came up for hearing before Circuit Judge J. Dossen Richards, who decreed the cancellation of the lease agreement in question. It is from this decree that the matter is before us on appeal on a bill of exceptions containing two counts.

The successor to the lessors, appellee herein, contends that the provision in the lease agreement which grants a term of thirteen years and another subsequent term of twenty years, a total of thirty-three years, renders same illegal, unconstitutional, and against public policy; and hence same should be canceled and said property revert to the lessor's successor. The lessee contested the legal sufficiency of this ; however, the trial judge, after hearing the case, decreed the cancellation of said lease agreement. Before this Court, appellee's counsel was asked whether, hypothetically conceding that his contention was correct, he would be, or should be, allowed to take advantage of his own wrong, since the instrument which he seeks to have cancelled was undeniably executed by the company and T. L. Richardson and Deborah Stubblefield, and appellee is privy to said lessors. Appellee replied that, under the law, and in equity, the doctrine of in pari delicto does not apply against a party to an agreement which he seeks to have cancelled as against the organic law of the land and public policy. In support thereof he read common law which would have been somewhat convincing in the absence of decisions of our courts to the contrary. The trial judge seems to have ruled without considering that some greater public good was subserved by such a decree rather than by inaction. 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 L.L.R. 47 (1870) , Couwenhoven v. Green, 2 L.L.R. 301 (1918) ; z L.L.R. 35o (1919). However, this has not been true where parties who were in pari delicto have attempted to take advantage of their own wrong. Instead, we find the following in the syllabus of West v. Dunbar, I L.L.R. 313 (1897) : "A lease for lands to a foreigner for fifty years, although repugnant to the Constitution, will not nevertheless be set aside at the instance of a party thereto;

a party will not be allowed to impeach his own deed." There is no record that this decision has ever since been set aside or recalled notwithstanding the legislation of 1899-1900 which seems to have been enacted as a result of the decision in the West case. In the more recent case of Couwenhoven v. Green, supra, the lease agreement in question presented more irregularities and illegalities than the one in this present case. In the Couwenhoven case one of the illegal clauses read as follows : "[s]hould the Constitution of Liberia ever become open for foreigners to hold real estate in fee simple in Liberia, then and from that date this deed shall entitle the lessee to have and to hold said premises in fee simple, to them and their heirs forever." Id. at 302. Nevertheless the Supreme Court did not cancel the lease, but, instead, remanded the case "in order to allow the parties to reconstruct the deed of lease by eliminating the illegal clauses in the instrument, taking into consideration the equitable rights of all parties concerned," requiring them to report to a later term of the Court. The parties did not come to an agreement on the terms of the lease, and, upon the lower court's making returns to that effect, the matter was taken up by this Court which ordered that the illegal clauses in the said lease agreement be eliminated, and decreed an annual rental to be paid, thereby perpetuating said lease instead of cancelling it as prayed. 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. Nevertheless this Court has not been loathe to discourage any veiled

attempt to subvert existing fundamental laws of the Republic, especially our Constitution. Our probate courts are given the right to examine every document which is the subject of admission to probate before ordering it admitted. Many controversies could be obviated if our probate courts would fairly, diligently, and correctly exercise this right as our present Solicitor General, S. Raymond Horace, did when he was Commissioner of Probate for Montserrado County, in the matter of certain lease agreements then offered before him by Counsellor H. Lafayette Harmon. Because of what has been stated herein, we hesitate to affirm the decree of the lower court ordering the cancellation of the lease agreement in issue at the instance and upon a suit brought therefor by appellee, one of the parties in privy thereto, who unreservedly admits, in his briefs, that he is in pari delicto; especially when to do so would certainly be placing us in the position to invoke the provisions of the Joint Resolution of January 7, 1899 (L. 1899-1900, p. so), prohibiting the granting of leases to foreigners in any places except ports

of entry and delivery. Perhaps our conclusions would have been different, and where the proof was evident and uncontroverted we might have found it necessary to invoke and apply the 1899 act, had the proceedings been at the instance of an interested party other than the lessor, now appellee. The decree of the lower court is consequently reversed with costs against the appellee ; and it is hereby so ordered.
Reversed.

Crusoe-Marsh v Morgan-Bedell [1971] LRSC 40; 20 LLR 334 (1971) (27 January 1971)

MAE CRUSOE-MARSH,

sole heir of Rebecca V. HensenCrusoe, Informant, v. MARY MORGAN-BEDELL, by and through her husband, G. Earnest Bedell, M. E. MORGAN-EARLY, ROSE JAMES, J. H. MORGAN, and HENRIETTA MORGANDORLEY, by and through her husband, HENRY W. DORLEY, Respondents.
BILL OF INFORMATION TO ADJUDGE IN CONTEMPT OF COURT.

Argued April 20, 1971. Decided May 27, 1971. 1. A mandate to a lower court from the Supreme Court, when fully executed by the lower court, terminates the proceeding upon which it was predicated, and a subsequent act by an interested party can only constitute the basis for other proceedings and does not amount to a violation of the judgment which the mandate ordered enforced. 2. It is the position of the Supreme Court that by its conduct it will seek to preserve the harmonious balance of government existing among the various branches of government provided for by the Constitution.

In 1967, the Supreme Court sent a mandate to the lower court ordering it to enforce its judgment in an ejectment suit. A writ of possession put the successful plaintiff onto the **land in dispute. Subsequently, the defendants in the ejectment suit, it would appear, took possession of the land** again. In 1968, plaintiff sought assistance in the matter from the office of the President of Liberia, the results of which appear inconclusive in the record. In May, 1970, the plaintiff filed a bill of information seeking to have defendants adjudged in contempt of Court and the relief provided her by the judgment of the Court enforced. By virtue of the nature of the subsequent encroachment, a new matter had arisen, the Supreme Court maintained, not within the contemplation of its prior mandate, in addition, for the sake of harmony among the various branches of government, the informant

having previously sought Executive
assistance, the bill of information was dismissed. Richard A. Diggs for
informant. Tilman Dunbar and Steven B. Dunbar for respondents.
MR. JUSTICE MITCHELL delivered the opinion of the Court. In 1964, Rebecca V.
Henson-Crusoe, sued in ejectment Mary Morgan-Bedell,
et al. This action was filed in the Civil Law Court, Sixth Judicial Circuit,
and her case was heard on October 19, 1965, with judgment
resulting in favor of the plaintiff. Defendants excepted to the verdict and
judgment of the court below and announced intention to
appeal to the Supreme Court. The case having been placed on the docket of the
Supreme Court, it was assigned and bulletined to be
heard at the March Term, 1967. When called, the appellants did not appear and
under the Rule of Court, the case was dismissed and
the judgment of the lower court was ordered enforced by a mandate from this
Court to the lower court. The orders from this court,
according to its mandate, were executed, and the appellee was placed in
possession of the tract of land sued for on a writ of possession
issued out of the court below, to which a return was made. This, in our
opinion, closed the story as far as the orders from this
Court were concerned. Subsequently, it would appear from the submission filed
by the informant, that the identical defendants who
had vacated the premises which plaintiff had been possessed of, returned to
the same premises and occupied or reoccupied the same
tract of land. On May 15, 1970, Mae Crusoe-Marsh, sole heir of Rebecca V.
Hensen-Crusoe, who had been previously

possessed of the property according to judgment of the court below which had
been ordered enforced as aforesaid, filed
a submission in the office of the clerk of this Court substantially averring
the facts set forth above and seeking further relief
and the citation of defendants for contempt of Court. Respondents appeared
and filed their return, in which they averred that the
informant had already complained in the same matter to the President of
Liberia for his intervention in the aforesaid disputed matter,
and in consideration of her complaint, the President had referred the matter
to his Administrative Assistant for investigation, hence informant's
submission,
besides being mischievous, subjects her to be held in contempt of Court for
attempting to mislead the Court en banc, especially since
the informant had participated in the investigation before the Administrative
Assistant to the President. Her filing this submission
before the Supreme Court, therefore, is intended to initiate a clash between
the Executive and the Judiciary branches of Government.
Further, they alleged that informant sought to have the Supreme Court
exercise original jurisdiction over the matter, because the
mandate from this Court had already been enforced, and the Supreme Court is
not the proper forum for such complaint. Accompanying

their said return, they made profert of a letter under the signature of Thomas M. Teage, Administrative Assistant to the President. "Dear Mrs. Early, "On the i 1th day of March 1968, we wrote you a letter asking you to call in our office on today, March 12, 1968, for an investigation of a matter the President of Liberia has referred to us for investigation reported to him by Mrs. Rebecca Hensen-Crusoe ; we note you failed to show up. "It is our further request that you will please call

at our office on Thursday, March 15, 1968, at ten for the investigation. Please fail not to appear. "Faithfully yours, THOMAS M. TEAGE,

Administrative Assistant to the President, R.L."

This letter, in itself, verifies the fact that informant was aware that the judgment of this Court had been completely enforced and there was nothing else to be done upon the reoccupation of the land by the defendants, and took her matter off the hands of the Court and referred it to the President. Moreover, her submission made to this Court was not filed until May 15, 1970, and the letter from Teague is dated March 12, 1968. "The power of this government shall be divided into three distinct departments : Legislative, Executive, and Judicial; and no person belonging to one of these departments, shall exercise any of the powers belonging to either of the others." Constitution of the Republic of Liberia, Article I, Section 14th. This case had been before this Court and the judgment of the Court had been enforced. There was nothing left to be done in connection with the enforcement of the Court's judgment or mandate. If defendants had obstructed the mandate from this Court directing enforcement of the judgment of the lower court, then they would have been liable in contempt of Court, but after plaintiff had been possessed of the land upon a writ of possession, any further infringement on her rights was not conduct which rendered them liable in contempt. When this case was called for hearing, informant's counsel said that he was unaware of his client having taken the matter before the President and if he had known that she had done so he would not have appealed to this Court, and knowing the provisions of the Constitution he wanted this Court to understand that he had no

idea of the circumstances as they had unfolded. Respondents' counsel maintained that the main intent of the informant was to deceive this Court and develop between the judiciary and executive branches of the Government and, therefore, she should be held to answer in contempt. In fine, the reoccupation of the land in question was, indeed, a new matter, Mae Crusoe-Bedell, the only surviving heir of Rebecca V. Hensen-Crusoe knowing that the Court's jurisdiction had ceased over the matter, found her way to the President for his executive intervention. Since this was done without the knowledge and consent of her counsel, there seems to us to be no reason for contempt to be adjudged against him. However, since jurisdiction is not conferred by consent of parties, but rather by law, and the Constitution provides that the one branch of Government shall not interfere with the functions of another, this matter having already been referred to the President of Liberia before the submission was made to this Court, we are of the opinion that the submission is void of legal consideration and, therefore, is hereby dismissed with costs against the informant.
Information dismissed.

Richardson v Stubblefield et al [1940] LRSC 5; 7 LLR 107 (1940) (20 December 1940)

CASES ADJUDGED
IN THE

SUPREME COURT OF THE REPUBLIC OF LIBERIA
AT

NOVEMBER TERM, 1940.

TOUSSAINT L. RICHARDSON, Appellant, v.
GEORGE W. STUBBLEFIELD and EDITH COLLINS-JONES, Executor and Executrix of the Estate of the Late DEBORAH F. STUBBLEFIELD, Appellees.
APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued April 13, 17, 18, 1939, and November 26, 27, 1940. Decided December 20, 1940. 1. The common law provisions for joint tenancy remain in vogue in this jurisdiction and our courts must in all cases interpret a joint conveyance, unlimited by any qualifying words, as one creating an estate in joint tenancy with its attendant doctrine of survivorship, and not a tenancy in common. 2. To constitute joint tenancy four unities must coexist : These are unities of interest, title, time and possession. 3. Testator is poWerless to make devise of land in fee when said testator possesses life estate only; therefore devise is void.

Appellees applied to the lower court for probate of the will of the late. Deborah Stubblefield. Appellant filed objections in that court to the probate. The court overruled appellant's objections and admitted the will to probate. On appeal to the Supreme Court, judgment reversed.

Anthony Barclay for appellant.
and T. G. Collins for appellees.

William E. Dennis

MR. CHIEF JUSTICE GRIMES delivered the opinion of the Court. Unto Robert B. and Maria A. E. Richardson were born three children in the following order: John T.; Deborah F., the application to probate the last will and testament of whom has led to the present litigation; and Toussaint L., the objector who opposes the probate of said will and is the appellant at this bar. The first vacant chair in this compact little family circle was that left when the paterfamilias died intestate on a date not stated in the record before us. It would appear that sometime afterwards, between the twentieth day of May and the fifth day of October, 1914, the materfamilias went to rejoin her departed husband in the regions beyond the grave, leaving behind a last will and testament executed on the former date and admitted to probate on that last named date. And it is important for us to record here that the estate which the late Mrs. Richardson disposed of in said will had devolved upon her as the principal devisee and residuary legatee of the estate of her father Thomas Smith. When the curtain again arises upon what has developed into an interesting little legal drama, we find Deborah F. Richardson, now deceased wife of George W. Stubblefield, herself gone to rest, also leaving a last will and testament behind her. Upon the application to probate of the said last will and testament this litigation was commenced. On the fourth of August, 1938, the youngest member of the family, Toussaint, in pursuance of a caveat he had filed on July 25, filed formal objections to the probate of the last will and testament of his sister aforesaid. Pleadings against and in support of said objections went as far as the rejoinder when, on August 31, the said objections

were
withdrawn and amended objections filed in lieu thereof. These also progressed to the rejoinder and the issues raised in these amended pleadings were the issues which came on for trial in the Circuit Court of the First Judicial Circuit before His Honor Nete-Sie Brownell, judge presiding in the month of January, 1939. Another remark in passing is that to the three Richardson children named in the first part of this opinion had come two different sets of property from two separate and distinct sources: that from their father who had died intestate, and that from their mother as devisee of her father Thomas Smith. The principal contention in this case, as correctly epitomized by the trial judge, turns upon whether or not that property which was formerly their maternal grandfather's devolved upon the three Richardsons as joint tenants or as tenants in common. To correctly decide this question we have to go back to the last will and testament of Thomas Smith,
the last purchaser, the relevant portion of which reads : "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 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."
Modern writers on real property all agree that there is a difference between the English and American rule on the subject of joint tenancy and tenancy in common. Washburn, in the first volume of his treatise on real property, puts it thus :

"By the common law, in England, if an estate is conveyed to two or more persons without indicating how the same is to be held, it will be understood to be in joint-tenancy. Contrary to the English rule, the policy of the American law is opposed to the notion of survivorship, and if an estate is conveyed to two or more persons without indicating how it is to be held, it will be presumed to be a tenancy in common. In many of the States the rule of survivorship is abolished by statute, except in the case of joint trustees or mortgagees, while in others all estates to two or more persons are taken to be tenancies in common, unless expressly declared to be joint-tenancies by the deed or instrument creating them, with a similar exception of estates to joint trustees or mortgagees."
Washburn, The American Law of Real Property 53o (6th ed. 1902).
The first question for us to decide is which of the two rules should be our guide. Our own Supreme Court in the year 1896 in the

case Williams v. Young, 1 L.L.R. 293, unmistakably followed the English rule in its entirety. The learned judge of the trial court, commenting upon the two rules and
the decision above referred to, seemed inclined to brush aside the rule, which he referred to as outmoded, and to recommend legislation
that would be more in line with the modern trend of opinion in the United States. And it is significant that although he does not
expressly give that suggestion as authority, he, nevertheless, in this case decided against joint tenancy. Be the American rule as
it may, courts of justice have to deal with the existing law; and the law on this subject in this country today undoubtedly supports
the English rule followed by our Supreme Court in the case just cited. According to Cyclopedia of Law and Procedure: "The ancient
English law was apt in its constructions of conveyances to favor joint tenancy rather than tenancy in common ; and where an estate
was con-

veyed to two or more persons without any words indicating an intention that it should be divided
among them it was construed to be a joint tenancy. Joint tenancies, however, for a long period of time have been and still are regarded
with so little favor in England and in this country, both in courts of law and of equity, that whenever the expressions in a conveyance
will import an intention in favor of a tenancy in common, such effect will be given to them. But notwithstanding this tendency of
the courts, in the absence of statute a conveyance to several persons will still be construed to be a joint tenancy where there is
no expression or words in the instrument creating it indicating an intention that the estate shall be divided." 23 Cyc. of Law &
Proc. Joint Tenancy 485 (1906). Our own statute adopting a civil code of laws for this Republic provides : "Sec. 1. That so much
of the seventh Section of an Act entitled, 'An Act defining certain Crimes, and relating to the punishment of Crimes' as reads:'Such
parts of the Common law set forth in Blackstone's Commentaries as may be applicable to the situation of the people ; except as changed
by the laws now in force, and such as may hereafter be enacted shall be the civil code of laws for the Republic'--be so altered and
amended as to read--that, Blackstone's Commentaries, as revised and modified by Chitty or Wendell, and the works referred to as the
sources of Municipal or Common law in Kent's commentaries on American law, volume first--shall be the civil and criminal code of
laws for the Republic of Liberia; except such parts as may be changed by the laws now in force, and such as may hereafter be enacted
: And all laws or parts of laws conflicting with the provisions of this Act be, and the same are hereby, repealed." L. 186o, 72 (4th)
§ 1. This Court commenting upon this statute in the case

Roberts v. Roberts, i L.L.R. 107 (1878), made the following observations : "Here is an adoption not only of the common law as set forth in Blackstone's Commentaries as in the previous act amended by this, but of the whole of those Commentaries as revised and modified by the writers named in the act. The statutes embraced in those Commentaries, where they remain unchanged by laws now in force, have thus been adopted as laws of this Republic. . . . "Kent in his Commentaries, Vol. 1, in giving an account of the sources of the common law to the American people, makes this statement: 'It is also the established doctrine that English statutes passed before the emigration of our ancestors, and applicable to our situation, and in amendment of the law, constitute a part of the common law of this country.' (See page 473.) "These statutes, being one of the sources of the common law referred to by him, have been incorporated by that act of the Legislature within our laws. As to the wisdom, policy or expediency of adopting these statutes as a whole, or of the works referred to in Kent, as sources both of the municipal and common law, and incorporating them as laws of the Republic, the court has nothing to do; these are matters of legislative deliberation and cognizance. . . ." Id. at 112. And so long as the statute quoted remains unrepealed, as undoubtedly it does, and the comment made in the aforesaid case is not recalled by a subsequent decision of this Court, our courts must in all proper cases interpret a joint conveyance, unlimited by any qualifying words, as one creating an estate in joint tenancy, with its attendant doctrine of survivorship, and not as a tenancy in common. But, nevertheless, there are two reasons why, although we uphold the doctrine that generally speaking the common law provisions for joint tenancy remain in force in

this jurisdiction until this day, we unhesitatingly affirm that in the case at bar no joint tenancy was created by the terms of the will we have before us for consideration. The first of these reasons is that to constitute a joint tenancy four unities must co-exist in the plurality of persons who claim as such, and these unities are the unities of interest, title, time, and possession. 2 Blackstone, Commentaries *18o; 7 R.C.L. Joint Tenants § 3, at 811 (1915). Obviously two of these were lacking in the case under review. In the first place, as has been seen from the section of the will quoted, Maria Richardson was given but a life estate, while her three children were evidently intended to enjoy the two-thirds of the remainder devised to them as a freehold estate of inheritance; and this destroyed, of course, the unity of interest. Then, as the life estate vested in Maria Richardson immediately after the death of Thomas Smith and not in the children until after the death of Maria A. Richardson, their mother, that made manifest that there was no unity of time. In the absence of these two unities, or in the absence of either of them, there cannot be, and never could be, an estate in joint tenancy. Another

cogent reason why we have to decide against joint tenancy in this case is the reason pointed out by the trial judge. In that clause of the will under construction the testator said, as we must now reiterate, "[W]hatever 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. . . ." During the argument here, the attention of counsel for appellant was directed to the second word "divided" in the partial sentence just quoted but, although he admitted having noticed it, he evinced a disposition to minimize its importance. All law writers agree that the very idea of a division is incompatible with joint tenancy, for in that species of tenure each joint tenant is supposed to be seized per my et per tout, or, in

other words, each joint tenant has a right to each and every sprig of grass, each and every pod of soil. z Blackstone, Commentaries *182. 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 twothirds 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. One of the most pertinent authorities we have been able to find in support of the view herein expressed is the case Brant v. Virginia Coal & Iron Co., [1876] USSC 25; 93 U.S. 326, 93 S. Ct. 927 (1876). Mr. Justice Field speaking for the Court in that case said : "In April, 1831, Robert Sinclair, of Hampshire County, Va., died, leaving a widow and eight surviving children. He was, at the time of his death, possessed of some personal property, and the real property in controversy, consisting of one hundred and ten acres. By his last will and testament he made the following devise: 'I give and bequeath to my beloved wife, Nancy Sinclair, all my estate, both real and personal; that is to say, all my lands, cattle, horses, sheep, farming utensils, household and kitchen furniture, with everything that I possess, to have and to hold during her life, and to do with as she sees proper before her death.' The will was duly probated in the proper county. "In July, 1839, the widow, for the consideration of $1,loo, executed a deed to the Union Potomac Company, a corporation created under the laws of Virginia, of the real property thus devised to her, describing it as the tract or parcel on which she then resided, and the same which was conveyed to her 'by the last

will and testament of her late husband.' As security for the payment of the consideration, she took at the time from the company its bond and a mortgage upon the property. The mortgage described the property as the tract of land which had on that day been conveyed by her to the Union Potomac Company. "In 1854 this bond and mortgage were assigned to the complainant and Hector Sinclair, the latter a son of the widow, in consideration of $1oo cash, and the yearly payment of the like sum during her life. Previous to this time, Brant and Hector Sinclair had purchased the interest of all the other heirs, except Jane Sinclair, who was at the time, and still is, an idiot, or an insane person; and such purchase is recited in the assignment, as is also the previous conveyance of a life interest to the company. "In July, 1857, these parties instituted suit for the foreclosure of the mortgage and sale of the property. The bill described the property as a tract of valuable coal land which the company had purchased of the widow, and prayed for the sale of the estate purchased. Copies of the deed of the widow and of the mortgage of the company were annexed to the bill. In due course of proceedings a decree was obtained directing a sale, by commissioners appointed for that purpose, of the property, describing it as 'the lands in the bill and proceedings mentioned,' if certain payments were not made within a designated period. The payments not being made, the commissioners, in December, 1958, sold the mortgaged property to one Patrick Hammill, who thus succeeded to all the rights of the Union Potomac Company. "The defendant corporation, the Virginia Coal and Iron Company, derive their title and interest in the premises by 'sundry mesne conveyances from Hammill, and in 1867 went into their possession. Since then it has cut down a large amount of valuable tim-

ber, and has engaged in mining and extracting coal from the land, and disposing of it. "Brant, having acquired the interest of Hector Sinclair, brought the present suit to restrain the company from mining and extracting coal from the land, and to compel an accounting for the timber cut and the coal taken and converted to its use.
.
. .

"The disposition of the case depends upon the construction given to the devise of Robert Sinclair to his widow, and the operation of the foreclosure proceedings as an estoppel upon the complainant from asserting title to the property. "The complainant contends that the widow took a life-estate in the property, with only such power as a life-tenant can have, and that her conveyance, therefore, carried no greater interest to the Union Potomac Company. The defendant corporation, on the other hand, insists, that, with the life estate, the widow took full power to dispose of the property absolutely, and that

her conveyance accordingly passed the fee. "We are of opinion that the position taken by the complainant is the correct one. The interest conveyed by the devise to the widow was only a lifeestate. The language used admits of no other conclusion; and the accompanying words, 'to do with as she sees proper before her death,' only conferred power to deal with the property in such manner as she might choose, consistently with that estate, and, perhaps, without liability for waste committed. These words, used in connection with a conveyance of a leasehold estate, would never be understood as conferring a power to sell the property so as to pass a greater estate. Whatever power of disposal the words confer is limited by the estate with which they are connected.

"In the case of Bradley v. Westcott, reported in the i3th of Vesey, the testator gave all his personal estate to his wife for her sole use for life, to be at her full, free, and absolute disposal and disposition during life; and the court held, that, as the testator had given in express terms an interest for life, the ambiguous words afterwards thrown in could not extend that interest to the absolute property. 'I must construe,' said the Master of the Rolls, 'the subsequent words with reference to the express interest for life previously given, that she is to have as full, free, and absolute disposition as a tenant for life can have.' "In Smith v. Bell, reported in the 6th of Peters, the testator gave all his personal estate, after certain payments, to his wife, 'to and for her own use and disposal absolutely,' with a provision that the remainder after her decease should go to his son. The court held that the latter clause qualified the former, and showed that the wife only took a life-estate. In construing the language of the devise, Chief Justice Marshall, after observing that the operation of the words 'to and for her own use and benefit and disposal absolutely,' annexed to the bequest, standing alone, could not be questioned, said : Tut suppose the testator had added the words "during her natural life," these words would have restrained those which preceded them, and have limited the use and benefit, and the absolute disposal given by the prior words, to the use and benefit and to a disposal for the life of the wife. The words, then, are susceptible of such limitation. It may be imposed on them by other words. Even the words "disposal absolutely" may have their character qualified by restraining words connected with and explaining them, to mean such absolute disposal as a tenant for life may make.' "The Chief Justice then proceeded to show that other equivalent words might be used, equally mani-

festing the intent of the testator to restrain the estate of the wife to her life, and that the words, 'devising a remainder to the son,' were thus equivalent. "In Boyd v. Strahan, 36 Ill. 355, there was a bequest to the wife of all the personal property of the testator not otherwise disposed of, 'to be at her own disposal, and for her own proper use and benefit during her natural life;' and the court held that the words `during her natural life' so qualified the power of disposal, as to make it mean such disposal as a tenant for life could make. "Numerous other cases to the same purport might be cited. They all show, that where a power of disposal accompanies a bequest or devise of a life-estate, the power is limited to such disposition as a tenant for life can make, unless there are other words clearly indicating that a larger power was intended." Id. at 3 27-34. And now we come to that part of the property which descended to the three Richardsons on the paternal side. On the death of Robert B. Richardson, intestate, his property descended to his three children aforesaid as an estate in coparcenary, and each was therefore entitled to one-third of the whole. It was suggested in the argument of counsel for appellees that John T. Richardson subsequently died intestate and without heirs and that therefore his one-third interest should be divided between Deborah and Toussaint, thus giving each of them one-half of the whole. As this phase of the question was not passed upon in the trial court, nor, as far as we can see, even raised in said court, it does not appear to us to be properly before us for review, and hence we do not feel ourselves called upon to make any comment thereon. Summing up, it is our opinion that inasmuch as the late Maria Richardson intended to devise lands which had only been given to her for life, the devise was ineffec-

tive and therefore void. Hence, the part of the will of the late Deborah F. Stubblefield which attempts to dispose of the fee of any of her maternal grandfather's property, in which she had only a life estate that determined at her death, was illegal; and her will, therefore, in regard to the property on the maternal side, should not, in our opinion, be admitted to probate. As to the disposition in her will of that property descended from her father, it is our opinion that she was only entitled to one of the three portions of the estate, and an attempt to devise in fee any part of said estate without reference to the shares of her brothers was also ineffective and void. It follows, then, that the will before us cannot legally be admitted to probate, and hence the judgment of the court below should be reversed and appellees ruled to pay all costs; and it is hereby so ordered.

R eversed.

Bility v Sirleaf [1988] LRSC 5; 34 LLR 552 (1988) (25 February 1988)

FOMBA BILITY, Appellant, v. **MARSAH SIRLEAF**, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE NINTH JUDICIAL CIRCUIT, BONG COUNTY.

Heard November 19, 1987. Decided February 25, 1988.

1. *Res judicata is* a principle of law which bars litigation of issues in a case involving the same parties and the same subject matter where the case has once before been judicially determined; this is to say, where the merits of the issues have been previously tried and judgment rendered thereon.

2. Under the doctrine *of stare decisis,* a deliberate and solemn decision of the court, made after argument on a question of law fairly arising in the case and necessary to its determination, is authority in subsequent cases where the very point is again in controversy.

3. Where a prior suit was not between the same parties and did not concern the same subject matter, a plea of *res judicata* will not be entertained.

4. The purpose of the appointment of an attorney by the court is to note exceptions to the ruling of the court on behalf of the absent party. Thus, the court's appointee is only required to except to the ruling of the court.

5. Where Rule 7 of the Circuit Court Rules has been invoked, it is error for the trial judge to appoint a lawyer to take the ruling on behalf of the absent party who was notified of the hearing but failed to appear.

6. Mere technicalities not affecting the substantial rights of the parties should not be allowed to defeat the ends of justice.

7. The issues of law having been disposed of in civil cases, the clerk of court shall call the trial docket of these cases in order. Either of the parties not being ready for trial shall file a motion for continuance setting forth therein the legal reasons why the case might not be heard at the particular term of court....A failure to file a motion for continuance or to appear for trial after returns 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 cost according to the party failing to appear.

8. Special damages must be particularly alleged and affirmatively proved, whereas in the case of general damages, the amount awarded is exclusively within the province of the trial jury.

9. Where general damages are prayed for in the complaint, a trial judge is duty bound to charge the jury on that point.

10. The failure of the trial court to read the mandate of the Supreme Court before commencing the trial of the case, as mandated, is not a ground provided in the statute for a new trial.

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

12. 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 action may be brought when the title to the real property as well as the right to possession thereof is disputed.

Marsah Sirleaf, appellee herein, instituted in the Ninth Judicial Circuit, Bong County, an action of ejectment against the appellant. In his answer, the appellant had raised the issue of *res judicata,* contending that an action had been previously instituted and adjudicated by the Supreme Court, involving the same subject matter and the same parties, and that the appellee was therefore barred from bring the suit. Simultaneously with the filing of the answer, the appellant also filed a motion to dismiss.

At the call of the case for the disposition of the law issues, the trial court heard and denied the motion, disposed of the law issues in the pleadings, and ruled the case to trial. From the denial of the motion, the appellant petitioned the Justice in Chambers for a writ of certiorari. The petition was heard and denied, but no appeal was taken therefrom. Accordingly, a mandate was sent to the trial court to resume jurisdiction over the case and to proceed with the trial thereof.

In response to a notice which was duly issued and served, counsel for appellant wrote a letter to the court requesting the reassignment of the case to the following day. The request was granted by the Court. However, neither the appellant nor his counsel appeared in court for the trial of the case. Whereupon appellee's counsel invoked Rule 7 of the Circuit Court Rules and prayed for a judgment by default. The request was granted by the court and the appellee was allowed to present evidence in support of the allegations laid in her complaint. Following the evidence, the jury returned a verdict of liable against the appellant. Whereupon counsel for appellant appeared, took exceptions to the verdict and filed a motion for a new trial. The motion was heard and denied and judgment was rendered confirming the verdict. An appeal was taken therefrom to the Supreme Court.

The Supreme Court affirmed the judgment of the trial court, holding that as to the evidence presented by the appellee, the same was sufficient to warrant the verdict returned by the jury, and that as the appellee had requested damages in her complaint, in addition to requesting that the appellant be evicted from the premises, the jury acted properly in awarding her special damages for the wrongful detention of the premises by the appellant. The Court rejected the contention that because the witnesses for the appellee had not mentioned the damages done to the appellee, she was therefore not entitled to general damages for the wrongful detention of the premises. The Court observed that the appellee had made mention of and demanded damages in both her complaint and in her testimony. The trial court did not err therefore in making mention of the damages in his charge in affirming the verdict adjudging the appellant liable in damages, and in denying the appellant's motion for a new trial, it said.

As to the contention of the appellant that the trial judge had erred in denying the appellant's motion to dismiss, the Supreme Court said that it found nothing in the records to substantiate the claim of the appellant that the matter had been adjudicated before, and that in any event, the issues had been taken to the Justice in Chambers on certiorari and resolved by the Justice without an appeal being taken to the full Bench. Therefore, the Court said that the trial judge correctly denied the motion to dismiss.

With regard to the arguments of the appellant that the trial court erred in appointing the County Attorney for Bong County to take the ruling of the court on the law issues, the Supreme Court said that the appointment of such lawyer did not prejudice the appellant's case as the said lawyer had noted the necessary exceptions on behalf of the appellant. The Court noted, however, that the trial court had erred in appointing a lawyer to take the ruling on behalf of the appellant as the appellant, having received a notice of assignment but had failed to attend the hearing, was not entitled to have counsel designated to take any ruling in its behalf.

In addition, the Court rejected the contention that the trial court should have sent out a special assignment for the reading of the Supreme Court's mandate prior to commencing trial of the case, noting that it was sufficient that the court had noted the assignment on the records. Technicalities not affecting the rights of the parties, it said, would not be allowed to defeat the ends of justice.

Lastly, the Supreme Court rejected the contention that the trial court had moved with abnormal speed in the trial of the case, noting that the court had acted in conformity with the rules and procedure. The Court said that the trial court had provided every opportunity to the appellant, but that the appellant had failed to appear as per assignment. Under the circumstances, the Circuit Court Rules had been correctly invoked by the appellee and legally acted upon by the trial court. The Court therefore *affirmed* by judgment of the trial court.

G. Bona Sagbe appeared for appellant. *James D. Gordon* appeared for appellee.

MR. JUSTICE BELLEH delivered the opinion of the Court.

The appellee, Marsah Sirleaf, of the City of Gbarnga, Bong County, Liberia, instituted an action of ejectment in the Ninth Judicial Circuit Court, Bong County, against the appellant, Fomba Bility, for one town lot, situated on Barror Street, Gbarnga City, Bong County. In support of her claim, the appellee proferted a public **land** sale deed. She prayed that the trial court would evict, oust and eject the appellant from appellee's said one lot situated in the said City of Gbarnga, Bong County. The appellant, having been served with the writ of summons together with the copy of the appellee's complaint, filed a four-count answer on the 23' day of May, A. D. 1983, in which answer he raised the issue of *res judicata as a* bar against appellee's action of ejectment. According to appellant's answer, the same action of ejectment had been adjudicated once by the Ninth Judicial Circuit, Bong County, and the Supreme Court of Liberia respectively.

The answer asserted that the previous ejectment action involved the identical parties and subject matter.

The appellee then filed a reply in which she refuted the allegations in the answer by asserting that her one lot had never been the subject of litigation, and that therefore her case of ejectment could not fall under the principle of *res judicata,* especially so when the appellant did not present a complaint, an answer, a reply, or the ruling of the court in the alleged prior case of ejectment involving the same parties and touching the same subject matter.

On the 23rd day of February, A. D. 1984, during the February 1984 Term of the court, presided over by His Honour Varney D. Cooper, when the case was called for disposition of the law issues, the appellant's counsel informed the court that he had filed a motion to dismiss the action of ejectment.
The law issues raised in the pleadings were then disposed of, the appellant's motion denied, and the case ruled to trial by jury. The appellant excepted to the ruling of the judge denying the motion to dismiss as well as the ruling for the disposition of the law issues, and petitioned the Chambers Justice for a writ of certiorari. The alternative writ was issued and served on the appellee. The Chambers Justice having heard the petition for certiorari, denied the same and quashed alternative writ. He ordered that a mandate be sent to the trial court to proceed with the trial of the case on its merits. No appeal was taken from this ruling of the Chambers Justice.

On November 21st, 1984, a notice of assignment was issued, served and returned served on both parties for the trial of the ejectment case on November 27, 1984 at 10:00 a.m. However, on the 27th of November, 1984, counsel for appellant wrote the court requesting for postponement of the trial until November 28, 1984 at the hour of 2:00 p. m. instead of 10:00 a.m. on November 27, 1984, as was previously scheduled. This request was granted by the trial judge and the trial consequently deferred to 2:00 p. m. on November 28, 1984.

According to the records certified to us, although the trial of the case was postponed to 2:00 p. m. on November 28, 1984, at the written request of Counsellor G. Bona Sagbe, counsel for the appellant, neither the appellant nor his counsel appeared for the hearing of the case as per his request. The trial judge waited until 4:00 p. m., but Counsellor Sagbe had still not arrived. Counsel for appellee then applied to the court for the trial of the case, invoking Rule 7 of the Circuit Court Rules as the basis therefor and citing the absence of the appellant and his counsel as the reason for the request. The request was granted and the sheriff was ordered to call the appellant three times at the door of the court room. This was done, and neither the appellant nor his counsel answered. The court them ordered the entry of a plea of not liable in favour of the appellant/defendant and a trial jury was empaneled to sit on the case and to determine the factual

issues. The appellee was allowed to take the stand and to testify to prove her case. The appellee testified and produced two other witnesses, presented her deed which was testified to by her witnesses, and marked, confirmed and admitted into evidence by the court to form part of the records in the case.

When the appellee rested evidence, the empaneled jury was charged by court. The jury thereafter retired to their room of deliberation and returned a verdict in favour of appellee. Upon the return of the jury at about 4:45 p. m. Counsellor Sagbe appeared and excepted to the verdict of the jury. He later filed a motion for a new trial, which was resisted, heard and denied. A final judgment was then rendered affirming and confirming the verdict of the empaneled jury. Appellant excepted to the final judgment and appealed to this Honourable Court for the review of the entire proceedings.

In furtherance of his appeal, the appellant filed a bill of exceptions containing 12 counts. In counts one, two and three of the bill of exceptions, appellant contended that His Honour Varney D. Cooper committed a reversible error when he ruled dismissing the entire motion of the defendant/appellant to dismiss the complaint, and further ruled out the defendant/ appellant's answer, all of which were based upon the principle of *res judicata* which the appellant had asserted because, according to him, the issue of ejectment was once adjudicated by the Ninth Judicial Circuit Court and the Supreme Court of Liberia, respectively.

The issue presented therefore, is whether or not the principle of *res judicata* is applicable in this case.

"Res judicata is a principle of law which bars litigation of issues in a case involving the same parties and the same subject matter where the case has once before been judicially determined; that is to say, where the merits of the issues have been previously tried and judgment rendered thereon." *Kiazolu Wahab v. Sonni et. al.[1964] LRSC 38; ,* 16 LLR 73(1964).

A careful perusal of the records show that the issue of *res judicata,* which was the prime basis for the appellant's motion to dismiss, was denied by the court below and that the appellant's answer, based upon the same issue, was ruled out by the trial judge who disposed of both the motion to dismiss and law issues. The records also reveal that subsequently, the appellant petitioned the Chambers Justice for a writ of certiorari and that the chambers Justice, having heard the petition, denied the same and quashed the alternative writ; and that the Justice thereafter sent a mandate to the Ninth Judicial Circuit Court, Bong County to resume jurisdiction

over the action of ejectment and to proceed with the trial thereof. No appeal was taken from the ruling of the Chambers Justice.

According to the doctrine of *stare decisis,* a deliberate or solemn decision of court, made after argument on question of law fairly arising in the case and necessary to its determination is an authority or binding precedent in the same court or in lower courts in subsequent cases where the very point is again in controversy, BLACK'S LAW DICTIONARY 1577. On this issue, this Court has stated:

"Where a prior suit was not between the same parties and did not concern the same subject matter, a plea of *res judicata* will not be entertained." *Tweh v. Massaquoi et. al.[1952] LRSC 8; , 11* LLR 152 (1952).

Coming to the factual contentions raised by the appellant, we note firstly that there is no evidence in the records that an action of ejectment was ever litigated between the appellant and the appellee. Secondly, the issue of *res judicata* was settled by the Chamber Justice without an appeal being taken to the full Bench. Under these circumstances, the Court is of the opinion that the trial judge correctly denied appellant's motion to dismiss and ruled out appellant's answer. Counts one, two and three of the bill of exceptions are therefore not sustained.

In count four of the bill of exceptions, the appellant contends that the trial judge erred when he appointed F. A. Vampelt, County Attorney for Bong County, to take a ruling in a civil action where the Republic of Liberia is not a party. From the foregoing, the issue presented for our consideration is whether or not the interest of the appellant was prejudiced by virtue of the court's appointment of County Attorney F. A. Vampelt to take the ruling for the appellant.

In the absence of any showing that the appellant's interest was affected through the neglect of the court's appointee, this issue needs no lengthy discussion. The purpose of the appointment of Attorney Vampelt by the court was to note an exception to the ruling of the court on behalf of the appellant who was at the time absent from the trial, notwithstanding his acknowledgment of the service of the notice of assignment. The court's appointee was only required to except to the ruling of the court during the disposition of the appellant's motion to dismiss which the appointee did, as shown on sheet (1) of the minutes of court for the 17th day's session, March 2, 1984. The noting of exceptions was to lay the premise for an appeal in case the necessity arose, because the ruling on the motion was interlocutory and not a final judgment. Had the ruling on the motion

been a final judgment, the appointee could have made an announcement of an appeal from the judgment on behalf of the appellant.

On the other hand, even though there was no harm done to appellant in the instant case, the court is of the opinion that the judge was in error to appoint a lawyer to take a ruling when Rule 7 of the Circuit Court Rules had been invoked.

According to the records in this case as found on sheet two of the 15th day's session, November 28, 1984, prior to the trial of the case, the mandate of the Supreme Court ordering the 9th Judicial Circuit Court, Bong County, to resume jurisdiction over the case and proceed with the trial was ordered read and same was read. We must here mention that notices of assignments were sent out by the court for the hearing of the case, and that the parties, having duly acknowledged the said notices of assignment, it must have been assumed that all parties would have been present in court for the reading of the mandate before the trial commenced. We gather from the contention of appellant that the court should have sent out a special notice of assignment purposely for the reading of the Supreme Court's mandate, since he admits by implication that the mandate from the Supreme Court was in fact read. "Mere technicalities not affecting the substantial rights of the parties should not be allowed to defeat the ends of justice." *Dennis v. Gooding*, 10 LLR 123 (1949).

Further, in count six of the bill of exceptions, the appellant contends that the court below moved with abnormal speed because, according to the appellant, he having failed to appear for the hearing of the case at 2:00 p. m., the judge *sua sponte* called the case at 3:00 p.m., permitted the appellee's counsel to invoke Rule 7 of the Circuit Court Rules, and thereupon proceeded with the trial. Rule 7 of the Circuit Court Rules provides:

"The issues of law having been disposed of in civil cases, the clerk of court shall call the trial docket of these cases in order. Either of the parties not being ready for trial shall file a motion for continuance setting forth therein the legal reasons why the case might not be heard at the particular term of court; the granting or denying of which shall be done by the court in keeping with law and in its discretion. A failure to file a motion for continuance or to appear for trial after returns 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 plaintiffs side of the case and decide thereon or dismiss the case against the defendant and rule the plaintiff to cost according to the party failing to appear. In no instance might a case be continued beyond the term for which it is filed and set down for trial except however, that should the business of the court be such that a particular case is not reached during the session, such

case or cases shall be continued as a matter of course. Clearing the trial docket by the disposition of cases shall be fore-most concern of the judge assigned to preside over term."

The records reveal that on the 27th day of November, 1984, a notice of assignment was issued by the court, served on the parties by the sheriffs office and returned served for the hearing of the case on the 28th of November, 1984. That assignment was duly acknowledged by appellant's counsel. Subsequently, on the same date, that is to say on the 27th of November, 1984, counsel for the appellant wrote the court requesting the court to start the hearing of the case at 2:00 p.m. on November 28, 1984. According to the records also, neither appellant nor his counsel was present in court at the hour of 2:00 p.m. in keeping with the request of counsel for the appellant. The court then postponed the trial pending the arrival of the appellant and his counsel up to 3:00 p.m. At that time, the court became convinced that the appellant and his counsel had no intention of attending the trial. Consequently, counsel for the appellee applied to court for the invocation of Rule 7 of the Circuit Court Rules. That request was granted by the court, and the appellee was then ordered to take the stand and proceed with her side of the case.

In our opinion, the action of the trial judge was in conformity with our rules and procedure as quoted *supra* and therefore the contention of appellant is baseless. Count six of the bill of exceptions is therefore not sustained.

In counts 7, 8 and 9 of the bill of exceptions, the appellant contends that the witness who testified at the trial on behalf of the plaintiff did not testify as to the general damages awarded by the jury in favour of the appellee, and that even though the court was not requested by the appellee to charge the jury on general damages, the judge *sua sponte* charged the jury to award plaintiff general damages. During the trial in the court below the plaintiff, in addition to her own statement in support of her claim to the one lot, subject of the action of ejectment, also produced two witnesses who affirmed and confirmed plaintiffs statement as well as the allegations contained and set forth in the plaintiff's complaint regarding the wrongful withholding by the appellant of appellee's property. The jurors who are judges of facts and within whose province it is to decide upon the credibility of the evidence adduced at the trial, after due deliberation, returned a verdict in open court to the effect that the appellant was liable in the action of ejectment and that the appellee was entitled to the sum of Ten Thousand Dollars ($10,000.00) as general damages.

Under our law, "special damages must be particularly alleged and affirmatively proved." *Kashouh v. Manly-Cole,* [1964] LRSC 11; 15 LLR 554 (1964). On the other hand, the amount to be awarded as general damages is exclusively within the province of the trial jury.

Regarding the appellant's contention that the judge *sua sponte* charged the jury on the issue of general damages without any request from the appellee, this Court is of the opinion that this contention is not supported by the records, in that the prayers of the plaintiffs complaint in the court below shows the contrary. The prayer reads:

"Wherefore, and in view of the foregoing, plaintiff prays that judgment be rendered against the defendant that he be ousted, evicted and ejected from her **land** and that she be awarded damages sufficient to compensate her for the wrongful detention of her **land** and grant unto plaintiff all and further relief that the case may demand."

In light of the prayers of the appellee in this case, the Court is convinced that the trial judge was duty bound to charge the trial jury with respect to general damages in favour of appellee as prayed for in the complaint. Count nine of the bill of exceptions is hereby overruled.

In count 10 of the bill of exceptions, the appellant contends that the trial judge erred when he denied appellant's motion for a new trial since, according to the appellant, the court did not acquire legal jurisdiction over the subject matter because it did not assign the reading of the Supreme Court mandate prior to the hearing of the case. For the benefit of this opinion, we quote count 10 of appellant's bill of exceptions:

"Defendant/appellant, again appealing says that the judge grossly erred when he denied our motion for new trial to the verdict of the trial jury, in which motion we asserted that the court did not acquire legal jurisdiction over the subject matter and person when he did not make an assignment for the reading and enforcement of the mandate, when he commenced trial of the case. Plaintiff/ appellee did not deny this ground. 'What is not denied is deemed admitted." *See* Motion for New Trial and Resistance."

From the wordings of count 10 of the bill of exceptions, we observe that the appellant's contention is a repetition of the issue of jurisdiction already passed upon in this opinion. According to the contention of the appellant, the court should have first assigned the reading of the Supreme Court mandate before the trial of the case was commenced. In our opinion, this does not constitute any of the grounds provided by statute for a new trial. The Civil Procedure Law, Rev. Code I: 26.4, relative to post trial motions, provide 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. A motion under this section shall be made within four days after verdict. No extension of time shall be granted for making a motion under this section."

In count 12 of the bill of exceptions, the appellant contends that the final judgment was contrary to the complaint and the evidence adduced at the trial, in that although there was no mention made of damages, special or general, yet the trial jury awarded Ten Thousand Dollars ($10,000.00) in favour of the plaintiff as damages. For the benefit of this opinion, we here-under quote the relevant portions of the plaintiff's complaint:

"1. Plaintiff complains that she is the owner and entitled to the possession of (1) one town lot situated in the City of Gbarnga, Bong County, Republic of Liberia, as will more fully appear from copy of public **land** sale deed hereto attached to form a cogent part of this complaint.

2. Plaintiff complains that the defendant is illegally occupying her **land** and although she has made several demands for defendant to vacate her said parcel of **land**, he has refused so to do, to the great inconvenience and damage to the plaintiff."

The Civil Procedure Law, Rev. Code 1:62.3, under claim for damages, provide that "in a complaint in an action of ejectment, the plaintiff may demand damages for wrongful detention of real property as well as delivery of possession."

During the trial in the court below, the plaintiff produced witnesses who testified that the plaintiff was entitled to the one town lot described in the public **land** sale deed from the Republic of Liberia, as grantor, to plaintiff, as grantee. The said public **land** sale deed was proferted to plaintiffs complaint, testified to, identified by two witnesses, marked by the court, and subsequently admitted into evidence by the court to form a part of the records in the proceedings.

In the opinion of this Court, the complaint quoted *supra* is self-explanatory, in that aside from plaintiffs request therein to the court for judgment against the defendant to have said defendant ousted and ejected from the premises, the plaintiff also prayed the court that she be awarded damages sufficient to compensate her for the wrongful detention of her **land** . Moreover, the plaintiff having rested evidence, the empaneled jury who sat on the case during the trial, and who were the sole judges of the facts, after being charged, retired to their room of deliberations, and after due deliberations, returned a unanimous verdict in favour of the plaintiff, awarding the amount of Ten Thousand Dollars ($10,000.00) as damages. Under these circumstances, this Court is of the opinion that the final judgment in this case was not contrary to the complaint and the evidence adduced at the trial as baselessly contended by appellant in count 12 of the bill of exceptions. Count 12 of the said bill of exceptions is therefore not sustained.

Under our statutes controlling action of ejectment, it is provided 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 the real property as well as the right to possession thereof is disputed. A widow may recover her dower in ejectment." Civil Procedure Law, Rev. Code 1:62.1.

In view of the above recited facts, and the controlling laws, it is the opinion of this Court that the judgment of the court below be, and the same is hereby affirmed and that a mandate be sent to the Ninth Judicial Circuit Court of Bong County to resume jurisdiction over the case and have its judgment enforced. Costs against the appellant. And it is hereby so ordered.

Judgment affirmed.

Tulay v Hall et al [1999] LRSC 23; 39 LLR 559 (1999) (4 June 1999)

GEORGE S. B. TULAY, Petitioner, v. **HIS HONOUR SEBRON J. HALL**, Assigned Judge Sixth Judicial Circuit, Montserrado County R. L., September Term, A. D. 1995, and **Dr. JEREMIAH TARPEH**, Respondents.

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE DENYING THE PETITION FOR THE ISSUANCE OF A WRIT OF CERTIORARI.

Heard: March 24, 1999. Decided: June 4, 1999.

1. Where two or more parties raise an issue of title for the same property derived from the same grantor, at the trial, the law makes it mandatory that the contending parties establish the quantum of evidence by preponderance of evidence as to who was vested with the original title by the grantor.

2. A person who has a genuine interest in the subject matter of an action, which interest could not be adequately represented by the parties to the action, and who could be adversely affected by a judgment in the action or by disposition of property in the court's custody, has a right to intervene.

3. The corrective competence of a writ of certiorari ends with the determination of the case out of which it grows and certiorari cannot be granted after rendition of final judgment.

Petitioner in these certiorari proceedings, George S. B**.** Tulay, entered into a contract of sale with one one Renney Pentee for the purchase of one lot of **land** with a three-bedroom house thereon in consideration of L$50,000.00 payable in five (5) installments. Following the payment of the full contract amount, petitioner took possession of the property and placed tenants therein. Few months later, Renney Pentee executed a deed to corespondent Jeremiah S. Tarpeh for the same **land** already sold to petitioner for the sum of US$7,000.00.

Subsequently, Jeremiah S. Tarpeh instituted an action of summary proceedings to recover possession of real property against petitioner's tenants, in the Civil Law Court of the Sixth Judicial Circuit. The respondents in their returns, alleged that the property was bought and owned by their landlord, petitioner, and that they were not unlawfully living on and occupying the disputed property, as alleged by the plaintiff.

Petitioner, George S. B. Tulay filed a returns to the complaint along with a motion to intervene as party respondent, claiming legal ownership of the subject property, and contending that his interests, rights, and claims could not be adequately protected and defended by the existing parties. The trial judge denied the motion to intervene on grounds that the petitioner's tenants were capable of adequately defending his legal interest, to which ruling petitioner excepted and applied to the Supreme Court for a writ of certiorari.

The Chambers Justice agreed that the trial judge committed a reversible error, but denied petitioner's petition for certiorari on grounds that petitioner unduly delayed in seeking the aid of certiorari after his motion was denied by the trial judge. The Chambers Justice further ruled that certiorari cannot be granted when final judgment has been rendered. Petitioner excepted to this ruling and appealed to the Supreme Court *en banc*.

The Supreme Court *reversed* the ruling of the Chambers Justice reasoning that the delay was attributed to the Chambers Justice's predecessor and not the petitioner. Accordingly, the Court remanded the case for a new trial, and ordered that the petitioner be joined as a party respondent in the main suit.

George S. B. Tulay of the Tulay and Associates Law Firm appeared for petitioner. *Jamesetta E. Howard*of the Cooper and Togbah Law Firm appeared for respondents.

MR. JUSTICE MORRIS delivered the opinion of the Court.

This case is before us on appeal from the ruling of our distinguished Colleague, Mr. Justice Wright, then presiding in chambers during the October Term, A. D. 1997 of this Honourable Court. Mr. Justice Wright observed and ruled that the trial judge erred in denying petitioner's motion for intervention in an action of summary proceedings to recover possession of real property, but he denied petitioner's petition for a writ of certiorari for reason that certiorari cannot be granted after final judgment.

The facts culled from the certified records transmitted to this Court revealed that Renney Pentee and Petitioner George S. B. Tulay made and entered into a statement of understanding on the 1st day of July A. D. 1992. Renney Pentee agreed to give his one lot of **land**, (a portion of block # 2, located and situated on the Freeway, Gardnersville, registered and probated on April 28, 1967, in volume 91-K, pages 70-71) for the sum of L$2,500.00 received from petitioner Tulay with the understanding that the said amount would be refunded to petitioner on or before August 31, 1992. The parties further mutually agreed and understood that upon failure of Renney Pentee to make, settle, or repay said amount at the time specified herein, the title to said property so described above shall be vested in the petitioner thereby binding on the heirs, executors, administrators and the assigns of Renney Pentee.

On the 23rdday of August A. D. 1992, Renney Pentee and petitioner George S. B. Tulay again made and entered into another contract of sale for the aforesaid lot of **land** with a three-bedroom house thereon in consideration for the sum of L$50,000.00 payable in five (5) installments, commencing from August-October 1993. The buyer, petitioner herein, became the legal and bonafide owner of the subject property as stated in clause 6 of the contract of sale. Both parties also agreed that the property should be surrendered to the petitioner on or before August 23, 1992. This contract of sale was probated on the 28th day of July, A. D. 1992, and registered in volume U-95, pages 281-285. On the 20thday of October, A. D. 1993, petitioner paid the balance of L$300.00 to Renney Pentee as full payment of L$50,000.00 for the purchase of the property. The petitioner took possession of the property, and placed therein his tenants, defendants in the court below.

The records also revealed that Renney Pentee, on the 5thday of January A. D. 1994, executed a deed to Dr. Jeremiah S. Tarpeh, co-respondent herein, for a parcel of **land** lot number N/N portion of block # 2, located and situated in the Township of Gardnersville, containing 7,186 square feet or 0.66 lot for the amount of US$7,000.00. This Deed was probated and registered on the 4th day of March A. D. 1994 in volume 26-93, pages 464-466.

On the 27th day of July A. D. 1995, co-respondent Tarpeh instituted an action of summary proceedings to recover possession of real property against Patricia Kiawu and Beatrice Kiawu in the trial court, claiming ownership of the property and praying said court to oust and evict the defendants from his property. But the petitioner was not an original party in the main suit. Respondents in the court below, Patricia and Beatrice Kiawu, filed their returns on the 4th day of August A. D. 1995. They alleged substantially that the property was bought and owned by their landlord, petitioner herein, and consequently they were not therefore unlawfully living and occupying the disputed property. Petitioner filed a fourteen-count returns on August 4, 1995 along with a three-count motion to intervene as party respondent, claiming legal ownership of the subject property which he possessed since September 2, 1992 subsequent to its purchase from Renney Pentee. He also alleged that his interests, rights, claims and defenses by the existing parties were inadequate, and that he had filed a motion to intervene in the action of summary proceedings to recover possession of real property so as to protect and defend his legitimate property and tenants. Petitioner gave notice to produce evidence at the trial in support of the allegations.

The trial judge, His Honour Sebron J. Hall, presiding over the Sixth Judicial Circuit Court, Montserrado County, during its September Term, A. D. 1995, denied the motion to intervene on the 13" day of October A. D. 1995, on grounds that petitioner's tenants were capable to adequately defend his legal interest. The judge also ruled that the petitioner would not suffer any injury should he not be permitted to intervene in the main suit, and that the petitioner failed to

profert any title to his motion to substantiate his allegations. Petitioner excepted to ruling and gave notice to take advantage of the statute as made and provided for in such cases.

The intervenor filed an eight-count petitioner for a writ of certiorari on the 8' day of November A. D. 1995, praying this Court to review and correct the ruling of the trial court denying his motion to intervene in the main suit. It is observed from the records in this case that the final judgment in the main suit was rendered on the 21' day of November A. D. 1995, and that the alternative writ was issued by the Clerk of this Court on November 23, 1995, 'upon orders of Mr. Justice Yancy, then presiding in Chambers over the October Term A. D. 1995 of this Honourable Court. The co-respondent judge was ordered to stay all further proceedings in this matter, and the respondents were instructed to file their returns on December 6, 1995. The respondents filed a nine-count returns to the petition on the 20thday of December A. D. 1995.

On the 25thday of November A. D. 1997, Mr. Justice Wright ruled that the trial judge committed a reversible error when he denied petitioner's motion to intervene. However, he denied petitioner's petition for certiorari on grounds that petitioner waived and slept on his rights by failing and neglecting to have the ruling denying his motion to intervene reviewed by certiorari immediately after said motion was denied. Further, he ruled that certiorari cannot be granted when final judgment has been rendered. Petitioner excepted to the ruling and appealed to this Court *en bane* for appellate review and final determination.

Petitioner substantially contended before this Court that the trial judge committed a reversible error in denying his motion to intervene in the main suit without considering his right, interest and claims in the subject matter. Thus, petitioner alleged that the trial judge deprived him of his right to defend and protect his property and tenants. It is contended by petitioner that the ruling of the trial judge denying his motion to intervene in the main action is illegal and unfair and defeats the ends of justice, in that, the trial judge denied him of his right to defend his tenants and property.

Petitioner further argued that he is the landlord for the respondents and the owner of the said house and the **land** pursuant to the contract of sale of July 23, 1992. As such, he has every right and duty to defend and protect his rights, claims, interests and ownership of the subject property. He stressed that no valid and enforceable judgment will be rendered in this case out of which this petition originates without he being made a party respondent in said case. Thus, any judgment rendered by the trial court or that which will be rendered by this Court without making petitioner a party respondent will neither be binding on him nor be of any legal effect on him. Petitioner therefore prays this Court to grant certiorari to review and correct the ruling of the trial judge.

Respondents basically contended that certiorari is a special proceeding to review and correct an intermediate order or interlocutory judgment of an inferior court. As such, certiorari cannot be granted after the rendition of final judgment and issuance of a writ of possession.

Respondents also contended in their petition and argued before this Court that Co-respondent Dr. Jeremiah Tarpeh has a superior title to the property than the petitioner, in that, he has a duly probated and registered deed as against the petitioner whose memorandum of understanding and the contract of sale had not been probated and registered in accordance with law. Hence, co-respondent Tarpeh argued that the petitioner did not meet the legal requirement for the subject property for his failure to register his documents within four (4) months of execution.

Respondents further argued that the ruling of the trial judge denying petitioner's motion to intervene was legal and fair on ground that the petitioner had no legal title to the premises in dispute that would allow him to intervene in the main suit. As such, his intervention would unduly delay or prejudice the adjudication of the rights of the original parties. The respondents finally contended that the trial judge committed no reversible error in denying petitioner's motion to intervene for reason that petitioner failed to annex his instrument of title to his motion to intervene which is an issue of law. Thus, respondents argued that they disagreed with the ruling of the Chambers Justice that the trial judge committed reversible error in denying petitioner's motion to intervene notwithstanding his notice to produce evidence at trial establishing his ownership of the premises and the title thereto. Respondents therefore prayed this Court to deny petitioner's petition and quash the writ of certiorari.

The facts and circumstances in this case present two (2) germane and cardinal issues for the final determination of this case. They are:

1. Whether or not the petitioner is held for laches to have the ruling denying his motion to intervene reviewed by certiorari.

2. Whether or not the trial judge committed a reversible error in denying petitioner's motion to intervene in an action of summary proceedings to recover possession of real property.

We shall now discuss the aforestated issues in the reverse order. According to the certified records before us, the trial judge basically denied petitioner's motion to intervene in the main suit on grounds that it was not necessary for petitioner to intervene for reasons that the defendants in the main suit filed their returns and were therefore capable to defend themselves and that the trial court was able to determine the legal issues without the aid of the intervenor, petitioner herein.

We observed from the records in this case that the petitioner filed his returns along with a motion to intervene claiming ownership of the subject property and contended that he would be bound by a judgment of the trial court should he fail to intervene.

The intervenor also alleged that he has been in possession of the premises since September 2, 1992 pursuant to its purchase from Renney Pentee, and that the defendants were his tenants who were also incapable to protect and defend his property. Thus, petitioner alleged that the motion to intervene was to protect and defend his property rights as well as his tenants.

The Court further observes from the certified records in this case that the intervenor/petitioner and co-respondent Dr. Jeremiah Tarpeh have the same grantor, Renney Pentee, for the identical property in question or subject of review by action of summary proceedings to recover real property in the trial court.

In as much as both the petitioner and Co-respondent Dr. Jeremiah Tarpeh have both raised the issue of title for the same property, derived from the same grantor, Renney Pentee, the law makes it mandatory that at the trial, the contending parties establish the quantum of evidence by a preponderance of the evidence relative to whether or not the petitioner/intervenor or the co-respondent was vested with the original title by the grantor, Renney Pentee. For reliance, see Civil Procedure Law, Rev. Codel :25.5.2.

Against this background, petitioner/intervenor in the instant case is so situated as to be adversely affected by a judgment in the action of summary proceedings to recover real property or by a distribution or disposition of the subject property by the trial court. *Ibid.*, 5.61(a)(b). We agree in part with the ruling of Mr. Justice Wright when he held that the trial court committed reversible error by holding that intervenor would not be adversely affected by a judgment against his client, notwithstanding the said ruling awarding possession of the disputed property to plaintiff which was claimed by the intervenor to be his lawful property. This court has held that "a person who has a genuine interest in the subject matter of an action, which interest could not be adequately represented by parties to the action, and who could be adversely affected by a judgment in the

action or by disposition of property in the court's custody, has a right to intervene." *Maritime Transport Operators GMBH v. Koroma,* 25 LLR371 (1976); Civil Procedure Law, Rev. Code 1:5.61.1(a)(b).

The considered intent of our law makers, as gathered from the Revised Civil Procedure Law, was to have intervention as a matter of right when the applicant's interest by parties in an action cannot adequately be represented or where the applicant will be bound by a judgment in said action and when the applicant is situated to be adversely affected by the disposition of property in the control of the court. We perceive no reason therefore justifying the denial of intervenor's motion to intervene in the action at bar when the petitioner's tenants could not adequately represent his interest and that he would have been definitely bound by the judgment of the trail court. We therefore concur with Mr. Justice Wright with respect to the unconditional rights of petitioner to intervene when he held: "this matter involves real property and every opportunity ought to be given the property owner to defend his property rights and interest. Our law is one which hears before it condemns and courts ought to zealously and cautiously guard against alienation of property rights in a hurry."

It is the holding of this Court that the trial judge therefore committed reversible error when he denied intervenor's motion to intervene as the statutory law of this **land** provides.

We, now, refer to the second and final issues for determination in this case, which is whether or not the petitioner is held for laches to have the ruling denying his motion to intervene reviewed by certiorari.

On the 25thday of November, A. D. 1997, the Chambers Justice ruled that the intervenor herein waived and slept on his rights by failing and neglecting to have the ruling denying his motion to intervene reviewed by certiorari immediately after rendition. Respondents contended in their brief that certiorari cannot be granted on grounds that the petitioner sat supinely until a final determination of the main suit before applying for a writ of certiorari to be issued on the respondent judge. Respondents averred that the petitioner is guilty of laches in seeking his remedy. Respondents relied on the case *Vamply of Liberia v. Kandakai,* [1973] LRSC 55; 22 LLR 241 (1973), wherein this Court held that "a writ of certiorari will be denied when the petitioner has been guilty of laches in seeking his remedy."

In the *Vamply* case, the employer company excepted to the ruling of the circuit court judge in an action of damages for breach of an employment contract but did not appeal from said ruling

ordering the enforcement of payment of the employee's wages for the balance of the employment period contained in the employment letter of the employee. The petitioner filed a petition for a writ of certiorari five months thereafter, challenging the rulings of the Judge. The Chambers Justice denied the petition, which ruling, on appeal, was confirmed by this Honourable Court *en bane,* on grounds that the petitioner company was guilty of laches for its failure and neglect to seek immediate remedy after rendition of said ruling. On the contrary and in the instant case, the trial judge denied intervenor's motion to intervene on the 13th day of October, A. D. 1995, and the intervenor petitioned this court for writ of certiorari on the fit h day of November, A. D. 1995. The trial judge rendered his final judgment in the main suit on the 21st day of November, A. D. 1995, twelve (12) days after petitioner's application to this court.

As such, petitioner sought an immediate and prompt relief after rendition of the ruling denying his motion to intervene, and he is not therefore guilty of laches as contended by the respondents herein. The facts and circumstances in the *Vamply* case and the case at bar are not analogous.

This court has held in a long line of cases that corrective competence of a writ of certiorari ends with the determination of case out of which it grows and that certiorari can be granted after rendition of final judgment. *Ajavon v. Bull,* 14 LLR 184 (1960); *Union National Bank, Inc., v. Hodge and Abraham,* [1971] LRSC 78; 20 LLR 635 (1971); *Cooper v. Dunbar,* 21LLR 295 (1972) and *Maritime Transport Operators GMBH v. Kromah et al.[1976] LRSC 77;* , 25 LLR 371 (1976).

In the *Ajavon* case, J. Everett Bull and Mai L. Bull obtained a judgment as lessors in an action of summary ejection in the magisterial court. Adolphus Ajavon announced an appeal and perfected same to the circuit court. The lessors, however, obtained a writ of possession from the magisterial court evicting petitioner Ajavon notwithstanding the pendency of his appeal before the circuit court. The petitioner applied to this Court for a writ of certiorari which was denied by the Chambers Justice. This Court confirmed the denial of the writ on grounds that certiorari cannot be granted after the enforcement of a judgment, but modified the order directing that petitioner Ajavon be permitted to retain possession of the leased property as lessee pending immediate adjudication of the appeal in the circuit court. The petitioners in the other cases cited above applied for writ of certiorari after rendition of final judgment in those cases.

We scrutinized the records before us and observed that the trial judge denied intervenor's motion to intervene on the 13th day of October, A. D. 1995, and that the intervenor sought the aid of certiorari on the 8 day of November, A. D. 1995. The trial judge rendered his final judgment in the action of summary proceedings to recover possession of real property on the 21' day of November, A. D. 1995. The court appointed counsel, Counsellor Richard McFarland, only

excepted to this ruling and did not announce an appeal. The alternative writ was issued by the clerk of this court on the 23r d day of November A. D. 1995 upon orders of Mr. Justice Yancy, two (2) days after rendition of final judgment; but the petitioner was not an original party to the action of summary proceedings to recover possession of real property.

We observe from the certified records before us that the co-respondent/intervenor filed a fourteen-count returns and a three-count motion to intervene simultaneously on the 4th day of August, A. D. 1995; that the motion to intervene was denied on the 13thday of October, A. D. 1995; that the petition for a writ of certiorari was filed on November 8, 1995; and that the trial judge made his final ruling in main suit on November 21, 1995.

From the afore stated facts, as culled from records, it is revealed that the petitioner/intervenor filed his petition for a writ of certiorari some 13 days prior to the date and day when His Honour Judge Sebron J. Hall made his final ruling on the 21stday of November A. D. 1995. To the court's mind, Mr. Justice Yancy had ample and sufficient time to have issued the necessary writ because our Civil Procedures Law provides that "... the writ shall direct such court, judge, administrative board or agency to send up with in five (5) days to the Justice who issued the writ a full and complete copy of the proceedings in the cause at issue with a certificate under the Seal of Court..." For reliance, see Civil Procedure Law, Rev. Code 1:16.23(4)(5). But on the contrary, Mr. Justice Yancy reneged on his statutory duty under the law until final judgment on November 21, 1995, to the serious detriment and injury of the petitioner/intervenor' s interest by issuing the writ on November 23, 1995.

This court holds that the petitioner sought immediate remedy on November 8, 1995 for the review and correction of the ruling denying his motion to intervene in the main suit after its rendition as the laws of this **land** direct, the rationale being that the petitioner had no further control over the action of the Justice in Chambers, he having filed his petition on November 8, 1995 with respect to the issuance of the alternative writ of certiorari. Therefore, any delay with respect to the authority of the Chambers Justice to grant or deny the issuance of an alternative writ cannot be attributed or imputed to the petitioner in the instant case. We further hold that the petitioner is not guilty of laches and negligence as ruled by the Chambers Justice and contended by the respondents.

Wherefore and in view of the foregoing, it is the considered opinion of this court that the ruling of the Chambers Justice and the trial judge should be, and the same are hereby reversed and the case is hereby remanded for trial joining the petitioner as co-respondent party in the main suit. The Clerk of this Court is hereby ordered to issue the peremptory writ of certiorari commanding the judge presiding therein to resume jurisdiction joining the intervenor as a co- respondent party

in the cause of action, and to proceed with the hearing of the main suit in keeping with law. Costs are to abide final determination of this case. And it is hereby so ordered.

Petition granted.

Howard v Dunbar [1961] LRSC 31; 14 LLR 515 (1961) (15 December 1961)

THOMAS F. HOWARD, Appellant, v. JOHN DUNBAR, Appellee.
APPEAL FROM ORDER IN CHAMBERS ON APPLICATION FOR A WRIT OF ERROR TO THE CIRCUIT
COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued November 21, 1961. Decided December 15, 1961. 1. The rules of the circuit courts, as approved by the Supreme Court, have the force and effect of statutory law. 2. It is improper for a lawyer without valid excuse to fail to appear at a hearing on assignment of a judge.

On appeal from an order in which the Justice presiding in Chambers refused to issue a writ of error for review of proceedings in an action of ejectment, order affirmed.
Peter Amos George
for appellant.

T. Gyibli Collins

for appellee. MR. Court.
JUSTICE MITCHELL

delivered the opinion of the

This is a case that took its birth in the Circuit Court of the Sixth Judicial Circuit, Montserrado County. An inspection of the records shows that the present appellee, John Dunbar, plaintiff below, sued out an action of ejectment on March 7, 196o, and filed same for the June, 196o, term of the aforesaid court, against Thomas F. Howard, defendant, alleging that the said defendant was illegally withholding his land situated in Block Number 21 on Camp Johnson Road in the City of Monrovia, Montserrado County, for which land the said plaintiff holds legal title, and that defendant had encroached on the said premises, had erected a house on a portion of the land and had sold a portion thereof to a third party. It appears that, by consent of both parties to the suit,

after pleadings
had rested they resorted to arbitration so that competent surveyors would go
on the spot and identify the common boundary between
plaintiff and defendant. Upon this mutual understanding a board of
arbitrators was appointed by the court, and they performed their
duty on the spot. After complying with the orders of the court, the
arbitrators filed their award, indicating therein that some portion
of the plaintiff's land was occupied by the defendant and that the fourth
corner of plaintiff's lot fell on the inside of the house
that defendant had built on the premises, and hence the usual mark for that
corner could not be set in without damage to the house,
which they were not authorized to do. This report motivated both plaintiff
and defendant to agree again to file joint objections
thereto for a second survey so that both lots would be marked off and
plaintiff's fourth corner set in. When the matter was assigned
for hearing by the court below, counsel for defendant, now appellant, failed
to appear, although he had been notified of the court's
assignment in the proper way; whereupon the court permitted the arbitrators
to give evidence in proof of their findings, and thereafter
affirmed the award by a final judgment. This final judgment of the court
below ordered plaintiff below, appellee herein, placed in
possession of his property which he complained had been withheld. Some time
thereafter, the present appellee applied for the issuance
of the writ of execution for the enforcement of the court's judgment since,
although the court had of its own accord noted on its
records an exception for the defendant, yet he had failed to avail himself of
the right of an appeal; and as soon as the writ was
issued and served appellant filed objections to stay the service of the
execution. When these objections were assigned for hearing,
not only was defendant's counsel informed of the assignment, but he initialed
the notice, certifying that he had been

notified. Still, he absented himself, as in the former cases, and according
to his practice, he was absent without
excuse. Hence there remained nothing for the court to do other than to
proceed to pass upon the grounds of the objections, which
was done; and they were denied ; and the writ was ordered enforced. At this
stage of the proceedings, counsel for appellant fled
to the Chambers of Mr. Justice Pierre, acting for Mr. Justice Harris, with a
petition seeking the issuance of the writ of error, for a review of the
proceedings. After respondents
had filed their returns the matter was heard by the said Justice; and we
quote herein his ruling thereon : "From the records in the
case in the Circuit Court of the Sixth Judicial Circuit, Montserrado County,
the action of ejectment out of which these proceedings
have grown was assigned for hearing, and for the purpose of disposing of the
report of arbitrators appointed to survey the land in

dispute, on October to, 196o. The notice of assignment shows that counsel for defendant was particularly asked to be notified, and he initialed the notice. "Although the said counsel had ample and timely notice of this assignment, he was absent when the case was called, without having obtained excuse or show-. ing cause why he should not attend upon the assignment of the case. Counsel for plaintiff being present, the court proceeded to hear the arbitrators' report read. It would appear that this report was not satisfactory, and counsel for the parties met later, and filed joint objections thereto. "The case was then assigned a second time before the same judge, His Honor, Joseph Findley, for hearing at 9 o'clock in the morning of November 17, 196o, for an investigation into the report. Although counsel for both sides initialed this second notice of assignment, counsel for the defendant was again absent when

the court met, and for yet another time he had failed either to obtain an excuse or indicate why he could not attend upon the assignment of the case. It would seem that, at this hearing, judgment was rendered on the arbitrators' report, in favor of the plaintiff. Execution was applied for and granted, and Judge Findley went out of term. Defendant's counsel got to know of the execution, and filed a motion to stay the same for several grounds stated therein. This motion came before His Honor, Judge Morris, and was assigned to be heard on March 14, 1961, when the court met as per assignment, which had been acknowledged by counsel on both sides. Again, defendant's counsel was absent; the judge therefore rendered judgment denying the stay of execution ; and, although defendant's counsel was absent, exceptions were ordered recorded for him. It is for the above reasons that the defendant in the court below has applied for the issuance of a writ of error for us to review what he claims to be errors committed by the trial judge below. "According to the rules of the circuit courts, failure to file a motion for continuance, or to appear for trial after return by the sheriff of a written assignment, is 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. Petitioner's counsel contended that his reason for not having appeared in the lower court, was because, on the same days when he should have appeared there, he was busy in the Supreme Court. It is true that Supreme Court assignments take preference over those of the inferior courts; but it is also true that, in all instances of counsel having assignment in the lower court and also having to appear in the Supreme Court, this information has been brought to our attention, and the clerk of the Supreme Court has, in all such cases, been ordered to inform the

judge of the lower court of the reason why counsel should be excused from keeping his assignment. "The rules of the courts of Liberia were approved by this Court, and they thus became, to all intents and purposes, law governing those courts. The Supreme Court itself is without authority to violate them. That being so, we cannot perceive of any error committed either by Judge Findley or by Judge Morris in proceeding with a case in which assignment had been regularly made and acknowledged by the parties, and where the said parties undertook to absent themselves from the hearing without excuse. Besides being in violation of the rules of court, it is contemptuous for a lawyer to ignore an assignment of a Judge, and it is a waste of public funds to have courts convened and the parties fail or refuse to take advantage of them in order that their causes might be heard. The Supreme Court will not and cannot encourage such behavior on part of counsel. "This point was resisted in Count '3' of the returns ; and we not only had counsel on both sides to argue it, but we ordered the original records of the lower court brought up ; and upon examination, we found that defendant's counsel had deliberately absented himself from the three assignments shown in the records. This one point showing deliberate violation of the rules of court is sufficient to form the basis of our decision in this matter. We have not been able to find any irregularity in the conduct of the respondents ; and we have no alternative therefore but to deny the petition. The clerk of this Court is ordered to send a mandate to the court below, and instruct the judge to resume jurisdiction and enforce his judgment." The appellant, being dissatisfied with the ruling made by the Justice, presiding in Chambers, sought an appeal before the full bench, which privilege was granted ; and it is this appeal which we have sat patiently and heard.

In the argument of appellant's counsel before us, he contended that since the objections to the report of the arbitrators were made jointly by counsel representing both sides in the case, the court below should not have disposed of the proceedings in his absence, and that it was irregular for the judge below to have disposed of the matter without a jury. Answering questions put to him by this Court, he soon admitted his misconception of the law with respect to proving of an award and the final judgment thereon. In accordance with the rule of court cited by the Justice presiding in Chambers, the court below had no alternative other than to have proceeded to hear the matter, especially when, in the absence of counsel without excuse, he was regularly served with legal notice of the aforesaid assignment--and this cannot be deemed a fault attachable to the opposite party or misconduct of the trial judge. The rules which control our court procedure must be closely observed and guarded with all diligence by those who are authorized to enforce them; and this Court will not countenance

their deliberate disregard. It is therefore our opinion that the ruling of Mr. Justice Pierre, acting for the Justice, presiding in Chambers, is sound in the sight of the law and should be upheld. The aforesaid ruling is therefore affirmed with the instruction that, in the enforcement of the final judgment of the lower court, the fourth corner of appellee's lot must be set by the surveyors who constituted the arbitration board. And it is hereby so ordered. Costs in these proceedings are hereby ruled against appellant.
Affirmed.

Williams et al v RL [1927] LRSC 4; 2 LLR 623 (1927) (19 January 1927)

A. D. WILLIAMS and **EDDIE HUTCHINS**, Appellants, v. **REPUBLIC OF LIBERIA**, Appellee.

HEARD DECEMBER 16, 1926. DECIDED JANUARY 19, 1927.

Johnson, C. J., Witherspoon and Bey-Solow, JJ.

1. On an indictment for larceny the accused has a right to ask on cross examination questions tending to prove that he was part owner of the property alleged to have been stolen.

2. Hence to deny the defendant the right to inquire whether or not there has been litigation between accused and the private prosecutor as to the ownership of said property is reversible error.
Judgment reversed.

Mr. Justice Bey-Solow delivered the opinion of the court:

Grand Larceny. This cause comes up from the Circuit Court of the first judicial circuit, Montserrado County, at its November term, A. D. 1925.

In that court, the appellants were indicted, tried and convicted of grand larceny, and final judgment was rendered upon the verdict of the jury, to which final judgment they excepted, and

have brought the cause up to this court for review. The facts will appear from the evidence in the records.

In the first count of the bill of exceptions, the appellants submit: that the court below erred in sustaining the objection, and not permitting the witness, Williette Page, to answer the question:

"Please tell the court and jury whether or not there had been any litigation between yourself and the prisoner concerning the **land** upon which the fibre was cut and placed in the swamp by you?"

This court is of the opinion that the question put by the defense on cross-examination, the subject of complaint in the first count of the bill of exceptions, should have been answered, as it would probably have shown that there had been litigation as to the ownership of the **land** upon which the fibre had been cut and hence as to the ownership of the **land** upon which the fibre has been cut and hence as to the ownership of the fibre itself. Further it having been shown in evidence by A. D. Williams and Williette Page that A. D. Williams, one of the appellants, claims part-ownership in the **land** in question, this court says that the judge of the lower court erred in overruling the question.

And further it was testified by A. D. Williams, one of the appellants, that the **land** upon which the fibre was cut and the swamp in which it was placed was his.

The evidence further shows on page 6 that the boys of Mrs. Williette Page, the private prosecurtrix, viz.: Garglar and Zone, stole a good quantity of the fibre, and that Mrs. Page herself complained to one John Lyoyd, a justice of the peace for the Territory of Marshall, that one Johnson had stolen her fibre. The whole evidence in this case is conflicting, and the benefit of the doubt should be given to the prisoners. (See I Lib. L. R. 401, 5.) Therefore the appellants submit that they cannot be legally charged and convicted with having committed larceny for fibre found upon their own **land**, as the appellants say they being under the impression that the **land** upon which the fibre in question was cut, and the swamp in which it was placed was theirs, although they deny the removal of the said fibre in question. (See Record in the case, pp. 7 and 8; W. E. Page's testimony, pp. 9 and 10; A. D. Williams' testimony; see 17 R. C. L., p. 26, sec. 29.)

As the evidence in the case does not support the verdict of the jury, this court is of the opinion that the judgment of the lower court should be reversed; and it is so ordered.

Hunter v Hunter [1973] LRSC 39; 22 LLR 87 (1973) (26 April 1973)

JAMES W. HUNTER, Appellant, v. SOPHIA L. HUNTER, Appellee.
MOTION TO DISMISS APPEAL FROM THE CIRCUIT COURT, SECOND JUDICIAL CIRCUIT, GRAND BASSA COUNTY.

Argued April 2, 3, 1973. Decided April 26, 1973. 1. 2. 3. 4. A party who fails to put in an answer must first appear in the action in order to participate in the trial as defendant under a general denial. No judge of concurrent jurisdiction can review the acts of his predecessor. In order to warrant review on appeal of a matter it must have come to finality in the lower court. A judgment is final when it has completely settled the rights of all parties, though it leaves things undone which may be necessary to due execution of such judgment. It will be presumed on appeal, in the absence of error affirmatively shown by the record, that the trial court acted correctly. A person cannot urge a ground for relief on appeal which was not presented to the lower court by proper objection and exception thereto.

5. 6.

A petition for partition of real property was filed by appellee in the Circuit Court and granted by the judge presiding, who set up a Commission to effect the partition. Appellant excepted to the ruling, but took no further action. Subsequently, the matter came before another judge, who sought to resolve the difficulties in enforcing the first judge's ruling by dissolving the Commission and appointing a surveyor who was technically skilled to carry out the original order. To this ruling an exception was taken, but no appeal was pursued. Thereafter the same judge approved the report of the surveyor and as to one aspect of that report directed the surveyor to obtain assistance from another surveyor. No exception was taken by respondent nor an appeal announced. (A writ of certiorari, for some reason, may have been applied for before the decree approving the report, but it, too, was never pursued.) Somehow the same proceedings came up before two other judges of the same court, in sequence. Both took positions contrary to the
87

 decree of the first judge and of the second, as well, which was in furtherance of the decree. Again, the matter came up before the fifth of the judges of the Circuit Court. He discarded the negating rulings of the prior two judges, declaring that they had attempted to review the acts of a colleague; he affirmed the position taken by the second judge and sought to implement and effect it. It was from this decree that the respondent appealed. The appellee moved to dismiss the appeal, contending primarily that an appeal should have been taken from the rulings of the first two judges and not the ruling of the last judge in furtherance of the decrees of those two, since it was interlocutory in nature and not final as the others were, certiorari being the proper remedy. The Supreme Court agreed, deciding an appeal was not properly before it and granted the motion, dismissing the appeal.

M. Fahnbulleh Jones for appellant, and appellant pro se. 0. Natty B. Davis and Joseph Findley for appellee.

MR. JUSTICE HORACE delivered the opinion of the Court. This case stems from an unfortunate controversy between brother and sister over property inherited by them from common ancestors. For the purpose of this opinion we have deemed it necessary to recount briefly the facts of the case as revealed by the record certified to us from the court below. James W. Hunter, appellant, and Sophia Hunter, appellee, are brother and sister, who inherited certain pieces of real property in Grand Bassa County from their grandparents, Thomas L. Hunter and Sophia A. Hunter, and great aunt, Laura Johnstone. Sophia Hunter, it appears, being dissatisfied with the way her brother, James W. Hunter, was handling the property owned by them in

common, filed a petition on May 26, 1969, in the Equity Division of the Circuit Court for the Second Judicial Circuit, Grand Bassa County, for partition of said property. James W. Hunter, respondent in said petition, was duly summoned but neither appeared nor answered. On June 14, 1969, during the May Term of the Second Judicial Circuit, the petition was called for hearing before Judge Dessaline T. Harris, counsellor 0. Natty B. Davis representing petitioner, and respondent, who had neither appeared in the matter nor answered, representing himself. Although no injunction papers are in the record before us, it appears that prior to filing of the petition for partition, Sophia Hunter had instituted injunction proceedings against James W. Hunter, because when the partition case was called the record shows that respondent requested the court to give preference to the injunction proceedings on the ground that since the petition was pending the property subject to an injunction could not legally be partitioned. The request of respondent was resisted by petitioner's counsel, and the judge ruled that the injunction had no bearing on the suit for partition and was intended to preserve the property until partition, when the injunction would expire of its own terms. We have taken pains to refer to the injunction proceedings because of what will be stated later in this opinion

as to the position of respondent in this connection. The court having disposed of the injunction as related above, the petition to partition was called, as the minutes of the trial court reflect. "The Court : At the call of this case respondent was found not to have appeared nor answered hence he is on bare denial. However he was in court at the call of this case in keeping with the minutes of court. The truthfulness of the parcels of land named in the petition was by question solicited from respondent, James · W. Hunter, and he confirmed all of the listed prop-

erties except item five under count one of the petition which calls for thirty acres. In denying the existence of thirty acres behind the hospital in Lower Buchanan, respondent James Hunter informed the court that instead of thirty acres there were only six acres which he knew to have been given to him and his sister, petitioner. In the circumstances, the court will order the commission set up infra to take cognizance of all and singular the properties listed in count one of the petition except that in the case of thirty acres of land behind the hospital, Buchanan, said committee will consider six. In addition to these parcels of **land petitioner informed the court that she has evidence of the existence of four acres of land** in New Cess, Grand Bassa County. So during the deliberation of the commission referred to, to be set up, these four acres of land the commission is ordered to consider the same during their deliberation if evidence of existence thereof is produced by petitioner, because when notice of this New Cess **land was given in court, respondent denied any knowledge about said parcel of land**." The court then proceeded to set up the Commission. Counsellor Joseph Findley was nominated by the petitioner. Hon. Joshua L. Harmon was nominated by the respondent, but because the court felt that Mr. Harmon was a Senator and immune from court process at the time, his nomination was rejected by the court. After taking exceptions to the court's ruling, respondent nominated counsellor Samuel W. Payne, and the Commission as named above, with the court's appointee, Mr. Joseph Sukun, as Chairman, was duly set up to partition the properties listed in the petition and ordered to report to court within sixty days, to which report either party in interest might file objections. Thus ended the first phase of this matter. One peculiar feature of this case is how the respondent came within the jurisdiction of the court to participate in

the partition proceedings when he had neither appeared nor answered. The Civil Procedure Law requires that upon being summoned, an appearance shall be made within ten days after service of such summons or resummons. Rev. Code I :3.62. Section 9.1 (2) of the Civil Procedure Law provides : "If a defendant appears within the time prescribed by Section 3.62 (emphasis supplied) his failure to interpose an answer shall be deemed a general denial of all the allegations in the complaint. At the trial, such a defendant may cross-examine plaintiff's witnesses and introduce evidence in support of his denial, but he may not introduce evidence of any affirmative matter." From the reading of this statute it seems to us that in order to qualify to participate in a trial as defendant or respondent, one must first appear. During the February Term of the Second Judicial Circuit, Grand Bassa County, Hon. D. W. B. Morris presiding, the matter was again called, and the court asked for the report of the Commission, when it was informed by the Chairman that he was unable to get the Commission to meet. Counsellor Findley, a member of the Commission, informed the court that the nature of service required of them was technical and not being surveyors, the Commission could not execute the orders of the court appointing them to partition the property in controversy between petitioner and respondent. In this situation, the court dissolved the Commission set up to partition the property and appointed surveyor Moses D. James to make a proper partition of the property in question and submit a report to the court by March zo, 1971, at which time the report would be passed upon and, if approved, distribution of the properties would be made to the parties concerned. The parties were ordered to turn over all deeds to the court-appointed surveyor. Respondent excepted to the entire ruling and announced an appeal to the Supreme Court at its October

1971 Term. The trial court then observed that announcement of an appeal to an interlocutory ruling was a strange procedure, but since respondent had done so he would order the surveyor to suspend the survey for a limited time in order to give respondent time to appeal and petitioner time to properly defend her interest. From this point, according to the scanty record available, it seems that the situation became more confused. As far as we have been able to gather it appears that instead of prosecuting an appeal, respondent filed in the office of the clerk of the Supreme Court a petition for a writ of certiorari venued before the full bench. There is no showing that the writ was ever authorized by the Supreme Court or a Justice thereof. In the meantime, counsellor for petitioner made representations to the Chief Justice, ad interim, of the situation, and the Chief Justice wrote a letter to Judge Morris instructing him to proceed with the matter and in case any party was dissatisfied he or she could appeal to the Supreme Court. After receipt of this letter and while the matter was proceeding, respondent obtained a certificate from the assistant clerk of the

Supreme Court to the effect that a petition for a writ of certiorari had been filed in his office venued before the full bench sitting in its March 1971 Term which was "still pending undisposed of." Being confused with this turn of events, Judge Morris sent a radiogram to the Acting Chief Justice requesting clarification, because his letter and the clerk's certificate from the Supreme Court filed in the trial court seemed conflicting. To this radiogram from Judge Morris, Acting Chief Justice Mitchell sent a reply. "Your radiogram received. Have not deviated from instruction given you by letter and I informed Counsellor Hunter personally if not satisfied proceed by regular appeal. This is still maintained." Upon receiving the radiogram, Judge Morris proceeded with the case. The surveyor made the partition

and reported to the court, which rendered a decree on the surveyor's report on March 19, 1971. Because of the importance both sides have attached to this decree, from different angles, of course, we will quote the part which begins after recitation of the facts. "In obedience to the judge's order the clerk issued notices which were served on both petitioner and respondent for the hearing of this matter at the hour of to o'clock. When the matter was resumed at II o'clock, petitioner, with her representatives, counsellors Davis and Findley, in compliance with said notice, were present. Respondent was absent and even up till now while the decree is being entered, 25 minutes to 12 o'clock, respondent is absent without excuse. The court therefore in passing upon the report of the surveyor, Moses D. James, decrees that same be hereby approved with reservation deleting the incited [sic] letter dated March 13, 1971, signed by respondent James W. Hunter addressed to Moses James, and further instructs the surveyor who stated that up to this point because respondent had failed to furnish him with the original deed of one of the pieces of property, he had not made a drawing [map] of the property on the Fair. Ground. As to this piece of property and the rest shown in said petition, subject of these proceedings uncountered, the court directs him to get in touch with the oldest Public Land Surveyor in this county, Arthur P. Harris, who might be able to designate the points of commencement of said properties without encroaching on others of legal title, partition this particular property and prepare the necessary quit claim deeds covering same . . . to be presented both sides for their signatures and probation and registration. Meanwhile the said surveyor shall prepare and present his bill which may also include service rendered by surveyor Harris for our approval to be included in the bill of costs which is

hereby ruled to be paid by respondent. With this amendment, the report be and the same is hereby approved. It is so ordered." We think it important to note that before surveyor James started the survey he requested respondent to be present in order to show him the corners, but respondent refused because, as stated by him, he had been enjoined from entering upon said property. It is difficult to understand respondent's attitude in this respect in view of Judge Harris' ruling in the injunction proceedings hereinabove referred to. No action was taken by respondent after the rendition of the above decree, either to appeal or move by remedial process to the Supreme Court. At the May Term of the Second Judicial Circuit, Grand Bassa County, Judge Alfred B. Flomo presiding, in some way not shown in the record, the partition matter came up again. Judge Flomo, after surveying the history of the case, and noting that neither of the parties had been placed in possession, appointed a Board of Commission to assist the appointed surveyor to conclude the matter. Levi R. Johnson was named Chairman, Rev. Oswald T. Dillon and Counsellor James G. Johnson, the other members. A report was to be made not later than July 17, 1971. Again, during the August 1971 Term of the Second Judicial Circuit, Grand Bassa County, Judge Roderick N. Lewis presiding, the matter somehow came up again. According to the record, on August 19, 1971, Judge Lewis reviewed the facts and then decreed that the commission constituted by Judge Flomo proceed without delay. During the November 1971 Term of the Second Judicial Circuit, Grand Bassa County, Judge William 0. Kun presiding, this same matter was brought up again. Judge Kun commenced by making a thorough inquiry into the status of the matter, whereby it was shown what

roles his predecessors, Judge Morris, Judge Flomo, and Judge Lewis, had played. His inquiry also revealed that after Judge Morris' decree, before Judge Flomo constituted a new Commission, a surveyor had been nominated by respondent and appointed by the court to associate with surveyor James in effecting the partition. Further, the inquiry of Judge Kun revealed that James had made the partition and prepared quit claim deeds which had been passed upon by Judge Morris. Although respondent took no action by way of exception or otherwise at this time, when Judge Flomo was presiding at a subsequent term of court, respondent objected to the partition James had made, on the ground that the surveyor had allocated most of the improved properties to petitioner and the unimproved properties to him. In passing, we should mention that it is indeed strange that respondent did not interpose his objections at the time the report was made and before Judge Morris passed upon it. It is also strange that he did nothing about this report which he considered prejudicial to his interest, or the decree based on that report, at the time he did raise objections. After due inquiry into the matter, on December 21, 1971, Judge Kun ruled

that the acts of Judge Flomo and Judge Lewis were improper in that they sought to review their colleague, Judge Morris and the decree made by him, which Judge Kun affirmed and ordered the parties to comply with. Respondent excepted to Judge Kun's ruling and announced an appeal to the Supreme Court at its March 1972 Term. Petitioner complied with the ruling and signed the deeds. Respondent based his appeal on a four-count bill of exceptions. Although, for reasons to be stated later, we cannot traverse the bill of exceptions, we deem it important, nevertheless, for the purpose of this opinion to quote Judge Kun's notation on the bill of exceptions.

"This court maintains that inasmuch as no appeal was taken from the decree made by Hon. D. W. B. Morris during the February 1971 Term of court, said decree is final and no other judge except authorized by the Supreme Court has the right to set aside the decree and reopen the case. With this observation, the bill of exceptions is approved in so far as it is supported by the records of the case." When this case was called before us, our attention was drawn to a motion to dismiss the appeal filed by appellee and resisted by appellant. Appellee's chief contention is that appellant never appealed from the rulings of Judge Harris and Judge Morris, which Judge Kun's decree merely sought to enforce and that the appeal respondent has taken from Judge Kun's decree is improper in that he should have moved by certiorari, the correct procedure in the case of an interlocutory ruling. Appellant charged in his resistance lack of legal sufficiency for the grounds of the motion and otherwise denied the allegations, as well as stressing laches on the part of movents. Before proceeding with the issues raised, we feel that some comment should be made on the roles of Judge Flomo and Judge Roderick N. Lewis in this matter. We have already referred to the rulings of these two judges. From those rulings, the one of Judge Flomo setting aside Judge Morris' decree, and that of Judge Lewis confirming Judge Flomo's position, it can be clearly seen that these two judges were without legal authority to proceed as they did, without regard as to whether their positions were legally tenable or not. It has been held by this Court, Republic v. Aggrey, 13 LLR 469, 478-79 (196o), more than once that no judge of concurrent jurisdiction can review the acts of his predecessor in a given case. "Now, summarizing both of these counts, this Court says that however sound the ruling of His Honor

Judge Weeks,
might seem to be in substance, it cannot be upheld by any authority of legal jurisprudence; and, however, erroneous or sound might
be the ruling of His Honor, Judge Samuel B. Cole, given at the February, 1959, Term of the court, the only judicial tribunal that
would have been clothed with legal authority to review the same was an appellate court; and Judge Weeks, presiding over the May term
of the aforesaid court, exercising concurrent jurisdiction with Judge Cole, was without legal authority to review his acts as such."
See also Jartu v. Estate of Konneh, to LLR 318 (1950). We, therefore, have no hesitancy in declaring the acts of Judge Flomo and
Judge Lewis legal nullities, because they run counter to both the common law and the decisions of this Court. Coming now to the motion
to dismiss, appellee has asked that we dismiss the appeal because actually there is no appeal before this Court, since appellant
failed to appeal from the decree he should have appealed from, that of Judge Morris, and that appellant could not appeal from Judge
Kun's decree enforcing Judge Morris' decree because Judge Kun's action was merely implementing the decree of Judge Morris. Appellant
on the other hand has argued the point that the motion to dismiss does not advance any of the statutory grounds for dismissal of
an appeal and, therefore, the motion should be denied. The points we deem necessary of consideration are : (t) what constitutes finality
in determining a case, to warrant an appeal being taken therefrom; and if warranted in the case under consideration, whether the
appeal was properly taken; (2) what the legal presumptions are with respect to the decisions of trial courts; and (3) whether in
the circumstances there is an appeal regularly before us, that is to say, has appellant properly re-

served the points he desires us to pass upon in his appeal by proper exceptions? With reference to the first point, most law writers
are agreed that in order to warrant review on appeal of a matter, it must have come to finality in the trial court. "As a general
rule, the face of the judgment is the test of its finality. . . . The fact that other proceedings of the court may be necessary to
carry into effect the rights of the parties, or that other matters may be reserved for consideration, the decision of which one way
or another cannot have the effect of altering the decree by which the rights of the parties have been declared, does not necessarily
preverit the decree from being considered final, unless ther is some further judicial action contemplated by the ourt. "A decree
which decides the right to property in contest, directs it to be delivered by defendant to complainant by transfer, and entitles
the complainant to have the decree carried immediately into execution, is a final decree, although it leaves to be adjusted accounts
between the parties in pursuance of the decree settling the question of ownership.", 2 AM. JUR., 1p"An appeal or writ of error will not lie, as a

rule, unless there has been final disposition of the case as to all the parties. "A reservation in a decree of a right to apply to the court for any order that may be necessary to the due execution of the decree does not destroy its appealability. It has been held that a judgment is final which completely settles the rights of the parties, although there is an order retaining the cause on the docket for the purpose of executing the judgment, which is discharged by the payment of the amount of a judgment into court." 2 CYC. 588. In his argument at this bar, appellant contended that the decree of Judge Morris was not final because it left peal and Error, §§ 24) 25.

something to be done. At the same time, he has contended that the decree of Judge Kun, which by its own wording was simply enforcing the decree of Judge Morris and which also left something to be done, was final. It is our view that this argument is inconsistent and illogical and seemed to be advanced because appellant did not avail himself of his legal rights with respect to Judge Morris' decree. We will say more about this later. We consider next the point of what the law presumes with respect to actions and/or decisions of lower courts. It is generally held, in the absence of patent error by the lower court, that the law presumes that the actions of such court were correct. "While there are limitations on the power of an appellate court to indulge in presumptions in support of orders or judgments, it is a general rule of wide application that an appellate court will indulge all reasonable presumptions in favor of the correctness of the judgment, order, or decree from which the appeal was taken. In other words, it will be presumed on appeal, in the absence of a showing to the contrary, that the trial court acted correctly, that the trial court , did not err or rule erroneously, and that the court will correctly settle questions as may arise in further proceedings in the cause. Indeed, error is never to be presumed by an appellate court on an appeal thereto, but must be affirmatively shown by the record; and in attempting to show affirmatively that an error exists as reflected by the record the appealing party must be guided by the rules of law and of equity applicable to the record produced." 5 C.J.S., Appeal and Error, § 1 533. Other authorities have addressed themselves to the point. "It may be stated as a general principle that reviewing courts indulge presumptions very freely for the purpose of sustaining the action of lower courts,

and very
sparingly for the purpose of overthrowing them. Generally speaking, presumptions unfavorable to the judgment and for the purpose of reversing it will not be indulged in. A record will not be interpreted to show error if it is susceptible of reasonable interpretation to the contrary but must be given such construction as will support the judgment if such construction can reasonably be made." The motion to dismiss avers that appellant did not take an appeal from the decree which settled the controversy, that is, the decree of Judge Morris. Neither in his resistance to the motion to dismiss nor in his argument before us has this averment been denied on the part of appellee. On the contrary, appealing from Judge Kun's decree, appellant, to all intents and purposes, makes a tacit admission that he did not appeal from Judge Morris' decree and the record confirms this. The law will presume, therefore, that the decree of Judge Morris, which was only implemented by Judge Kun, was not appealed from. Appellant in his argument emphasized that he wanted the partition made by surveyor James upon orders of Judge Morris vacated because of its inequities, that is, it awarded most of the improved portions of the property to appellee and most of the unimproved property to him. Be that as it may, and if so it does seem unfair, but has appellant safeguarded his rights in the trial court? We think not. It seems to us that if appellant felt that Judge Morris' decree was interlocutory,
he should hav6 at least excepted to it and thus reserved this point for appeal. Better still, he should have applied to the Justice in chambers for a remedial writ to correct what he considered error on the part of the judge. He did not do this. He did file a petition for a writ of certiorari but that was when Judge Morris dissolved the Commission set up by Judge Dessaline T. Harris and appointed surveyor Moses D. James to make the partition and not when Judge Morris passed

101 on the report of the surveyor. Even the petition for certiorari was never followed through. In some jurisdictions in reviewing an appeal from a final judgment there may be a review of interlocutory rulings, but in order to have a review of such interlocutory rulings they must have been properly reserved for review. Proper preservation and reservation of an interlocutory decision for appellate review may require, among other conditions, proper objection and exception to the decision and embodiment thereof in the record on appeal. Therefore, even if we assumed that Judge Morris' decree was interlocutory, how can we review it, either by itself or conjointly with Judge Kun's ruling which merely implemented it, when no exceptions were taken to reserve the issues for review? "A party cannot in the appellate court, urge a ground for relief which was not presented to the court below, especially where the new ground is inconsistent with the theory on which he proceeded at the trial." 2 CYC. 674. "Within the rule that questions not presented in the trial court in some appropriate manner will not be considered on appeal or error, it is a rule of nearly universal application that objections must be made in the trial court in order

to reserve questions for review." 2 CYC. 677. All in all, the whole case as handled in the court below presents the situation of
a comedy of errors. One fact stands out, however, quite plainly : that the bone of the controversy is the decree of Judge D. W. B.
Morris, upon which the appeal hinges. Equally clear is the fact that appellant neither excepted to, nor appealed from, that decree.
Because of what has been hereinabove stated we are of the considered opinion that the decree of Judge Morris was a final decree which
should have been appealed from if appellant wanted review by the Supreme Court. It

was not Judge Kun's decree from which an appeal should have been taken, for it merely implemented Judge Morris' action in the case.
Our holding in this regard is further borne out by the fact that the appeal from Judge Kun was to the report of surveyor Moses D.
James upon which Judge Morris had passed. The motion to dismiss the appeal is, therefore, granted. The Clerk of this Court is hereby
commanded to send a mandate to the court below to resume jurisdiction and enforce the decree of Judge D. W. B. Morris as implemented
by the ruling of Judge William 0. Kun. Costs in these proceedings disallowed, except for an amount of $300.00 to be paid to the surveyor
by both parties equally. It is so ordered.
Motion granted, appeal dismissed.

WAT Corp. v Alraine [1975] LRSC 16; 24 LLR 224 (1975) (2 May 1975)

WEST AFRICA TRADING CORPORATION, Appellant, v. ALRAINE (Liberia) LTD., Appellee.
MOTION TO DISMISS APPEAL.

Argued April 9, 1975.
Decided May 2, 1975. 1. There is no legal justification for the rule of thumb requiring an amount be pledged in the appeal bond equal
to one and one-half times the amount sued for. 2. A sufficient description of 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 metes and bounds.

A motion was brought to dismiss the appeal on the grounds that insufficient security
had been pledged in that one and one-half times the amount sued for was not provided in the appeal bond, and the realty pledged was
not sufficiently described to establish the lien of the bond. Though the Supreme Court denied the arguments principally advanced

by the appellee, it was of the opinion that the lack of identification of the realty would make difficult appellee's efforts to locate it. The motion to dismiss the appeal was granted.

M. Fahnbulleh Jones for appellant. Yangbe and Toye C. Barnard for appellee.

Moses
K.

MR. CHIEF JUSTICE PIERRE delivered the opinion of the Court. This case has come up to us on appeal from the judgment rendered in the Sixth Judicial Circuit Court, sitting in its December 1973 Term. Plaintiff who is the appellant herein, had sued by attachment for damages, and complained that warehouse space leased to the appellee had been used in a manner to cause cracks in the building, to the damage and in224

convenience of the lessor. A firm of general contractors, Housing Development and Construction Corporation, was invited to examine the condition of the building, and their report as to the cause of the cracks complained of by the apellant, is very interesting. Defendant appeared in the action and filed an answer, in which it was contended that there was no ground for attachment according to law ; that the applicatory affidavit filed with plaintiff's complaint is false in many respects, especially when it alleged that repeated demands for the sum sued for had been made ; that although plaintiff had sued for the sum of $147,499.00 as damages, yet the attachment bond contained no fixed amount, that is, one and one-half times the sum sued for as required, by which defendant could be indemnified as the law requires ; that the attachment bond was defective because it did not have an affidavit of sureties appended thereto. Defendant also contended that cracks in the walls of the building, and the sunken floor, were caused by cheap material used, and poor construction of the building, and supported this contention by a report submitted by the firm of Milton and Richards, architects and engineers. Defendant denied responsibility for the condition of the building and claimed that it was caused by the failure to have observed sound professional precautions, and that the type of soil on which it was built required the employment of certain measures in keeping with good architectural policies to insure its stabilization.

A jury deliberated on the evidence after the issues of law had been passed upon and the case ruled to trial. The jury returned a verdict denying plaintiff the damages sued for. Judgment was rendered on this verdict, to which plaintiff excepted and announced an appeal to the Supreme Court. After completion of the appeal, the appellee filed a motion to dismiss the appeal, on several grounds, which we shall review later, and appellant resisted.

The first two counts of the motion to dismiss are based on the fact that the penalty in the appellant's appeal bond is not one and one-half times the amount sued for, and the appellee contends that for this reason the said bond is defective. While it is true that filing a defective bond is ground for dismissal of an appeal, we contend that the defectiveness of the bond must be clearly shown and not assumed. According to our Civil Procedure Law the only reason for filing an appeal bond in civil cases is that it will indemnify the appellee from all costs or injury arising from the appeal, if unsuccessful, and that the appellant will comply with the judgment of the appellate court or of any other court to which the case is removed. Rev. Code r :51.8. This is the most recent legislative enactment, but is contained verbatim in the 1956 Code, Title 6, § 1013, as well as substantially the same in the Revised Statutes before it. Rev. Stat., § 426. The question of requiring the indemnity of an appeal bond to be one and one-half times the amount sued for, is not mentioned in either one of the foregoing sections, and we have wondered what the legal authority is for this requirement in appeal bonds. Not being able to find legal ground for the requirement, we are unable to uphold this reason for dismissing an appeal. In this case the amount sued for is $147,499.00, and the indemnification provided in the appeal bond is $5,000.00. The question we ask ourselves in this circumstance is, could this smaller amount properly indemnify the appellee against cost or injury it might sustain? The foregoing sections relating to indemnity require that the security of the bond be fixed by the court, and, further, that should the bond be insufficient, it may be made sufficient before the trial court loses jurisdiction over the case. Rev. Code i :5 r.8. The bond must have been approved by the trial judge. Nor have we been able to find anything in the record to

show that there was any exception taken to either of the sureties, as is allowed by section 63.5 of the Civil Procedure Law, contained in our Revised Code. We must assume, therefore, that appellee must have been satisfied with the sureties, and with the amount inserted in the bond as indemnification. Can counsel at this stage raise the question of the defectiveness of the bond, on the ground of insufficiency of the indemnification? We do not think so, because making the bond sufficient could only have been done before the trial court lost jurisdiction. We shall now consider count three of the motion to dismiss. In this count the appellee has stated that the affidavit of the sureties, attached to the bond, does not contain a sufficient description of the property pledged to establish the lien of the bond, in accord with statutory requirements, and on this ground the appeal bond should be dismissed. Our Civil Procedure Law contains the applicable section. "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." Rev. Code i :63.2 An inspection of the bond shows that there is an affidavit sworn to March 25, 1974, filed with it, and for the purpose of this opinion we will quote from it. "Personally appeared before me, a duly qualified Justice of the Peace, Emmanuel Lue and Henry Temah,

at my office in the City of Monrovia, Montserrado County, who being duly sworn, depose and say: i. That they are the sureties whose names appear on the plaintiff/appellant's bond to which this affidavit of sureties is attached. "2. That they are freeholders and householders within 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. "4. That the foregoing statements are true and correct to the best of their knowledge." Does this affidavit contain a description of the sureties' property "sufficiently identified to establish the lien of the bond," as the statute requires?

We interpret this part of section 63.2 (b) to mean offering the property as security in order that an appellee be protected against loss as a result of costs or injury sustained by the appeal. BLACK'S LAW DICTIONARY has defined description relating to real property to mean "that part of a conveyance, advertisement of sale, etc., which identifies the land or premises intended to be affected." In giving effect to the text of this statute, we must consider that description of land merely means designating the particular space occupied, or to be occupied so as to enable anyone to find it, should this become necessary. Hence, in deeds which convey real property we have description by metes and bounds, to sufficiently and correctly identify the particular plot of land. With this as a background it is our opinion that description as used in this section means that land offered as security for appeal bonds must be described in the affidavit of the sureties sufficiently well to identify the particular piece of property intended to be encumbered by the bond. It is not sufficient to say that a surety owns an acre on a particular street; that property must be

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described in a manner to make finding it on the ground an easy exercise. We hold that this is best accomplished by stating
the number of the plot and the metes and bounds. In such circumstance there would be no difficulty in designating the land with certainty.
The description of property intended to be used as security in appeals, must be of such certainty and definiteness that locating
the property would not be difficult; nor would satisfying any obligation by virtue of the security which the property offers be denied
to the appellee. Unless the affidavit of the sureties describes the property offered in the foregoing manner, it cannot be said to
have conformed to the requirements of the law, because the property would not have been "sufficiently identified to establish the
lien of the bond." A lien being a charge, or security, or encumbrance upon property of one person, to secure some debt or obligation
to another, there should be such certainty as to the particular property intended, as to leave no doubt in any one's mind. The requirements
of the law with respect to the affidavit of sureties which accompanies appeal bonds are mandatory and must be met literally. We have
no authority to hold otherwise. The Court's power to construe and interpret statutes does not go beyond giving effect to the words
in the text of the particular statute ; legislative intent must be gathered from the meaning of the words used. The lawmakers must
be said to have intended only what they wrote and nothing more or less, hence, the Court has no alternative but to insist upon strict
compliance with the law as it was passed. In this case the law states positively that the affidavit of the sureties must contain
"a description of the property, sufficiently identified in order that it might be able to establish the lien of the bond." The affidavit
accompanying the bond in this case does not contain any description of the property offered as security as aforesaid, and renders
the bond defective; the bond being defective

affords ground for dismissal of the appeal. The motion
to dismiss the appeal is, therefore, granted with costs against the appellant.
Motion granted.

Williams-Baguiri et al v Cooper et al [1960] LRSC 46; 14 LLR 101 (1960) (6 May 1960)

HENRIETTE M. WILLIAMS-BAGURI, W. 0. DESHIELD, JAMES H. DESHIELD, JR., HENRY DESHIELD, and JOHN HILARY COOPER, Plaintiffs, v. THOMAS
R. COOPER, JOSEPH SHERMAN, and DENNIS JULU, Defendants.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO

COUNTY.

Argued March 16, 1960. Decided May 6, 1960. In an action of ejectment, where the defendant has alleged adverse possession,
a plea of lack of knowledge by the plaintiff must be alleged and proved with particularity.

On appeal from a judgment dismissing
an action of ejectment, judgment affirmed.
D. B. Cooper for appellants. for appellees.
MR. JUSTICE WARDSWORTH

Lawrence A. Morgan

delivered the opinion of

the Court. Appellants in the above-entitled cause instituted an action of ejectment as plaintiffs in the
Circuit Court of the Sixth Judicial Circuit, Montserrado County, against appellees herein, for recovery of a portion of Block Number
9, Long Beach Settlement, Monrovia, claiming that the said parcel of land had come to the said plaintiffsappellants, who at the time
of the suit were the owners in fee simple, by the right of descent from their ancestor, John Shavers. Defendants-appellees, having
been summoned, appeared and filed an answer containing one count in which they expressly denied the right of the plaintiffsappellants
to recover on the ground that, since said defendantsappellees had held the parcel of land in ques101

tion in adverse possession for a period of more than twenty years, plaintiffs-appellants were thereby barred from recovery. The
pleadings progressed as far as the surrejoinder. On December 13, 1956, the trial judge heard arguments pro et con on the law issues
involved in the case, and on the following day, December 14, 1956, gave a ruling in which he sustained the allegations of defendants-appellees
and dismissed the case ; to which ruling plaintiffs-appellants took exceptions and prayed an appeal to this Court of last resort
for review. Accordingly we have for our judicial consideration appellants' bill of exceptions, which in its body reads as follows
: ,4 r. The above-mentioned cause of action was commenced by filing the plaintiffs' written directions and complaint in the above-mentioned
court on May 15, 1956, in the office of the clerk of said court, and a writ of summons was duly issued against the said defendants
who appeared and filed their answer and other subsequent pleadings. The plaintiffs also filed their pleadings. "2. On December is,
1956, the trial court heard the law issues raised in the pleadings duly filed by the plaintiffs and the defendants, and made the
following ruling thereon, as attached hereto and marked Exhibit 'A' and made a part of this bill of exceptions, to which the said
plaintiffs then and there took exceptions and prayed an appeal to the Supreme Court of Liberia, at its March, 1957, term. Appellants
having incorporated the trial judge's ruling as a part of their bill of exceptions in these proceedings, we deem it expedient, for

the benefit of this opinion, to include certain excerpts from the said ruling, which we quote hereunder, as follows: "Plaintiffs allege in their complaint : Ct i. That they are the heirs of the late John Shavers. "2. That they are descendents of the late John Shavers, deceased, who died possessed and owned in fee simple fifteen acres of land.

"3. That the said property has come to the said plaintiffs by descent from their ancestor, John Shavers. "4. That, notwithstanding the fact of the said land having come to them as stated above, the defendants aforesaid are presently in illegal and unlawful possession of a portion of said lands and are unlawfully withholding same from them." "Defendants in their said answer plead the statute of limitations in bar by alleging: 'Plaintiffs are estopped and forever barred by reason of the fact that the defendant held the property subject to this action in adverse possession for a period of twenty years; that is to say, from June 20, 1928, up to and including May 11, 1956, the day on which they were sued by plaintiffs, as appears more fully by copy of defendants' deed from the Republic of Liberia.' "Plaintiffs have countered this issue by the filing of a reply, submitting the following : "1. That the statute of limitations could not run against them because they were minors and did not know the whereabouts of the property, and did not have a deed, nor did anyone put them in knowledge that they owned the property. "2. That the Supreme Court of Liberia, during its March 1954, term turned over to the heirs of John Shavers all of his property. "3. That the statutory plea of limitation could not run against them because they just luckily found out the whereabouts of said deed for said property, and hence could not have filed an action of ejectment previously. "4. That a plaintiff in an ejectment action who pleads the statute of limitations admits the title right of the defendant. "Defendants in their rejoinder allege the following:

That the reply of the plaintiffs is inconsistent and contradictory, in that they contend that they were minors without a showing of when they reached their majority; that they did not know the whereabouts of the property; that they had nobody to put them in knowledge that they owned the property; and that they have been granted the said property by the Supreme Court of Liberia, which was in an action instituted in the year 193o against the late Abayomi Karnga. "2. That, from the year 1930, when the Supreme Court of Liberia turned over the said property to present time is a period of twenty-six years, or beyond the statutory period of limitation. "3. That sufficient notice has not been afforded defendants, by omitting to show the period in which the said deed got into their possession, so as to be able to reckon time; the mere averment of 'just luckily' is legally insufficient. "Plaintiffs

surrejoined the said defendants and raised one new issue, which is that the rejoinder of the defendants was filed out of statutory time; that is to say, plaintiffs' reply was filed on May 30, 1956, in the office of the clerk of court; and a copy was furnished them; nevertheless, their said rejoinder was not filed in the office of the clerk of court until June II, 1956, quite eleven days thereafter. "These are the issues for resolution in this cause, which the court will proceed to pass upon commencing with the surrejoinder of the plaintiffs. All subsequent pleadings by a defendant after the answer are governed by those which, by statute, the answer is subject to. Williams v. Lewis & Co., 1 L.L.R. 229 (189o). It is the time the notice was served and not when the complaint was filed, that governs the answer in this respect. Green v. Turner, 1 L.L.R. 276 (1895). So it is at the time when a copy of the adverse party's

pleading is served upon him that time commences to run. "The plaintiffs herein aver that the defendants filed their rejoinder out of statutory time. To the mind of the court, this allegation recorded in their surrejoinder is not legally convincing; for mere allegation is not proof. Some evidence, that is to say, some certificate from the officer serving the said reply upon the defendants was necessary; at least some showing other than the mere allegation of the same, since the statute quoted above provides for the time to commence to run as from the time notice of the filing of the same is served, and not when filed in the office of the clerk of the court. "This count, therefore, of the surrejoinder of the plaintiffs herein is therefore overruled. "Culled from the records there is only one major issue upon which a resolution of this matter depends; and that is whether the plea of statutory limitation, as raised by the defendants herein, is a bar to an action. The statutory period of limitation applicable to an action of ejectment is twenty years. 1956 Code, tit. 6, § 50 (a). "An inspection of the answer of the defendants shows that this is expressly raised as a defense. "The plaintiffs, in an effort to defeat this plea, aver that they were minors, without making a clear-cut issue by stating the time they reached their maturity; especially so when they have elected to plead the same in bar. Notice should be given the adverse party of such an issue. Failure to give such notice renders the action dismissible. Clark v. Barbour, 2 L.L.R.·i5 (1909) . "An inspection of the reply of the plaintiffs shows inconsistent, evasive and contradictory pleas in one and the same count--not permissible. "It is to be remembered that, as soon as plaintiff and

defendant are available in any given suit, the period of statutory limitation commences to run, which the more goes to show that it is necessary for a party resisting the plea of statutory limitation to show

when the said minor reached maturity so as to reckon the time, failing which bars an action in keeping with the statutes. The Supreme Court of Liberia has held that the statutes commence to run against a party when he has failed to use his legal advantages to the security of his interest. Hilton v. Sherman, r L.L.R. 43 (1867) . "In view of the foregoing facts and circumstances and the law controlling, cited above, the action of the plaintiffs is dismissed with costs against them. And it is hereby so ordered." In countering the plea of statute of limitations, time is an essential factor which should be stated with the view of serving notice on the adverse party, which alone could be the means of determining whether statute of limitations as a plea in bar would be tenable in law. Plaintiffsappellants in Counts "1" and "3" of their reply, alleged as follows : i. Because plaintiffs say that the whole answer of defendants should be dismissed, and they so pray for that the alleged statute of limitations as pleaded by defendants cannot run against plaintiffs, for that plaintiffs were minors or under-age and did not know the whereabouts of the property, neither did they have the deed, nor anyone to put them in knowledge that they owned the property. "3. And also because plaintiffs further say that the statute of limitations cannot run against plaintiffs, for they just luckily found out the whereabouts of said deeds for said property, and hence they could not have filed an action of ejectment before obtaining the original deed to said property." It is legally incumbent on plaintiffs-appellants to indicate the time when they reached their majority, as also the "

time of the discovery of the deeds, so as to justify their neglect in seeking recovery of the property in question, subject to these proceedings, before the institution of the suit now under review. It should be remembered that our statute mandatorily provides: "The fundamental principle on which all pleading shall be based shall be that of giving notice to the other parties of all facts it is intended to prove." 1956 Code, tit. 6, § 252. The failure of plaintiffs-appellants to meet this requirement is an incurable legal blunder. "Title to land by adverse enjoyment owes its origin to and is predicated upon the statute of limitations, 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. Thorne v. Thomson, [1930] LRSC 8; 3 L.L.R. 193 (1930), Syllabus I. "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." Page v. Harland, i L.L.R. 463, 471 (i906). In view of the foregoing surrounding circumstances and the law cited, supra, the ruling of the trial judge is hereby upheld and sustained with costs against the appellants. And it is hereby so ordered. Affirmed.

Richards v LBDI [1982] LRSC 14; 29 LLR 525 (1982) (5 February 1982)

JOHN RICHARDS, Appellant/Respondent, v. **THE LIBERIAN BANK FOR DEVELOPMENT & INVESTMENT**, by and thru COMFORT MINOR, Appellee/Movant.

MOTION TO DISMISS APPEAL FROM RULING OF THE DEBT COURT FOR MONTSERRADO COUNTY.

Heard November 11, 1981 Decided February 5, 1982

1. There is no requirement that the affidavit of sureties to an appeal bond should contain the metes and bounds of the property; however, the law requires that the property should be sufficiently described so as to establish the lien of the appeal bond on it.

2. Depending on the location of the property offered as security for appeal bond, the names of the grantor and grantee may constitute reasonable description of the **land**; inclusion of the lot number, its location, and the metes and bounds are desirable and render the description more precise. And while all of these descriptions may be necessary in certain areas, the omission of one or more of these methods of description does not necessarily make the appeal bond insufficient.

3. A single description in an affidavit of sureties for different properties situated in various places and owned by different persons is deceptive and insufficient to create a lien on any of the several properties offered as security for the appeal bond.

Appellee/movant filed a motion to dismiss appellant/ respondent's appeal on the grounds that the properties offered as security for the appeal bond were not definitively described in the affidavit of sureties and, as such, the appeal bond is insufficient and defective. The Supreme Court ruled that there are several ways in which a piece of property can be described for purposes of an appeal bond, depending on the location of the property, but that a single description for different proper ties situated in various places, and owned by different persons, is deceptive and insufficient to create the lien of the appeal bond on any of the several properties offered as security for the appeal bond. The Supreme Court therefore granted the motion and dismissed the appeal.

J K. Burphy appeared for the appellant/respondent. Joseph Williamson appeared for the appellee/movant.

MR. JUSTICE MABANDE delivered the opinion of the Court.

Appellee/Movant, Liberian Bank for Development & Investment (LBDI), instituted an action of debt in the Debt Court for Montserrado County against appellant, John Richards. The case was regularly tried and judgment was rendered in favor of appellee/movant. To this judgment, appellant/respondent's counsel excepted and announced an appeal to this Court.

On March 30, 1981, applee/movant filed a motion to dismiss the appeal now pending before the Court. Appellee's/movant argued that the bond is insufficient and defective to support an appeal because the various parcels of real property pledged as securities by the sureties were not definitively described by the affidavit of sureties. In support of his contention the counsel cited this Court to section 63.2 of the Civil Procedure Law, Rev. Code and the opinion of this Court in this case, *Ammons et al., v. Barclay*[1968] LRSC 2; , 18 LLR 212 (1968).

Counsel for appellant/respondent conceded the validity of the law relied on by the appellee/movant but argued that the bond and its supporting documents fully met the appeal requirements of the law. He also contended that the statute does not provide per se that metes and bounds of the **land** offered as security should be couched in the affidavit of sureties. He further argued that the description of the properties according to his affidavit of sureties sufficiently created a lien on the properties.

The certificate of property valuation issued by the Ministry of Finance for appellant/respondent indicates that several properties exist for each of the sureties. The total value of the various properties exceeded the penalty of the bond. Each property pledged by the bond is described by name of owner, location and lot number. The metes and bounds are not indicated for each of the properties. Section 63.2 (c) of the Civil Procedure Law, Rev. Code, which is in issue before us, reads thus:

"A description of the real property offered as security thereunder, sufficiently identified to clearly establish the lien of the bond."

The Ammons case, supra, did not specify what descriptions were required by the law. The description should be certain so as to indicate which of the several properties is offered as the pledge.

In the case *West African Trading Corporation v. Alraine Liberia Ltd.*, [1975] LRSC 16; 24 LLR 224 (1975), this Court commented on the statute in the following words:

"It is our opinion that 'description', as used in this section, means that **land** offered as security for appeal bonds must be described in the affidavit of the sureties sufficiently well to identity the particular piece of property intended to be encumbered by the bond. It is not sufficient to say that a surety owns an acre on a particular street; that property must be described in a manner to make finding it on the ground an easy exercise. We hold that this is best accomplished by stating the number of the plot and the metes and bounds. In such circumstance there would be no difficulty in designating the **land** with certainty. The description of the property intended to be used as security in appeals, must be of such certainty and definiteness that locating the property would not be difficult; nor would satisfying any obligation by virtue of the security which the property offers be denied to the appellee."

The comment did not say that the statute required that real estates pledged must be described by metes and bounds. It only suggested, “That this is best accomplished by stating the number of the plot and the metes and bounds." The statute does not prohibit pledges where the real estates are definitely identified without repeating the lot number, metes and bounds.

In a recent case, *Zayzay v. Jallah et al.*[1976] LRSC 6; , 24 LLR 486 (1976) the appellee moved to dismiss an appeal on the ground that the property pledged was not sufficiently described so as to have established a lien on it. The court, in commenting on the statute, held:

"The language is plain and unambiguous. Therefore, we must take the view that the lawmakers meant that in the description of the real property to be incorporated in an affidavit of the sureties, they referred to that part of the deed, mortgage, contract or other instrument affecting the title to the real property which describes the property affected. That, however, general and indefinite the description may be, if by extrinsic factors it can be made practically certain what property it was intended to cover, it will be deemed sufficient."

The appeal in the Zayzay case, supra, was dismissed because the supporting documents of the bond showed no reasonable certainty and particularity of description of the property offered.

In the case before us, the real estates are located in two small cities and are described by lot numbers. Deeds generally give four main descriptions of a **land**. Every deed must contain the names of the grantor and the grantee, the lot number, the name of the place where the specific property is situated and an expert description of how it can be properly demarcated. In towns, villages and small cities, the names of the grantor and grantee may constitute reasonable description of the **land**. Inclusion of the lot number and its location in addition renders the description more precise. While all of the other descriptions may be necessary in certain areas, the statute does not render other descriptive means insufficient by the omission of one.

Counsel for appellee/movant argued that an affidavit of sureties must contain a description of the properties pledged and that the description must be in harmony with those set out in all of the required documents attached to support that bond. Appellant/respondent's counsel did not disagree with this contention.

According to the records, the bond and its supporting instruments cover several properties that were pledged by appellant/respondent. The certificate of property valuation attached to the bond also indicates that the several properties pledged are located at various places in both Charlesville and Marshall City. The attached affidavit of sureties gave description of a single property without indicating which of the properties pledged is intended to have been described. A single description for different properties situated in various places and owned by different persons is deceptive and insufficient to create a lien on any of the several properties. Such a description fits no property and it therefore renders an affidavit of sureties defective. Such an affidavit cannot support a bond as in this case. The motion to dismiss the appeal is therefore granted with costs against appellant. The Clerk of this Court is therefore ordered to send a mandate to the trial court to resume jurisdiction over the matter and enforce its judgment. And it is so ordered.

Motion granted; appeal dismissed.

Mensah et al v Tecquah et al [1954] LRSC 29; 12 LLR 147 (1954) (10 December 1954)

H. D. MENSAH et al., Petitioners, v. G. C. N. TECQUAH, Associate Magistrate for the City of Monrovia, B. G. McCABE, Police Magistrate, and JACOB CUMMINGS, Respondents.
APPLICATION FOR WRIT OF PROHIBITION.

Argued October 26, 27, 1954. Decided December 10, 1954. Prohibition will lie, although a court has jurisdiction, where the court exceeds or abuses its jurisdiction.

Petitioners, lessees of **land** in Monrovia, alleged that respondents had procured and issued a summary judgment of eviction without a showing of adequate grounds therefor. On appeal from denial of application for writ of prohibition in Chambers to this Court, en bane, writ granted. A. B. Ricks for petitioners. spondents. Jacob Cummings for re-

MR. JUSTICE SHANNON delivered the opinion of the Court.* One Joseph E. Nelson, a near relative of the petitioners, entered into a lease agreement with Jacob Cummings, one of the respondents, for a parcel of **land** situated in the City of Monrovia, for a period of twenty calendar years as from August, 1949 at the rate of one hundred dollars per annum, payable in quarterly installments. According to the terms of the lease, the said Joseph E. Nelson was to erect a building on said **land** in

conformity to specifications shown in said lease agreement. During the tenure of said lease it was provided : "that the said Lessee shall have the right to sublet or assign this lease Mr. Chief Justice Russell was absent because of illness, and took no part in this case.

without the consent of the Lessor, but the Lessor shall be informed." This agreement was duly entered into probate and registered according to law. Subsequently, that is to say on August 21, 1951, the said Joseph E. Nelson, lessor, having an occasion to go to the Gold Coast on an urgent call, issued a document giving notice that he was assigning the leasehold to one Ewur Sam Baiden, who was to pay the rentals as they became due to the lessor. There is no evidence that the lessor was not advised or informed of this assignment ; but, on the other hand, there is a strong presumption of. this in that there is a copy of a receipt in the record showing that the assignee had paid the rent to the lessor up to December 31, 1953. Despite this, and without any showing that said lease agreement had been cancelled, the lessor, one of the respondents aforesaid, sought to eject the assignee together with other sub-tenants by means of an action of summary ejectment and even before the period for which the assignee claims that he holds a receipt for rent paid. According to the petition a snap judgment of eviction was entered in the absence of petitioners, who were the defendants in said summary ejectment action, and without ever giving them notice to appear and have their day in court. At this stage prohibition proceedings were instituted to prohibit the eviction, same having been filed before the Justice presiding in Chambers, who denied same with following notation : "Because of what I consider the unmeritorious character of nature of the petition I refuse to order the alternate writ of prohibition prayed for issued. The Magistrate is hereby authorized and ordered to proceed with the case pending before him as though no inhibition had been placed against his hearing and to conclude the matter, as, to issue this writ prayed for would be lending aid to the party applying for same in baffling justice."

To this ruling and order of the Justice presiding in Chambers, petitioners excepted and prayed an appeal to the full Bench. After hearing petitioners' counsel and, of course, respondent Jacob Cummings, who appeared and filed a brief, we find ourselves certainly not in agreement with our colleague in denying the petition as unmeritorious. It is our opinion that said petition is pregnant with grounds which merited the granting of the alternative writ of prohibition prayed for, among which grounds we mention : (a) the existence of a lease agreement under which petitioners enjoyed the leasehold ; (b) the assignment of the lease to Ewur Sam Baiden; and (c) the regular,

prompt and full payment of the covenanted lease money up to and including December 31, 1953, a date subsequent to the institution of the action of summary ejectment before Magistrate G. C. N. Tecquah, notwithstanding the last payment was made through the selfsame Magistrate Tecquah, who issued the following receipt: "Received from Mrs. Mensah of Old Crew Town the sum of $75.00 (seventy-five dollars) being ground rent from 1st. April 1953 to December 1953. "For Mr. Jacob Cummings G. C. N. TECQUAH. "19/11/53." What is peculiarly inexplicable, and will certainly remain so, because no opportunity was offered or afforded for the hearing of the petition, is why Magistrate Tecquah, who had acted as representing Jacob Cummings, and who issued a receipt for "ground rent," consented to be Judge in an action of summary ejectment when he should have known that the period for which he had issued a receipt for rent had not expired and the defendants below, now petitioners, could not have then been in default. The situation becomes the more difficult and embarrassing when the said Nlagistrate is charged with having decided the case in the absence of the petitioners

(defendants before him), without giving them an opportunity to have their day in court. Had he done this he would have been reminded that the defendants were not in default in meeting their obligations on the lease agreement, since the receipt, supra, shows it was through the said magistrate that the last rent was paid. Because of the foregoing facts, added to the final determination of the action of summary ejectment and the issuance of a writ of possession, we are of the opinion that the writ of prohibition prayed for should have been granted so that the merits of said prohibition could be heard and determined. The ruling of the justice presiding in Chambers is therefore reversed. Under the circumstances we would be left with no alternative but to grant the issuance of the alternative writ prayed for so, as to enable the respondents to file their returns showing cause why said writ should not be granted. But, considering all the facts in connection therewith, we are further of the opinion that it would simply expend unnecessary energy, time and money, especially so when the brief of respondent, Jacob Cummings, does not at all deny the truthfulness oi the facts stated in the petition, but rather simply submits that (I) he has not been served with a copy of the petition; and (2) that prohibition will not lie when a court is exercising competent jurisdiction in any judicial trial. Respondents submit that Magistrate Tecquah had jurisdiction over the person as well as the subject-matter and cause in said summary ejectment proceeding, and that the writ as prayed for would be legally wanting in the present case and should therefore be denied and the proceeding dismissed with costs against the petitioners. It is true that, generally, prohibition will not lie where a court has jurisdiction. There is no gainsaying that Magistrate Tecquah has jurisdiction to try and determine cases in summary ejectment. But where it appears that there is an excess or abuse of that jurisdiction, or where

the court attempts to proceed by a rule different from those which ought to be observed at all times, prohibition does lie. Parker v. Worrell, 2 L.L.R. 52; (1925). In such cases, it does not only prohibit the doing of the unlawful act, but goes to the extent of undoing what has already been done. See 22 R.C.L. 8 Prohibition § 7. In this case, Magistrate Tecquah acted irregularly by attempting to proceed by a rule different from those which ought to be observed at all times. In the first place, he should not have been willing to act as Judge in a matter wherein he had acted as agent or representative for one of the parties. In the second place, he should not have gone into the case in the absence of the defendants or without first having given them notice to appear to have their day in court. His conduct, therefore, in acting as Judge in the matter despite the above-stated facts, and in entering and disposing of same to the extent of issuing a writ of possession, are denounced ; and we are undoing the unlawful acts complained of and directing the said Magistrate Tecquah to cancel, vacate and void all of the proceedings had in the summary ejectment case before him, including the writ of possession, to such an extent as if no such actions had ever been taken; but, this of course without prejudice to any rights of respondent Jacob Cummings in and to said property wherein he considers himself unduly wronged or taken advantage of. The compulsory writ prayed for in respect of these proceedings is hereby granted and ordered issued against the respondents; costs against said respondents and it is so ordered.

Writ granted.

Lay et al v Sandolo-Belleh et al [1984] LRSC 35; 32 LLR 264 (1984) (28 June 1984)

NYAN LAY, ALFRED KEHYEE, et al., Appellants, *v.* **MARTHA SANDOLO-BELLEH** and **DAVID L. BLEGAY**, Appellees.

APPEAL FROM THE CIRCUIT COURT FOR THE EIGHTH JUDICIAL CIRCUIT, NIMBA COUNTY

Heard: May 23, 1984. Decided: June 28, 1984.

1. All evidence must be relevant to the issue; that is, it must have a tendency to establish the truth or falsehood of the allegations or denials of the parties, or it must relate to the extent of the damages.

2. Issues not raised in a pleading may not properly be raised at the trial of a case.

3. Where a party excepts to the judge's charge to the jury, he must specifically except to that part of the charge with which he disagrees to enable the judge to rule on the issue.

4. Exceptions to the charge of the court should specifically point out the particular portion, or portions of the charge objected to so as to appraise the court of the particular matters complained of. Such objections to the charge cannot be waived but, it has been held that, objections to the charge will be deemed waived unless each ground of objections is specified.

5. Before announcing the taking of an appeal, a party in a jury case shall move for a new trial after a verdict and, in any case, shall except to the judgment.

6. In an action of ejectment, the parties must necessarily rely upon title, and the best title is one given by the Republic of Liberia, with preference according to the date of issuance, the older being preferred.

7. In an ejectment action, the mere allegation that money was collected to purchase real property, without any showing of title, will not defeat a better title from the Republic of Liberia.

8. The Court will reverse and remand a case for a new trial where the irregularities complained of are attributed to the trial court, and not to the inability of a retained counsel to adequately defend or prosecute a civil action.

Appellants/defendants, who were unsuccessful in an action of ejectment in the lower court, appealed to this Court on a two-count bill of exceptions essentially alleging that: (1) the lower

court judge erred when he denied the admissibility into evidence a receipt tendered by the appellants to support their claim, and (2) the judge failed to instruct the jury on the question of fraud as requested by the appellants. During the trial, the appellant argued that they had occupied the real property in question with the late father of the appellees, Mr. Sandolo, with whom they had also collected money to purchase the said property. They learned later that Mr. Sandolo bought the same property and obtained a title deed in his own name. The heirs of Mr. Sandolo introduced into evidence the warranty deed for the property issued by the Republic of Liberia, while all the appellants had to show was a receipt from Mr. Sandolo for money, which the court eventually rejected since it had not been specially pleaded in their answer. The court noted that if the facts given by the appellants are true, they should have sought remedy at law against Mr. Sandolo to recover their money, or to have the deed cancelled. The court also noted that during the trial neither party submitted a written charge to be considered by the judge in his charge to the jury, and when he did give his instructions to the jury, the appellants excepted generally, but did not except to any specific portion of the charge. Specifically, not only did the judge fail in his oral charge to the jury to include fraud, but the appellants also did not object to the judge's failure to expound on fraud in his charge. In view of the foregoing, this court was constrained to affirm the decision of the lower court in favor of the appellees.

E. Winfred Smallwood of the Cooper & Togbah Law Firm for appellants; John *T. Teewia* of the Carlor, Gordon, Hne & Teewia Law Offices for appellees.

MR. JUSTICE SMITH delivered the opinion of the Court:

The appellants, who were defendants in the court below, have brought this appeal on a two-count bill of exceptions. They have charged the trial judge with denying admissibility into evidence a receipt tendered by them in support of their defense, which receipt they claim was identified, marked and confirmed by the court. In count 2 of the bill of exceptions, appellants contend that the trial judge failed to expound to the jury, in his charge, the request made by them on the question of fraud. For the benefit of this opinion, we quote the two-count bill of exceptions verbatim, as follows:

"1.That Your Honour erred when the receipt tendered by them for the collection of money for the purchase of said **land** was rejected by court. Said receipt, dated 1958, was marked by court D/1 and confirmed by the court. To this error on the part of the court, defendants excepted.

"2. And also because defendants submit that Your Honour erred when their request to expound to the jury fraud was ignored. Defendants submit that this error on part of the court caused them to except to the verdict and charge of jury as given them by court".

As we have gathered from the record, when court's mark D/1 was offered into evidence, plaintiffs objected on the ground that the instrument was not relevant to the case, and the trial judge sustained the objection, observing that the said D/1 was not even pleaded.

Under our statute, all evidence must be relevant to the issue, that is to say, it must have a tendency to establish the truth or falsehood of the allegations or denials of the parties. Civil Procedure Law, Rev. Code 1: 25.4. If the receipt referred to was pleaded and made profert to the defendants' answer, the court would have been in a better position to determine its relevance to the case, but the document was not pleaded, and the appellants did not insist upon its inclusion in the transcribed record in order for this Court to review its relevancy.

It is elementary to state here that the fundamental principle of all pleadings is that of giving notice of what a party intends to prove at the trial. If the defendants relied on the receipt as constituting their title to the **land**, they should have pleaded and annexed it to their answer under the principle of notice, for "issues not raised in the pleadings may not properly be raised at the trial of a case." *Shaheen* v. *Compagnie Francaise de l'Afrique Occidentale*, 13 LLR 278 (1958). The receipt not having been pleaded and its relevance to the case properly shown by the appellants, we hold that the trial court correctly denied the application to admit same into evidence and appellants' contention cannot therefore be sustained.

In count 2 of the bill of exceptions, appellants contend that the trial judge erred when he failed to expound their request to the jury. However, the records show that at the close of argument (not at the close of evidence as provided by the Civil Procedure Law, Rev. Code 1: 22.9.(1), counsel for appellants asked the court, in his own words, "to charge the jury on the following principles of law: (1) The criteria and principle of law governing ejectment; (2) the principle governing the rule of best evidence; (3) the principle governing unanimous verdict, and (4) damages in ejectment suit". Nowhere in the record is it shown that a request for written charge was made by any of the parties, neither is it shown by the record in support of the bill of exceptions that a request was made to the court by the appellants to charge the jury on fraud, nor did appellants except to the court's oral charge specifically on any issue. Instead, according to the record, appellants noted exceptions as follows: "To which oral charge, counsel for defendants excepts."

By this exception, as noted by counsel for defendants, it is not specifically shown as to what part of the judge's charge defendants excepted, and which principle of law was not ex-pounded to the jury, if any. This Court has often held that where a party excepts to the court's charge, he must specifically except to that part of the charge with particularity to enable the court to pass on the issue. “A bill of exceptions must state distinctly the grounds upon which the exception is taken.” It is improper to place upon the court the burden of searching the record in order to discover the exception taken and the grounds therefor. *Sampson and Johnson* v. *Republic*[1952] LRSC 5; , 11 LLR,135 (1952). Exceptions to the charge of the court should specifically point out the particular portion, or portions of the charge objected to so as to appraise the court of the particular matters complained of. It has been held that the requirement cannot be waived, but that objections to the charge will be regarded waived unless each ground for objection is specified. 23 C. J. S., *Courts,* § 1345– *Objection to Instruction,* at 1005. Since the appellants have not specifically pointed out the request made, which the court allegedly failed to expound to the jury in its charge, this Court will not take cognizance of count two of the bill of exceptions.

The issue advanced by appellees in their brief is that appellants excepted to the verdict but failed to file a motion for a new trial as a prerequisite to taking an appeal. The record does not show that any motion was filed for a new trial. Our civil statute provides the following regarding appeals:

"Before announcing the taking of an appeal, a party in a jury case shall move for a new trial after a verdict and, in any case, shall except to the judgment". Civil Procedure Law, Rev. Code 1:51.5. Our law provides remedy if the verdict of the jury is contrary to the weight of the evidence, or if the interest of justice requires such action to be taken. Here is the law:

“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 . . . " Civil Procedure Law, Rev. Code 1:26(4).

However, appellants are not contending that the verdict is contrary to the weight of the evidence adduced at the trial, nor have they sought to set it aside in the interest of justice. Their contention is about the denial of their application to admit their receipt into evidence, and the trial judge's failure to expound their request to the jury.

We have already discussed these issues and, in our opinion, the appellants have not availed themselves of the safeguard of the law in order to benefit therefrom. In an action of ejectment,

the parties must necessarily rely upon title, and the best title is that given by the Republic of Liberia, with preference according to the date of issuance, the older being preferred. *Walker* v. *Morris*[1963] LRSC 42; , 15 LLR 424 (1963).

Plaintiffs/appellees have supported their claim by a public **land** sale deed from the Republic of Liberia to their late father for twenty-five (25) acres, signed by the late President William V. S. Tubman on October 30, 1966. They have also shown letters of administration as heirs of their late parents to administer their intestate estate, none of which instruments was denied by the defendants/appellants. The defendants/appellants on their part have not shown title of any kind except that they are contending, from their testimonies, that the **land** in question was occupied by them together with the plaintiffs' late father, Sandolo, who thereafter purchased the **land** for himself after they had collected money to purchase said **land** together. It would seem to us, from this contention, that if the late Sandolo had obtained title to the twenty-five acres of **land** in his own name for which they all collected money to purchase, defendants had remedy at law to either demand the return of their money, or seek the cancellation of his (Sandolo's) title deed during his lifetime, or resort to some peaceful means by which they could benefit. In our opinion, in ejectment action, the mere allegation that money was collected to purchase the subject property, without any showing of title, will not defeat a better title from the Republic of Liberia.

Appellants have filed what they termed "submission" in which they substantially alleged that, although a motion for new trial was not filed as a prerequisite to taking an appeal, they pray that the case be remanded for a new trial because their lawyer, Attorney Akosah, did not give them proper and adequate legal representation. This Court will not do for party litigants what they ought to do for themselves. Attorney Akosah was the choice of the defendants with whom they established an attorney-client relationship. If this Court were to remand cases for new trial on such ground, there would definitely be endless litigations in this country. This Court can only remand a cause for a new trial where the irregularities complained of can be attributed to the trial court, and not the inability of a retained counsel to adequately defend or prosecute a civil action. The submission of the defendants/appellants does not therefore warrant the attention of this Court.

In view of the proof of title by the appellees to the **land** in question, and in the absence of any showing of right to possession and title of the subject real property on part of the appellants, it is our opinion that the judgment of the court below should not be disturbed. The judgment below is therefore confirmed and affirmed with costs against the appellants. And it is hereby so ordered.

Judgment affirmed.

Forleh et al v RL [2004] LRSC 3; 42 LLR 23 (2004) (13 August 2004)

LOUISE ADJUAH FORLEH et al., Appellants, ***v.*** **REPUBLIC OF LIBERIA**, Appellee.

APPEAL FROM A JUDGMENT OF THE CIRCUIT COURT, FIRST JUDICIAL CIRCUIT, CRIMINAL ASSIZES, MONTSERRADO COUNTY.

Heard: March 22, 2004. Decided: August 13, 2004.

1. No person shall be held to answer for a capital or infamous crime except in cases of impeachment, cases arising in the armed forces and petty offenses, unless upon indictment by the grand jury; and in all such cases, the accused shall have the right to a speedy, public and impartial trial by a jury of the vicinity, unless such person shall, with the appropriate understanding, expressly waive the right to a jury trial.
2. In all criminal cases, the accused shall have the right to be represented by counsel of his choice, to confront witnesses against him and to have compulsory process for obtaining witnesses in his favor.
3. While a defendant in a criminal case has the constitutional right to compulsory process to obtain witnesses, the witness testimony sought to be introduced must be relevant to the matter at bar.
4. Although a judge errs in not granting a defendant's application to produce witnesses, the error is not reversible if the testimony sought to be brought is not relevant and material to the matter.
5. The examination of witnesses in all cases is directly under the control of the trial judge and if it is not shown that he abused his power by showing partiality to one side or the other, his decisions are within the law.
6. A trial court may exclude evidence *sua sponte* if the question is irrelevant or legally untenable.
7. A judge's charge to a jury to bring in a unanimous verdict is not a reversible error, being consistent with the law.
8. A defendant's failure to take exceptions to a part of a judge's charge to the jury calling for the jury to bring in a unanimous verdict is deemed a waiver and it cannot therefore be considered by the Supreme Court.
9. All evidence must be relevant to the issue; that is, it must have a tendency to establish the truth or falsehood of the allegations or denials of the parties or it must relate to the extent of the damages.

10. A motion is an application for an order granting relief incidental to the main relief sought in the action or proceeding in which the motion is brought.
11. A motion made on the record of the court during the trial of a case is not required to be made twenty-four hours before the hearing as provided under the Civil Procedure Law.
12. *Prima facie* evidence is evidence sufficient to establish the facts unless rebutted.
13. The uncorroborated evidence of an accused is insufficient to establish his innocence, especially where the evidence against him is clear and convincing.
14. A defendant may not be set free on the strength of his lone testimony, as against those given by two or more witnesses.
15. The jurors are judges of the facts.
16. An appellant may not assign for hearing before the Supreme Court any issue not raised or excepted to in the trial court.
17. The conflict in the testimonies of prosecution witnesses goes to the weight of the evidence, not to its sufficiency, to sustain a conviction.
18. Where a party contends that the verdict of the jury is contrary to the instructions of the court and the evidence, it is encumbent on him to show to the court the specific aspects of the instruction and evidence the verdict is contrary to.
19. To merely aver that the verdict of the jury is contrary to the weight of the evidence adduced at the trial is not detailed enough to enable the court to reach a conclusion, and therefore the exceptions will not be sustained.

Appellant Louise Adjuah Forleh and others who were alleged to have acted on her instructions were indicted, tried and convicted of the crime of criminal mischief in the Circuit Court for the First Judicial Circuit, Montserrado County. The indictment alleged that Co-appellant Forleh and the other defendants, jointly and severally, with criminal intent, did connive and conspire, and acting by said conspiracy did illegally, wickedly, purposely, unlawfully, criminally, recklessly, wantonly, purposely and knowingly destroyed, damaged and defaced the house of the private prosecutrix, constructed on a parcel of **land** which Co-defendant/appellant Forleh claimed belonged to her and to which she asserted she held title.
In their bill of exceptions and brief, the appellants charged the trial judge with commission of reversible error when he (a) denied appellants' request for a subpoena to be served on the office of the Assistant Director for CID Affairs to testify to the procedure adopted by the police in criminal investigation; instructed the jury to bring in a unanimous verdict; and granted the motion of the prosecution made on the records of the court to strike the testimony of the appellants' second witness. The bill of exceptions also asserted that the verdict of the trial jury was manifestly against the weight of the evidence adduced at the trial.
The Supreme Court dismissed the appellants' allegations made against the trial judge and the trial jury. The Court opined that while the appellants had the constitutional right to have witnesses testified in their defense and the trial court is obliged to honour the request, the testimony of the witnesses must be shown to be relevant to the issues at bar. Hence, the Court said that while the trial judge had erred in not granting the request of the appellants, the error was not a reversible one since the testimony of the witness was not shown to be relevant and therefore did not have any impact on the trial, considering the overwhelming evidence produced by the prosecution.
The Court further opined that on the question of the judge instructing the jury to bring a

unanimous verdict, the act of the judge was consistent with the statute and therefore not violative of any law or practice of this jurisdiction. The Court said also that as the appellants had not excepted to the comment of the judge to the jury that they should bring in a unanimous verdict, the issue raised in that connection was not a fit subject for consideration by the Court. Additionally, the Court opined that the appellants had further waived the right to assert that the trial judge had erred in not allowing the trial jury to visit the scene of the incident before bringing in a verdict of guilty against them. The appellants had not raised the issue in the lower court so as to enable them to have same placed in the bill of exceptions; and that as such they were without the legal right to assign the failure as an error with regards to which the Supreme Court could pass upon.

Finally, the Supreme Court stated that its examination of the case had revealed that the prosecution had presented a prima facie case and that therefore the verdict of the jury was not against the weight of the evidence. The Court noted that the only testimony of the appellants in denial of the allegations contained in the indictment was that of Co-appellant Forleh. The uncorroborated evidence of an accused, the Court said, was insufficient to establish his or her innocence. Accordingly, the Court *upheld* the verdict of the trial jury and *affirmed* the judgment of the trial court.

Frederick D. Cherue and *Charles K. Williams* of the Dugbor Law Offices appeared for the appellants. *Theophilus C. Gould*, Solicitor General, appeared for the appellee.

MR. JUSTICE GREAVES delivered the opinion of the Court.

On April 11, 2002 the Grand Jurors of the First Judicial Circuit Court, Montserrado County, Republic of Liberia, indicted Louise Adjuah Forleh et al. for the crime of criminal mischief. The said indictment alleged among other things that on the 19th day of January, A. D. 2002, at about 2 0’ clock p. m. in the City of Paynesville, ELWA Junction, Montserrado County, Republic of Liberia, the within named defendants, Louise Adjuah Forleh et al., without the fear of God and the statutory laws of the Republic of Liberia, and with criminal intent, connived and conspired severally, jointly, illegally, unlawfully, criminally, recklessly, wickedly, knowingly, wantonly, and purposely destroyed, damaged and defaced private prosecutrix’s house, which was at roof level. The house was built at the total cost of One Hundred Forty Eight Thousand Liberian Dollars (LD148,000.00) and Three Thousand Seven Hundred Fourteen United States Dollars and Seventy-Five Cents (US$3,714.75). This act thereby deprived the private prosecutrix of her property (house) that she erected on her **land**. Moreover, it was alleged that thereby the crime of criminal mischief the said defendants did do and commit at the above named place, date and time, in violation of chapter 15, section 15.5 (a, b, and c) of the New Penal Law of Liberia, which states:

CRIMINAL MISCHIEF: A person is guilty of criminal mischief if he:

(a) Damages tangible property of another purposely or recklessly;

(b) Damages tangible property of another negligently in the employment of fire, explosives or other danger-ous means listed in section 15.4(1);

(c) Purposely or recklessly tampers with tangible property of another so as to endanger person or property.

On the 21st day of August, A. D. 2002, the said case was called for trial as per a notice of assignment. After notation of representations, prosecution made an application to amend the face of the indictment to include Sam Strather, Abel Strather, Alexander Whornee and Abraham Whornee as co-defendants. The said application was granted by the trial court and the indictment was amended accordingly. Again, upon application of prosecution severance was prayed for in said matter, as only Louise Adjuah Forleh had been brought under the jurisdiction of the court and the other four co-defendants were at large. The court, over the objections of defendant's counsel, granted the application and the trial was proceeded with, with the defendant/ appellant being tried alone.

Upon her arraignment, the said defendant/appellant entered a plea of not guilty, which joined issue with the Republic of Liberia. A jury trial was duly held under the direction of the court and on the 30th day of October, A. D. 2002 the trial jury returned a verdict of guilty against the defendant/appellant. On the 4th day of November, A. D. 2002 defendant/appellant filed an eight (8) count motion for new trial which was heard and denied by the court. On the 22nd day of November, A. D. 2002 a final judgment confirming the verdict of the trial jury was rendered by the court, sentencing the defendant/appellant to three (3) years imprisonment. Exceptions to the verdict having been noted, and an appeal announced and granted, this case is before this forum of final adjudication on an eleven (11) count bill of exceptions.

Although there are other issues raised in the bill of exceptions of the defendant/appellant, however for the purpose of the disposition of this matter, we have singled out the following four (4) issues as being meritorious or worthy of our notice. They are:

(1) Whether or not the trial judge committed a reversible error when he denied defendant/appellant's request for a subpoena to be served on the office of the Assistant Director of Police for C.I.D. Affairs to testify as to the procedure adopted by police in criminal investigations.

(2) Whether or not the trial judge committed a reversible error when he instructed the trial jury to return a unanimous verdict.

(3) Whether or not the trial judge committed a reversible error when he granted on the record of court the motion of the prosecution to strike the testimony of defendant/ appellant's second witness in the person of Emmanuel Beer, based upon its irrelevancy and immateriality to the said trial.

(4) Whether or not the verdict of the trial jury in this case was manifestly against the weight of the evidence adduced at the trial and also contrary to the law, and therefore the trial judge committed a reversible error by confirming and affirming the verdict and adjudging the defendant/appellant guilty.

We shall begin the discussion of the issues in a chronological order. The first issue which centers around count ten (10) of the defendant's bill of exceptions which states: "Your Honour also

committed a reversible error when you denied the defendant of her constitutional right to obtain a witness by compulsory process. That is, Your Honour denied the request for a subpoena to be served on the office of the Assistant Director of Police for C.I.D. to testify as to the procedure adopted by police in criminal investigations". In other words, the defendant/ appellant's counsel is invoking Article 21 (h) of the 1986 Constitution of the Republic of Liberia which states: "No person shall be held to answer for a capital or infamous crime except in cases of impeachment, cases arising in the armed forces and petty offenses, unless upon indictment by the grand jury; and in all such cases, the accused shall have the right to a speedy, public and impartial trial by a jury of the vicinity, unless such person shall, with the appropriate understanding, expressly waive the right to a jury trial. In all criminal cases, the accused shall have the right to be represented by counsel of his choice, to confront witnesses against him and to have *compulsory process* for obtaining witnesses in his favor. He shall not be compelled to furnish evidence against himself and he shall be presumed innocent until the contrary is proved beyond a reasonable doubt. No person shall be subject to double jeopardy". The question is did the trial judge violate this provision of the constitution; if so, how? We can only find out by reverting to the courts record from below in the instant case.

The records show that on the 49th day special jury sitting, Monday, October 21, A. D. 2002, August, A. D. 2002 Term of court, sheet eleven (11), defendant/appellants counsel made an application to the court below to have a *subpoena deces tecum* issued and served on the Assistant Director of Police for C.I.D. Affairs for the purpose of coming before said court to testify as to the procedure usually adopted by the Police of the Republic of Liberia with respect to criminal investigations and the conduct and nature of such investigation respecting all statements taken at same. Over the objection of the prosecution the trial judge ordered said writ issued. (See sheet seventeen (17), 49th day special jury sitting, October 21, 2002). On the 23rd day of August, A. D. 2002, sheet two (2), and at the call of the said case, the trial judge ordered the sheriff to read in open court the returns on the back of the writ of *subpoena duces tecum* that was ordered served on the Assistant Director of Police for C.I.D Affairs. The returns as read by the sheriff showed that the Assistant C.I.D Director was out of the country. The records also show that at that stage the defendant/appellant's counsel requested the trial judge to order the qualification of two of his witnesses, Mr. Emmanuel Beer, who had also been subpoenaed to appear before the said court upon defendant's counsel request, and Roseline Goodrich. They were so qualified and proceeded to testify in the matter.

On the 24th day of August, A. D. 2002, sheet two (2), 51st day's special jury sitting, the defendant/appellant's counsel again requested the trial court to have a *subpoena duces tecum* issued and have same served on the office of the Assistant Director of Police for C.I.D/C.I.U and Interpol to have a representative or any authority or person thereof appear before the court for the purpose of testifying to the normal procedure adopted in criminal investigations, the manner of obtaining statements from suspects, and the procedure adopted in preparing a charge sheet and transmitting same to courts of competent jurisdiction for trial. The court denied the application of the defendant/appellant, stating that the director was out of the bailiwick of the Republic which could be seen by the returns to the *subpoena* issued by the said court, and that there was still a witness of defendant who had yet to testify, and must proceed to testify. This Court says that while it is the constitutional right of the defendant/appellant in the instant case to compulsory process to obtain witnesses (Article 21(h), Liberian Constitution), the witness testimony sought to be introduced in court must be relevant to the matter at bar. *Original African Hebrew Israelite Foundation of Liberia v. Lewis*, [1984] LRSC 29; 32 LLR 184 (1984), Syl 2. In our opinion even

though the trial judge erred in not granting the said defendant/ appellant counsel's application for the writ to be issued for the second time in order to have his witness appear and testify on his behalf, which is a violation of his constitutional right to compulsory process to obtain witness (Article 21(h), Liberian Constitution), the testimony of said witness sought to be brought before the court would not have been relevant. In other words, the testimony would have no impact on the on-going trial considering the overwhelming evidence adduced by prosecution at the trial in its favor. Moreover, defendant/ appellant's counsel sought to have the C.I.D Assistant Director appear in court to explain the procedure relative to criminal investigations before the police. There was no charge sheet introduced by the prosecution at the trial below in which it was stated that the defendant/appellant confessed to the commission of the said crime. The prosecution was not rely-ing on the lone testimony of Sgt. Appleton, the investigator of said matter at the Police Station in Paynesville, to establish or prove its case. The prosecution had produced four (4) other witnesses beside Sgt. Appleton who testified before court, among other things, that they were present when said structure was demolished; they had heard defendant/appellant making remarks like: "they are always building on people's **land**, I will make sure and destroy this building"; that the defendant/appellant carried armed men on the site who, with the assistance of the defendant/appellant, destroyed the private prosecutrix's house with diggers, pin bar, shovel, hammer, etc. These items were produced in court. (*See sheet 2, 42nd day, jury sitting, Tuesday, October 8, 2002 through Wednesday, October 16, 2002; sheet 12, 48th day Special Jury Session.)* We are therefore of the opinion that even though the trial judge erred in not granting the defendant/appellant's counsel application to produce said witness, we will not reverse the matter on this issue as the testimony which the counsel sought to bring before the court was not relevant and material to the matter, as stated earlier. In *Anderson v. Republic*, [1978] LRSC 26; 27 LLR 67, syl. 6 (1978), this Court opined that "the examination of witnesses in all cases is directly under the control of the trial judge." Hence, if it is not shown that he abused his power by showing partiality to one side or the other, his decisions are within the law. Also, at syllabus 7 of the same case, this Court said: "A trial court may exclude evidence *sua sponte* if the question is irrelevant or legally untenable...."

The facts show also that defendant/appellant counsel applied to the court below for the wrong writ (*subpoena duces tecum*), instead of *subpeona ad testificandum*. "A *subpoena duces tecum* is different from a *subpoena ad testificandum*, the latter being to have a witness testify in general and the former being to have the witness produce the requested documents". *Insurance Company of Africa/Intrusco Corporation v. Fantas-tic Store*, [1984] LRSC 48; 32 LLR 366 (1984), syl. 6. Defendant's counsel therefore should have applied for a *subpoena ad testificandum* instead of a *subpoena duces tecum* since he wished to have said witness testify instead of producing documents in court.

Coming to issue number two (2), i.e., whether or not the trial judge committed a reversible error when he instructed the trial jury to return a *unanimous verdict;* centers around count six (6) of defendants/appellants' bill of exceptions. Count six (6) of the said bill of exceptions says that "Your Honour committed a reversible error when Your Honour charged the jury to return a unanimous verdict. That is to say, Your Honour's insistence upon what verdict to be returned by the jury or as to the unanimity of the jury's verdict did prejudice the minds and independence of the jury in exercising their impartial or best judgment. Under our law, remarks by the trial judge which prejudice or tend to prejudice the minds of the jury against the unsuccessful party affords a ground for a reversal of the judgment. Your Honor did commit a reversible error by an irregular charge to the jury".

We shall now revert to that portion of the trial judge's charge to the trial jury which is found on sheet nine (9), 55th day's special jury sitting, Wednesday, October 30, A. D. 2002, which the defendant/appellant's counsel is contending is contrary to the law. We quote the first paragraph of the judge's charge, beginning at the sixth (6th) line from the bottom of said paragraph, which reads: "where there is no doubt that the private prosecutrix house was broken down and that said house was broken down by the defendant in the dock, along with others, you will return a verdict of guilty against her; but where you people find that there is doubt as to the breaking down of the private prosecutrix's house and as to the defendant being the one who had broken down said house with others, then you will return a verdict of not guilty in favor of the defendant". In the next paragraph on the same sheet, the trial judge continued his charge to the jury by stating: "You will now go into your room of deliberation to consider your verdict. But before doing so, this court would like to discharge alternate jurors Hawa Cuffy and Mary Tarpeh, with thanks and after inspection of the Criminal Verdict Form by lawyers on both sides you will proceed to your room of deliberation and return a "*unanimous verdict".*
Before discussing the issue raised by defendants/ appellants' counsel, we shall first revert to the law governing verdict which is found in chapter 20, section 20.11, paragraphs 1 and 2, pages 378-379, 1 LCL Revised, Criminal Procedure Law.

> 1. *Procedure on Retirement of Jury*. "After hearing the instructions of the court, the jurors shall retire from the courtroom to consider their verdict. The Court shall appoint one of the jurors foreman or instruct the jurors to select one of their number as foreman".
> 2. *Form of Verdict*. The verdict shall be unanimous and shall be *guilty or not guilty".* [Emphasis supplied]

Black's Law Dictionary, 5th edition, page 1398 (VER-DICT), states: "In criminal cases, the verdict shall be unanimous and shall be returned by the jury to the judge in open court".
From the laws quoted and the wordings of the trial judge's charge to the trial jury to bring a unanimous verdict, he did not commit a reversible error. Furthermore, there is no showing as per the records from the court below that the said defendant/ appellant's counsel excepted to that portion of the trial judge's instruction/charge to the trial jury. Defendant/appellant's failure to take exception to the trial judge's charge/instructions to the trial jury is deemed as a waiver and it shall not be considered on appeal by the Supreme Court. *Ezzedine v. Sambola*, [1988] LRSC 53; 35 LLR 239, syl. 6 & 8 (1988); *Kpolleh v. Republic*, [1990] LRSC 1; 36 LLR 623, syl 5. (1990); *Lay et al. v. Belleh et al.*[1984] LRSC 35; , 32 LLR 264, syls. 3 and 4 (1984).
The third issue, that is, whether or not the trial judge com-mitted a reversible error when he granted the motion of the prosecution to strike the testimony of defendant/appellant's second witness in the person of Emmanuel Beer, based upon its irrelevancy and immateriality to the said trial, centers around count eleven (11) of defendant/appellant's bill of exceptions which states: "Your Honour also committed a reversible error when you granted the request of prosecution to strike the testimony of defendant's second witness, in person of Emmanuel Beer". A recourse to the testimony of defendant/appellant's second witness, in person of Mr. Emmanuel Beer which is found on sheets three (3) and four (4), 50th day special jury sitting, Wednesday, October 23, A. D. 2002, shows thus on the direct examination:

Ques: "Mr. Witness according to the application made to this court you were requested to appear to testify on a complaint filed by Adjuah Forleh at the Ministry of Justice sometime ago

respecting the interference with her **land**, the investigation conducted and the attendant conclusion if you know. Now that you are before this court, please say all that you know within your certain knowledge touching the said matter, the subject of the subpoena".

Ans: "I vividly recollect sometime in 2000 one Amos Goll brought Mrs. Adjuah Forleh in my office at the Ministry of Justice. He introduced her to me that she has some problems there from. I tried to ascertain from her what the nature of her problem was. She then explained to me that one Snorton had encroached on her premises behind LBS in Paynesville. I asked Mrs. Forleh if she had a genuine deed to authenticate her claim. Predicated upon that she did present to me copy of a deed..... at the Ministry of Justice in person of Cllr. Theophilus C. Gould. I then took her upstairs, introduced her to Cllr. Gould and then she explained to him the nature of her problems, after which I took leave of them and went downstairs to my office".

The prosecution then motioned the trial judge to strike the testimony of Witness Emmanuel Beer from the record/minutes of the case as same did not touch on the facts and circum-stances of said case. Prosecution relied on section 25.4 of the Civil Procedure Law which states that "All evidence must be relevant to the issue; that it must have a tendency to establish the truth or falsehood of the allegations or denials of the parties or it must relate to the extent of the damages". The court sustained the said motion over the objection of defendant/appellant's counsel on the ground that the testimony of said witness was irrelevant to said trial as the allegations that formed the basis of said trial was one laid out in the indictment found against the defendant that she, along with other persons, demolished the private prosecutrix's house sometime in 2002. The court went on to say that said testimony did not have the tendency whatsoever to establish the truth that Adjuah Forleh did demolish the private prosecutrix's house or the tendency to support the denial of Defendant Adjuah Forler that she did not demolish the private prosecutrix's house, the subject of these proceedings. Defendant/appellant also contended that a motion is to be in writing and made at least twenty-four (24) hours before hearing. Prosecution countered said argument by invoking section 10.1 of the Civil Procedure Law, which states, at paragraph 1, DEFINITION AND GENERAL PROCEDURE. *1 Motion Defined; When and How Made:* "A motion is an application for an order granting relief incidental to the main relief sought in the action or proceeding in which the motion is brought. A written motion is made when a notice of the motion is served. *Unless made during a hearing or trial*, a motion shall be in writing and shall state with particularity the grounds there for and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion". [Emphasis ours]. We are of the opinion that the motion made on record by prosecution is supported by law.

We therefore hold and concur with the trial judge that the testimony of defendant/appellant's witness Emmanuel Beer is irrelevant to the trial as it does not have a tendency to establish the truth or falsehood of the allegation or denials of the charges. Civil Procedure Law, Rev. Code 1:25.4; *the Original African Hebrew Israelite Foundation of Liberia v. Lewis et at.[1984] LRSC 29; ,* 32 LLR 184, syl. 2 (1984). The trial judge therefore did not commit a reversible error.

As to the fourth and last issue whether or not the verdict of the trial jury in the instant case was manifestly against the weight of the evidence adduced at the trial and also contrary to the law and therefore that the trial judge committed a reversible error by confirming and affirming said verdict and adjudging the defendant/appellant guilty, we hold that same is to the contrary. We shall proceed to review the evidence as were adduced at the trial of this matter in the court below. The testimonies of prosecution's five (5) witnesses are found on sheet two (2), 42nd day

jury sitting, Tuesday, October 8, 2002 through Wednesday, October 16, 2002, sheet 12, 48th day special jury session. The prosecution's witnesses testimonies:

1. Janet Williams (Private Prosecutrix)

In January, 2002, defendant carried a group of armed men on the site behind LBS where she was building her house which had reached roof-level. They placed everyone in the neighborhood at gun-point and proceeded to break down the house. She (private prosecutrix) proceeded to the Police Headquarters (Zone 5) to make a complaint, but when the police arrived, the defendant had left, but they arrested the armed men.

2. Masayan Sorsor

One Friday morning while in her garden (she lives in the same area which the incident took place) she saw a group of people dressed in military uniform with arms and rushed to tell the private prosecutrix. She saw the defendant/ appellant damage a window of the private prosecutrix's house in the process of breaking the house down.

3. C. D. Quidue

Defendant carried soldiers to damage private prosecutrix house and he heard her remark on the scene that day that "they always building on people's **land**. I will make sure and destroy this building. I am not going to no authority, they will carry me to authority". He saw defendant enter the building and with a pin bar hit a window thus bursting the window glasses. He then advised one officer that was with the defendant to take the matter to the depot, but he refused saying he was on an operation. They broke down the said house.

4. Sergeant Anthony Appleton

On January 18, 2002 Private Prosecutrix Janet Williams reported to police depot in Paynesville that some men were breaking down her house. They proceeded there, but the defendant had left. They arrested three (3) men who told the police it was the defendant that had ordered them to do so. The defendant was subsequently arrested and admitted to the police she had ordered the men to destroy private prosecutrix's house because she was building on her **land**. He testified that the house was demolished with hammers, diggers, shovels, etc.

5. Joseph Barchue

The carpenter who worked on the destroyed building and lived in said area, saw people breaking down the house, including an armed man. The private prosecutrix brought police officers and arrested the men including the armed man. The entire building that had reached the roof level was broken down.

The prosecution introduced into evidence the instrument used to destroy the said house, including pin bars, hammers, diggers, shovel, etc. The prosecution also introduced receipts of materials purchased for the building of said house; photographs showing the house as it was before it was broken down and after it was broken down; a letter from Counsellor Molley N. Gray, Sr., dated January 26, 2000, inviting the private prosecutrix to a conference relative to a piece of property located in the City of Paynesville on which the private prosecutrix was constructing, which he alleged belong to appellant/defendant. These were all marked by court and subsequently admitted into evidence.

DEFENDANT/APPELLANT'S EVIDENCE

1. Louise Adjuah Forleh (defendant/appellant)

Denied destroying private prosecutrix's house. Explained about an incident which occurred in

2000 involving the **land** in question and the grantor which was taken to the Ministry of Justice and not the matter in question which is before this court by way of an indictment.
2. Emmanuel Beer
Testimony was ordered stricken by the trial judge upon application of the prosecution because same was irrelevant and immaterial. Testified to the 2000 incident carried to the Ministry of Justice and not the 2002 matter, the subject of the indictment.
3. Rose Goodrich
Testified also that she does not know of the January 18, 2002 incident (destruction of house) but only the 2000 incident (Ministry of Justice investigation). She in fact left the scene after the 2000 incident at Paynesville.
Prosecution produced one rebuttal witness in person of George Chea, who testified that he had built private prosecutrix's house from the foundation to the roof level. He also testified that he was not present when the said house was being destroyed, but when he last went on the scene of the crime said house had been destroyed down to the foundation.
One can see from the evidence adduced by the prosecution that it established a *prima facie* case in the trial court. *Prima facie* evidence is evidence sufficient to establish the facts unless rebutted. *Republic v. Chakpadeh*, [1988] LRSC 105; 35 LLR 715 (1998), syl. 4. Prosecution's five witnesses, plus the rebuttal witness George Chea, all testified in conformity with the allegations laid down in the indictment. It was therefore incumbent on the said defendant to rebut the evidence adduced by the prosecution.
In the defendant's effort to rebut the prosecution's evidence, she took the stand in person and denied that she had broken down or destroyed the private prosecutrix house. She dwelled on the 2000 incident that went to the Justice Ministry for an investigation. Defendant, in our mind, tried to insert the issue of title to the **land** in this matter, which was not the issue at bar. The two (2) witnesses brought by the defendant, in person of Emmanuel Beer and Rose Goodrich, testified that they knew nothing about the 2002 incident for which this case was being tried, but only the incident that occurred in 2000. This has left only the lone testimony of defendant to rebut the prosecution *prima facie* case established. The uncorroborated evidence of an accused is insufficient to establish his innocence, especially where the evidence against him is clear and convincing. *Toe v. Republic*, [1983] LRSC 4; 30 LLR 491 (1983), syl. 7. Also a defendant may not be set free on the strength of his lone testimony, as against those given by two or more witnesses. *Jusu v. Republic*, [1987] LRSC 2; 34 LLR 291 (1983), Syl. 5.
Defendant contended in her bill of exceptions that it was error on the trial judge's part to allow the jury to bring in a verdict without visiting the crime scene, and that prosecution witnesses contradicted each other as to the defendant being on the crime scene. Another contradiction alleged by defendant is that the private prosecutrix and witness (rebuttal witness George Chea) contradicted each other as to the number of houses broken down. She also stated that Sgt. Appleton's testimony was the basis upon which the trial jury relied to bring a verdict of guilty against the defendant/appellant which was based upon second-hand information.
Coming to the contention of the defendant/appellant's counsel that it was error on the trial judge's part to allow the jury to bring a verdict of guilty without visiting the scene of the crime, this court says the trial jurors are the judges of the facts and that their verdict was not contrary to the evidence adduced at the trial and the instructions of the trial judge. Furthermore, the defendants/appellants' counsel at no time in the court below raised said issue or excepted to same on the record in order to have same placed in his bill of exceptions. He therefore may not now assign same as an error before this Court. *Ezzedine v. Sambola*, [1988] LRSC 53; 35 LLR

239 (1988), syls. 6 and 8.
As to the contention that prosecution witnesses contradicted each other relative to defendant being on the crime scene, the evidence is to the contrary as the private prosecutrix, Masayn Soroor, and C. D. Quidue all testified to defendant being on the crime scene and assisting in demolishing private prosecutrix's house. Even if there was some conflict in prosecution's witnesses testimonies, said conflict goes to its weight, but not to its sufficiency to sustain a conviction. *Republic v. Eid*, [1995] LRSC 6; 37 LLR 761 (1995), syl 7. There was no contradiction between private prosecutrix and rebuttal witness George Chea. There was no "two (2) houses" involved in this matter as the indictment in this matter clearly states one. The explanation centers around the first house that was being built in 2000, which was allegedly broken down by the defendant in that year, and which is clearly not an issue in this matter. The trial jury properly brought a verdict which was in conformity with the evidence, and the trial judge did not commit a reversible error in confirming and affirming same.
Also, this Court has held that "Where a party contends that the verdict of the jury is contrary to the instruction of the court and the evidence, it is incumbent on him to show to the court the specific aspect of instructions and evidence the verdict was contrary to." *Korkoya v. Korkoya*, [1994] LRSC 27; 37 LLR 553 (1994), syl 1. This Court also held in the case *Sheriff v. Carew*, [1986] LRSC 1; 34 LLR 3 (1986), syl. 3, that "issues or allegations in the written pleadings should be detailed in such a manner that a judge would be able to comprehend and arrive at a logical conclusion." To merely aver that the verdict is contrary to the weight of evidence adduced at the trial is not detailed enough to enable the court to reach a conclusion. The defendants/ appellants' counsel did not follow this procedure or law laid down by this Court, and therefore his exceptions will not be sustained by this Court.
In view of the foregoing and the legal citations *supra*, it is the holding of this Court that the judgment of the court below be, and the same is hereby confirmed. The Clerk of this Court is hereby ordered to send a mandate to the court below ordering the judge presiding therein to resume jurisdiction over said case and to enforce its judgment. And it is hereby so ordered.

Judgment affirmed.

Bailey v Sancea [1974] LRSC 35; 23 LLR 150 (1974) (14 June 1974)

HARPER S. BAILEY, Appellant, v. ANNA C. SANCEA, by and through her Husband, CHARLES B. SANCEA, Appellee.
APPEAL FROM THE CIRCUIT
COURT, SEVENTH JUDICIAL CIRCUIT, GRAND ORDER COUNTY.

Argued May 21, 1974. Decided June 14, 1974. 1. A seller is estopped from repudiating
his act of conveying realty to another, by reason of title only afterward acquired by him. 2. To warrant granting specific performance
of a contract there must be a contract to be enforced and no remedy at law which is adequate for its breach. 3. A promise to execute

a deed to real property which has been sold may be specifically enforced by order of a court when the buyer, in reliance on the promise, has taken possession of the property and erected valuable and permanent improvements thereon.

The appellant sold a quarter-acre town lot to Anna C. Sancea in June, 1965, for a sum of money, issuing a document he entitled "bill of sale" which, though he stated his title to the property was tribal in origin, appeared to be a warranty deed. There seemed to be a further agreement between the parties that upon seller's procurement of a public land sale deed for the property conveyed, he would execute a warranty deed to the buyer based thereon. The buyer took possession of the 'property and built a house thereon. The seller acquired title to the property in 1967, by public land sale deed but refused to execute a deed to the buyer as agreed. Thereupon the seller started an action in ejectment against the buyer, and appealed to the Supreme Court unsuccessfully from the judgment rendered against him in the lower court. The buyer had also instituted an action in the Circuit Court for specific performance of the contract to convey a deed to her as the parties had agreed. The seller appealed to the Supreme Court from the judgment rendered in that case against him. The judgment was affirmed.

Appellant, pro se. Frank Smith for appellee. MR. JUSTICE. HENRIES delivered the opinion of the Court. The appellant sold a quarter-acre town lot in Swedru, Grand Gedeh County, for $4.o.00, and issued a document which he entitled a bill of sale to the appellee, even though the appellant had not acquired a fee simple title to the land from the Republic of Liberia. The appellant subsequently acquired title in 1967, but refused to issue a warranty or transfer deed to the appellee who, according to an agreement made, was to have assisted him in the procurement of the public land sale deed, and in turn he was to issue and deliver to her a warranty deed for the parcel of land he had sold. Instead of executing the deed, the appellant brought an action of ejectment against the appellee contending that because she had failed to obtain and probate a warranty deed from him as agreed, she was guilty of laches and should be evicted from the premises. That case was finally decided by this Court in favor of the appellee herein on April 26, 1973. One would have thought that, after it had been determined thakthe appellee was legally entitled to the premises and shotild be given a deed, the appellant would have issued the deed and put an end to this controversy, yet he refused to do so. The appellee then continued an action against appellant for specific performance of a contract which had been pending before the Seventh Judicial Circuit Court, Grand Gedeh County. Again, judgment was rendered in appellee's favor, and the appellant appealed to this Court. The appellant filed a bill of exceptions containing three counts, only one of which we have chosen to consider. In that count appellant avers in essence that he has performed his obligation under the contract in that for eight

years the appellee has been in possession of the premises sold to her by him, and it is the appellee
who has failed to present a warranty deed to him for his signature. We wonder of what use the parcel of land is to the appellee when
she does not have title to the property? Already her ownership of the property has been questioned, and by the appellant himself from whom the property was bought. Fortunately
for the appellee, in our decision of April z6, 1973, we held that the appellant was estopped from repudiating his own act of selling
the property to her. Again, during the instant case, an information was filed with this Court which stated that the Government, in
the exercise of its power of eminent domain, has expropriated certain real property of several persons, including the quarter-acre
town lot which is the subject of this action. The appellee, therefore, must present some evidence of ownership other than the aforesaid
"bill of sale," in order to be compensated for the loss of property. As long ago as 1882, in Smith v. Hill, 1 LLR 157, this Court held that a deed, lawfully executed, is evidence against all parties to it and it is evidence of all title or rights
transferable by it. See also Williams v. Wynn, 2 LLR 148 (1914) ; King v. Cooper, [1937] LRSC 14; 6 LLR 12 (1937). Since the appellant admits selling the property to the appellee for a valuable consideration, and the appellee, relying on
his promise to execute a title deed to her, erected a house thereon, it is incumbent upon the appellant to execute a deed in her
favor. The fact that the deed was not presented to him for his signature cannot exculpate him from issuing a deed to them. Title
cannot be conveyed without the execution of a deed from the grantor to the grantee. To warrant granting specific performance of a
contract there must be a contract to be enforced and no adequate remedy at law. Both prerequisites exist in this case. A promise
to execute a deed to real property which has been sold may be specifically enforced by, a court of

equity
where the buyer, in reliance on the promise, has taken possession of the property and erected valuable and permanent improvements
thereon. See Pennoh v. Pennoh, 13 LLR 480 (196o) ; Kamara v. Logan, [1954] LRSC 17; 12 LLR 28 (1959.) ; Collins V. Elias Brothers, i 1 LLR 258 (1952). In view of the foregoing, we find no error committed by the trial judge and, therefore, the judgment of the lower court is
affirmed with costs against the appellant. It is so ordered. Affirmed.

The Garnett Heirs et al v Allison [1994] LRSC 33; 37 LLR 611 (1994) (23 September 1994)

THE GARNETT HEIRS, by and thru BOYE GARNETT, and **Messrs HARAM HAMOUD**, **AHMED SOAR** and **RIAD SOAR**, Appellants v. **HENRY ALLISON,** by and thru His daughter, NEE ALLISON, Attorney-In-Fact and Agent, Appellee.

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

Heard: April 14 & 15, 1994. Decided: September 23, 1994.

1. Under the rule of pleadings, averments in a pleading to which a responsive pleading is required are admitted when not denied in the responsive pleading. *Civil Procedure Law, Rev. Code* 1: 9.8 (3)

2. In ejectment actions, the parties must necessarily rely upon title, and where a pleading refers to a written instrument, a copy of the instrument may be annexed to, and made a part of the pleading.

3. Documents, instruments or other writings which are required to have revenue stamps affixed thereto shall not be given effect or received in evidence in any court or administrative proceedings unless they bear appropriate revenue stamps of the Republic of Liberia in the prescribed amount, but a reasonable time shall be afforded proponents of such documents, instruments or other writings to cure any such defect.

4. According to Rule 28 of the Circuit Court Rules, law issues raised in a case could be passed upon whether or not the counsels previously notified are present.

5. The court will not do for a party that which he ought to do for himself.

6. The approval by the trial judge of a bill of exceptions, without expressed reservation admits of the correctness of every material statement which precedes his signature.

7. The Supreme Court will not adjudicate matters not raised by the pleadings.

8. 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 sometimes made obligatory on part of the pleader in such a case to annex a copy of the instrument to the pleading.

9. In ejectment action, the parties must necessarily rely upon title, and when a pleading refers to a written instrument, a copy of the instrument may be annexed to, and made a part of the pleading.

10. Issues not raised in the court below and passed upon by the trial judge, will not be adjudicated by the Supreme Court

11. The Supreme Court cannot take evidence on appeal.

12. Where the trial judge is accused of communicating with the jury after his charges, counsel for appellants should raise the objection as a matter of record before the jury returns their verdict, and allow ruling to be entered for review by this Court; or seek redress from the Justice in Chambers.

13. Documents not pleaded and annexed to pleadings under the principle of notice cannot be admitted into evidence.

14. 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.

15. In ejectment action, mere relationship by ties of blood cannot confer title to real property.

These appellate proceedings emanate from an action of ejectment instituted by Henry Allison by and thru his attorney-in-fact and agent, Nee Allison, in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County. Proferted with his complaint were a copy of plaintiff's title deed with the description of the property by its metes and bounds, and a photo copy of the power of attorney issued to Nee Allison as attorney-in-fact. Appellants, the Garnett Heirs, appeared and filed an answer, which was subsequently withdrawn and amended. A regular trial was had which culminated in a final judgment in favor of plaintiff/appellee, to which defendants/appellants noted their exceptions and appealed to the Supreme Court.

The Supreme Court, upon review of the records, noted that appellants did not aver in their amended answer that the property subject of the action is owned by them and not the plaintiff; nor did they allege their right of possession to the property; nor was a profert of any deed from any source made to the amended answer as did the plaintiff. The Court held that the failure on the part of defendant/appellant to deny or rebut the allegations of ownership or title to the property, subject of he action, as raised in the complaint, is by operation of law, an admission by the defendants of plaintiff's title to the subject property and their inability to show title in themselves. The Court also took note of the several issues of law raised in the amended answer and the motion to dismiss the plaintiff's complaint, but held that it found no adverse ruling against the defendants on these issues which is prejudicial and reversible to warrant the consideration of the Court in the face of the clear admission by the defendants of plaintiff's title to the subject property and their inability to show title in themselves.

Accordingly, the judgment appealed from was *affirmed*

McDonald J. Krakue appeared for appellants. *Joseph P. H Findley* appeared for appellee.

MR. JUSTICE SMITH delivered the opinion of the Court.

For the benefit of this opinion, we quote the plaintiffs' amended complaint and the defendant's amended answer as filed in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, sitting in its June Term, A. D. 1992. The case was tried by a jury and a verdict finding

for the plaintiff was returned and confirmed by the court to which judgment the defendants excepted and have come to this Court on appeal for our review and determination:

PLAINTIFF'S COMPLAINT

"1. That Nee Allison is attorney-in-fact for plaintiff as more fully appears from photostat of her power of attorney with notary certificate marked Exhibit "A" and Counsellor Joseph Findley has also been authorized by the plaintiff, Henry Y. Allison to institute this suit as more fully appears from a letter of February 18, 1992, written to the Counsel by Mr. Allison, marked exhibit "B".

2. That plaintiff owns a certain tract of **land** located and situated on Camp Johnson Road in the City of Monrovia, Republic of Liberia, with a building thereon including a basement with three rooms, a two-door store with warehouse, and three floors above the store. Photostat of the deed to said property is filed herewith marked "C" and described as follows:

"Commencing at the Northwestern angle of Henry Y. Allison, Sr. parcel of **land**, thence running on magnetic bearing as follows: Thence running North 12 degrees West 33 fee to a point, thence running, South 68 degrees feet 132 feet to a point, thence running 12 degrees east 33 feet to a point, thence running North 68 degrees 132 feet to the place of commencement and containing 4,356 sq. ft. acres of **land** and no more."

3. That the defendants have entered upon the said **land** wrongfully and withheld possession from plaintiff thereby depriving him of the rents and profits thereof.

4. That despite many peaceful demands made upon defendants to vacate the said premises, the defendants have refused and failed so to do.

5. That the rental value from the premises is L$15,000.00 per annum and that defendants are wrongfully withholding said premises and he has done so for more than three (3) years; thereby causing plaintiff to lose L$45,000.00.."

DEFENDANT'S AMENDED ANSWER

"1. That the entire action captioned ACTION OF EJECT-MENT should be stricken and

dismissed in that the purported attorney-in-fact, Nee Allison, has no authority to sue or bring an action of ejectment or to recover real property purportedly owned by Henry Y. Allison. Defendants say from a careful perusal of the four (4) specific counts of the power of attorney, no mention is made by the said Henry Y. Allison of empowering Nee Allison to sue by way of ejectment or taking legal steps to recover any real property owned by the said Henry Y. Allison; hence, same should be dismissed.

2. Further to the entire action, defendants say same should be dismissed, in that, the said Henry Y. Allison being aware that this power of attorney was limited, acknowledged the extent of same in the third (3') paragraph to the last of said Power of Attorney when he said "If any provision or part of this power of attorney shall be held to be invalid for any legal reason, the remaining provisions shall continue to be valid and enforceable to the greatest extent possible." Only those provisions that were expressly provided for should be legally enforced. Hence, the entire action should be dismissed.

3. That the purported power of attorney is bad and defective; in that, there is no notary seal or stamps affixed to same which is required by law. Defendants say it is clear that looking at the said power of attorney, it was made up right in the office of the respondents' counsel; hence, the entire action should be dismissed.

4. That further to the signature which purports to be that of Henry Y. Allison, defendants say, same is false and misleading. Defendants say that at the call of this motion, he will produce copies of letters and agreements which would exhibit the actual signature of the said Henry Y. Allison which will show that the signature on the power of attorney here in dispute is false and incorrect; hence the entire action should be dismissed.

5. That the plaintiff has no capacity to sue; in that, even though the action was instituted by one who purports to be an agent or attorney-in-fact for the plaintiff, Henry Y. Allison; yet the deed which is the basis of an ejectment action, squarely shows that the property in question is allegedly owned by Henry Y. Allison, Sr. and not Henry Y. Allison, who are two distinct and separate persons. Defendants say that for this cogent discrepancy, the entire action according to law, is bound to crumble and this they so pray.

6. That also as to the entire complaint, defendants say is a fit subject for dismissal, for the plaintiff has failed to show how its purported grantor Zondell B. Jallah acquired the said property in question from the Republic of Liberia.

7. That as to count two (2) of the complaint, same presents no triable issue as defendants have no knowledge of same.

8. That as to count three (3) of the complaint, same is baseless and unfounded; as the defendants have not entered any **land**, premises or house owned by the plaintiff, not to mention the least of depriving him of rent and of profits.

9. That because of the averment of count three (3) of this amended answer, count four (4) of the aforesaid complaint presents no triable issue.

10. That count five (5) of the complaint is another of plaintiff s mechanization of facts and criminal desire to deceive the court, and all of which defendants deny. Defendants say further that there is no truth in the matter that the complainant was deprived of L$45,000.00. Defendants say this he will prove at the trial that the plaintiff is a "liar", a cheat and a non God fearing individual.

11. Because defendants aver that the complaint lacks the factual sufficiency to warrant the action of ejectment; in that, the plaintiff has not proven that the defendants have entered and wrongfully withheld from plaintiff or her purported principal the subject real property.

12. Defendants deny all and singular the allegations made and set forth in plaintiff's complaint which was not made a subject to special traverse in these amended answer..."

Count two (2) of the complaint shows that the plaintiff proferted with his complaint, a copy of his title deed with the description of the property by its metes and bounds and annexed a photo copy of the power of attorney issued to Nee Allison as attorney-in-fact for the plaintiff, Henry Y. Allison. In the complaint, the plaintiff claims the amount of L$45,000.00 as damages for wrongfully detaining and withholding the property for more than three (3) years.

There is no averment in the 12-count amended answer alleging that the subject property is owned by the defendants and not the plaintiff; nor have the defendants alleged anywhere in the amended answer their right of possession to the property; or a profert of any deed from any source made to the amended answer as did the plaintiff. Defendants however raised several issues of law in their said answer along with a motion to dismiss the plaintiff's complaint.

It is interesting to note that in traversing count two of plaintiffs amended complaint in which he made profert of his title deed to the property and described its metes and bounds, the defendants, besides not showing any kind of title in themselves or their rights of possession, aver in count seven (7) of their amended answer and we quote: "Count two (2) of the complaint, same presents no triable issue as defendants have no knowledge of same." (Emphasis).

Pleadings are written allegations of what is affirmed on the one side or denied on the other, disclosing to the court or jury having to try the cause the real matter in dispute between the parties. From the averment of count 7 of the amended answer, it must be concluded that the factual issue of ownership raised by plaintiffs pleadings, which is the decisive factor of the case, is not denied by the defendants in their amended answer. Under the rule of pleadings, averments in a pleading to which a responsive pleading is required are admitted when not denied in the responsive pleading. Civil Procedure Law, Rev. Code 1: 9.8 (3).

There are several issues of law raised in the above quoted amended answer and the motion to dismiss plaintiff's complaint which the trial judge passed upon; and we have not found any adverse ruling against the defendants which is prejudicial and reversible to warrant our consideration in the face of a clear admission by the defendants of plaintiffs title to the subject property and their inability to show title in themselves. In ejectment action, the parties must necessarily rely upon title, and where a pleading refers to a written instrument, a copy of the instrument may be annexed to, and made a part of the pleading. *Walker v. Morris, [1963] LRSC 42; 15* LLR 424 (1963). Appellants have also filed a sixteen-count bill of exceptions but elected to narrow the issues to seven points on which they desire our review and determination. It is our opinion therefore that any issue of the bill of exceptions not included in the brief and argued before us must be considered as waived. We must therefore proceed to discuss the seven (7) issues argued in appellants' brief.

The first issue argued by counsel for appellants in his brief is that the trial judge ruled contrary to law as to the time allowed to correct the insufficiency of revenue stamps on the power of attorney and the notary certificate, as raised. He argued that the 48 hours allowed by law to correct such defect commences to run upon receipt by the defaulter of the pleading attacking the insufficiency of revenue stamps and quoted for reliance, *Construction and Maintenance*

Services, Inc. v. Richards, 26 LLR321 (1977). Taking recourse to the Revenue and Finance Law relied upon by the trial judge to order the correction of the defect, and the aforesaid case cited in 26 LLR by the appellants' counsel, we find no problem with the judge's ruling in allowing the defaulter to correct the defect with respect to stamp not later than the following day, November 10, 1992. For the benefit of this opinion, we quote the relevant Revenue and Finance Law on which the trial judge relied:

"...Document, instrument or other writings which are required to have revenue stamps affixed under the provision of section 16.3 shall not be given effect or received in evidence in any court or administrative proceedings unless they bear appropriate revenue stamps of the Republic of Liberia in the prescribed amount cancelled in accordance with the provision of Section 16.4; but a reasonable time shall be afforded proponents of such documents, instruments or other writings to cure any such defect". Revenue and Finance Law, Rev. Code 36:71.5

The argument of counsel for appellants is not supported by the trial record, in that the plaintiff did receive the defendants' objection to the power of attorney with respect to the revenue stamps and did not correct the defect within 48 hours, nor did he show the date on which plaintiff received the motion attacking the insufficiency of revenue stamps and did not correct the defect within 48 hours of receipt of the motion. Further appellant did not cite us to the statute which requires that upon receipt of an attack of a defect in revenue stamps, the proponent of such document to be stamped, is required to have the defect corrected within 48 hours of receipt of such objection. Moreover, the opinion referred to and cited by the learned counsel was delivered on November 25, 1977, at the time the current Revenue and Finance Law relied upon by the trial judge had not been passed into law and published, as the current Revenue and Finance Law quoted above was first published in 1979, about two (2) years after the opinion cited. It is clear therefore that the Revenue and Finance Law with respect to revenue stamp supercedes the statute relied upon by this Court in the opinion cited, especially when the trial judge ordered the defect to be corrected less than 48 hours time. The time allowed by the trial judge was therefore reasonable and supported by statute; hence, the first issue regarding revenue stamps as advanced by counsel for appellants, is not sustained.

Counsel for appellants argues in his brief that the trial judge did not appoint a lawyer to take the ruling on the law issues for the absent lawyer. This is normally done to allow exceptions to be taken or appeal to be announced in case of a final judgment. However, recourse to the sheriff's returns to the notice of assignment for the disposition of law issues dated December 4, 1992 for December 9, 1992, shows that the counsel for the defendants could not be found to be served, but one of the defendants in person of Richard Garnett, who identified himself to the officer, was served but refused to accept a copy of the notice. On the said 9th day of December, 1992, the trial judge disposed of the law issues and ruled the case to trial by jury. Upon application of counsel for plaintiff, the case was assigned for trial on the 16th. No exception was noted by the

judge for the defendants' lawyer. According to Rule 28 of the Circuit Court Rules, law issues raised in a case could be passed upon whether or not the counsels previously notified are present. In this case, counsels for both parties, however, appeared for trial which ended in an appeal taken and perfected .Hence no prejudice has been shown by the appellants which has affected their ownership or possessory rights by reason of the judge's failure to appoint a lawyer to take the ruling on the law issues for the absent lawyer. It was however, incumbent upon defendant Richard Garnett who was notified of the assignment to receive their copy and take it to their lawyer to be present at the disposition of the law issues in order to note exception to the ruling. The court will not do for a party that which he ought to do for himself. This second issue of the brief as argued is therefore not sustained.

The third point of appellant's argument in the brief before us is the trial judge's approval of the bill of exceptions without reservation. He argues that by approving the bill of exceptions, the trial juudge thereby admits all the allegations contained in the bill of exceptions as being true, for which the judgment should be reversed. In support thereof, appellant cites as reliance the case *Cooper v. Alemendine*, [1971] LRSC 54; 20 LLR 416 (1971). In that case, the Court held that "the approval by the trial judge of a bill of exceptions without expressed reservation admits of the correctness of every material statement which precedes his signature." While this argument may be legally tenable, counsel for appellants has not shown the Court any reversible or prejudicial error committed by the trial judge in approving the bill of exceptions, which substantially affect defendants ownership or possessory rights of the subject property which admission by reason of such approval would affect the title of the plaintiff, especially where the defendants could not show any title in themselves or any possessory rights. It is our considered opinion therefore that the third point of argument of the appellants be, and same is hereby overruled.

In arguing the fourth point of his brief, counsel for appellants attempted to trace appellants' chain of title to the property as having come to them from F.E.R. Johnson to their grand Aunt, Rebecca Garnett and thence, to their fathers J. Richard Garnett and Jesse Garnett (brothers) who were joint owners until their death. Said property came to them by descent, the counsel argued. He questioned the rights of the plaintiff's grantor, Zondell B. Jallah, to convey the **land**. It must be noted that defendants did not raise any of such questions in their pleadings for the trial judge to pass upon during trial. The Supreme Court will not therefore adjudicate issues not raised in the pleadings. *Coleman v. Cooper*, [1955] LRSC 7; 12 LLR 226 (1955). 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 sometimes made obligatory on part of the pleader in such a case to annex a copy of the instrument to the pleading. 21 RCL 476, § 38. In the defendants' pleadings, no title to the property was alleged nor their ownership by descent raised therein or the title of their fathers from F. E. R. Johnson put in issue as notice to the court to pass upon. In ejectment action, the parties must necessarily rely upon title, and when a pleading refers to a written instrument, a copy of the instrument may be annexed to, and made a part of the pleading. *Walker v. Morris*,

[1963] LRSC 42; 15 LLR 424 (1963). It is therefore our considered opinion that what was not raised in the court below and passed upon by the trial judge, will not be adjudicated by this Court; hence, the fourth issue is overruled.

Counsel for appellants in arguing the fifth point in his brief contends that the verdict of the empaneled jury is uncertain because it did not name the quantity of the **land** awarded. This argument is unwarranted and therefore cannot be sustained. Recourse to the verdict and plaintiff's complaint, reveals that plaintiff instituted the ejectment action to recover possession of real property located on Camp Johnson Road on which there is a building, said to comprise of a basement with 3 rooms, 2 doorstores, and a warehouse with 3 stories above the basement, which complaint described the metes and bounds of the property. The verdict of the empaneled jury states, and we quote the relevant portion:

"The defendants are liable and the plaintiff is entitled to her property and is also awarded the amount of L$26,250.00 as damages.

The damages was reduced from L$45,000.00 to L$26,250.00 and this is the right of the jury. We see no uncertainty in the verdict and hence the 5th issue of the brief is not sustained.

The 6th issue of the appellant's brief alleges, and counsel for appellant argues, that the trial judge was seen by several witnesses leaving from the jury deliberation room. The counsel contends that the matter should have been investigated. When asked by the bench whether or not he made this allegation as a matter of record to be passed upon by the trial court, he replied that he did not for fear that he could be attached in contempt of court, if he did; he however raised the issue in his motion for new trial. Counsel for plaintiff resisted the motion for new trial and with reference to the allegation of the judge tempering with the jury in their room of deliberation, he attached an affidavit of two (2) court officers who, on their oath deposed and said that they kept surveillance on the jury when they were kept together from April 15 to 16, 1992 and that at no time did they see the trial judge entering or leaving from the jury room or communicating with them. The trial judge, in his ruling denying the motion for new trial, categorically denied ever entering the jury room or having private communication with the empaneled jury at any time. We must again emphasize here that this Court cannot take evidence on appeal; counsel for appellants should have raised the objection as a matter of record before the jury returned their verdict and produce those witnesses who saw the trial judge leaving the jury room and allow ruling to be entered for review by this Court; or seek redress from the Justice in Chambers. As much as this Court would have loved to pass on this issue for the future benefit of those judges who may elect to charge the jury in open court, and thereafter follow them into their room of deliberation or call them to say what their verdict should be, we cannot entertain this argument of the counsel for appellant on

this point to defeat the sworn affidavit of the officers of court who by court's order attended the jury who were kept together from the 15th to the 16thof April, 1992, and without any evidence by the defendants/appellants in rebuttal. The sixth point of argument is therefore not sustained.

Counsel for appellants in arguing the last point of his brief, contends that the plaintiff's deed executed by Zondell B. Jallah in 1980 cannot prevail against the deed of Rebecca Garnett issued to her by F. E. R. Johnson in 1927 as testified to. Rebecca Garnett is the aunt of defendants' fathers, J. Richard Garnett and Jesse Garnett. Perusal of the appeal records in this case shows that although no deed or any kind of paper title was pleaded and annexed to the defendants' pleadings, the trial court unusually admitted into evidence documents DF/1, DF/2 and DF/3 to form part of the defendants' evidence without objection interposed by counsel for plaintiff, who, having expressed concern about the application to admit into evidence documents not pleaded and annexed to the pleadings as a matter of notice, noted that he interposed no objection to the admissibility of the documents as those documents would establish the case for the plaintiff. DF/1 is a warranty deed from F. E. R. Johnson to Rebecca Garnett executed in 1927. DF/2 is copy of a letter from J. Richard Garnett to Mrs. Zondell B. Jallah calling her attention to their understanding to the effect that she was only to erect a beauty shop on his Aunt Rebecca Garnett's property, but instead of a beauty shop, she was erecting a permanent dwelling structure to lease without his knowledge and consent, and therefore she should forward him a bill of costs of the concrete house for a peaceful solution to avoid future embarrassment. DF/3 is a warranty deed from Zondell B. Jallah to Richard and Jesse S. N. Garnett. It is very elementary for any impartial and conscientious circuit judge not to know that documents not pleaded and annexed to pleadings under the principle of notice can not be admitted into evidence. However, be as it may, there is also in the record a warranty deed from Richard Garnett and Jesse Garnett to Zondell B. Jallah dated August 20, 1977 for a piece of property on Camp Johnson Road, Block number 26, containing 3,356 sq. ft. and also a warranty deed from Zondell B. Jallah to Henry Y. Allison for a piece of property on Camp Johnson Road, in Block 26, containing 4,356 Sq. Ft. dated November 4, 1980 for which the said Zondell B. Jallah received the amount of L$15,000.00 as purchase price of the property. The puzzling question gathered from the argument of counsel for appellants is, how could Richard and Jesse Garnett accept a warranty deed from Zondell B. Jallah for the same property of their Aunt Rebecca Garnett deeded to her by F. E. R. Johnson in 1927? The true answer is that the property conveyed by Zondell B. Jallah to Richard and Jesse Garnett in 1973 could not be the same property belonging to Rebecca Garnett. There is a description of the pieces of properties at the back of the warranty deed from Zondell B. Jallah to Richard and Jesse Garnett, one calling for 4,356 sq. ft. shown to be for Zondell B. Jallah and the other covering 8,052.2 sq. ft. shown to be for Richard and Jesse Garnett. It is therefore clear that by virtue of the warranty deed from Richard and Jesse Garnett to Zondell B. Jallah dated August 20, 1977, she had the right to convey to Henry Y. Allison the said property. Therefore, the argument of counsel for defendants in his brief that Zondell B. Jallah could not show the chain of her title is not tenable and hence, overruled.

Another puzzling question is: why were these documents never pleaded and copies annexed to the defendants' amended answer, or notice given therein for their production at the trial if they were not available at the time of pleading? We must conclude therefore that the defendants have realized that such evidence under the circumstance was no help in their defense, and so they decided not to plead them. Our conclusion is supported by the fact that the defendants on several occasions offered to refund the plaintiff's $15,000.00 paid for the **land** even though they denied the signature on the deed to be that of the grantor. Further, there is evidence on record which was not rebutted by the defendants that the plaintiff had been in possession of the property from 1980 to 1990 when he had to flee the country because of the civil war. That it was during the absence from the country of the plaintiff that the defendants wrongfully took possession of the property and illegally withheld possession. We are of the opinion that the conveyance of the property to Zondell. B. Jallah by Richard Garnett and Jesse Garnett in 1977 was upon a compromise reached by the grantors and the grantee as a result of the letter written to the grantee, Zondell B. Jallah, by J. Richard Garnett marked by Court DF/2, for which no legal action was taken by the said Richard and Jesse Garnett, from 1960 up to 1980 when the property was conveyed to the plaintiff.

Granted that J. Richard Garnett and Jesse Garnett did convey the piece of property to Zondell B. Jallah, and judging from the letter marked by Court DF/2 of November 30, 1960, as produced into evidence, the failure of the defendants or their fathers to act until Zondell B. Jallah erected a 3-storey concrete building on said property, which she later sold to Henry Y. Allison in 1980, would defeat their claim. It is a principle of law that 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. And whatever had been made a derelict by the owner will become the property of the first occupant. *Clarke v. Lewis*, [1929] LRSC 5; 3 LLR 95 (1929).

Another point which cannot escape our attention is the absence from defendants' evidence, any title deed of the subject property in themselves. Although they irregularly slipped in a deed belonging to their grand aunt Rebecca Garnett from F. E. R. Johnson to form part of their evidence of title, they did not show by either a warranty deed from Rebecca Garnett to them or to their fathers, J. Richard Garnett and Jesse Garnett, nor an executor deed or administrator's deed under which they could claim title to the property. In *Cooper-King v. Cooper-Scott*, [1963] LRSC 38; 15 LLR 390 (1963) and *Jackson et al. v. Mason[1975] LRSC 7;* , 24 LLR 97 (1975) this Court held that in ejectment action, mere relationship by ties of blood cannot confer title to real property.

In view of the circumstances attending this case, and the law cited in support of our position, it is our holding that the judgment appealed from should be, and the same is hereby confirmed and affirmed with costs ruled against the appellants. And it is hereby so ordered.

Judgment affirmed.

Mendohdou et al v Geahdoe et al [1999] LRSC 40; 39 LLR 742 (1999) (16 December 1999)

SACKOR MENDOHDOU et al., Appellants, v. **AMOS GEAHDOE & REV. DAVID G. KAI**, Appellees.

APPEAL FROM THE MONTHLY AND PROBATE COURT FOR MONTSERRADO COUNTY.

Heard: November 10, 1999. Decided: December 17, 1999.

1. Any person interested in the intestate estate or in the decedent himself can present a petition to the probate court or a court having jurisdiction, praying for a decree granting letters of administration to him. The petitioner need not be a blood relative of the decedent.

2. The appointment of an administrator by the probate court is conclusive evidence of the authority of said administrator to convey portion of an intestate estate upon the authority of the court issuing the letters of administration unless the decree is reversed, modified or revoked by the probate court or a court granting same.

3. An administrator may be removed only upon evidence of improper conduct and after he has had an opportunity to defend himself.

4. A sale of real property can be made by an administrator of an estate only by authority of the probate court; and, if not so authorized, the transaction is void.

5. Where the administrators conveyed the parcel of **land** of the intestate estate under the express authority of the probate court, which issued the letters of administration, the transaction is presumed to be valid and legal to all intents and purposes.

Appellants were appointed administrators of an intestate estate and upon their petition, the probate court ordered the sale of certain real properties of the estate. After the judge who ordered the grant of letters of administration and ordered the sale of the real properties had been succeeded by another judge at the same probate court, appellees petitioned the probate court to rescind the letters of administration already granted and to cancel the deeds issued for the conveyance of the real properties for reason that the persons appointed as administrators are not related to the decedent by blood.

The succeeding judge of the probate court sustained the petition, rescinded the letters of administration, and canceled the decree ordering the conveyance of the real properties. Appellants appealed to the Supreme Court for a review.

The Supreme Court reviewed the case and first held that one need not be a lineal heir or be otherwise related by blood to the decedent to apply for letters of administration to administer the estate of the decedent. Any person who is interested in the decedent himself or who has interest in the estate may apply for letters of administration. The Court found from the evidence that appellants had interest in the decedent and the estate and so they were eligible to serve as administrators.

The Supreme Court also ruled that once the property of an intestate estate is conveyed by the administrator upon the orders of the probate court or any court which granted the letters of administration, that transaction is presumed valid and legal and, as such, it cannot be declared void merely because the person who served as administrator, even though duly appointed by the court, did not have the capacity to serve. The Supreme Court further ruled that removal of an administrator of an intestate estate is permissible only when there is misconduct in the performance of his responsibilities; and even then, the administrator must have the opportunity of defending himself before an action to remove him can be taken. The Supreme Court found that no evidence existed to show that appellants had not conducted themselves properly; as such, the Supreme Court held that the ruling of the succeeding probate judge rescinding the letters of administration and the canceling the decree of sale of the real properties was erroneous.

The Supreme Court therefore *reversed* the judgment.

Ceaineh Clinton Johnson appeared for appellants. *Marcus R Jones* appeared for appellees.

MR. JUSTICE JANGABA delivered the opinion of the Court.

This case before us on appeal originates from the Monthly and Probate Court for Montserrado County, where appellees filed a petition for revocation of letters of administration and court's decree of sale, which petition was granted by His Honour, John L. Greaves, presiding judge, thereby vacating appellants' letters of administration and decree of sale previously granted to them by said court.

The certified records transmitted to this Court reveal that Amos Doe, Kai Geah-Doe and the late Ketekpu Geah-Doe were appointed administrators on November 21, 1984 by the Monthly and Probate Court for Montserrado County, under the signature of the then Probate Court Judge, His Honour S.G. Walker, to administer the Intestate Estate of the late Caregar Yanee Geah Doe, the father of the Late Ketekpu Geah-Doe. The letters of administration was duly probated and registered according to law in volume 453-85, pages 11-12 of the archives. The records also show that Ketekpu Geah-Doe, Amos Geah-Doe and Kai Geandoe, executed a deed on October 25, 1984 to one John S. Jones and children for a parcel of **land** containing two (2) lots, lying and located in the Settlement of New Georgia in Monrovia. The records further show that Ketekpu Geah-Doe and Amos Geah-Doe again executed a deed on April 25, 1988 to Brown J. Volgar for a piece of **land** containing one (1) lot lying in the Settlement of New Georgia.

On the 5th day of May, A.D. 1993, Amos Geah-Doe and Rev. David G. Kai, appellants (son and uncle respectively of the late Ketekpu Geah-Doe), filed a petition to the probate court below praying for the issuance of letters of administration to them to administer the intestate estate of the late Ketekpu Geah-Doe, who died in 1990, seized of both personal and real property within the City of Monrovia and elsewhere in Liberia. They also tendered an administrators' bond of L$12,100.00 (Twelve Thousand Liberian Dollars) as required by law.

On the 24th day of June, A. D. 1993, Her Honour Gloria M. Scott; then probate court judge presiding over the Monthly and Probate Court for Montserrado County, appointed appellants as administrators to administer the intestate estate of the late Ketekpu Geah-Doe. Appellants filed a petition on 8thJuly, A. D. 1993, praying the court below to sell 260 acres of **land** so as to settle obligations of the intestate estate. A court's decree of sale was granted on March 1, 1994 by Her Honour Gloria Scott, thereby authorizing appellants, as administrators, to convey 260 acres of **land** belonging to the said intestate estate of Ketekpu Geah-Doe to pay Government taxes and to meet with some other obligations of the intestate estate.

Appellees filed a petition on July 3, 1995 for the revocation of the letters of administration and the decree of sale previously granted to appellants by the probate court. Appellees substantially alleged in their petition for revocation of letters of administration and cancellation of the decree of sale that Amos Geandoe, co-appellant, did not bear any blood relation with the late Ketekpu Geandoe, but was merely a ward of the decedent prior to and at the time of death of Ketekpu. Further, appellees also alleged that Rev. David Kai, the other co-appellant, was not the uncle of the decedent. They further alleged that appellants obtained their letters of administration and a decree of sale from the probate court by means of fraud, misrepresentation and other dubious means, thereby lacking the capacity to administer the intestate estate of the decedent.

Appellees submitted that the deceased was their uncle and brother, and therefore it is they who have the legal capacity to administer the intestate estate of the decedent.

Appellants filed returns contending, among other things, that appellees failed to prove their allegation that Amos Geah-Doe, co-appellant, is no blood relative of the decedent, but a ward. Appellees also argued that it is the controlling law that determination of issues of facts as to next of kin should precede the granting of letters of administration; and so the grant of letters of administration to them closes that issue. They maintained that appellees also failed to state which of the six of them were brothers, uncles and nephews of the decedent, and as such they were not blood relatives of the decedent.

Specifically, in the count three of appellants' returns, they maintained that Rev. David Kai, co-appellant, was the uncle of the late Ketekpu Geah-Doe, and Amos Geah-Doe, also coappellant, is the son of the decedent. Thus, Amos Geah-Doe, co-appellant, averred in said count that due to the blood relation with the late Ketekpu Geah-Doe, he and his father, Ketekpu Geah-Doe, were appointed by the Probate Court for Montserrado County in 1984 to administer the intestate estate of his late grandfather, Caregar Yanee Geah-Doe. Amos Geah-Doe also proferted a deed and a birth certificate bearing his name as Amos Geah-Doe.

Based on the foregoing, appellants prayed the trial court to deny appellees' petition for revocation of their letters of administration and the court's decree of sale.

The Probate Court Judge, His Honour John L. Greaves, ruled on May 1, 1998, granting appellees' petition and thereby revoked appellants' letters of administration and the court's decree of sale. The judge, in essence, ruled that appellants obtained their letters of administration and the decree of sale from the probate court by false representation, and that appellants lacked the

legal capacity to administer estate under our law because Amos Geah-Doe, co-appellant, was not a blood relative of the decedent. The judge also ruled that it was not established that Amos Geah-Doe was an adopted child to entitle him to partake in said estate as if he were born in wedlock, as in keeping with our law.

Appellants excepted to this ruling and appealed to this Court for our appellate review.

Appellants raised three (3) issues in their brief; but it is only the third issue which this Court deems paramount for the determination of this case.

Counsel for appellants strongly contended that the administration of an intestate estate is not restricted to a lineal heir of the decedent; appellants argued that any person interested in an intestacy or in the decedent may petition to the probate court for a decree granting letters of administration.

Co-appellant Amos Geah-Doe maintained that he established in the lower court by the preponderance of evidence that he is heir of the deceased; and that the issuance of letters of administration in respect of intestacy is dependent on a determination of the issue as to next of kin. Since he was already appointed administrator, the issue of next of kin was settled and should not be re-opened.

Appellants averred that they had not breached the oath administered to them as administrators to protect and preserve the intestate estate of the late Ketekpu Geah-Doe. Appellants contended that the probate court could only remove them from the position of administrators for improper conduct, and that there is no issue of improper conduct in this case, as same does not exist.

Appellants therefore prayed this Court to reverse the ruling of the court below and affirm appellants' letters of administration.

Appellees raised two (2) issues in their brief; but this Court considers only the second issue relevant for the determination of this case.

Counsel for appellees contended that co-appellant Amos Geah-Doe does not have any legal capacity to administer the intestate estate of the late Ketekpu Geah-Doe pursuant to section 8:111.1 of the revised Decedents' Estates Law relating to order of priority for granting letters of administration. Appellees' Counsel argued strongly that since co-appellant Amos Geah-Doe bears no blood relationship to the decedent, co-appellant Amos Geah-Doe does not fall within the category of next of kin of the decedent as named in section 8:111.1 of the Decedents' Estates Law, Rev. Code 8, and therefore he has no legal standing to pray for letters of administration to serve as administrator of said estate.

Appellees therefore prayed this Honourable Court to affirm the ruling of the lower court.

The facts and circumstances and the contentions of both parties present only one question to be resolved by this Court for the determination of this case on appeal. The question is: whether or not an administrator of an intestate estate by law is restricted to the lineal heir of a decedent.

The answer to this question is in the negative. A recourse to the records in this case reveals that the late Ketekpu Geah-Doe and co-appellant Amos Geah-Doe, along with Kai Geah-Doe were appointed in 1984 as administrators by the lower court to administer the intestate estate of the late Caregar Yanee Geah-Doe, father of the late Ketekpu Geah-Doe. Co-appellant Amos Geah-Doe, along with the late Ketekpu Geah-Doe, executed deeds conveying parcels of **land** of the estate so administered. There is no evidence shown to this Court that there was any objection to the effect that co-appellant Amos Geah-Doe did not bear any blood relation with the late Caregar Yanee Geah-Doe, whose intestate estate he was appointed as co-administrator, along with the late Ketekpu Geah-Doe. We therefore perceive no reasoning why co-appellant Amos Geah-Doe, who along with the late Ketekpu Geah-Doe, appointed and administered the intestate estate of Ketekpu Geah-Doe's father (the late Caregar Yanee Geah-Doe), cannot administer the intestate estate of the late Ketekpu Geah-Doe. The facts and circumstances in this case cannot preclude Co-appellant Amos Geah-Doe from administering the intestate estate of the late Ketekpu Geah-Doe.

The records also indicate that during his lifetime, the late Ketekpu Geah-Doe conveyed realty to co-appellant Amos Geah-Doe, the deeds for which were probated and registered according to law.

Our revised Decedents Estates Law provides that any person interested in the intestate estate or in the decedent himself can present a petition to the probate court or a court having jurisdiction, praying for a decree granting letters of administration to him. Decedents Estates Law, Rev. Code 8:111.3(1). The language of this statutory provision governing appointment of an administrator of an intestate estate of a decedent does not in any way and manner restrict such appointment to a lineal heir of the decedent.

Co-appellant Amos Geah-Doe has interest in the intestate estate of the late Ketekpu Geah-Doe, as well as in the decedent himself, with whom he once administered the intestate estate of Ketekpu Geah-Doe's father. Thus, this Court holds that coappellant Amos Geah-Doe has a legal standing to serve as administrator of the intestate estate of the deceased.

Another aspect of the probate judge's ruling is the revocation of the court's decree of sale granted Amos Geah-Doe and Rev. David G. Kai, administrators, by authority of the court under the signature of Her Honour Gloria Musu Scott, then probate court judge.

This Court holds that the appointment of an administrator by the probate court is a conclusive evidence of authority of said administrator to convey portion of an intestate estate upon the authority of the court issuing the letters of administration unless the decree is reversed, modified or revoked by the probate court or a court granting same. Decedents Estates Law, Rev. Code 8:107.3. This Court held that "a sale of real property can be made by an administrator of an estate only by authority of the probate court; and, if not so authorized, the transaction is void." *Tetteh v. Stubblefield*, [1962] LRSC 1; 15 LLR 3 (1962); *Caulcrick v. Lewis et al.[1973] LRSC 32; ,* 22 LLR 37, 43 (1971).

In the case at bar, the administrators conveyed the parcel of **land** of the intestate estate under the express authority of the Monthly and Probate Court for Montserrado County; and as such the transaction is not void *ab initio* as contended by Counsel for appellees.

The next question which comes to the mind of this Court is whether or not co-appellant Amos Geah-Doe has breached the oath administered to him as administrator to protect, manage and preserve the intestate estate. The records in this case are devoid of any evidence of improper conduct of co-appellant Amos Geah-Doe.

In the case *Dennis and Bull v. Weeks et al.*[*[1952] LRSC 30*; , *11* LLR 317, 319 (1952), this Court held that an administrator may be removed only upon evidence of improper conduct and after he has had an opportunity to defend himself. This is the proper reason to remove an administrator; but it does not exist in this case before us. A mere allegation does not constitute proof.

Wherefore, and in view of the foregoing, it is the considered opinion of this Court that the decree of the probate court should be, and the same is hereby reversed. The cause is remanded with specific instructions to the probate judge to close the said estate within the period of 90 days as of the rendition of this opinion and to include all of the heirs in the distribution. 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 close the aforesaid estate consistent with law. Costs are disallowed. And it is hereby so ordered.

Judgment reversed.

Trays v Montgomery [1967] LRSC 32; 18 LLR 202 (1967) (18 January 1967)

MILDRED A. MONTGOMERY-TRAYS, surviving heir of ABRAHAM L. MONTGOMERY, Intestate, Appellant, v. STELLA V. MONTGOMERY, widow of ABRAHAM L. MONTGOMERY, Intestate, and MARION MAJOR-PRATT, Appellees. APPEAL FROM THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT, COUNTY OF SINOE.

Argued November 13, 1967. Decided January 18, 1967. 1. Where one party to an oral contract for the sale of land has, in reliance on the contract, so far performed his part thereof that it would amount to a fraud upon him to allow the other party to repudiate the contract by invoking the statute of frauds, courts should regard the case as removed from the operation of the statute of frauds and decree specific performance of the parol contract.

In the course of estate proceedings, objection was made by coadministratrix, the appellant, to delivery of a deed to real property by her coadministratrix, an appellee, to the coappellee, who, in the lifetime of the intestate, had paid him the purchase price of the property, had been pointed out by the intestate to witnesses as the new owner of the property, and had received the deed to the property from him. On appeal from the judgment of the lower court ordering the issuance of an administratrix's deed, the judgment was affirmed and the deed ordered delivered. Clarence 0. Tuning for appellant. Bernard for appellees. Richards and

MR. JUSTICE SIMPSON delivered the opinion of the Court. On November 24, 1964, while residing

in the City of Greenville, Sinoe County, Abraham L. Montgomery de202

LIBERIAN LAW REPORTS

203

parted this life for a celestial
abode, leaving to mourn his demise his wife, Stella V. Montgomery, and a niece, in the person of Mildred A. Montgomery-Trays. By virtue of the demise of Mr. Montgomery, application was made to the Probate Court at Greenville for the appointment of the widow as administratrix of the estate of decedent. The application as sought was granted and thereupon letters of administration issued in January, 1965, to the administratrix declaring her sole administratrix of the estate. Subsequently, the widow applied to court to have the decedent's niece, in the person of appellant, named as one of the administratrices of the said estate. This application was also granted by the court and the two administratrices were granted letters of administration. Subsequently, coadministratrix-appellant returned to Harper City, in Maryland County, where she resides and the coadministratrix-appellee on February 18, 1965, filed an inventory of the estate alleging that the worldly goods of the intestate amounted to $20.75. Upon learning of this, one John L. Morris, a representative of the appellant, raised issue in the Probate Court in respect to the declared value of the estate, alleging, inter alia, that the widow had received $59o.00 from a joint venture at Butaw, Sinoe County, for the destruction of certain crops and live trees owned by the intestate, and that this amount for which she was compensated constituted a portion of the estate and had not been included as part of the assets. Thereafter, this matter was ordered investigated by the assigned Circuit Judge, Hon. Daniel Drapper, who conducted an investigation on September 27, 1966. It was conceded by counsel for appellee Montgomery that $5oo.00 had been received by her, but that this amount was received subsequent to the filing of the inventory on February 18, 1965. The court, in ruling, held that since

the widow had the responsibility for the interment of the intestate, consideration should be given this fact in a de-

204

LIBERIAN LAW REPORTS

termination of how these proceeds were to be divided. Accordingly, the widow was granted two-thirds of this amount, and the niece one-third of the said amount. However, the court further determined that the amount receivable by the appellant should be liquidated in monthly installments, at the rate of $15.00 per month. This matter subsided temporarily until January 5, 1967, when counsel for appellant appeared in court and made averment to the effect that the widow, though ordered to do so by the court, had failed and neglected to surrender into court for a period of one year, the deed covering the one-hundred-odd-acre tract of land owned by the intestate, situated at Butaw, in Sinoe County. The clerk of the court was ordered to issue a writ of summons upon appellee Montgomery and one

John L. Morris, to appear in court on January 9, 1967, to show cause why the orders of the judge had not been complied with in respect to producing and submitting to the court the subject deed. On February 3, as the court met for the conduct of business, the widow presented a certificate, supported by an affidavit which stated that the subject property covered by the deed at issue had been the subject of a sale from the intestate to one Marion MajorPratt. The certificate further stated that the intestate had, in the presence of several witnesses, taken the aforesaid Marion Major-Pratt onto the property during his lifetime and had placed her in possession of the same by informing the custodians placed upon the property by him of the fact that he had bargained and sold the said property to appellee Pratt. In addition to the above, the certificate also stated that the decedent had delivered to Major-Pratt prior to his demise his evidence of title in the form of the deed. This being the case, the judge held that this was a sufficient part performance on the part of Mrs. Pratt to warrant the ordering of an administrator's deed in her favor for the subject property. To this ruling of the judge and

the final judgment, exceptions were taken and an appeal announced to this Court for a review of that judgment. Predicated upon the above-recited facts, we are required as a matter of law to review the aforesaid judgment for a determination of whether or not the same conforms to the statutes and laws of this Republic. In effect, there is but one issue to be determined by us at this time, and the same has to do with whether or not a party may, by placing an individual in possession of property and, furthermore, receiving money as the purchase price for the same, be made to specifically perform the contract obligations, and be ordered to deliver the deed to the grantee. In respect to part performance, the following is found in 49 AM. JUR., Statute of Frauds, § 419 : "Subject to a rule to the contrary followed in a few jurisdictions, it is the accepted view that part performance of a parol contract for the sale of real estate has the effect, subject to certain conditions concerning the nature and extent of the acts constituting performance and the right to equitable relief generally, of taking such contract from the operation of the statute of frauds, so that chancery may decree its specific performance or grant other equitable relief." Continuing, at Section 421: "The true basis of the doctrine of part performance, according to the overwhelming weight of authority, is that it would be a fraud upon the plaintiff if the defendant were permitted to escape performance of his part of the oral agreement after he has permitted the plaintiff to perform in reliance upon the agreement. The oral contract is enforced in harmony with the principle that courts of equity will not allow the statute to be used as an instrument of fraud. In other words, the doctrine of part performance was established for the same purpose for which the statute of frauds itself was enacted, namely, for the prevention

of fraud, and arose from the necessity of preventing the statute from becoming an agent of fraud, for it could not have been the intention of the statute to enable any party to commit a fraud with impunity. As often stated, where one party to an oral contract for the sale of land has, in reliance on the contract, so far performed his part thereof that it would be a fraud upon him to allow the other party to repudiate the contract by invoking the statute of frauds, equity will regard the case as removed from the operation of the statute. It is not merely to remedy a possible loss to the plaintiff, or to prevent an unjust retention of benefit by the defendant who sets up the statute of frauds as a defense to an action on the contract after he has refused to perform it, that equity may intervene to decree specific performance in the case of land a contract which, although not in writing as required by the statute of frauds, has been partially performed by the plaintiff. Equity acts to decree specific performance because, by reason of the part performance, the relation of the parties has been changed and a restoration to their former condition would be impracticable, so that to refuse to execute the contract would amount to a fraud upon plaintiff. One who has permitted another to perform acts or expend large amounts of money on the faith of a parol agreement, or who accepts the benefit of the other's part performance, for which the party performing cannot be adequately compensated in damages, is not permitted to assert the statute of frauds to invalidate the agreement. Similar facts may also be sufficient to support the right to equitable relief in reforming a contract to include lands omitted therefrom by mistake and the specific performance of the contract as reformed." From the above-quoted provisions of law, it can readily be seen that there has been such performance by the ap-

pellee, Marion Pratt, to remove this case from the operation of statute of frauds and to compel the specific performance of the parol contract by ordering the administratrix's deed to be issued. In the circumstances, the judgment of the court below is hereby affirmed, with costs against appellant. And it is hereby so ordered.
Affirmed.

Rauls v Manning et al [1949] LRSC 23; 10 LLR 229 (1949) (16 December 1949)

ELIZABETH RAULS, Appellant, v. JAMES A. MANNING and MARIE V. RAILEY, Executors of the Property of the Late LIZZIE MARIE LOMAX, Appellees.
OBJECTIONS TO THE PROBATE OF A WILL.

Argued October 19, 1949. Decided December 16, 1949. 1. One complaining of fraud must apply for relief at the earliest convenient moment after knowledge of fraud or the Court will not grant relief. 2. Under the Statute of Frauds an oral promise to the tenant to execute a deed is unenforceable and the tenant is a tenant at will. 3. Neither a testamentary gift nor generally the capacity of a beneficiary to take property is adjudicated by probate. 4. A judgment probating a will determines that the instrument is the last will of the testator without reference to the right of the testator to dispose of the property which he undertakes to bequeath. 5. On appeal from judgment admitting will to probate over objections of appellant, judgment affirmed.

MR. JUSTICE BARCLAY

delivered the opinion of the

Court. "To Mrs. Sarian Clarke, I Will and Bequeath one lot over the brook, the identical spot on which Mrs. Elizabeth Rauls built a small house. I desire my Executors and Executrix to refund to Mrs. Elizabeth Rauls the amount of ten dollars ($ro.00) which she gave me as an advance intending thereby to buy said premises, that over ten years she made no effort on making further payments notwithstanding she has been enjoying said premises unmolested, yet I desire my Executor and Executrix to relieve her from any liabilities and the aforesaid amount be refunded, because I sympathize with her condition, to Mrs. Sarian Clarke her use and behoof forever. The above paragraph in the will of Mrs. Lizzie Marie Lomax has given birth to this case.

The salient and outstanding objection made by objector, now appellant, to the probate of the last will and testament of Lizzie Lomax is that testatrix was guilty of fraud in that testatrix some years ago entered into a verbal contract with objector, now appellant, in which testatrix promised to convey by deed to appellant a certain piece of land in the city of Greenville, Sinoe County, in consideration of which appellant was to do her laundry. It appears from the evidence adduced that objector performed the laundry work from 1934 to 1939, that at that time she requested testatrix to execute the deed transferring said land, and that up until 1940 when objector was leaving Sinoe for Monrovia objector had not been given the deed. From the evidence it also appears that although Reverend Greene was requested to write the deed, yet there was no agreed purchase price for the land, and last but of importance is the fact that the will was signed by testatrix in the presence of witnesses and that testatrix at the time was of sound mind and disposing memory and was of legal age for the execution of a last will and testament. Objector having lost the case in the court below has appealed here upon a bill of exceptions containing four counts succinctly stated as follows: 1. Because in overruling objector's objections to Counsellor Crayton appearing in the case representing Respondents referred to him in the words

: "his acts therefore rather show to the Court that he was shown himself to be an unreliable friend rather than they are, against professional ethics." 2. Because T. E. Cess Pelham one of the attesting witnesses to the purported Will should not have deposed as a witness, because he was the writer and custodian thereof and it was he who requested one of the attesting witnesses to sign although in the presence of testatrix.

LIBERIAN LAW REPORTS

231

3. Because although it was brought out in evidence that there did exist a verbal contract between testatrix and objector as above stated, yet testatrix devised said land to one Sarian Clarke, which act on the part of testatrix implies fraud, nevertheless the judge's charge to the jury ignored those pertinent points and stated inter alia that to vitiate a will on the ground of fraud the contract relied on must be in writing and that said contract must be the deed for said parcel of land duly executed in keeping with the law. 4. Because the judge instructed the jury to bring in a verdict allowing probate of the will, predicated on issues of law and precluding such evidence to which its attention should have been called. Appellant in her brief stressed only the question of fraud, contending that because of the verbal contract testator had no legal right to devise the said lot to Sarian Clarke, and that having done so shows the said will to be a work of fraudulent contrivances and makes the whole will a nullity. The questions presented are : (I) Whether objections to a valid will on the ground that testator fraudulently had reneged on a promise to sell a lot to objector, although receiving some money, but without fixing the price, would be sustained and prevent probate. (2) Whether objections to the probate of an otherwise valid will, on the ground that testator had included in his will and devised lands not his, would be sustained and thereby vitiate the will. First we must consider the nature of the fraud. "Fraud in its ordinary application to cases of contract includes any trick or artifice employed by one person to induce another to fall into or detain him in an error, so that he may make an agreement contrary to his interest; and it may consist in misrepresenting

232

LIBERIAN LAW REPORTS

or concealing material facts, and may be effected by words or by actions. Where a party intentionally or by design misrepresents a material fact or produces a false impression, in order to mislead another or to obtain an undue advantage of him, there is a positive fraud in the fullest sense of the term." Murdock v. The United States Trading Co., [1932] LRSC 4; 3 L.L.R. 288, 295 (1932). In the case Page v. Jackson, 2 L.L.R. 77 (1912) it was held that a party complaining of fraud must apply for relief at the earliest convenient moment after knowledge of fraud or the court will,refuse to grant relief. In Pyne v. Bardu, [1933] LRSC 1; 3 L.L.R. 371 (1933) is a case in point. Plaintiff-in-error was the agent for

the owner of a tract of land in Monrovia. The owner permitted defendant-in-error
to occupy it and erect a but thereon. After defendant-in-error had occupied
it for several years a demand was made upon him to surrender
possession of the property. Defendant-in-error refused to comply, contending
that he had paid the owner five pounds for a life estate
in the land by oral agreement. On a writ of error the Court held that in
view of the requirements of the statute of frauds, an estate
of life tenancy of real estate cannot be proved by parol ; and that defendant
was a tenant at. will and therefore subject to be dispossessed
at any time. In this case the evidence adduced at the trial having
conclusively shown that objector actually did laundry work from
1934 to 1939 and that testatrix lived until 1947, we are of the opinion that
objector had sufficient time in which to enter an action
of specific performance to compel the execution of the deed, if she
considered the purported deed consumated on her part. Not having
done so, she is guilty of laches and cannot successfully prevent the probate
of an otherwise valid will based on her objections.
Validity of a particular testamentary gift contained in

a will is not a subject for determination in
the Probate Court, for "the judgment of probate is not conclusive on such
issue, nor, as a general rule, is the capacity of a beneficiary
to take property adjudicated by probate." 57 Am. Jur. Wills § 947 (1948) .
The question of ownership by the testator of property
claimed to belong to his estate is neither involved in nor determined by the
probate of his will. A judgment probating a will determines
that the instrument is the last will of the testator without reference to the
right of the latter to dispose of the property which
he undertakes to bequeath. Id. § 948. Consequently, we must affirm the
judgment of the lower court with costs against objector. And
it is hereby so ordered. dffirmed.

Anderson et al v Anderson [1951] LRSC 1; 10 LLR 384 (1951) (2 February 1951)

B. J. K. ANDERSON, III, Executor of the Estate of the Late B. J. K. ANDERSON,
Petitioner, v. ALFRED B. ANDERSON, a Legatee of the
Late B. J. K. ANDERSON, II, His Honor J. AUZZELL GITTENS, Commissioner of
Probate, Montserrado County, and L. R. GITTENS, Deputy
Sheriff, Montserrado County, Respondents.
CERTIORARI TO THE MONTHLY AND PROBATE COURT OF MONTSERRADO COUNTY.

Argued November 9,
15, 1950. Decided February 2, 1951. Where a legacy in real estate cannot be
given because it was sold by the executor to sundry persons

years before, the court in order to avoid a disruption of the existing property rights acquired by innocent persons will permit a substitution of other property in lieu thereof with the consent of the legatee or, upon his failure to consent, the payment of its value in cash.

Alfred B. Anderson, respondent herein, successfully petitioned the Probate Court to recover a legacy. On appeal by B. J. K. Anderson, III, executor, this Court granted the motion to dismiss the appeal on the ground that there was no approved appeal bond and ordered the Probate Court to enforce its judgment. Anderson v. Anderson, 1 0 L.L.R. Io8 (1949) . On enforcement in the Probate Court, B. J. K. Anderson, III, petitioner herein, petitioned the court to permit a substitution of property for the legacy. This was denied by the Probate Court which also fined petitioner for contempt. On petition for writ of certiorari, writ of certiorari granted and judgment reversed. B. J. K. Anderson for himself. Carney Johnson for

respondents. MR. Court.
JUSTICE SHANNON

delivered
the opinion of the

This is a certiorari proceeding instituted by Benjamin J. K. Anderson, III, petitioner, against the probate judge and Alfred B. Anderson. The following are the facts leading up to its institution : Benjamin J. K. Anderson, II, during his lifetime executed his last will and testament which was after his death admitted to proof and probate. His wife, Adeline Anderson, and his son, Benjamin J. K. Anderson, III, were nominated executrix and executor respectively. In this will Alfred B. Anderson, a foster son of the said Benjamin J. K. Anderson, was bequeathed four acres of land near the vicinity of the Baptist Hospital of Monrovia, but this legacy was never given him either by the executrix, who functioned independently when the executor was at the time of his father's death in America and had not yet returned, or by the said executor after his return to Liberia either jointly with his mother or independently after his said mother's death. Because of the delay in handing over his legacy and the apparent determination not to do so, Alfred B. Anderson, one of the respondents, instituted proceedings "to recover legacy" which terminated in his favor. On appeal to this Court a motion to dismiss on the ground that there was no approved appeal bond was sustained with a mandate to the Probate Court to resume jurisdiction and enforce its judgment. Anderson v. Anderson, 10 L.L.R. 1o8 (1949) · As a result of the effort of the judge of the Probate Court to enforce said judgment, petitioner filed a petition requesting leave of the Probate Court to substitute other property for the legacy since the property so bequeathed to respondent Alfred B. Anderson no longer existed, having been sold in sundry parts and to sundry persons. The probate judge took the position that it was contemptuous

on the part of the petitioner to make such a submission before him, and to have yielded to it and granted the substitution would be against the judgment
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386

LIBERIAN LAW REPORTS

and decree of this Court sent down for enforcement. The petition embodied in the submission was denied with an order for the enforcement of this Court's judgment. In addition, the petitioner was fined the sum of twentyfive dollars for contempt of court. To this the petitioner excepted and has brought the matter up again for review by this Court. In the bill of exceptions and brief of petitioner before us, it is not clear which phase of the probate judge's ruling he is asking us to review, the one denying the petition to "substitute legacy," or the one fining him twenty-five dollars, or both. However, since the former seems to be the one primarily stressed, we propose to dispose of it, and under our right in certiorari proceedings to open up and review the entire record certified to us, we will say later whether or not we uphold the fine then imposed.
According to clause 8 of the said last will and testament of Benjamin J. K. Anderson, II, Alfred Anderson, respondent, was bequeathed four acres of land. It has been submitted by petitioner and has not been contested by respondent Anderson that during the life of the testator, but subsequent to the execution of said will, the said testator had disposed of one acre of said four acres, and because of this respondent indicated his willingness to waive demanding it and only stressed the recovery of the remaining three acres. The petitioner countered that respondent had waived or quitclaimed his right to the said legacy because he had bargained with the widow, Adeline Anderson, during her lifetime for an exchange wherein respondent accepted other land in lieu thereof. As proof of this, profert was made of a deed from the said Adeline Anderson personally, not as executrix, to Alfred Anderson. Alfred Anderson claimed that this was a separate and distinct deal, independent of, and unrelated to, his legacy; this contention seems to be supported by the same deed which carries a purchase price as consideration and is signed by the said Adeline Ander-

LIBERIAN LAW REPORTS

387

son
as an individual. Furthermore, there is no written document executed by the respondent to support this. To say the least, the entire matter, with its surrounding facts and circumstances, simply depicts a concerted determination by selfishly bent minds to deprive a legatee of his just legacy for reasons which are apparent and which can never be legally justified. We would be left with no alternative but to insist on the enforcement of our former decree for the "recovery of the legacy," except that it has been clearly shown that the entire residue of the four acres of land has been disposed of to sundry persons. Therefore to order said enforcement would be

like Shylock's demand of a pound of flesh and would also create a disruption of sundry existing conditions in property rights previously acquired. Words are insufficient to condemn this undue advantage that has been taken of respondent Anderson by the executor and executrix of the will under which the respondent claims. Under the circumstances and in fairness to other interested but innocent parties, we are decreeing that the petition for substitution of legacy be granted and the petitioner be permitted to substitute other propery in lieu of the legacy; but this must be done with the express consent and acceptance of the respondent. In the event of failure in this respect, it is also decreed that petitioner will pay unto respondent the sum of two thousand two hundred dollars for the remainder of the land unduly withheld from the said respondent. Because of this conclusion we have refrained from passing upon the intervener filed by Mr. Justice Barclay in his individual capacity. Mr. Justice Barclay filed this intervener with respect to one town lot, a portion of the legacy to Alfred Anderson involving the land now in litigation, which was sold to Mr. Justice Barclay by the executor and executrix by order of the Probate Court. The facts in this connection were conceded by the said Alfred Anderson, respondent-in-

certiorari, and hence this parcel of land sold to Mr. Justice Barclay is considered not to be involved in these proceedings and is not covered by this opinion and judgment thereon. We have unanimously decided to rescind the fine of twenty-five dollars imposed upon petitioner by the lower court. The property right of respondent Anderson in and to the said remainder of the four acres of land given him under the will of Benjamin J. K. Anderson, II, will not be prejudiced or precluded until this decree is satisfied. The entire costs of the certiorari proceedings are ruled against the petitioner. And it is hereby so ordered. Reversed.

King et al v Jarnveneh et al [2005] LRSC 2; 42 LLR 372 (2005) (28 February 2005)

NAPOLEON T. KING, JOHN ZOEDOE, and **F. TOGBA BLAMO**, Administrators of the Intestate Estate of the Late KING PETERS, Informants, *v.* **MOSES JARNVENEH.**, **ROBERTSON FALLAH**, **FAYAH SACKOR BROWN**, **BEN NAGBE et al.**, Respondents.

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

Heard: December 13, 2004. Decided: February 28, 2005

1. The Full Bench of the Supreme Court cannot pass on a matter pending before the Chambers Justice.
2. Where the Justice in Chambers before whom a petition for a writ of prohibition and returns thereto are filed has not rendered a ruling on the issues raised therein, the Supreme Court cannot determine the prohibition as it is not before the full bench.
3. According to the Liberian Constitution, the Supreme Court sits in appellate jurisdiction and does not take cognizance of cases that are not of an appellate nature, except cases involving ambassadors, Ministers, or cases in which a county is a party.
4. The Supreme Court is the final arbiter of constitutional issues and exercises final appellate jurisdiction in all cases, whether emanating from courts of record, courts not of record, administrative agencies, autonomous agencies or any other authority, both as to law and fact, except cases involving ambassadors, ministers, or cases in which a county is a party. In all such cases, the Supreme Court exercises original jurisdiction.
5. If a party to a case before or decided by the Chambers Justice, and who does not appeal there from, feels aggrieved by the improper execution of the mandate of the Chambers Justice, or if a party is impeding or obstructing the enforcement of the mandate, a bill of information is the appropriate action to obtain relief.
6. Where a matter is pending before a Justice in Chambers, a bill of information growing out of such matter must be venue before the Justice in Chambers and not the Full Bench of the Supreme Court.

The appellants, administrators of the Intestate Estate of the late King Peters, alleging that the said Estate owned a certain parcel of **land**, instituted an action of summary proceedings to recover real property against certain of the respondents whom they accused of occupying a portion of the **land** owned by the estate. Judgment was entered by the lower court in favor of the informants. From this judgment the respondent appealed to the Supreme Court.

While the appeal was pending before the Supreme Court, the petitioners in prohibition, learning that the judge presiding in the lower court had ordered a writ of possession to be issued against them to evict them from the premises, filed a petition for a writ of prohibition before the Justice in Chambers of the Supreme Court to prohibit the lower court and the informants from evicting them. The petition in prohibition stated that petitioners were not named in the writ of summons issued by the lower court and were therefore not served with summons, and hence, had no opportunity to appear, answer and defend their rights to their various properties. The Justice in Chambers ordered the alternative writ issued and served on the informants.

While the prohibition remained pending and undetermined by the Justice in Chambers, the informants, plaintiffs in the lower court, filed a bill of information before the full bench of the Supreme Court alleging that notwithstanding the pendency of the appeal taken to the Supreme Court by the respondents in information, the latter were continuing to operate businesses and dwelling houses on the disputed property without paying rents there for to the informants. The informants therefore prayed the Supreme Court to have the Marshall collect the rents from the property that was in possession of the respondents in information and to have the same placed in

escrow. Based on the said allegations, the alternative writ of information was ordered issued. On the agreement of the parties, the appeal, prohibition and information were consolidated.
The Supreme Court dismissed the information, holding that it was filed before the wrong forum. The Court observed that the information grew out of the prohibition filed before the Justice in Chambers and that the prohibition had not been determined by the Justice or any ruling made thereon by him. It said that under the circumstances, if there were contentions regarding the case while the prohibition was pending before the Justice, the information should have been filed before the Justice and not the full bench.
Speaking directly on the prohibition, which was consolidated with the appeal and the information, the Court held that the Constitution of Liberia gives to it only appellate jurisdiction except in certain matters. Accordingly, it said, it does not take cognizance of cases that are not of an appellate nature. The Court therefore concluded that as the Justice in Chambers had not rendered a decision on the prohibition and the matter was still pending before the Justice, it could not assume original jurisdiction over the prohibition.
On the question of the appeal taken from the final judgment of the lower court, the Supreme Court held that the appeal be set aside pending the outcome of the prohibition proceedings which remained undetermined before the Justice in Chambers, noting that it would not dealt with cases in piece meal.

Joseph H. Constance and *Manston Manley* of Greene and Associates, Inc. appeared for the informants. *Joseph N. Blidi* of the Joseph N. Blidi Legal Consultancy appeared for the respondent.

MR. JUSTICE CAMPBELL delivered the opinion of the Court.

The records in this case reveal that the Intestate Estate of the Late King Peters, by and thru its administrators, hereinafter called informants, instituted an action of summary proceedings to recover possession of real property against Sackor Brown, Fayiah, et al., hereinafter referred to as the respondents, in the Sixth Judicial Circuit, Civil Law Court, Montserrado County, praying the court to evict the respondents who were said to be illegally occupying six hundred (600) acres of **land** belonging to the estate.
The respondents filed their answer together with a motion to dismiss the informants' complaint. In both the answer and motion to dismiss, the respondents contended, among other things: That the action was statute barred in that the respondents had lived on the premises for more than 35 years without any one questioning them, and that therefore they owned the property under the principle of adverse possession. The respondents therefore prayed the lower court to dismiss the action of summary proceedings to recover possession of real property instituted against them.
The motion to dismiss was heard and denied, and the case was ruled to trial. After the production of evidence on both sides and arguments *pro et con*, the lower court entered final judgment holding respondents liable to the informants. It therefore ordered them evicted from the property.

To this ruling the respondents excepted and announced an appeal to the Honorable Supreme Court. The appeal was granted as a matter of law. Thereafter, the co-respondents filed their bill of exceptions, an approved appeal bond, and a notice of completion of appeal.

While the appeal was pending before the Supreme Court and upon hearing that a writ of possession was ordered by the presiding judge below to evict them from their premises, co-respondents John Saah, William Tamba, Taylor Pokpeh, Joseph Washington, Frances James Decker, Beatrice M. Doe-Blidi, Sunday Doe, and Morley Saror fled to the Chambers Justice and filed a petition for a writ of prohibition against the informants and His Honor Sebron J. Hall, Assigned Circuit Judge, Sixth Judicial Circuit, Montserrado County.

The prohibition filed with the Chambers Justice alleged, among other things: That they were not named in the writ of summons as party-defendants and that therefore said writ of summons, together with the complaint in the action of summary proceedings to recover possession of real property filed by the informants, the administrators of King Peters' Estate, was never served on them. Hence, they had no opportunity to appear, answer and defend their rights to their various properties. They alleged also that at no time were they approached by the informants, the administrators of the Late King Peters' Intestate Estate, as individuals also occupying the six hundred acres (600) of **land**, the subject of said action. Thus, they said, they were not bound by the judgment. The Justice in Chambers ordered the alternative writ issued, which ordered the informants to file their returns within ten days.

The informants filed a 12-count returns which alleged, among other things: That the co-respondents were summoned and brought under the jurisdiction of the court; that they appeared in court on several occasions; that because they are many, they appointed one Sackor Brown to testify on their behalf after their legal counsel requested the court to consolidate the action; that respondents had their day in court; and that therefore the judgment "is binding on them."

Although the petition for a writ of prohibition is still pending before the Chambers Justice undetermined, the informants filed a four-count bill of information before the Full Bench against Moses Jaryeneh, Robertson Fallah, Fayiah, Sackor Brown, Ben Nagbe et al, as co-respondents.

The four-count bill of information filed with the Supreme Court alleged, among other things: That the informants had won the case of summary proceedings to recover possession of real property in the lower court, which case is pending before the Supreme Court on appeal; that the petition for a writ of prohibition which grew out of the summary proceedings to recover possession of real property is also pending before the Chambers Justice of the Supreme Court; and that despite the pendency of the appeal and prohibition, the respondents have continued to operate several businesses and dwelling houses on the subject property without paying rents to informants. They therefore prayed the Supreme Court to mandate the Marshal of the said Court to collect all rents from the businesses and dwelling houses that are located on the six hundred (600) acres of **land** and that such rents be assessed by the Marshal of the Supreme Court in keeping with informants' copy of the deed attached to the bill of information, with the exception of those to whom the informants had conveyed properties.

The alternative writ of information was ordered issued and the respondents were ordered to file their returns and to stay all further proceedings until otherwise ordered.

Upon receipt of the writ and the bill of information, the respondents filed a seven-count return. For the benefit of this opinion we deem it necessary to quote Counts 3, 4 and 5 of the returns, which read thus:

"3. That as to count four (4) of informants' information, respondents aver that they did file a petition for a writ of prohibition against the informants herein before the then Chambers Justice, His Honor Fulton Yancy, who issued the alternative writ of prohibition ordering the co-respondent judge Sebron Hall, and the informants herein in paragraph three (3) thereof, to stay all further proceedings until otherwise ordered and to file their returns in the office of the Clerk of this Honorable Court on or before the 2nd of January, A. D. 1997, which they have failed and neglected to do up to and including the time of filing their bill of information and the filing of these returns. Copy of the alternative writ of prohibition is marked as exhibit "D" and attached hereto to form an integral part of these returns;

"4. That further as to count four (4) of informants' information, respondents contend that since a stay order was placed on the proceedings, the appeal by respondents and the petition for writ of prohibition have not been heard and determined against the respondents. Respondents are not required and cannot, under the circumstances, pay rent to the informants for the property in dispute; therefore, informants' information should be dismissed;

"5. Respondents further say that another major reason why the appeal by the respondents/appellants has not been heard and determined by the Full Bench of this Honorable Court is that one copy of the two **land** deeds upon which the informants/appellees relied to institute the action of summary proceedings to recover possession of real property in the Civil Law Court was not clear and could not be read by the then Justices of this Honorable Court prior to and during the perfection of the said appeal and up to the present. The Court has a policy whereby if an important exhibit such as the said deed is not clear and readable; the case would not be heard until the party in whose favor it was presented produces a clear and readable copy. Hence, His Honor, then Chief Justice James Bull, insisted that the case could not be heard on appeal by this Honorable Court until this defect was corrected by the informants/appellees. Up to and including the date of filing these returns, this defect has not been cured by the informants/appellees. The Clerk of this Honorable Court is a living witness to this fact and respondents hereby give notice to this Honorable Court that they will produce evidence to prove this fact during the hearing into this cause of action. Respondents therefore pray this Honorable Court to dismiss the informants' entire bill of information."

From the facts and circumstances in this case, the issue for our determination is whether or not this Court can pass upon the appeal, the petition for prohibition and bill of information in the absence of the determination of the prohibition proceedings involving the same parties and growing out of the summary proceedings to recover possession of real property which is still pending before the Chambers Justice? In other words, can we entertain these proceedings in a consolidated form while the petition for prohibition is still pending, undetermined before the Chambers Justice?

In deciding the issue mentioned above, there is a need to revert to the records in this case. The case records reveal that the action of summary proceedings to recover possession of real property was disposed of by the lower court in favor of the informants and the court ordered the respondents evicted from the premises. To the trial court's final judgment, respondents excepted and announced an appeal to the Honourable Supreme Court and thereafter perfected their appeal in keeping with law.

While this appeal was pending before the Honourable Supreme Court, the co-respondents filed a petition for a writ of prohibition before the Chambers Justice and contended therein, among other

things: That they were not party to the action of summary proceedings to recover possession of real property instituted by the informants, and that although they were never served a writ of summons as party-defendants, yet the lower court decided to evict them from their premises, contrary to law. The alternative writ of prohibition was issued and the co-respondent judge and the informants were ordered to stay all further proceedings in the case. They were further ordered to file their returns to the prohibition. In obedience to said order, the informants filed their returns.

The records show that the petition for the writ of prohibition has not been determined by the Chambers Justice; that is to say, the petition is still pending before the Chambers Justice. And while the prohibition proceedings which grew out of the summary proceedings to recover possession of real property is pending in Chambers, the informants filed this bill of information with the Full Bench, informing this Honourable Court that the respondents are doing business on the premises of the informants and collecting rents to the detriment of the informants. They therefore prayed this Court to order the Marshal to collect all rents and have same placed in an escrow account with the exception of those individuals that the estate had sold **land** to.

The records further show that the appeal from the main suit of summary proceedings to recover possession of real property, the prohibition, and the bill of information were ordered consolidated by the previous Bench. This Bench, as a matter of law, has to hear these consolidated proceedings and that is what was done during this October Term of this Court.

The parties are aware of the pendency of the prohibition proceedings, and, even in their briefs filed with the Clerk of this Court and their arguments before the Full Bench, they agreed that the prohibition is still pending undetermined. Yet, the informants filed this information and both parties' counsels agreed for this Court to consolidate the appeal, prohibition and the bill of information. By coming to us while the prohibition proceedings are still pending before the Chambers Justice, we hold that the parties are seeking a short-cut to the disposition of this matter, which is contrary to law.

Since the Chambers Justice has not rendered any ruling on the issues raised in the prohibition and its returns which grew out of the main suit of summary proceedings to recover possession of real property, this Court cannot proceed to determine the prohibition which is not before the Full Bench.

According to our Constitution, the Supreme Court sits in appellate jurisdiction and does not take cognizance of cases that are not of an appellate nature, except cases involving ambassadors, Ministers, or cases in which a county is a party. Therefore, the Supreme Court cannot pass on the prohibition proceedings and decide the issues raised in the petition for prohibition and its returns thereto. Under our Constitution, the original jurisdiction of the Supreme Court is very narrow and restricted. Our Constitution 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 record, courts not of record, administrative agencies, autonomous agencies or any other authority, both as to law and fact, except cases involving ambassadors, ministers, or cases in which a county is a party. In all such cases, the Supreme Court shall exercise original jurisdiction. The Legislature shall make no law nor create any exceptions as would deprive the Supreme Court of any of the powers granted herein...." LIB. CONST., Art. 66, eff. 1986.

It is therefore our holding that since the prohibition grew out of the summary proceedings to recover possession of real property which has not been determined by the Chambers Justice, it

would be contrary to law for this Bench to pass upon said prohibition.
The most that could be done by this Bench is to order the parties to proceed to the Chambers Justice for the determination of the prohibition proceedings. Anything to the contrary is tantamount to the Supreme Court assuming original jurisdiction in prohibition proceedings.
We further hold that the bill of information should have been directed to the Chambers Justice and not to the Full Bench since said bill of information grew out of the prohibition. The alternative writ of prohibition having been ordered issued by the Chambers Justice with a stay order, if there is a contention by any of the parties regarding the case while the prohibition is pending, it is the Chambers Justice who should have been informed.

"If a party to a case before or decided by the Chambers Justice, and who does not appeal therefrom feels aggrieved by the improper execution of the mandate of the Chambers Justice, or if a party is impeding or obstructing the enforcement of the mandate, a bill of information is the appropriate action to obtain relief, but the bill of information must be venued before the Chambers Justice, not the Full Bench of the Supreme Court." See the case *Majority Membership of the United Church of the Lord, Inc. v. Minority Membership of the United Church of the Lord, Inc. et al.[1999] LRSC 36*; , 39 LLR 692 (1999).
Even though there is an appeal before this Honourable Court from the trial court's final judgment in the action of summary proceedings to recover possession of real property which this Court has the constitutional mandate to review, this Court has held in several cases that it will not decide cases by piece meal. Thus, since the prohibition is pending undetermined, it is only proper and legal that the appeal be set aside until the outcome of the prohibition proceedings.
Wherefore and in view of the facts, circumstances and the law citations recited hereinabove, it is our holding that the bill of information is hereby dismissed for being venued before the wrong forum; the appeal growing out of the final judgment is set aside pending the outcome of the prohibition proceedings. The Clerk of this Court is hereby ordered to inform the parties to proceed to the Chambers Justice for the disposition of the prohibition. Costs disallowed pending final determination**.** And it is hereby so ordered.

Information dismissed.

Nornneh v Naklen et al [2004] LRSC 11; 42 LLR 129 (2004) (16 August 2004)

ELIZABETH T. NORNNEH, Appellant, *v.* **JOHN NAKLEN, FRANCES NAKLEN, ELLEN NAKLEN and VICTOR NAKLEN,** Appellees.

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE GRANTING OF THE PETITION FOR A WRIT OF PROHIBITION.

Heard: March 29, 2004. Decided: August 16, 2004.

1. The possessory right or title of a lessee to leased property terminates upon the expiration of the terms and conditions of the lease.
2. Upon the expiration of a lease, the lessor has the right to institute an action of summary proceedings to recover possession of real property against the lessee occupying the premises beyond the lease period.
3. The failure of the lessee to vacate the leased premises after the expiration of the terms and conditions of the lease is tantamount to wrongful and unlawful withholding of the subject property.
4. The judgment of a trial court putting lessee into possession of leased premises in an action commenced by the lessors to have the lessee vacate the premises prior to the expiration of the lease does not bar the lessor from asserting his or her right under the lease agreement after the expiration of the lease and by virtue of their title deeds.
5. Prohibition will lie where a trial judge unwarrantedly assumes jurisdiction over a **land** not constituting part of the matter in dispute and proceed by wrong rule.

Appellant, who had been leased a parcel of **land** by the Kru Governor Naklen, Sr., his wife and their son, for a period of fifteen years with the proviso that she construct a three-room house thereon, one of which rooms would be given the Governor for his use, sued out an action in summary proceedings to recover possession of real property in the magisterial court against John Naklen, son of the Governor who had occupied the room following the death of the Governor. A motion filed by the defendant for the dismissal of the case on the ground that title was at issue having been denied, the magistrate entered a judgment in favor of the plaintiff, holding that the defendant, who was not a party to the lease agreement concluded between the Naklens and the plaintiff, had failed to show that he held letters of administration to the property of his late father. An appeal from the magisterial court's judgment also having been dismissed by the circuit court, a writ of possession was ordered issued placing the plaintiff in possession of the property. Subsequently, prior to the expiration of the lease agreement under which the appellant held the property, a writ of arrest was issued by a justice of the peace against the plaintiff in the summary proceedings case, Elizabeth T. Nornneh, appellant herein, for criminal mischief, based on the allegations of the co-appellees that the appellant had damaged their property. On summary proceedings to the Circuit Court, the Court ruled dismissing the criminal charges on the ground that the appellant was lawfully in possession of the property based on the lease agreement. Thereafter, shortly after the expiration of the lease agreement, the appellees instituted an action of summary proceedings against the appellant to recover possession of real property. Although there were to records to show that this action was not heard or that the appellant was ejected or ousted from the property, the Circuit Court judge proceeded to order the deputy sheriff to evict from the property all tenants who he said had been illegally placed on the property by the justice of the peace growing out of the summary proceedings to recover real property. Based on the said

orders, the deputy sheriff proceed to evict other tenants of the Estate of the late Governor from property not covered by the lease agreement concluded with the appellant.
The appellees then filed before the Justice in Chambers a petition for issuance of a writ of prohibition. The petition was granted on the ground that the trial judge had assumed jurisdiction over the matter before the justice of the peace when no complaint had been filed before the circuit court, and also that the circuit court judge had proceeded by wrong rule.
On appeal to the Full Bench the ruling of the Chambers Justice was upheld and the petition granted. The Supreme Court held that prohibition would lie to prevent the enforcement of a judgment growing out of a trial that had proceeded by wrong rules and to undo acts that were unlawfully done. The Court opined that the trial judge had assumed jurisdiction wrongfully since there was no complaint before him growing out of the summary proceedings before the justice of the peace court. Summary proceedings, the Court noted, had only been issued against the justice of the peace in the malicious mischief case. The summary proceedings to recover possession of real property, the Court observed, was still pending before the justice of the peace when the circuit court judge issued the eviction order against the tenants. In so acting, the Supreme Court held that the appellees had been denied their day in court
The Court also opined that while the appellant had the right to the premises during the period of the lease, that right was lost by the expiration of the lease, and thereby the failure of the appellant to vacate the premises upon notice was tantamount to wrongful and unlawful withholding. In such circumstance, the Court said, the appellees, upon the expiration of the lease held by the appellant, had the right to institute summary proceedings to recover real property against the appellant and to have her evicted and ousted from the property. Hence, based on the foregoing, the Court affirmed the ruling of the Chambers Justice.

James W. Zotaa, Jr. of Liberty Law Firm appeared for the appellant. *Joseph H. Constance* of Green and Associates Inc. appeared for the appellees.

MR. JUSTICE CAMPBELL delivered the opinion of the Court.

This case is before us on an appeal from the ruling of Mr. Justice Jangaba, Chambers Justice, during the March Term, A. D 1999, granting the petitioners/appellees' petition for a writ of prohibition.
According to the records, the Late Kru Governor, John Naklen, Sr., acquired a curator's deed as a result of an auction on the 2nd day of November, A. D. 1938, under the signature of Thomas C. Lomax, Curator of Montserrado County, for a parcel of **land** located and lying in Cooper Farm area, now on New Port Street, Monrovia. The said parcel of **land** had formed part of the Intestate Estate of the late Freeman Anthony. The deed was probated and registered according to law. The late Governor Naklen, Sr. deeded the subject property to Victor Nakien and Ellen Naklen on January 25, 1979. The second deed also was probated and registered.
The records also reveal that the Late Governor Naklen and his wife, Frances Naklen, and his son,

Edward Naklen, entered into and executed a lease agreement with Elizabeth Nornneh allegedly for the property on the 18th day of July, A. D. 1983, for a period of 15 years, commencing from July 18, 1983 up to and including the 18th day of July, A. D. 1998. The parties agreed that the lessee would construct on the property a three (3) room concrete building within a period of seven (7) years and that one (1) room therein shall be given to the Governor for his use. Accordingly, the three room concrete building was constructed, of which one room was used by the Governor. After the death of the Governor, his son, John Naklen occupied said room.

The records further show that co-respondent/appellant Nornneh instituted an action of summary proceedings to recover possession of real property on August 20, 1993, against the Governor's son, John Naklen, at the Monrovia City Court, before Associate Magistrate Joseph S. Fayiah. She instituted this suit basically alleging that John Naklen illegally withheld a room within her house. On the l3th day of October, A. D. 1993, counsel for John Naklen moved the magisterial court to dismiss the suit on ground that title was in issue due to the lease agreement entered into and executed by the Naklens and Elizabeth T. Nornneh. The motion was resisted by counsel for Elizabeth T. Nornneh, contending that the plaintiff had instituted the suit based upon the possessory right vested in her. On the 28th of October, A. D. 1993, Associate Magistrate Fayiah denied co-petitioner/co-appellee John Naklens' motion to dismiss the suit on grounds that he was not a party to the lease agreement entered into between the Naklens and co-respondent/appellant Nornneh and that Co-petitioner/co-appellee John Naklen did not show to the court that he was an administrator of the Intestate Estate of his deceased father. The City Court rendered final judgment against co-petitioner/co-appellee John Naklen. Co-petitioner/ co-appellee John Naklen excepted to the ruling and announced an appealed to the Sixth Judicial Circuit Court, which appeal was heard and dismissed by the circuit court. A writ of possession and a writ of execution were duly issued placing Co-respondent/appellant Elizabeth T. Nornneh in possession of the property.

On the 13th day of July, A. D. 1998, Justice of the Peace Solomon issued a writ of arrest for criminal mischief upon the oath and complaint of co-petitioners Victor Naklen and Ellen Naklen against co-respondent Elizabeth T. Nornneh for allegedly damaging their property. The Naklens, through their counsel, Counsellor Joseph H. Constance, also notified co-respondent Nornneh on July 17, 1998 to vacate the subject property at the expiration of the lease agreement on July 18, 1998, stating that they had no intention of renewing the said agreement.

On July 22, 1998, co-respondent/appellant's counsel filed summary proceedings against Justice of the Peace Solomon before Judge Timothy Z. Swope, presiding over Criminal Court "D", alleging that Justice of the Peace Solomon had refused to dismiss the case despite the said property being given to co-respondent/appellant Nornneh by the Sixth Judicial Circuit Court. The summary proceedings was resisted and granted on the 27th day of August, A. D. 1998 by Judge Swope on grounds that Justice of the Peace Solomon should not have issued a writ of arrest for criminal mischief against co-respondent/appellant Nornneh for allegedly damaging her own property or **land** given her by the Sixth Judicial Circuit Court. Judge Swope therefore ordered the criminal charge dismissed. No appeal was taken by the court appointed counsel, Counsellor Oct avious Obey.

The Naklens instituted an action of summary proceedings to recover possession of real property on July 24, 1998, against co-respondent/appellant Elizabeth T. Nornneh before Justice of the Peace Sam T. Solomon to recover possession of the lease property after the expiration of the lease. A writ of summons was duly issued, served and returned served. Several notices of assignments were issued, served and acknowledged by counsels for both parties. The last

assignment in the case was issued on September 3, 1998 for hearing on Saturday, September 5, 1998 at 9:00 a.m. The records are devoid of any evidence that the action of summary proceedings to recover possession of real property was ever heard and that co-respondent Nornneh was ever ejected or ousted from the property.

While this case was pending before Justice of the Peace Solomon undetermined, Judge Swope ordered the deputy sheriff for Criminal Court "D", Edward V. Ricks, to proceed on the alleged premises of co-respondent/appellant Elizabeth T. Nornneh to remove all illegal tenants allegedly placed therein by Justice of the Peace Sam T. Solomon, in the absence of a complaint before him growing out of the summary proceedings to recover possession of real property.

As a result of this order, the deputy sheriff proceeded to oust and evict other tenants of the Intestate Estate of the late Governor John Naklen, Sr., located on New Port Street, that were not covered by the lease agreement between the late Governor and co-respondent/appellant Nornneh.

The appellees applied to the Chambers Justice for a writ of prohibition. The writ was issued and the Chambers Justice heard the proceedings in prohibition and ruled granting the petitioners' petition on grounds that the co-respondent judge unwarrantedly assumed jurisdiction without a complaint being filed against Justice of the Peace Solomon in the action of summary proceedings to recover possession of real property. The Justice further held that the judge had proceeded by a wrong rule in evicting the Naklens and their tenants from the property of the Intestate Estate of the late John Naklen, Sr.

It is from this ruling that the case has come before the Court *en banc* for final determination.

After having heard arguments on both sides, the appellant, by and thru her counsels, conceded to the soundness of the Chambers Justice's ruling, as mentioned in the Brief filed with this Honourable Court that "prohibition would lie to prevent the enforcement of a judgment growing out of a trial which proceeded by wrong rules or to undo what was unlawfully done; that co-respondent/co-appellant Judge Timothy Z. Swope assumed jurisdiction wrongfully when there was no complaint growing out of the summary proceedings to recover possession of real property brought against co-respondent/co-appellant Elizabeth Nornneh; and that the eviction of tenants by the judge from the Intestate Estate of the late Governor Naklen, a property separate and distinct from the one in dispute between the Naklens and Elizabeth Nornneh, was an error for which prohibition would lie to prevent the illegal eviction or undo the illegal eviction of the Naklens and tenants from their late father's estate".

From the above circumstances and considering the ruling of the Chambers Justice to be in line with law, it is our considered opinion that the ruling of Mr. Justice Jangaba in this case should and same is hereby incorporated in this opinion.

The facts and circumstances in this case present the following issues for the determination of this case:

1. Whether the co-respondent judge legally obtained jurisdiction over the summary proceedings to recover possession of real property which was pending before Justice of the Peace Solomon for which he ordered the tenants of the Nakien Estate evicted.
2. Whether co-petitioners Victor Naklen and Ellen Naklen have the legal right, by virtue of their title deed for the leased premises, to institute summary proceedings to recover possession of real property against co-respondent Nornneh upon the expiration of the lease agreement?

We shall decide these issues in a reverse order. As to the issue relating to the legal right of Victor and Ellen Naklen, we observed from the records in this case that the Late Kru Governor, John Naklen, acquired these premises from a judicial sale in 1938 and subsequently deeded said property to his children, Victor and Ellen Naklen, on January 25, 1979. The Late Governor Nakien and his wife, Frances Naklen, as well as his son Edward Nakien, entered into a lease agreement with co-respondent/appellant Nornneh on July 18, 1983, leasing said property to her for the period of 15 years from July 18, 1983 up and including July 18, 1998. Thus, co-respondent/appellant Nornneh was legally placed in possession of the leased property in 1994 and 1995 by the trial court until the expiration of the lease agreement on July 18, 1998. The Naklens, upon the expiration of the lease agreement on July 18, 1998, had the legal right to institute the action of summary proceedings to recover possession of real property.

The possessory right or title of co-respondent/appellant Nornneh to the leased property terminated upon the expiration of the terms and conditions of said lease. Her failure and refusal to vacate the premises upon notice is tantamount to wrongful and unlawful withholding of the subject property. In this regard, the judgment of the Sixth Judicial Circuit Court does not bar the Naklens from asserting their right under the lease agreement and by virtue of their title deed.

With regard to the issue of whether co-respondent Judge Swope obtained jurisdiction over any summary proceedings against Justice of the Peace Solomon, growing out of the action of summary proceedings to recover possession of real property, this Court notes that a petition for summary proceedings was filed against Justice of the Peace Solomon on July 22, 1998, growing out of criminal mischief, which the said judge granted and ordered dismissed without an appeal being taken. This Court also observed from the records in the case that the action of summary proceedings to recover possession of real property was instituted by the Naklens against co-respondent/appellant Nornneh on July 24, 1998, two days after the filing of the petition for summary proceedings against Justice of the Peace Solomon by co-respondent/appellant Nornneh before Judge Swope in the criminal matter.

The records are devoid of any evidence showing that a petition for summary proceedings was ever filed against Justice of the Peace Solomon by co-respondent/appellant Nornneh before Judge Swope in a civil matter. This Court further observed from the records that the trial judge never summoned Justice of the Peace Solomon and co-appellees Victor Naklen and Ellen Naklen herein in any civil suit, wherein co-respondent/appellant Elizabeth Nornneh's right had been allegedly abridged by Justice of the Peace Solomon in contemplation of section 8.12 of the New Judiciary Law, Rev. Code 17, strongly relied on by Judge Swope.

This Court, moreover, observed from the records in this case that the action of summary proceedings to recover possession of real property was still pending when Judge Swope ordered his deputy sheriff to oust and evict all illegal tenants from the alleged premises of co-respondent/appellant Nornneh and place her in possession of the said property. Co-petitioners/co-appellees Frances Naklen and John Naklen, administratrix and administrator of the Intestate Estate of the Late John Naklen, Sr. contended in the petition that the deputy sheriff of Criminal Court "D", Edward V. Ricks, also ousted and evicted them and their tenants from the said Estate which is not covered by the leased property between the Naklens and co-respondent/appellant Nornneh, defendant in the action of summary proceedings to recover possession of real property instituted by Victor Naklen Ellen Naklen, co-petitioners/ appellees. Thus, this Court holds that the trial judge denied the petitioners/appellees their day in court, in that he never obtained jurisdiction over any complaint in the action of summary proceedings to recover possession of real property. He therefore acted without assuming jurisdiction over the

subject matter and the petitioners/appellees herein, when he ordered them and their family as well as their tenants ousted and evicted during the pendency of the civil matter before Justice of the Peace Solomon. There is no showing in the records before this Court of any arbitrary and illegal act or acts committed by Justice of the Peace Solomon upon which Judge Swope acted to have evicted petitioners/appellees.

The respondents' counsel strongly relied on the case *Carter v. Massaquoi*, [1976] LRSC 10; 24 LLR 511 (1976), Syl. 3, wherein this court held that "prohibition will not issue where there is no attempt to proceed by a wrong rule." In that case, a writ of replevin was issued to the sheriff to replevy chattels in possession of appellee Massaquoi. The bailiff served the writ and immediately placed appellant Carter in possession of the chattels. The sheriff demanded the return of the chattels from appellant Carter, plaintiff in the court below, on ground that he (sheriff) should have retained possession of said chattels until the statutory period of ten days before delivering same to plaintiff Carter upon orders of the trial judge. Carter applied for prohibition which was denied by the Chambers Justice and she appealed. This Court, on appeal, affirmed the ruling of the Chambers Justice on the ground that there was no attempt to proceed by a wrong rule.

In the instant case, the co-respondent judge unwarrantedly assumed jurisdiction without a complaint having been filed against Justice of the Peace Solomon in an action of summary proceedings to recover possession of real property, and also ordered the petitioners/appellees evicted from the leased property. Notwithstanding, co-respondent/appellant Nornneh was and is still in possession of the premises and in the face of the pendency of the civil suit.

Furthermore, co-petitioners/co-appellees Frances Naklen and John Naklen, their family and tenants were evicted from the Intestate Estate of the Late John Naklen, Sr. which was never part of the leased property in the civil matter pending before Justice of the Peace Solomon. Moreover, the case was never heard and therefore co-respondent/appellant Nornneh was never evicted from the leased property, when Judge Swope ordered the petitioners/appellees evicted, thereby dismissing the action of summary proceedings to recover possession of real property. This Court finds that the facts in the *Carter* case and the instant case are not analogous. Thus, the trial judge indeed unwarrantedly assumed jurisdiction and proceeded by wrong rule, for which prohibition will lie. *Dweh v. Findley*, [1964] LRSC 23; 15 LLR 638 (1964).

The eviction orders of the trial judge are hereby ordered vacated and co-petitioners/co-appellees Frances Nakien and John Naklen are ordered repossessed of the Intestate Estate of the late John Naklen, Sr. on New Port Street. The action of summary proceedings to recover possession of real property is re-instated, and the bonafide owners of the subject property by virtue of the title deed are entitled to oust, evict and eject Co-respondent/ appellant Nornneh from the leased property upon the expiration of the lease agreement. Co-petitioners/co-appellees Victor and Ellen Naklen are at liberty to recover possession of the leased property either at the Monrovia City Court or at the Civil Law Court, Sixth Judicial Circuit, Montserrado County, since Sam T. Solomon before whom the civil suit was filed is no longer functioning as justice of the peace.

WHEREFORE and in view of the forgoing, the petition for the writ of prohibition should be, and same is hereby granted and the peremptory writ ordered issued. 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 give effect to this ruling. Costs are ruled against respondents. And it is hereby so ordered."

Our review of the records in the case file show that the lease agreement entered into between John Naklen, Sr., his wife Frances Naklen and his son Edward Naklen, as lessors, and Elizabeth Nornneh, as lessee, for the property located on New Port Street, Monrovia, Liberia, has expired

and since title is not in issue, an action of summary proceedings to recover possession of real property is the proper action to be instituted by co-appellees Ellen Nakien and Victor Naklen, owners of said leased property against Elizabeth Nornneh, co-appellant.
In view of the circumstances and law citations contained in the ruling of Mr. Justice Jangaba being sound, we have no alternative, but to affirm the ruling of the Chambers Justice. The Clerk of this Court is hereby instructed to send a mandate to Criminal Court "D", commanding the judge presiding therein to resume jurisdiction over this matter and give effect to this opinion in conformity with the ruling of Mr. Justice Jangaba. Costs are ruled against co-respondent/co-appellant Elizabeth T. Nornneh. And it is hereby so ordered.

Petition granted.

John et al v Kaidii et al [2002] LRSC 30; 41 LLR 277 (2002) (13 December 2002)

THE INTESTATE ESTATE OF THE LATE CHIEF MURPHY-VEY JOHN, represented by J. D. LANSANA, JR. and JOHNNY KAIDII LARTEY, and CHICRI BROTHERS CORPORATION, represented by its Manager, Informants, *v.* **THE INTESTATE OF THE LATE BENDU KAIDII**, by and through its Administrator, FOLLY KAIDII, and HIS HONOUR JOHN L. GREAVES, Judge of the Monthly Probate Court for Montserrado County, Respondents.

MOTION TO DISMISS BILL OF INFORMATION FROM THE MONTHLY AND PROBATE COURT FOR MONTSERRADO COUNTY.

Heard: November 21, 2002. Decided: December 13, 2002.

1. The Supreme Court has jurisdiction over bills of information where its mandate is being executed in an improper manner or where there is a pendency of the case before the Supreme Court.
2. It is essential to the proper rendition of a judgment that the court has jurisdiction over the subject matter.
3. A judgment rendered without jurisdiction is not affected by the judicial discretion of a court.
4. In order to confer jurisdiction on a court, the subject matter must be presented for its consideration in some mode sanctioned by law.

5. Where judicial tribunals have no jurisdiction of the subject matter on which they assume to act, their proceedings are absolutely void in the strictest sense of the term.
6. A court must recognize a want of jurisdiction over the subject matter of a case even if no objection is made by any of the parties thereto.
7. Whenever a want of jurisdiction is suggested by the court's examination of the case or otherwise, it is the duty of the court to consider it, for if the court is without jurisdiction it is powerless to act in the case.
8. 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.
9. A bill of information will also lie to prevent anyone from interfering with the judgment or mandate of the Supreme Court.
10. The Supreme Court cannot review documentary evidence attached to a bill of information, and render judgment thereon, when the said documents were not introduced in, and passed upon by, the lower court; such act would be irregular and unprecedented.
11. The determination of ownership to real property requires the taking of evidence, of which the Supreme Court does not have original jurisdiction as it is constitutionally impotent to assume.
12. A bill of information is improperly filed before the Supreme Court where the Court lacks jurisdiction to determine the information because the mandate out of which the information grows has not been executed in an improper manner.
13. A Supreme Court will refuse information proceedings to decide who is in rightful possession of real property where such a decision would necessitate the taking of evidence, since the Supreme Court is not authorized to assume original jurisdiction in such cases.

The respondents filed a motion to dismiss a bill of information filed by the informants, the Intestate Estate of the late Chief Murphy-Vey John and Chicri Brothers, contending that the trial court had erred in executing the mandate of the Supreme Court because of the trial court's issuance of a bill of costs against Co-informant Chicri Brothers in enforcement of the Supreme Court's mandate, which enforcement the other Co-informant said would adversely it. The informants attached to the information copies of documents which it wanted the Supreme Court to take cognizance of. The respondents' motion challenged the jurisdiction of the Supreme court on the grounds that the trial judge had not violated the Supreme Court's mandate by an improper execution or otherwise, that the information sought to have the Supreme Court pass on evidence and the ownership of real property which were not passed upon by the lower court, and that the informants lacked the capacity to bring the information.
The Supreme Court agreed with the respondents' contentions and therefore granted the motion and dismissed the information proceedings. The Court rejected the request of the informants that it takes cognizance of the documents attached to the information, noting that not only did the Supreme Court lack the power, under the Constitution, to assume original jurisdiction over matters involving **land** disputes, but also that it was prohibited from taking evidence in a matter which had not been introduced and passed upon by the lower court. In agreeing that it lacked jurisdiction to entertain the information, the Court noted that a court must first decide whether it has jurisdiction over a matter before it proceeds to go into the merits of the dispute, and that the court has a duty to make that determination even if the parties did not object to the

jurisdiction of the court. It emphasized that it could not determine whether the parcel of **land** leased to Chicri Brothers by the co-respondent was a part of the parcel of **land** conveyed to the co-respondent Intestate Estate of the late Chief Murphy Vey-John. That determination was for the lower court.

The Court observed that the co-informant, Intestate Estate of the late Chief Murphy-Vey John, was not a party to the lease agreement between Co-respondent Intestate Estate of the late Bendu Kaidii and Chicri Brothers, represented by Chicri AbiJaoudi, regarding which the bill of costs had been issued, and that as such its rights and interest were not affected. The Court opined that the lease agreement between the Intestate Estate of the late Bendu Kaidii and Chicri Brothers created rights, obligations, and liabilities which were enforceable under the law and that the trial court's enforcement of the Supreme Court's mandate, consistent with the law, was not a basis upon which information would lie. It stated that while information would lie to prevent the improper execution of its mandate or interference with its judgment, the instant case did not present any one of those scenarios.

C. Alexander B. Zoe of Providence Law Associates appeared for the informants. *Sylvester S. Kpaka* of J. D. Gordon Inc. and *Johnny Moon* of Sherman & Sherman Inc. appeared for the respondents.

MR. JUSTICE SACKOR delivered the opinion of the Court

The Intestate Estate of the late Bendu Kaidii, by and thru its administrator, Folly Kaidii Dempster, filed a motion to dismiss the informants bill of information, filed before this Court on the 4th day of January, A. D. 2002. The substances of the motion to dismiss are as follow:

1. That the Supreme Court does not have jurisdiction over the bill of information since the said bill of information required this Court to take evidence and to decide on the ownership to real property in the absence of any certified records to this Court from the trial court;
2. That the informants do not have the legal capacity to institute these information proceedings because they were not parties to the bill of information filed by the co-respondent in the court below;
3. That the information was filed in violation of Part 8 of the Revised Rules of the Supreme Court of Liberia, the respondents therefore requested this Court to dismiss the bill of information and to order the trial court to resume jurisdiction over the case and enforce the mandate of this Court.

In their resistance to the motion to dismiss, the informants contended among other things that none of the five legal grounds stated by the respondents existed for the dismissal of the bill of information and that this Court did have jurisdiction over the bill of information as it related to the Intestate Estate of the late Chief Murphy-Vey John represented by J. D. Lansana et al. versus the Intestate Estate of the late Bendu Kaidii. The informants further contended in count 4 of their

resistance to the motion to dismiss that they had the legal capacity to file the bill of information in that they stood to suffer injustice if the mandate of this Court in the Bendu Kaidii versus Chicri AbiJaoudi case, to which they were not parties, was improperly executed against them. In count five of their resistance, they contented that the bill of information is not filed in violation of the Revised Rules of this Court since the information resulted from the attempt by the respondents to improperly execute this Court's mandate issued in the Bendu Kaidii Estate versus Chicri AbiJaoudi case. They therefore requested this Court to deny the motion to dismiss and to issue the peremptory writ.

The cardinal question to be resolved by this Court is whether or not the information proceedings is properly before this Court? Recapping the history of these proceedings, we find that during the October Term, A. D. 2001 of this Court, the appeal of Co-informant Chicri AbiJaoudi was dismissed by this Court upon a motion by the co-informant, the Intestate Estate of the late Bendu Kaidii, on the ground that the appeal bond filed by Chicri AbiJaoudi was legally defective. This Court mandated the Monthly and Probate Court for Montserrado County to resume jurisdiction over the case and enforce its judgment, to the extent that all rent arrears be paid up to date to give effect to our previous opinion. We would like to reemphasize that the Intestate Estate of the late Bendu Kaidii by and thru its administrator, Folly Kaidii Dempster, filed a bill of information against Chicri AbiJaoudi in the trial court, praying for the sum total of US$49,000.00 as rental arrears covering the period 1991 up to and including 2000, which information was granted, an appeal taken therefrom and denied by this Court as aforesaid in this opinion.

The records in the case show the mandate of this Court was read and the bill of cost was prepared for taxation by both counsels. Counsel for Co-respondent Intestate Estate of the late Bendu Kaidii signed the bill of cost but counsel for the informants refused to sign the bill of cost for the execution of this Court's mandate. The informants fled to this Court with a bill of information informing this Court that they will be affected by the execution of this Court's mandate, and they exhibited to this Court certified copy of an aborigines grant deed from the Republic of Liberia to Chief Murphy and the residents of Vai Town, which contained 25 acres of **land** and an opinion of the March Term, A. D. 1988 of this Court granting cancellation proceedings of the 1931 deed and the March Term, A. D. 1989 opinion of this Court confirming the judgment of the trial court awarding 25 acres of **land** to Chief Murphy Vey John and his people. The mandate of this Court in the ejectment suit is yet to be enforced due to the inconclusiveness of the report of the team of surveyors.

The informants want this Court to take evidence as to the ownership of real property which Co-informant Chicri AbiJaoudi for Chicri Brothers, leased from the Intestate Estate of the late Bendu Kaidii in August 1985, involving a parcel of **land** situated in Vai Town containing 3/10 town lot.

This Court holds that it has jurisdiction over bills of information where its mandate is being executed in an improper manner or where there is a pendency of the case before this Court. This Court, in the case *Vargas v. Morris*, 39 LLR 18 (1998), held: "It is essential to the proper rendition of a judgment that the court has jurisdiction over the subject matter. A judgment rendered without jurisdiction is not affected by the judicial discretion of a court. In order to confer jurisdiction on a court, the subject matter must be presented for its consideration in some mode sanctioned by law. Where judicial tribunals have no jurisdiction of the subject matter on which they assume to act, their proceedings are absolutely void in the strictest sense of the term. A court must recognize want of jurisdiction over the subject matter of a case even if no objection is made by any of the parties thereto. Therefore, whenever a want of jurisdiction is suggested by

the court's examination of the case or otherwise, it is the duty of the court to consider it, for if the court is without jurisdiction it is powerless to act in the case".
A recourse to our Revised Rules of Court of 1999 clearly provides that bill of information will lie to prevent a judge or any judicial officer who attempts to execute the mandate of this Court in an improper manner, and that information will also lie to prevent anyone whomsoever from interfering with the judgment or mandate of the Supreme Court. Rule IV, Part 8, Revised Rules of the Supreme Court of Liberia, adopted 1999, states:

"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 anyone whomsoever from interfering with the judgment and/or mandate of the Supreme Court".

In the case at bar, the trial judge never improperly executed the mandate of this Court when he taxed the bill of cost in obedience to our mandate for the payment of the rental arrears to the Intestate Estate of the late Bendu Kaidii by Chicri AbiJaoudi under the terms and conditions of the lease agreement. The landlord and tenant relationship existing between the Intestate Estate of the late Bendu Kaidii, as lessor, and Chicri AbiJaoudi, as lessee, by virtue of the lease agreement does not affect the rights and interest of the co-informant, who is a stranger to the lease agreement. This Court holds that the leasehold right granted to Chicri AbiJaoudi by the Intestate Estate of the late Bendu Kaidii clearly created obligations, rights and liabilities for the contracting parties which are also enforceable under our law.
The respondents in their resistance contended that the attachment of exhibits was not to request this Court to take evidence but to inform this Court of the injustice they stand to suffer if the mandate of this Court is improperly executed. This Court disagrees with the contention of the respondents in that the respondents' exhibits such as the two opinions of this Court, and an aborigines deed are a clear indication that the respondents sought to have this Court take evidence and decide who is in rightful possession of the subject property. The informants also requested this Court to review the documentary evidence attached to the information and to render judgment thereon, which is irregular and unprecedented. In the case *Pratt v. Smith,* [1977] LRSC 32; 26 LLR 160 (1977), this Court held:

"The Supreme Court will refuse information proceedings to decide who is in rightful possession of real property where such a decision would necessitate the hearing of evidence, since this Court is not authorized to exercise original jurisdiction in such cases".

This Court upholds its decision in the *Pratt* case that it cannot decide whether or not the Interstate Estate of the late Bendu Kaidii containing 3/10 town lot, located in Vai Town, is part and parcel of the 25 acres of **land** acquired by the late Chief Murphy Vey John in 1906 from the Government of Liberia, also located in Via Town. The determination of the ownership of the 3/10 town lot requires the taking of evidence. This Court does not have original

jurisdiction to determine the same, for to do so we would have to acquire original jurisdiction which we are constitutionally impotent to assume. This bill of information is improperly before this Court and the Court lacks jurisdiction to determine the same since the mandate out of which the bill of information grew has not been executed in an improper manner to warrant the granting of information. However, our colleague, Madam Chief Justice Scott, disagrees with the majority opinion and therefore dissents.

In view of the foregoing, it is the considered opinion of this Court that the motion to dismiss is hereby granted and the bill of information is dismissed. The Clerk of this Court is hereby ordered to send a mandate to the trial court to resume jurisdiction and enforce the 2001 mandate of this Court. Costs are ruled against the respondents. And it is hereby so ordered.

Motion to dismiss granted.

In re Gibson v Dennis [2001] LRSC 29; 40 LLR 698 (2001) (20 December 2001)

IN RE: THE PETITION OF ESTHER E. MASSAQUOI AND JOHN C. A. GIBSON, Petitioners/Appellants, v. GEORGE WILLIAM WEH DENNIS, Objector.

APPEAL FROM THE JUDGMENT OF THE MONTHLY AND PROBATE COURT FOR MONTSERRADO COUNTY.

Heard: November 28, 2001. Decided: December 20, 2001.

1. The judge of the Monthly and Probate Court for Montserrado County has concurrent jurisdiction with the judge of the Provisional Monthly and Probate Court for the District of Careysburg, and therefore the judge for the Monthly and Probate Court for Montserrado County cannot review the decision of the judge of the Provisional Monthly and Probate Court for the District of Careysburg admitting into probate the last will and testament of a decedent and issuing letters testamentary to the executors thereunder.

2. All admissions made by a party himself or by his agent acting within the scope of his authority are admissible.

3. Every agent for the conduct of a cause has the authority to make admissions in that cause. and the admissions of every agent in a matter under his control as agent shall be admissible.

4. When several parties have a joint interest and such interest has been proved, the admission of one shall be deemed to be the admission of all; provided, however, that the joint interest may not be proved by the admission of one or more against those not joining in such admission.

5. All evidence must be relevant to the issue, that is, it must have a tendency to establish the truth or falsehood of the allegations or denials of the parties or it must relate to the extent of the damages.

6. The burden of proof rests on the party who alleges a fact except that when the subject matter of a negative averment lies peculiarly within the knowledge of the other party, the averment shall be taken as true unless disproved by the party.

7. It is sufficient if the party who has the burden of proof establishes his allegations by a preponderance of the evidence.

8. The best evidence which a case admits of must always be produced; that is, no evidence is sufficient which presupposes the existence of better evidence.

9. 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 or unless it is a copy of some public record or document which was proved as provided by law.

10. Photocopies of documents attached to pleadings are designated as exhibits and remain so until they are testified to and the witnesses testifying thereto are examined and cross-examined, and the documents receive the court's mark of identification and are subsequently admitted into evidence.

11. The issues of relevant evidence and their admissibility are determined during trial, with or without a jury, and not during the disposition of the law issues or before the commencement of trial; and the weight of evidence in a proceeding or trial is determined only when the evidence is admitted.

12. The striking of a reply by a trial judge while disposing of the law issues has no affect whatsoever on the trial of a petition or the objections or answer thereto.

13. The Probate Procedure Code provides for the filing of only a petition and returns thereto and no other pleadings unless directed by the court. Hence, the striking of a reply filed without an order of the court causes no disability to a petitioner in cross-examining, impeaching, or discrediting an objector or his witnesses.

14. Under the practice and procedure in the Liberian jurisdiction the adverse parties are under a duty to prove by a preponderance of the evidence their side of a case if their positions are to be adjudged favourably by the court in a final judgment or decree.

The petitioners/appellants appealed from a ruling of the Monthly and Probate Court for Montserrado County made during the disposition of the law issues striking the petition-ers' reply and holding that the failure of the petitioners to respond to the appellee's claim that the decedent had during her lifetime conveyed certain property to the objector/ appellee excluded said property from the estate of the decedent and vested ownership thereto in the objector. Because the executor and executrixes of the decedent's estate had been away from the bailiwick of the Republic of Liberia for an extended period, the appellants had petitioned the court for letters of administration to administer the said estate. Objections were filed to the petition, the objector/appellee contending that the decedent had conveyed a certain parcel of his **land** to him, which should be excluded from the estate. A reply was filed in response to the objections but was stricken by the probate court.

The probate court ruled that it shared concurrent jurisdiction with the Provisional Monthly and Probate Court for Careysburg District which had probated the Last Will and Testament of the decedent, and therefore could not review the acts of that court. The court therefore granted the petition. However, it also ruled that as the petitioners had not denied the objector's claim to ownership of the certain parcel of **land**, the same was tantamount to an admission, and hence, that the subject **land** claimed by the objector should be excluded from the estate.

On appeal, the Supreme Court reversed the ruling of the probate judge which excluded the claimed parcel of **land** from the decedent estate, holding that the claim of the objector was an allegation of fact that was subject to proof at a trial and that it could not be accepted as true by the trial judge in the disposition of the law issues. The Court noted that although the trial judge had stricken the petitioners reply from the records, the Probate Procedure Code did not provide for the filing of such reply, and that therefore the petitioners suffered no disability as a result of such ruling and retained the right to examine and cross-examine the objector's witnesses as well as the documents on which the objector relied. The Court further observed that the trial court could not admit copies of the documents into evidence and rule thereon in the course of disposing of the law issues without the whereabouts of the original being accounted for, noting that such copies were mere exhibits and remained so until the procedure prescribed by law had been complied with regarding the admission of documents into evidence. The admission into evidence of such documents, the Court added, could only be done after the documents had been testified to by witnesses who were examined and cross-examined thereon, the documents marked by the court and, upon request, admitted into evidence. The acceptance of such documents, without the same go through the prescribed process and without the objector having met the burden of a preponderance of the evidence, but which formed the basis of the trial court ruling while disposing of the law issues was a reversible error, the Court said. The trial court's ruling was therefore reversed in part and the case remanded for further appropriate hearing by the lower court.

Paul Berry and Cooper W. Kruah appeared for the petitioners. Snonsio Nigba appeared for the objector.

MADAM CHIEF JUSTICE SCOTT delivered the opinion of the Court.

The certified records forwarded to this Court reveal that Frances P. North-Dennis died testate in May 1988. In January, 1989, the last Will and Testament of Frances P. North-Dennis was offered and subsequently duly admitted into probate by the Provisional Monthly and Probate Court for Careysburg District, Montserrado County, Republic of Liberia. The named executrixes and executor in the Will, namely, Julia F. Gibson (now deceased), Sarah J. Gibson and Bernard A. Gibson, were sworn and issued letters testamentary. The executrixes and executor performed their duties until 1990, but due to the civil conflict which had intensified in Liberia they fled the country. Thereafter, the petitioners/appellants filed a petition before the Monthly and Probate Court for Montserrado County for letters of administration to administer the aforementioned estate of the late Frances P. North-Dennis, stating as the reason therefor that the executor and executrixes were without the Republic of Liberia. To this petition, the objector/appellee filed objections, contending that the said last Will and Testament was invalid, in that title to a parcel of **land** which had been conveyed under the said Will was transferred by a sale to objector during the lifetime of the testator. The objector also contended that during the testator's lifetime, she had initiated and concluded adoption proceedings in his favor and had thereby adopted him as her son.

The judge of the Monthly and Probate Court for Mont-serrado County called the case for hearing on the law issues, but instead of entertaining arguments as was contemplated he handed down a ruling. In the ruling the judge granted the letters of administration on the ground that the Monthly and Probate Court for Montserrado County had concurrent jurisdiction with that of the Provisional Monthly and Probate Court for Careysburg District, and that therefore he could not review the decision to determine the validity of the said Will and the granting of the letters testamentary. The judge also proceeded to exclude from the estate of the decedent the parcel of **land** which was alleged to have been conveyed to the objector during the lifetime of the decedent. From this ruling of the judge both the petitioners and the objector announced an appeal. However, while the petitioners filed a bill of exceptions and completed the appeal process, the objector did not file a bill of exceptions or pursue any of the other appeal steps.

The sole issue which this Court must decide is whether or not the admissibility of evidence is determinable by a trial court whilst ruling on the law issues?

To enable us to answer this question, we again take recourse to the records and to the applicable statutes.

This Court confirms from the onset that portion of the ruling of the judge which says that the judge of the Monthly and Probate Court for Montserrado County has concurrent jurisdiction with the judge of the Provisional Monthly and Probate Court for Careysburg District and, hence, the Probate Judge for Montserrado County could not review the decision of the Probate Judge for Careysburg District admitting into probate the last Will and Testament of the late Frances P. North-Dennis and to subsequently issue letters testamentary in favor of Julia F. Gibson, Sarah Gibson, and Bernard A. Gibson as executrixes and executor of the testate estate of the late Frances P. North-Dennis.

Reverting to the issue at hand, we observe that the objector submitted to the trial court two species of documents attached to his pleadings to substantiate the averments stated therein. The documents were:

1) Photocopy of a true and certified copy of a warranty deed from Frances P. Dennis to George William Weh Dennis, as recorded in volume 392-82, pages 43-45, of the records of Montserrado County, filed in the archives of the Ministry of Foreign Affairs, and issued by the Ministry of Foreign Affairs on the 22nd day of July, A. D. 1987, under the hand and seal of J. Bernard Blamo, Minister of Foreign Affairs.

2) Photocopy of a true and correct copy of a court's decree of adoption in favor of George William Weh Dennis, as recorded in volume 63, page 618, of the records of Montserrado County, filed in the archives of the Department of State, and issued by J. Rudolph Grimes. Secretary of State.

In reply to the objector's objections, to which photocopies of the abovementioned documents were attached, the petition-ers contested and questioned the genuineness, authenticity and validity of the photocopies of the said documents. The judge of the Monthly and Probate Court for Montserrado County, in ruling on the law issues, determined that the following issues were amongst the several issues before the court for resolution:

"...(2) What effect does the warranty deed, attached to objector's objections and marked RO/5, have on the overall matter of this estate?

(3) Does the objector have the legal capacity to bring any suit against said estate?"

The trial judge, in ruling on the law issues, ordered that the reply of the petitioners, which had challenged the validity, genuineness and legality of the documents mentioned above be stricken from the records. The judge stated as the ground for his action that the said pleading was filed on the 76th day after the objector had filed his objections to the petitioners' petition instead of the statutory period of ten days. The judge's ruling continued:

"...This court notes that the said warranty deed is a certified copy from the Ministry of Foreign Affairs, which shows that on the 21st day of June, A. D. 1982, Decedent Frances North-Dennis, while alive, sold said parcel of **land** to objector for one hundred dollars ($100.00). The

court says it shall treat this as an information to this court that this piece of property is not a part of the testate estate of the late Frances North-Dennis. The failure of the petitioners to respond to this vital point raised by objector/respondent is tantamount to their admission that this piece of property is not a part of the testate estate of the late Frances P. North-Dennis. (See Civil Procedure Law, Rev. Code 1:25.8(1) and (2), I LCLR 200 (1973)."

In order to adequately address the conclusions stated by the probate judge in his ruling, we revert to the law citation cited supra in the said ruling. The law states:

"Section 25.8. Admissions.

1) Admissibility in general. All admissions made by a party himself or by his agent acting within the scope of his authority are admissible. Every agent for the conduct of a cause shall have authority to make admissions in that cause. The admissions of every other agent in any matter under his control as agent shall be admissible.

2) Joint interest. When several parties have a joint interest and such interest has been proved, the admission of one is the admission of all; but the joint interest may not be proved by the admission of one or more against those not joining in such admission." Civil Procedure Law, Rev. Code 1:25.8

This Court's inspection of the foregoing law revealed that chapter 25 of the Civil Procedure Law is captioned "Evidence". It is the view of this Court therefore that chapter 25 contains the procedural rules and guidelines of evidence and its admissibility. Paragraphs (1) and (2) of section 25.8, quoted herein, refer to the admissibility of admissions into evidence. But the question which confronts us is, at what stage of the process of a cause of action does the court determine evidence and its admissibility?

The rules of evidence, as also contained in chapter 25 of the Civil Procedure Law, require that all evidence must be relevant to the issue, that is, it must have a tendency to establish the truth or falsehood of the allegations or denials of the parties or it must relate to the extent of the damages. For reliance, see the Civil Procedure Law, Rev. Code 1:25.4.

Chapter 25 of the Civil Procedure Law further provides in various other sections, as follows:

Section 25.5. Burden of Proof

1. Party having burden. The burden of proof rests on the party who alleges a fact except that when the subject matter of a negative averment lies peculiarly within the knowledge of the other party, the averment is taken as true unless disproved by the party."

2. Quantum of evidence. It is sufficient if the party who has the burden of proof establishes his allegations by a preponderance of the evidence."

“Section 25.6. Best Evidence.

1. In general. The best evidence which the case admits of must always be produced; that is, no evidence is sufficient which supposes the existence of better evidence.”

2. Copies of writings. 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 or unless it is a copy of some public record or document proved as provided in section 25.10 of this chapter.” Civil Procedure Law, Rev. Code 1:25.5 and 25.6.

Photocopies of documents attached to pleadings are designated as exhibits and remain so until during trial when they are testified to by witnesses who may be cross-examined thereon, they receive court’s mark of identification, and are subsequently admitted into evidence. It is only after this process that the court or the jury can determine the weight of the evidence so admitted. It is common legal practice hoary with age that the weight of evidence in a proceeding or trial is determined only when the evidence is admitted.

A ruling on law issues is a pre-trial determination by the court on points of law. As such, the ruling on law issue is inadequate and lacks the evidentiary legal capacity to determine the weight to be accorded to unproven photocopies of the documents in controversy, attached to a pleading in an action. It is common legal knowledge, procedure and practice that the issues of relevant evidence and their admissibility are determined during trial, with or without a jury, and not during the disposition of the law issues. We are therefore convinced that the determination made by the probate court judge in his ruling on the law issues that the photocopy of the true and certified copy of the warranty deed from Frances P. North-Dennis attached to the objector’s objection, dated the 21st day of June, A. D. 1982, for one hundred dollars ($100.00), and allegedly executed before the death of the testator was admissible into evidence was premature and erroneous, and hence, is reversible. The determination of admissibility of evidence is made during trial and not before the commence-ment of the trial.

When the judge ordered the reply of the petitioners/ appellants stricken from the records, the order did not prevent, bar, or deny the petitioners/appellants of the right to cross-examine the objector, his witnesses, or oral testimonies relating to the documentary evidence of the objector? We believe and are convinced that the action of the trial judge was contrary to the principle enunciated herein. The objector and the petitioners remained equally under a legal duty to prove their case. The striking of the reply by the judge had no affect whatsoever on the hearing or trial of the petition and the objections thereto. The filing of a reply to the objection or re-turns without the orders of the probate court judge was a legal surplusage. The Decedents Estates Law provides at section 103.2, under the caption pleadings and process, as follows:

1. Kinds of pleading. Unless otherwise provided in this Code, pleadings shall consist of a petition, an account in an accounting proceeding and a return consisting of an answer or objections. There shall be no other pleading unless directed by the court.

2. Time of servings, answer or objection. Except as provided in sections 113.11 and 116.8(d), answers or objections shall be served on all parties who have appeared at least one day before the date fixed for the return of process and shall be filed with the clerk of court on or before such date.

3. Form of averments. Statements in a pleading shall be sufficiently particular to give the court and parties notice of the claim, objection or defense and shall contain a demand for the relief sought.

4. Upon whom service of copies are to he made. In addition to the requirements set forth in section 103.7, copies of all pleadings shall he served on any party who has appeared in the proceeding and demanded that a copy of all papers be served upon him, and upon all parties upon whom the court by written order or oral direction entered in the minutes directs that service be made. A party who fails to comply with this requirement may be treated as a party in default." For reliance, see Decedents Estates Law, Rev. Code 8: 103.2.

Clearly the foregoing provisions of law state the kinds of pleadings - a petition for accounting, on the one hand, and returns consisting of either an answer or objections, on the other hand - which are permissible in probate proceedings. The provisions mandate that there shall be no other pleading except upon orders of the court. The records before this Court for review reveal no such order of the probate judge to file other pleadings in addition to those provided for by the pro-visions of the Probate Procedure Code. Hence, the petitioners suffered no legal disability which would have prevented them from cross-examining and seeking to impeach and discredit the objector's witnesses and the exhibits attached to the objections.

Under the practice and procedure in this jurisdiction, the adverse parties are under a duty to prove by a preponderance of the evidence their side of the case if their positions are to be adjudged favorably by the probate court in a final judgment or decree granting either the petition or the objections. This stage of the probate proceedings shall obtain only after the probate judge has ruled the petition and the returns/objections thereto to trial, following the disposition of the law issues and not before. This Court therefore finds that the probate judge's ruling on the law issues should have passed on the points of law in controversy and not on the admissibility of evidence. In passing on the evidence the trial judge made a final determina-tion of the validity, legality, relevance and weight of evidence without a regular trial. This, we believe, was an error.

Wherefore, and in view of the foregoing law and circum-stances, the ruling on the law issues, which determined the admissibility of evidence and the final outcome of the petition and the objections thereto, is hereby declared premature, erroneous, illegal, and reversible. This appeal is therefore hereby ordered granted and the action is hereby remanded to the Probate Court for Montserrado County. The Clerk of this Court is hereby ordered to send a mandate to the court

below ordering the judge presiding therein to resume jurisdiction over the case and to give effect to this judgment. Costs are ruled against the objector. And it is hereby so ordered.

Judgment reversed.

Twe et al v Twe-paye et al [1999] LRSC 15; 39 LLR 474 (1999) (3 June 1999)

MRS. HELEN JAPPAH TWE et al., Appellants, v. **HELENA TWE-PAYE** and **DESTON D. TWE**, Appellees.

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

Heard: March 17,1999. Decided: June 3,1999.

1. An individual who desires to change his or her name should file a petition to the circuit court of the county where he or she resides.

2. An order granting a petition for change in name shall be filed within ten days thereafter in the office of the Registrar of Deeds of the county where the petitioner resides.

3. Extrinsic evidence is permissible to identify the person or persons intended to be designated by the name used for the grantee in a deed provided such extrinsic evidence is merely explanatory of the designation contained in the instrument and will not in effect add new terms thereto.

4. Extrinsic evidence is permissible to show who was intended as the grantee where two or more persons have the same name.

5. A plaintiff in an action of ejectment can only recover on the strength of his own title, and not upon the weakness of the defendant's title.

These proceedings emanate from the final judgment in an action of ejectment instituted by Elizabeth Twe Paye, using the name Helena Twe Paye, and Deston D. Twe, against Helena Jappah Twe, former wife of Deston D. Twe. The records in the case showed that during the course of their common law marriage, Deston D. Twe and Helena Jappah Twe acquired a parcel of **land** containing 1.5 town lots in 1980, the deed to which was probated and registered in keeping with law. Subsequently, Deston D. Twe and Helena Twe solemnized their common law marriage, but the married couple separated and a divorce proceeding was pending undetermined. During the separation, the two houses that were constructed on the aforesaid property was in the possession and control of Elizabeth Paye, sister of Deston D. Twe by virtue of two letters of authority from her brother. Subsequently, Helena Jappah Twe and her son moved on the aforesaid property, claimed ownership to it, and refused to leave in spite of repeated demands by Elizabeth Paye. Hence Elizabeth instituted an action of summary proceedings to recover possession of the property.

While the action of summary proceedings was pending undetermined in the Civil Law Court, the defendant, Mrs. Helena Jappah Twe leased the property to Paul Nah Toe for a period of three (3) years. As a result, Helena Tweh Paye and Deston D. Twe instituted an action of ejectment against Helena Jappah Tweh and her lessees, Paul Nah Toe et al.

Plaintiffs claimed joint ownership of the property and that the name Helena Twe shown on the deed was Deston D. Twe's sister who was unmarried at the time of the purchase of the **land**, and not the married name of Co-defendant Helena Jappah Twe. The plaintiffs further contended that Helena Jappah Twe had unlawfully leased the property. The defendants filed their answer contending that Co-defendant Helena Jappah Twe and her husband, Deston D. Twe, jointly owned the subject property prior to marriage; and that she had every right to lease the property in the absence of her husband. Finally, Co-defendant Helena Jappah Twe alleged that she had no sister-in-law by the name of Helena Twe Paye, but rather Elizabeth Twe Paye.

After a regular trial, the trial judge returned a verdict for plaintiffs, which was confirmed by the trial judge, ordering the defendants evicted from the property. Defendants excepted to this judgment and appealed to the Supreme Court.

The Supreme Court upon review of the records found that the judgment of the trial court was contrary to the weight of the evidence adduced at trial and that there was no evidence that Elizabeth Twe Paye had ever changed her name to Helena Twe Paye in the manner required by law. The Court also noted that Elizabeth L. Paye had not acquired title to the subject property, in that, in the first summary proceeding to recover possession of real property against Helena Jappah Twe, she had filed for and on behalf of her brother, Deston D. Twe, the husband of Helena Jappah Twe, and she admitted in her pleading in that case that she was not claiming any ownership of the property, but rather possessory right thereto by virtue of her letters of authority received from her brother, Deston D. Twe. The Court wondered how a person who had sued in a representative capacity in a previous suit pending undetermined could claim title in a subsequent action to the very property. Accordingly, the Supreme Court reversed the judgment of the trial court and declared appellant Helena Jappah Twe as the co-grantee as mentioned in the deed of the disputed property.

Nyenati Tuan of the Tuan Wreh Law Firm appeared for appellants. *James Zotaa* of the Liberty Law Firm appeared for appellees.

MR. JUSTICE SACKOR delivered the opinion of the Court.

This case is before us on appeal from the judgement of the Sixth Judicial Circuit Court for Montserrado County in an action of ejectment during its June Term, A. D. 1998 presided over by His Honour Wynston 0. Henries, Resident Circuit Judge.

We observed from the records of this case that Deston D. Twe and Helena Jappah Twe met and lived together as husband and wife in 1969. Their common law marriage was blessed with three children, who were born on January 10, 1971, August 29, 1975, and November 9, 1977, respectively. The records also show that Deston D. Twe and Helena Twe acquired a parcel of **land** containing 1.5 town lots in 1980 from Mr. Paye Berrian lying and situated in the Township of Gardnersville, Montserrado County. This deed was probated and registered in keeping with law. Deston D. Twe and Helena Twe solemnized their common law marriage on the 27th Day of February A. D. 1984. It is also further observed from the records that the married couple separated and that a divorce proceeding had been filed by Mrs. Helena Twe at the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, which is pending undetermined.

Co-appellee, Elizabeth Paye, by and thru her legal counsel, Attorney Frank A. Songor, instituted an action of summary proceeding to recover possession of real property on the 12thday of

October A. D. 1995, against Helena Jappah and one Wollo in the Civil Law Court, Sixth Judicial Circuit for Montserrado

County, during its September Term A. D. 1995, presided over by His Honour Sebron J. Hall, then assigned circuit judge. Plaintiff Elizabeth Paye alleged among other things, that she was in possession of a parcel of **land** containing two houses in June 1995 owned by her brother Deston D. Twe. She alleged specifically in count 2 of her complaint, that she held legal rights of possession or possessory title to her brother's property in Barnersville by virtue of two letters of authority which she attached thereto as exhibits 'A' and B.

She contended in count 3 of the complaint that Helena Jappah approached her in May, 1995 requesting her for a room to stay therein for three months which request she granted notwithstanding her brother's disagreement. She alleged that Helena Jappah refused and neglected to leave the subject property after repeated demands, on grounds that she and her son were the owners of the property. Plaintiff Elizabeth Paye further alleged in count 3 of her complaint that she was not claiming ownership of the property and was not challenging the ownership of anyone, but her legal right of possession of said property pursuant to the letters of authority executed to her by her brother. Plaintiff prayed the trial court for general damages against the defendants for wrongfully withholding the subject property. On the 22ndday of October A. D. 1995, defendants filed a six-count answer alleging among other things that co-defendant, Helena Jappah Twe, and Deston D. Twe acquired and jointly constructed the building on the subject property as husband and wife, and that her husband did not have the authority to singularly give an authority to his sister to administer the said property. Codefendant, Helena Jappah Twe, further alleged that she and her husband were still married and that the summary proceeding could not lie since title was at issue.

In response to the answer, plaintiff Elizabeth Paye filed a five-count reply, in count 2 of which she contended that Helena Jappah Twe's separation from her husband and subsequent institution of divorce proceedings against her husband divested her of her interest and possession in the property. In count 4 of the reply, plaintiff claimed no ownership but a legal possession of the subject property. This case between Elizabeth Paye, now Helena Twe Paye, and Helena Jappah Twe and Wollo is still pending before the Civil Law Court undecided as evidenced by a clerk's certificate dated the 6thday of May, A. D. 1998, under the signature of Joe Albert Junius, Clerk of the Civil Law Court.

On the 1st day of June A. D. 1997, Mrs. Helena Twe, leased the subject property, containing 3-bedrooms, to Paul Nah Toe for a period of three years certain commencing from the 1st day of

June A. D. 1997 up to including the 31' day of May A. D. 2000 for the annual rental of L$18,000.00 (Eighteen Thousand Dollars) with the optional period of two years.

On the 17thday of April, A. D. 1998, Elizabeth L. Paye and Deston D. Twe instituted an action of summary proceeding to recover possession of real property against Paul Nah Toe, Selina Russell and Roseline Gould at the Gardnersville Magistrate Court alleging that the defendants illegally withheld the premises. A writ of summons was accordingly issued on the same day and date commanding the defendants to appear in the said court on the 18thday of April A. D. 1998 at the hour of 10:00 a.m. for hearing. On the 27thday of April A. D. 1998, plaintiffs' complaint was withdrawn with the right to refile by and thru their legal counsel, Counsellor James Zotaa.

On the 27th day of April A. D. 1998, Helena Twe Paye and Deston D. Twe instituted an action of ejectment against Mrs. Helena Jappah Twe, Nah Toe, Shelley Toe, Selena Russell, Roseline Gould in the Sixth Judicial Circuit Court for Montserrado County, during its June Term A. D. 1998, presided over by His Honour Wynston O. Henries, resident circuit judge. Plaintiff claimed joint ownership of the disputed property and alleged that they jointly constructed the building thereon. Plaintiff alleged that the name Helena Twe as shown on the deed is the name of Deston D. Twe's sister who was unmarried at the time of the purchase of the **land**. They alleged that said name was not the married name of co-defendant Helena Jappah Twe, and as such, Helena Jappah Twe unlawfully leased the property to the lessee. Plaintiff contended substantially in count eight of the complaint that a married woman has vested title to her husband's property either acquired prior to, or during marriage, but can not claim any right thereto jointly held by her husband and other relatives of the husband.

A writ of summons was duly issued on the 27 day of May A. D. 1998, and defendants appeared and filed a twelve-count answer to the complaint contending *inter alia* that co-defendant Helena Jappah Twe and her husband Deston D. Twe jointly owned the property prior to their marriage on February 27, 1984. At such, she has every right to dispose of the property by a lease agreement in the absence of her husband. Defendants contended that co-plaintiff Elizabeth Twe Paye had filed a summary proceeding to recover possession of real property for and on behalf of Deston D. Twe in a representative capacity before the Civil Law Court during its September Term A. D. 1995. Codefendant Helena Jappah Twe alleged that she has no sister-in-law by name of Helena Twe Paye rather than Elizabeth Twe Paye. The Plaintiff filed their reply and the pleadings rested.

The trial judge, His Honour Wynston O. Henries, disposed of the law issues and ruled this case to trial on the 12t h day of June A. D. 1998. The jury, subsequent to a regular trial, rendered a verdict on the 2nd day of July, A. D. 1998, holding the defendants liable and placing the plaintiff

in possession of the property. A motion for new trial was filed by the defendants, resisted and denied by the trial judge. The trial judge rendered his final judgement on the 18' day of August, A. D. 1998, confirming the verdict of the jury and ordering the defendant ousted, evicted and ejected from the subject property. The defendants excepted to this judgment and announced an appeal to this court upon a four-count bill of exceptions.

Appellants alleged in their bill of exceptions and contended before this court that the trial judge erred when he sustained coappellees' objection with respect to the names Elizabeth L. Paye and Deston D. Twe as plaintiffs in the summary proceeding to recover possession of real property before Associate Magistrate Wellington J. Saye on April 17, 1998. Appellants also averred that the verdict of the empaneled jury is not supported by the evidence adduced at the trial, in that, Co-plaintiff Helena Twe Paye answered questions in the affirmative during trial that her name is Elizabeth Munah Louise Paye. At such, appellants contended that co-plaintiff Elizabeth Munah Louise Paye misled the court to believe that her name is Helena Twe Paye to deprive co-appellant Helena Jappah Twe of her property. In other words, appellants maintained that the production of Elizabeth Munah Louise Paye's marriage certificate submitted into evidence substantiates this fact. It is contended by the appellants that coplaintiff Helena Twe Paye has never produced a petition for the change of name from Elizabeth Twe Paye to Helena Twe Paye as required by statute, and that she also failed to produce any substantial evidence that convinced the jury in rendering a verdict in favor of the plaintiffs in the court below. Appellants request this court to reverse the judgement of the lower court.

Appellees in their brief contended that Deston Twe and his sister acquired the **land** in question in 1980 and are therefore joint tenants governed by the doctrine of survivorship. In this regard, the appellees contended that Helena Jappah Twe who subsequently married to Deston Twe cannot claim ownership of the property jointly owned by them prior to the marriage. Appellees strongly contended that Helena Jappah Twe has no title and legal authority to execute a valid lease agreement to the other co-appellants. They argued that Helena Jappah Twe claimed that she and Co-appellee Deston D. Twe jointly acquired the property from the Paye Berrain family, but she failed to produce her deed and that of her grantor. Appellees therefore prayed this Honourable Court to confirm the judgment of the lower court.

The issues to be resolved by this court for the final determination of this case are:

1. Whether or not the verdict of the jury confirmed by the judgment of the trial judge is supported by the evidence adduced at the trial.

2. Is there any decree for change of name establishing that Elizabeth Twe Paye ever changed her name to Helena Twe-Paye?

We shall decide these issues in the reverse order. As to the issue of change of name, the records in this case reveal that coappellee Helena Twe-Paye's claims that she is the grantee on the deed as Helena Twe prior to her marriage. Helena Jappah-Twe also claims that she is the grantee of the very property as Helena Twe prior to her marriage to Deston Twe in 1984. The records also disclose that Helena Twe-Paye, in answering a court's question regarding her name, affirmed her name to be Elizabeth Paye. She also answered in the affirmative, under cross-examination, that her name is Elizabeth Munah Paye. See minutes of the 9th day's Jury Session, June Term, A. D. 1998, Wednesday, June 24, 1998, sheets three and five. We further observed from the records in this case that Elizabeth Paye sued Co-appellant Helena Jappah-Twe in an action of summary proceedings to recover possession of real property in the trial court on October 12, 1995 in a representative capacity involving the very property. This action is pending. Further, Elizabeth L. Paye and Deston D. Twe also instituted the very cause of action on April 17, 1998 before the Gardnersville Magisterial Court against Nah Toe *et al.* for the subject property, which was later withdrawn reserving the right to refile. Helena Twe-Paye and Deston D. Twe brought an action of ejectment on April 27, 1998 against Helena Jasper-Twe et al. for the same property.

The crux of this matter is the name of the co-grantee of the subject property. Our statute provides the procedure by which one can change his or her name in our jurisdiction. The statute provides that such an individual should file a petition to the circuit court of the county where he resides so as to assume another name. This petition shall be in writing, signed, and verified by the petitioner in the same manner as a pleading in a court of record. Such petition shall also specify the reasons of the application, the name of the applicant and his residence as well as the name he so proposes to assume among other things. Civil Procedure Law, Rev. Code 1: 67.1 and 67.2.

The court shall make an order in the absence of a reasonable objection to the change of name proposed, authorizing the petitioner to assume the name on a specific day not less than seven days after entry of the order. The papers on which said order is granted shall be filed within ten days thereafter in the office of the registrar of deeds of the county where the petitioner resides. The order shall direct the publication within twenty days in a designated newspaper at least twice after its entry. Ibid 1: 67.4. This procedure is the exclusive method by which the person can officially change his or her name as a Liberian citizen in contemplation of the law. Ibid 1: 67.5.

The records subscribed and forwarded to this court are devoid of any evidence establishing that co-appellee ever changed her name from Elizabeth L. Paye to Helena Twe Paye. Thus, this Court holds that in view of co-appellee's failure to change her name from Elizabeth Twe to Helena Twe

in compliance with the statute relating to the change of name of an individual, she cannot be known as Helena Twe; and her claim is therefore defeated in the absence of such decree of change of her name as aforesaid herein. We are further in full agreement with appellants' assertion that appellee changed her name from Elizabeth L. Paye to Helena Twe-Paye in the ejectment suit so as to deprive co-appellant, Helena Jappah-Twe, of the property.

As to the issue whether or not the verdict confirmed by the judgment of the lower court is supported by the evidence adduced at trial, this court observes from the records in this case that co-appellee Elizabeth L. Paye instituted summary proceeding to recover possession of real property in 1995 against Helena Jappah-Twe at the Sixth Judicial Circuit Court for Montserrado County in a representative rapacity. She claimed no title in herself and did not challenge Co-appellant Helena Twe's ownership of the property, but claimed possessory title and possession of the very property by virtue of two letters of authority received from her brother, Deston D. Twe. The trial records clearly show that Co-appellee Helena Twe-Paye confirmed her name as Elizabeth Munah Louise Paye. She alleged that Helena Twe Paye is her baptism name and Elizabeth L. Paye is her confirmation name at the Catholic Church. However, she failed to produce into evidence records from her church to substantiate her allegations. Yet, the empaneled jury brought a verdict holding the appellants liable, and the trial judge confirmed the aforesaid verdict thereby ordering the appellants ousted, evicted, and ejected from the property. We wonder, how the trial judge arrived at the conclusion in the face of the clear evidence that Elizabeth L. Paye is not Helena Twe. The coappellee' s own admission of her name as Elizabeth L. Paye during the trial is a clear evidence which requires no further extrinsic evidence to establish the designation of the grantee of the property. Law writers have held that "extrinsic evidence is permissible to identify the person or persons intended to be designated by the name used for the grantee in a deed provided such extrinsic evidence is merely explanatory of the designation contained in the instrument and will not in effect add new terms thereto. Extrinsic evidence is permissible to show who was intended as the grantee where two or more persons have the same name." 23 AM. JUR. 2d, *Deeds, §* 54.

In the instant case, one of the parties claiming as Helena Twe in deed admitted during trial as being Elizabeth L. Paye. Thus, an extrinsic evidence is no longer required wherein it is established by such confirmation that Helena and Elizabeth are two separate and distinct first names. We are taken aback for the trial judge to confirm the verdict of the jury notwithstanding Elizabeth L. Paye's failure to produce records from the church confirming her names as Helena Twe Paye and Elizabeth L. Paye as requested by the very judge. We perceive no conclusive evidence upon which the trial jury and the trial judge awarded the property to the co-appellee. It is a well established principle of law in our jurisdiction that a plaintiff in an action of ejectment can only recover on the strength of his own title and not upon the weakness of the defendant. *Karuaii-et al. v. Sarfloh[1977] LRSC 17; ,* 26 LLR 3 (1977).

We are convinced that Co-appellee Elizabeth L. Paye has not acquired title to the subject property, in that, she instituted a summary proceeding to recover possession of real property against Helena Jappah Twe for and on behalf of her brother, Deston D. Twe, the husband of Helena Jappah Twe. She admitted in her pleading in 1995 presently pending before the trial court that she was not claiming any ownership of the property, but possessory right of said property by virtue of her letters of authority received from her brother, Deston D. Twe. In 1998, she and her brother, Deston D. Twe, instituted an action of ejectment against Helena Jappah Twe wherein she claimed that she and her brother jointly acquired the very property in 1980 prior to her marriage. The question is, how can a person who sued in a representative capacity in a previous suit pending undetermined claim title in a subsequent action of the very property. This court will not allow any improper behavior of any party litigant which has the propensity to deprive the property rights of another party. We therefore warn our judges of subordinate courts as well as lawyers practicing before our courts, to zealously and cautiously guard against the alienation of the property rights of party litigants. The judgment of the lower court is contrary to the weight of the evidence adduced at the trial. At such, the trial judge committed a reversible error when he confirmed and affirmed the verdict of the empaneled jury.

Wherefore, in view of the foregoing, it is the holding of this Court that the judgment of the lower court is reversed and Helena Jappah Twe is considered as the co-grantee in the deed of the subject property and has every right to execute a valid lease agreement in the absence of her lawful husband. The Clerk of this Court is hereby ordered to send a Mandate to the Court below commanding the judge therein to resume jurisdiction and give effect to this opinion. Costs against the appellees. And it is hereby so ordered.

Judgment reversed.

Catholic Relief Services v Natt [1999] LRSC 7; 39 LLR 417 (1999) (22 January 1999)

THE SALVATION ARMY (LIBERIA) INC., by and thru MAJOR BRIAN J. KNIGHTLEY, Appellant, v. **GEORGE S. B. TULAY**, Appellee.

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

Heard: November 19, 1998. Decided: January 21, 1999.

1. The Supreme Court can only review issues that have been passed upon by subordinate courts and made the subject of appeal.

2. Factual matters contained in the bill of exceptions but which are still pending undetermined in the trial cannot be reviewed by the Supreme Court; the Court can only pass on issues on appeal from a judgment of a subordinate court.

3. A party may move the court for judgment dismissing one or more claims for relief asserted against him in a complaint as of the time of service of his responsive pleading.

4. The party filing the last pleading is entitled to move the court first on any legal defect in the pleading of his adversary.

5. The doctrine of lis pendens is only applicable where there is another action pending between the same parties for the same cause in a court within the Republic of Liberia.

Appellee who claimed that he had paid for a parcel of **land** from the grantor of the appellant prior to the transfer of the said **land** to the appellant, and that therefore he, the appellee, was entitled to the said property, was sued in an action of ejectment by the appellant. Following the filing of the reply, the appellee filed a motion to dismiss the action, claiming that there were matters of the same nature pending before the Monthly and Probate Court for Montserrado County and the Civil Law Court for Montserrado County, relying for the request on the doctrine of lis pendens. The appellee also asserted that the appellant's deed was defective and that because he had paid for the premises, the appellant's action should be dismissed.

The trial court sustained the contentions in the motion and dismissed the appellant's action. From this action of the trial judge an appeal was taken to the Supreme Court.

The Supreme Court reversed the judgment of the trial court, holding, firstly, that the motion was filed untimely in that not only did the law provide that the last pleader is the party entitled to move the court on the legal defect of the pleading of his adversary, and that the appellee had failed to file the motion at the time that he filed his responsive pleading. The trial court, it said, should therefore not have sustained the motion.

Secondly, the Supreme Court said, the doctrine of *lis pendens* was not applicable and should not have been sustained by the trial judge since the actions to which the appellee had referred were not the same as ejectment action, noting that one action was for damages and concerned injury to property, while the other was a challenge to the probation of a deed, none of which involved ejectment. The Court therefore reversed the judgment and ordered the trial court to proceed to dispose of the law issues.

Francis S. Korkpor of the Tialia and Associates, Inc. for the appellant. *George S. B. Tulay* of Tulay & Associates appeared for the appellee.

MR. JUSTICE MORRIS delivered the opinion of the Court.

The records transmitted to this court revealed that in July 1992, appellee and one Jessie Payne, attorney-in-fact for one Mrs. Victoria Johnson Maxwell, agreed and consented to sell a piece of **land** located between the Pan African Plaza and Toyota Garage, directly opposite the Monrovia City Hall, for an amount of LD$100,000.00. Appellee alleged that between July 1992 and October 15, 1992, he paid the amount of LD$50,000.00 to the said Jessie S. Payne against the LD$100,000.00 and moved in the promises in 1992. Appellee also asserted that between October 15, 1992 and to June, 1994, he could dot locate Mrs. Victoria Johnson-Maxwell, but that when he managed to get in torch with her in 1993, he paid her US$10,000.0 for the premises in question. He further alleged that he agreed to pay the US$10,000 both in cash and goods, such as African gowns, shirts, dresses and arts and crafts, and that by July 13, 1995, he had allegedly paid to the said Victoria Johnson Maxwell an amount of US$5,700.00, excluding the values of the African gowns, dresses, shirts, etc.

Appellee stated that in all he sent a cash total of US$15,600.00 to Mrs. Victoria Johnson-Maxwell in U.S.A. excluding the LD$50,000.00, he had paid to Jessie S. Payne. He further said that he was informed that between the 15' and 22' day of February, 1996, that Mrs. Maxwell, thru the influence of Mr. Jessie S. Payne, had or was about to sell the piece of **land**; that upon hearing of this news, he filed, on January 23, 1996, a caveat against the probation of any lease agreement, deeds or any other documents from Mrs. Victoria Johnson Maxwell; and that said caveat is still pending before the Probate Court for Montserrado County.

Appellee asserted further that in September 1996, appellant herein carried 50 ex-fighters on the premises and forcibly opened all the doors, illegally entered therein and put appellee's family and other relatives and dependants' belongings outside, took away valuables, and damaged the rest,

for which unwholesome acts appellees and others affected, filed an action of damages for wrong before the Sixth Judicial Circuit Court, Montserrado County.

On October 11, 1996, appellee filed a bill of information before the probate court informing the court of the illegal probation and registration's of appellant's deed on February 13, 1996, with out notice and information to him, even though his caveat was filed on January 24, 1996, and that the caveat was still pending before the said court undetermined.

On February 3, 1997, the appellant herein instituted an action of ejectment against appellee in the Civil Law Court for the Sixth Judicial Circuit, during its March Term, A. D. 1997, presided over by His Honour M. Wilkins Wright, then resident circuit judge.

Appellant also stated in its complaint that all efforts tea have the appellee meet with it in connection with the said matter, through a conference to ascertain the reason/or intention for appellee continued use and occupation of its legitimate premises failed. Appellant prayed the trial court to eject and evict appellee from appellant's premises and that appellant be placed in possession of the subject property.

On the 14th day of February, A. D. 1997, appellee filed a nine-count answer to the appellant's complaint. In count 2, appellee contended that from the time he and Mrs. Maxwell agreed for him to buy the premises in question for US$10,000.00, he made the first payment to her in 1993 or 1994. Therefore, the premises was not hers but appellee's. Hence, she could not have legally sold said premises to the appellant in January, 1996, and if she did, appellee argued, said sale was illegal and had no effect on appellee. Appellee also further asserted in his answer that appellant's deed, exhibit "A" to the complaint, was illegally probated and registered, and that as such, same was a legal nullity and had no legal effect on him since he had filed information before the monthly and probate court and said information was still pending before the said court undetermined. Appellee also contended that by the delineation of contract, the premises in question was owned by him and not the appellant. Hence, he could not be evicted, ousted and ejected from said premises.

Appellee also submitted that the entire complaint was the subject matter of dismissal, in that, there were two cases relative to the subject matter between the appellee and appellant pending in the Civil Law Court and the Probate Court for Montserrado County. Hence, the action of ejectment should be dismissed.

Appellee prayed the trial court to dismiss appellant's complaint with costs against the appellant and that his (appellee's) answer be maintained and sustained. Appellant filed its reply on the 19th day of February, A. D. 1997, and pleadings rested.

On February 28, 1997, appellee filed a motion to dismiss appellant's action, informing the trial court that the appellee was a party-defendant in the case out of which the motion grew, and that at various times between 1992 and 1996 he had paid to Mrs. Victoria Johnson Maxwell, the owner of subject property, various amounts totaling, USD20,000.00, for two separate pieces of property, plus African goods, such as, dresses, gowns, shirts, and arts and crafts, in addition to LD$50,000.00 paid to Mr. Jessie G. Payne, attorney-in-fact for Mrs. Maxwell. Appellee contended that based on the mutual agreement between him and Mrs. Maxwell and Mr. Payne, he moved into and took possession of the premises in July, 1992, and was still in possession up to the present.

Appellant filed a five-count resistance to appellee's motion to dismiss contending that count one of the motion contained no traversable issue, hence not a subject of contention; that the motion lacked legal reasons for which the complaint should be dismissed; that the facts are repeated as contained in the appellee's answer.

Appellant contended that under the rule of pleadings notice must be given to the adversary of the defenses a party intended to rely upon. Appellant prayed the court below to dismiss the motion, rule the complaint to trial, dismiss the answer, and place the appellee on bare denial.

On the 16th day of May, A. D. 1997, His Honour M. Wilkins Wright, then resident circuit judge, granted appellee's motion to dismiss appellant's action of ejectment on ground that appellant's title deed was defective and on the doctrine of *lis pendens.* The court appointed counsel excepted to this ruling and announced an appeal to this Honourable Court which was granted by the trial judge. The appellant has filed a seven-count bill of exceptions.

Appellant alleges in its bill of exceptions and argued before this Court that the ruling of the trial judge was erroneous and prejudicial, in that, appellee's motion to dismiss appellant's action of ejectment was contrary to law. In other words, appellant contended that there was no other action pending before the same parties for the same cause in the courts within this Republic, the ground used by the trial judge for granting the motion to dismiss. Appellant also, argued that the trial

judge committed a reversible error when he reviewed the act of the probate court to the effect that appellant's title deed was defective for reason that it was probated and registered within a period shorter than four (4) months and that the **land** was surveyed without the due notice to the appellee. In short, appellant submitted that the probation of a conveyance is not reviewable in an action of ejectment.

It was further contended by appellant that the appellee's motion to dismiss appellant's complaint was untimely filed, in that the said motion was not filed at the time of service of appellee's responsive pleadings, but 14 days after the service of the answer and appellant's reply.

Appellant further argued that a title deed probated presents issue of facts to be tried by a jury and that appellee's motion to dismiss could not challenge a title deed for reason that a motion was not a substitute for an answer. Appellant further asserted that the appellee had failed in his answer to appellant's complaint to traverse the averments contained therein with respect to the ownership to the property and to profert title and other relevant documents in establishing title to the disputed property.

Appellant therefore prayed this Court to reverse the ruling of the trial judge dismissing appellant's action of ejectment anti to grant appellant's resistance to said motion.

Appellee, on the other hand, contended that a contract of sale of the subject property was concluded between Jessie S. Payne and appellee in 1992, and between Victoria Johnson-Maxwell and him in 1993, whereupon he paid the sum of USD14,200.00 against the purchase price of USD20,000.00 by January 16, 1996. This, appellee said, made him the legal owner of the property as of the first payment of the purchase price to his grantor, Victoria Johnson-Maxwell. As such, his grantor was divested of the ownership of the premises when, on January 16, 1996, she executed appellant's deed for the premises. Hence, appellee contended that the sale was unlawful and illegal and could not stand.

This Court is reluctant to decide appellee's issue of ownership of the subject property pursuant to a contract of sale allegedly concluded between appellee and his grantor upon which he allegedly made an initial payment on the ground that there is an action of ejectment pending before the Civil Law Court to determine the parties' title and right of possession to the disputed property. For, to do so would mean delving into the merits of the ejectment suit which is not the subject of appeal before this Court.

The third contention raised and argued by appellee was that the probate court was wrong in probating on February 3, 1996, a deed against which probation a caveat was filed on January 24, 1996, without giving notice and information to the caveat-or. The fourth contention raised and argued before this Court by appellee was that appellant's deed against which probation a caveat was filed, could not be used in an action of ejectment by the appellant, for reason that the said deed could not be considered as legal title until the dispute was settled. Appellee also contended that appellant's deed for the disputed property was subject of litigation in the Monthly and Probate Court for Montserrado County, wherein a caveat and a bill of information had been filed and remained undetermined.

This Court is cognizant of its scope of appellate review, that is, that it can only review issues that are passed upon by subordinate courts and made the subject of appeal. Hence, appellee's issues three and four ate not subject of the appeal before this Court as those issues are yet to be determined by the Monthly and Probate Court for Montserrado County, as admitted by the appellee.

The fifth issue raised and argued before this Court by appellee is that the caveat and the bill of information filed and presently pending before the Monthly and Probate Court for Montserrado County and the action of ejectment pending before the Civil Law Court undetermined involved two or more cases pending between the same parties in a court of competent jurisdiction, and that as such, the motion filed by the appellee was legally granted by the trial judge dismissing the ejectment suit.

Appellee also raised the issue of appellant's failure to file a notice of change of counsel with the clerk of the trial court and to serve a copy thereof on appellee's counsel. This Court however observes during the arguments of this case that appellee conceded the filing and service of a notice of change of counsel by the appellant herein.

The seventh and final issue raised by the appellee was that the appellant had failed to deny the allegations of fact made by him to the effect that he had moved on the premises in July, 1992, and that he concluded a contract of sale with the grantor of the disputed property and subsequently made an initial payment of US$14,200.00 excluding the sum of LD$50,000.00 paid to one Jessie S. Payne for the subject property. These allegations, pleaded and not denied by the appellant, he said, are therefore deemed admitted.

We are impotent to decide appellant's issue number seven on ground that the factual matters contained therein are cognizable before the trial court for determination of the ejectment suit which is pending undetermined. This Court can only pass on issues on appeal from a judgment of a subordinate court. The subject of appeal before this Court is to determine whether the doctrine of *lis pendis* is applicable in this case for which appellant's action of ejectment was dismissed upon motion of appellee. We cannot therefore decide any other issue which is not subject of the appeal before this court, for to do so will delve into the merits of the ejectment suit which is not on appeal before this Court.

Predicated upon the contentions of the parties as contained and summarized from the certified records, briefs and arguments before this Honourable Court, we have determined that the cardinal issues for the determination of this case to be:

1. Whether or not appellee's motion to dismiss was timely filed in contemplation of our statute.

2. Whether or not there was another action pending between the same parties for the same cause of action for which the doctrine of *lis pendens* is applicable.

These issues will be decided in the order in which they were raised. As to the issue of timelessness of appellee's motion to dismiss and the legal grounds upon which it was filed, this Court observes that the appellee filed his answer on the 14thday of February, A. D. 1997 and that his motion to dismiss appellee's complaint and the entire action was filed on the 28th day of February A. D. 1997, fourteen (14) days after the filing and service of his answer and nine (9) days subsequent to the filing of appellant's reply. It is an elementary principle of law, practice, and procedure in this jurisdiction that a party may move the court for judgment dismissing one or more claims for relief asserted against him in a complaint as of the lime of service of his responsive pleading. Civil Procedure Law, Rev. Code 1: 11.2, *Pretrial Motions and Practice, Motion to Dismiss.*

In the case *Horace v. Harris*, [1947] LRSC 14; 9 LLR 372 (1947), this Court held that "the party filing the last pleading is entitled to move the Court first on any legal defect in the pleading of his adversary. Thus, the filing, on February 28, 1997, of appellee's motion to dismiss appellant's complaint, 14 days after service of the answer, was untimely and should have been dismissed by the trial judge.

With respect to the issue of *lis pendens*, this Court observed from the records that the appellee filed an action of damaged for wrong against the appellant in the Civil Law Court for the Sixth Judicial Circuit Court and that the appellant subsequently filed an action of ejectment against the appellee in the same court. These two actions are still pending undetermined. Secondly, we observed from the records that appellee filed a caveat in the Monthly and Probate Court for Montserrado County against the probation and registration of appellant's deed and a bill of information in the probate court regarding the probation and registration of appellant's deed without notice to the appellee. There is no showing in the records that the appellee ever made any efforts to have the caveat and bill of information heard, and which were still pending before the probate court undetermined up to and including the time appellant instituted its ejectment suit.

The appellee filed a motion to dismiss appellant's action of ejectment pursuant to chapter 11; section 11.2(d) of the Civil Procedure Law, Rev. Code 1, which provides that a party litigant *may move the court to dismiss one or more claims for relief asserted against him in a complaint* at the time of service of his responsive pleading on ground that there is another action pending between the same parties for the same cause in a court in this Republic (Emphasis ours).

This Court holds that there are two separate and distinct actions pending between the same parties, in that an ejectment suit does not present the some cause as that of an action of damages for wrong. The former relates to lawful title and possession of a property but the latter concerns itself with injury done to a property. The doctrine of *lis pendens* is only applicable where there is another action pending between the same parties for the same cause in a court within this Republic, in accordance with the statutory provision's, stated *supra.* Thus, the doctrine of *lis pendens*, appellee strongly contended, was inapplicable to the instant case.

Wherefore, and in view of the foregoing, it is the considered opinion of this Court that the ruling of the trial court dismissing appellant's action of ejectment should be, and the same is hereby reversed. The motion to dismissed is denied and the case remanded. 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 ejectment suit and proceed with the hearing of the case on the merits in keeping with law. Costs to abide final determination of this case. And it is hereby so ordered.

Motion to dismiss denied; judgment reversed.

Wiah v RL [1997] LRSC 7; 38 LLR 385 (1997) (22 July 1997)

ANDREW DOE WIAH, Appellant, v**. REPUBLIC OF LIBERIA**, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE FIRST JUDICIAL CIRCUIT, CRIMINAL ASSIZES, COURT "B", MONTSERRADO COUNTY.

Heard: May 26, 1997. Decided: July 22, 1997.

1. The object of a bill of exceptions is to put the controverted rulings or decisions upon the record for the information of the appellate court.

2. The Supreme Court cannot sustain a bill of exceptions which fails to state the facts and circumstances in the records upon which it is based.

3. A bill of exceptions is defined as a specification of the exceptions made to the judgment, decision, order, ruling, sentence or other matters of the trial court excepted to and relied upon for the appeal, together with a statement of the basis of the exceptions.

4. A bill of exceptions is substantially a pleading of the exceptant before the appellate court. As such, the exceptant is responsible for all deficiencies therein, and where the bill of exceptions is unintelligible, confusing, or conflicting, it will be interpreted against the appellant and in support of the judgment.

5. Any party may, at the close of the evidence or at such earlier time during the trial and as the court reasonably directs, file written requests that the court shall instruct the jury on the law as set forth in the request and furnish copies of such requests to the adverse parties.

6. The trial court shall instruct the jury on every issue of law arising out of the facts even though no requests to charge thereon have been submitted by counsel for the parties.

7. It is irregular for the trial judge in his charge to the jury to ignore the request of counsel for instructions to the jury on points of law since the jurors, being lay persons, do not understand the legal implications surrounding a given set of facts in a case.

8. The functions of a charge to the jury are (a) to explain the issues, (b) to notice the positions taken by the parties and suggests, as far as the case may require, the rules of evidence and their application, and (c) declare what rule or rules of law are applicable to the facts which may be found.

9. A person is guilty of criminal mischief if he damages tangible property of another purposely or recklessly and absence evidence of such damage, a conviction cannot be upheld.

10. An appellant has no legal standing to include in his bill of exceptions errors committed by the trial judge in his charge to the jury if the appellant did not except to the charge before the retirement of the jury to consider its verdict.

11. Evidence that property was uprooted from the ground without further evidence of damage to said property is insufficient to sustain conviction of malicious mischief.

12. It is a settled principle that a charge must be proven as laid in the indictment.

13. An indictment must allege with precision and certainty every material fact constituting the offence charged, and such material facts must be proved beyond a rationale doubt, which is the standard for criminal prosecution in this jurisdiction, or the accused will be entitled to a discharge.

Appellant was accused of criminal mischief, charged, indicted, tried, and convicted. The indictment charged that the appellant had unlawfully, wrongfully, illegally, willfully, purposely and recklessly removed, damaged and destroyed four cornerstones of the private prosecutor, which at the time were planted on **land** owned by the private prosecutor, but which the appellant also claimed ownership to. The value of the cornerstones was placed at L$350.00 (Liberian dollars). At the trial of the case, the witnesses for the prosecution, including the private prosecutor, testified that the appellant had uprooted the cornerstones planted on the **land** of the private prosecutor, but no one testified that the cornerstones had been destroyed by the appellant.

The Supreme Court, after reviewing the records, sustained the contentions of the appellant, contained in counts one and two of the bill of exceptions. The Court observed that under the criminal mischief statute, the defendant must have destroyed the property of the private prosecutor, but that this element was absent from the evidence in the case. The Court noted that all the evidence in the case showed that the appellant had uprooted the cornerstones of the private prosecutor but that the records were devoid of any evidence that the cornerstones were damaged and destroyed by the appellant, as alleged in the indictment. In the absence of such evidence, which was not in harmony with the allegations set forth in the indictment, the Court said, there was a failure to prove the guilt of the appellant beyond a reasonable doubt, and therefore the conviction could not be upheld.

The Court also opined that the trial judge committed a prejudicial error when he failed, in his charge to the jury, to instruct the jurors on the points of law requested by the appellant. The court noted that the judge was under an obligation to give such instructions of law even if the parties did not request same. Accordingly, it *reversed* the judgment and ordered the appellant discharged.

Thompson Jagba appeared for appellant. *The Ministry of Justice* appeared for the appellee.

MRS. CHIEF JUSTICE JOHNSON-MORRIS delivered the opinion of the Court.

The appellant, Andrew Doe Wiah, was indicted by the grand jurors for Montserrado County during the May Term, A. D. 1995, of the First Judicial Circuit Court, Criminal Assizes "B", for the crime of criminal mischief. The indictment alleged that in the month of February A. D. 1995, in the vicinity of St. Paul Bridge, Bushrod Island, City of Monrovia, Montserrado County, Republic of Liberia, Appellant Andrew Doe Wiah, then and there claiming ownership of the parcel of **land** owned by Private Prosecutor Anthony Saah, did unlawfully, wrongfully, illegally, willfully, purposely and recklessly remove, damage and destroy the four cornerstones of the private prosecutor which he (the private prosecutor) had planted at the four corners of his parcel of **land**. The value of the cornerstones, according to the indictment, was L$350.00. The indictment further alleged that the appellant failed to replace or restitute the value of the private prosecutor's cornerstones, thereby causing the private prosecutor to suffer financial loss. The indictment alleged that then and thereby the crime of criminal mischief the appellant did do and commit, contrary to the form, force and effect of the statute laws of Liberia, in such cases made and provided, against the peace and dignity of the Republic.

Appellant Andrew Doe Wiah was arraigned on the 22ndday's jury session of the August Term, A. D. 1995 of the First Judicial Circuit, Criminal Assizes "B", presided over by His Honour William B. Metzger, Sr. At the arraignment, he entered a plea of "not guilty".

The appellant having joined issue with the State by pleading "not guilty" to the indictment, the State produced three witnesses, including the private prosecutor, Mr. Anthony Saah, whose testimonies were corroborated on the issue of the appellant uprooting the cornerstones of the private prosecutor. The prosecution witnesses were cross-examined by the defense counsel and thereafter the prosecution, led by Attorney Mardea Chenoweth, rested evidence and presented for admission into evidence instruments bearing court's marks P-1 and P-2, same being private prosecutor's deed and receipt for the four cornerstones, subject of the litigation. Also, at the request of the prosecution, the court admitted the said instruments into evidence to form a part of the prosecution's evidence. After the State had rested evidence *in toto,* the defense counsel, Counsellor Thompson Jagba, announced that his client, the appellant, was waiving the production of evidence, and requested that the case be submitted to the court for arguments, which was done. Following arguments by both parties, the presiding judge instructed the empaneled jury, after which they retired to their room of deliberation and returned with a unanimous verdict of "guilty" against the appellant. Appellant's counsel excepted to the verdict and subsequently filed a motion for new trial in keeping with the Criminal Procedure Law, Rev. Code 2: 22.1. Appellant's motion was resisted and denied, and judgment was entered by the trial judge confirming the verdict of the jury against appellant. From this judgment, appellant announced an appeal to this Court of last resort for review of the trial court's decision on a three-count bill of exceptions.

We shall consider all the counts of the bill of exceptions but in the reverse order. Count three of the bill of exceptions reads thus:

"Because Your Honour committed a reversible error when you failed to acquit the defendant due to the inconsistency and contradictory evidence of the prosecution, as can be clearly seen from the writ of arrest for criminal trespass and criminal mischief which grew out of the same facts".

The exception contained in count three above leaves much to be desired, in that it is so vague that it leaves one with the impression that counsel for the appellant merely filed the bill of exceptions to fulfill the requirements of the appeal process.

There is no showing of the contradictions and inconsistencies in the evidence of the prosecution, referred to by the appellant. Moreover, appellant referred to a writ of arrest for criminal trespass which he claimed is inconsistent with the criminal mischief indictment under which he was tried. However, from an inspection of the records certified to this Court, there is no such writ of arrest for criminal trespass.

The object of a bill of exceptions is to put the controverted rulings or decisions upon the record for the information of the appellate court. On the contrary, count three of appellant's bill of exceptions failed to state with any particularity the contradictions or inconsistencies which he claimed are found in the prosecution's evidence. This Court cannot sustain this count of the bill of exceptions as it failed to state the facts and circumstances in the records upon which it is based. Under the Criminal Procedure Law, Rev. Code 2: 24.9, a bill of exceptions is defined as a specification of the exceptions made to the judgment, decision, order, ruling, sentence or other matter excepted to and relied upon for the appeal, together with a statement of the basis of the exceptions. Finally on this issue of the vagueness of count three of appellant's bill of exceptions, this Court, relying upon the Encyclopedia of Pleading and Practice cited in the case *Johns v. Cess-Pelham and Wither -spoon[1944] LRSC 15;* , 8 LLR 296 (1944), text at page 302, noted that:

"A bill of exceptions is substantially a pleading of the exceptant before the appellate court. He is therefore responsible for all deficiencies therein, and where the bill of exceptions is unintelligible, confused, or conflicting, it will be interpreted against the appellant and in support of the judgment..."

Coming now to the second count of the bill of exceptions, appellant contended that the trial judge erred when he failed to instruct the jury as per the prayer of appellant's counsel on the issues of law relating to the rights of the defendant, burden of proof, and the obligation of the prosecution to produce corroborating evidence.

Under the Criminal Procedure Law, Rev. Code 2: 20.8, *instructions to the jury,* under paragraph one, captioned *Prior to retirement of the jury,* it is stated that at the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court shall instruct the jury on the law as set forth in the requests. At the same time, copies of such requests shall be furnished to the adverse parties. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the court shall instruct the jury after the arguments are completed. *The court shall instruct the jury on every issue of law arising out of the facts even though no requests to charge thereon have been submitted by counsel.* (Emphasis ours).

Notwithstanding this statutory obligation, the trial judge woefully failed to instruct the jury on the statutory definition of the crime with which the appellant was charged. We quote the trial

judge's charge verbatim below, as found on sheet two of the 28th day's jury session of the August Term, A. D. 1995, dated September 26, A. D. 1995.

"A CHARGE TO THE JURY

The Court: Let us first of all recognize you all and evaluate you as respected good men and women selected on the basis of trust that you will faithfully and impartially discharge these sacred duties without fear or favor and/or for reward.

You have sat with us and heard this case from its inception to now. You have actively participated in the day to day deliberations by even posing intelligent questions to the witnesses.

You have also heard the arguments in which the prosecution pointed out legal and factual reasons why you should convict and bring the defendant down guilty. You have also heard on what legal principles and facts the counsel for the defendant expounded and requested you to set the defendant free.

Now, therefore, we charge you to go in your deliberations room and conscientiously debate the pros and cons in this matter and submit a verdict of guilty to us if in your unanimous opinion he is guilty, or a unanimous verdict of not guilty if in your candid opinion he is not guilty. Let us remind ourselves of the biblical commandment `Do unto others as you would have them do unto you'. This is our charge and we hand you the records and all submissions in this case."

This charge of the trial judge completely ignored not only the request of the appellant's counsel for instructions to the jury on points of law as found on sheet (1) of the 28th day's jury session, dated September 26, 1995, but also that of the prosecution. This is very irregular and unfortunate because the object of the charge to the jury is to enlighten them on the issues involved in the controversy since jurors are lay persons who do not understand the legal implications surrounding a given set of facts involved in a case. In 1975, this Court opined in the case *Nyumo v. Republic*, [1975] LRSC 10; 24 LLR 154 (1975), that the functions of a charge to a jury are, as follows:

1. To explain the issues;

2. To note the positions taken by the parties and suggest, as far as the case may require, the rules of evidence and their application therein.

3. To declare what rule or rules of law are applicable to any state of facts which may be found.

Having thus stated the functions of a charge to the jury, it is obvious to us that the trial judge's charge to the jury in the instant case did not achieve the object of a charge to the jury; otherwise, we believe that the verdict would have been different. Let us for instance take recourse to the statutory definition of criminal mischief, which is also recited in the indictment, as follows:

"Chapter 15 section 15.6(a) of the Penal Law, Rev. Code 26, states thus: *"Criminal Mischief:* A person is guilty of criminal mischief if he: (a) "damages tangible property of another purposely or recklessly".

Regrettably, however, appellant's counsel failed to except to the judge's charge before the retirement of the jury to consider its verdict, as required by the statute. Criminal Procedure Law, Rev. Code 2: 20.8. Therefore, as prejudicial and inadequate as the charge may have been, appellant had no legal standing to have included it in his bill of exceptions as an error committed by the judge. Therefore, count two of appellant's bill of exceptions, as it relates to such omission by the trial judge, is not sustained.

Let us now consider the evidence adduced by the prosecution in support of the allegations of the indictment which have already referred to in this opinion.

The first witness for the prosecution, who was also the private prosecutor, Mr. Anthony Saah, stated the following in his testimony in chief:

"In the month of February 1995, I met Mr. Doe Wiah taking up my cornerstones. So I asked him to place them back and he refused. So I took the complaint to the Grebo Chief. The chief called him, asked him whether he took my cornerstones up, and he said yes. The chief asked him, why you took the cornerstones up for? and he said that the place was for him and I told the chief that the place was for me. Then I took out my deed and showed it to the chief. The chief asked him to present his own document. He failed to present his document to show that the **land** was for him, so he was told to put my cornerstones back, but he refused. So I took him to the magisterial court in New Kru Town. While we were on the case, his counsellor, Thompson Jargba, brought Judge Zogan's complaint to Criminal Court "B". So when we got here, we went into the case. While going into the case, I met Mr. Doe Wiah constructing on the **land**. I told him to stop and he refused and I brought him before this judge to show that the **land** is mine. I have my original deed here with me". (See Sheet 2 of the 24th day's jury session and Sheet 2 of the 25th day's jury session for this testimony of the witness Anthony Saah).

The foregoing chief testimony of the private prosecutor lacks an iota of evidence of destruction of any tangible property of the private prosecutor as alleged in the indictment. The prosecutions's witness, Anthony Saah, talked about the taking up or removal of his cornerstones by the appellant which is not the same as damaging the cornerstones as contemplated by the statute. The cornerstones could be planted if they were only removed, taken up or uprooted, as the evidence revealed. Again, while on the direct examination, witness Saah did not identify a piece of the broken cornerstones, but rather a deed and a receipt for the cornerstones which were marked by the court as "P-1 and P-2" respectively, and subsequently admitted into evidence.

Mr. Fayiah Carpenter was the prosecution's second witness. He testified briefly as follows:

"The thing where I know, it was one day, I sat down right in front of my house, the place where the tailor boy was sewing, I see this man Andrew Doe Wiah. He came out of the house. After he came out of the house, I saw him take up the cornerstones. He then dropped it down. That is all I see". (See sheet 7 of the 5thday's jury session).

While under cross-examination, witness Carpenter was asked by the defense counsel whether appellant destroyed the cornerstones. His answer was: "I don't know whether he destroyed it or not because the time he was carrying it, I leave them there."

The testimony of the third and final witness of the prosecution, Solomon Saah, was no better in establishing the essential element of the crime charged. The scanty testimony was that "one time private prosecutor, Anthony Saah, lodged a complaint to their Community Chairman, said that Andrew Doe Wiah took up his cornerstones, so he should go and find out from Andrew Doe Wiah. So that evening we went to Mr. Andrew Wiah. The Chairman asked Mr. Andrew Wiah whether he was the one that took up the cornerstones. So Andrew Wiah said yes, I took it up. So from there they came to call me and I left them there. So that all I know".

The foregoing evidence of the prosecution simply cannot constitute the crime of criminal mischief as defined under the statute quoted supra because no evidence of the destruction of the cornerstones was established. Therefore, we concur with count two of the bill of exceptions that the trial judge committed a fatal error by failing to instruct the jury on the issue of law relating to the rights of the defendant and the burden of proof which rests on the prosecution to prove the defendant's guilt beyond all reasonable doubt.

Finally, count one of the bill of exceptions averred essentially that the evidence of the prosecution failed to establish a prima facie case and created a material variance, thereby creating doubt in the mind of every reasonable being which should have operated in favour of the appellant, in that the prosecution tried to prove title rather than the crime charged.

The Court concurs with the contention of this count of the bill of exceptions because the evidence of the prosecution is wholly at variance with the allegations of the indictment, especially as regards the gravamen of the crime of criminal mischief, which is the destruction of tangible property. In the instant case, the cornerstones. 29 C.J.S., § 47, states thus:

"It is a settled principle of law that a charge must be proven as laid in the indictment."

Also in the case *Appleton v. Republic*, [1974] LRSC 31; 23 LLR 109 (1974), text at page 116, this Court, relying upon its previous opinions in the cases *Sampson v. Republic*, 11LLR 135 (1952), and *Attoh v. Republic*, [1945] LRSC 1; 9 LLR 3 (1945), said that an indictment must allege with precision and certainty every material fact constituting the offense charged. And such material facts must be proved beyond a rational doubt or the accused will be entitled to a discharge. We are of the opinion that the prosecution in the instant case failed to substantiate a very essential allegation of the indictment that appellant damaged the cornerstones of the private prosecutor. Even the testimony of the private prosecutor himself is devoid of any mention of the destruction of his cornerstones. His testimony stated only that the cornerstones were uprooted. Consequently, we sustain the contention of count one of the bill of exceptions.

Finally, because the prosecution failed to prove the appellant's guilt in keeping with the standard set for criminal prosecution in our jurisdiction, that is, proof beyond a reasonable doubt, the judgment of the trial court must be reversed. This conclusion is based upon a previous holding of

this Court in which it opined that a judgment founded upon a verdict contrary to the evidence cannot be upheld. See the case *Appleton v. Republic*, [1974] LRSC 31; 23 LLR 109 (1974).

Wherefore, and in view of the foregoing, it is our opinion that the judgment of the trial court should be and the same is hereby reversed and the appellant ordered discharged. And it is hereby so ordered.

Konnah et al v Carver [1989] LRSC 19; 36 LLR 319 (1989) (14 July 1989)

PAYE KONNAH and **SAYE TIAWAN**, Appellants, v**. GEORGE CARVER,** Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE EIGHTH JUDICIAL CIRCUIT, NIMBA COUNTY.

Heard: May 29, 1989. Decided: July 14, 1989.

1. Plaintiff in all claims of damages, special or general, is required to plead with particularity and prove his case during the trial. This he must do even where the defendant has abandoned his defense and the plaintiff has prayed for default judgment.

2. When a defendant to a suit before a court of competent jurisdiction fails to appear, either in person or by counsel, on the day assigned for the hearing of said case, such failure is sufficient cause for the opponent to ask for a default judgment.

3. When the jury has reached a conclusion, after having given consideration to the evidence and has found it sufficient to support the verdict, the decision should be upheld.

4. The want of proof is deemed sufficient to defeat the best laid action.

5. The fundamental rule of pleading and practice is that evidence must support the allegations or averments, since allegations are intended only to set forth in a clear and logical manner the party's claim containing the offense complained of; and if it is not supported by evidence, it can in no way amount to proof.

6. While it true that it is the province of the jury to say what general damages should be, the amount awarded should always depend upon and be governed by the evidence adduced at the trial.

7.Even where only general damages is claimed, the plaintiff must carry the burden of producing evidence to give indication to the jury as to what its verdict should be based on.

The appellee, plaintiff in the court below, filed an action of damages for damage to personal property in 1987, claiming that crops planted on his parcel of **land** were devoured by appellants' animals, despite the fact that his farm was fenced in. In the complaint, the appellee prayed for general damages as the jury saw fit and just.

During the trial in the court below, the appellee and his witnesses failed to establish, among other things, the size of the farm, the quantity of crops (rice, plantain tree, cassava, etc.) that were allegedly destroyed, or the value of the crops allegedly destroyed. Moreover, the appellants did not appear in response to the assignment to present evidence on their behalf; therefore, the case was concluded on a default judgment.

At the conclusion of the trial, the jury returned a verdict of liable against the appellants and awarded appellee general damages in the amount of $11,000.00. The verdict was confirmed by the trial judge and a judgment entered thereon. From said judgment, the appellants appealed to the Supreme Court for a review and final determination.

In its opinion, the Supreme Court held that while the trial jury is clothed with statutory authority to award general damages, the amount awarded should always be based upon and governed by the evidence adduced at the trial, and that this standard must be complied with even in cases of default judgment. The Court observed that the appellee had not established that he was entitled to the amount awarded by the jury. Consequently, the Court affirmed the judgment with the modification that the award of $11,000.00 made by the jury be reduced to $3,500.00.

C. Wallace Octavius Obey appeared for appellants *P. Edwin Gausi* appeared for appellee.

MR. JUSTICE KPOMAKPOR delivered the opinion of the Court.

The appellee, the plaintiff in the court below, in 1987 filed a four-count complaint for damages to personal property against the appellants. In count two of the complaint, the appellee alleged that he had planted in 1986 several kinds of crops such as cassava , pepper, rice, etc. He further averred that he was the owner in fee simple of the **land** on which he planted the crops. He also averred that the cattle of appellants had from time to time gone to his farm and eaten his crops. In count three of the said complaint, the only other important count, the appellee alleged that although he had his farm fenced in, the appellants' animals however tore down the fence, entered the farm and devoured his crops. Appellee therefore prayed for judgment against the appellants and for general damages as the jury saw fit and just. He did not ask for special damages.

In their answer, the appellants raised several issues, including one that the action of "damages to personal property" is not provided for by our statute. Count-two of the said answer we hereunder quote, it being, in our opinion, relevant:

"2. That under our fundamental principle of law governing pleadings as well as notice, the plaintiff who alleges that he is the owner of a farm **land** which he planted several cash crops and were destroyed by defendants' cattle should have given notice to the defendants of the area and total acres on which he allegedly planted his crops. Having elected to evade these principles

of law which would have informed the defendants of what the plaintiff intends to prove against them, the complaint must crumble and fall, count 2 of the plaintiff's complaint being a fit subject for dismissal.

In his reply, appellee rejected the contention of the appellants that the action be dismissed on the ground that our statute does not provide for "damages to personal property" as an action. The appellee also contended that the defendants misunderstood the application of the principle of notice because he had promised in his complaint to produce his deed during the trial which contains the metes and bounds of the property. Consequently, he concluded that the notice requirement was fully complied with. He therefore prayed that defendants be adjudged liable and that he be compensated in general damages.

The records certified to us in this case revealed that on Thursday, September 8, 1988, 26th day's jury session, of the Eighth Judicial Circuit Court, the following record was made by the appellee:

"At this stage, counsel for plaintiff begs to inform this Honourable Court that they rest with the production of evidence . . . ."

In response to that submission, the trial judge made the following record:

"The Court: The plaintiff having rested evidence in this proceeding, this case is hereby deferred to tomorrow, the day of September, A. D. 1988, at the precise hour of 9:00 in the morning and these records shall serve as regular notice of assignment served and returned served on each party litigant since all of the legal counsel for both plaintiff and defendants are physically present in court . . . ."

Despite the above record made on the previous day, when the case was called on Friday, September 9, 1988, at the hour of 11:25 A. M., the appellants and their counsel failed to appear. Under the above circumstances, counsel for plaintiff invoked Rule 7 of the Circuit Court Rules, praying that the court permit him to argue his side of the case. The request was granted and ultimately the jury brought in its verdict in favor of the plaintiff. We are satisfied from the evidence presented and the argument of counsel for the appellants that the trial judge acted in accordance with law and the practice when he granted the request of counsel for the appellee. Therefore, the contention of appellants to the effect that the trial judge hurriedly disposed of the matter without allowing them the opportunity to put in a defense is not sustained.

In prosecuting their appeal, the appellants filed a five-count bill of exceptions. In count one, the appellants accused the judge of committing a reversible error when he sustained the objections to questions which were intended to elicit from the appellee himself and his witnesses the precise figures or estimate of the crops allegedly destroyed by defendants' animals. This accusation of the appellants against the trial judge is unmeritorious since it is not supported by the record before us. In our opinion, the trial judge correctly sustained all objections to these questions because, according to the records, the same questions had been put to one witness or another earlier and they were answered. Under such circumstances, in keeping with the practice in this jurisdiction, a witness need not answer a question or questions which he has already answered. In count five of the bill of exceptions, the appellants also charged the judge of committing a

significant reversible error in confirming the verdict of the jury awarding the appellee $11,000.00 as general damages, not because it was excessive, *but because, according to them, the verdict was brought and delivered in their absence.* (Emphasis ours).

As already mentioned in this opinion, the appellee had claimed that he owned a parcel of **land** in fee simple on which he planted sundry crops, including rice, cassava, plantains, etc. However, surprisingly, *the size or amount of the appellee's award of$11,000.00 was not raised as an issue by the appellants in their bill of exceptions, their brief or the argument before this Court, at least not directly or squarely.* The appellants instead contended that the appellee failed to give them notice as to what he hoped to prove during the trial with respect to the size of the farm, the acreage and quantity of the crops devoured by appellants' animals. In other words, the appellants contended, though in an indirect way, that the appellee should have stated in his complaint or reply the size of the **land** on which the crops. was planted and the exact quantity of crops, perhaps when harvested. This information, the appellants argued, was necessary to give the court and jury, and themselves, an idea as to why he was claiming general damages. (Emphasis ours.) The fact that the appellee claimed only general damages, and not special as well, baffles us, since such a claim for seed rice, clearing the **land** and planting it would have served as a guideline for the jury in determining the size of the award. Since the appellants have not denied the appellee's allegation that his crops were devoured by appellants' animals, and since we have said that we are satisfied that the trial judge committed no wrong when he granted the request of appellee's counsel, made on September 9, 1988, to present his side of the case. The only question for our determination then is, whether or not even under these circumstances the appellee has stated sufficient facts in his pleadings and in his argument before this Court to warrant the jury's verdict of $11,000.00 as general damages. We are not convinced that he did.

During the trial of this case and while on the cross-examination, the plaintiff, now appellee, was asked the following question:

"Mr. witness in your testimony you mentioned that such crops as plantain, cassava, rice and etc. were destroyed by cattle such as sheep and goats owned by the defendants. You will please state if you can the quantity of crops plantain tree, cassava, rice etc. that were allegedly destroyed according to you?"

The witness replied: "I want to say that I am not in the position to state the number or quantity or rice, plantain, pepper, cassava that were destroyed on the farm because usually we do not count the amount of rice, plantain, pepper, cassava when a farmer makes his farm. *My farm which I made in question was big or large like from this court building to the public market of Sanniquellie."* (Emphasis added.)

Indeed, this is an interesting answer, coming from the appellee himself Another but similar question put to the witness was:

"Mr. witness you will please tell us how many acres of **land** in 1986 did you cultivate according to you and thereon planted crops which were destroyed by the defendants' cattle?"

To this question the appellee gave the following answer, which we consider not helpful:

"Usually we do not count and or we do not mention the number of acres for farming nor do we use tapeline for measurement of the farm."

While testifying on behalf of the appellee, Joseph Gausi, appellee's second witness after himself, was asked this question: "Can you estimate the quantity of crops destroyed by the goats and sheep of the plaintiffs farm?"

His answer was: "I cannot estimate." The second question put to this witness of appellee reads thus:

"Mr. witness since you personally went to the plaintiffs farm upon his request and saw the same, are you in position to estimate to the size (sic) of the said farm?"

This witness, like the appellee himself, gave the following curious answer: "Yes, it was almost like from here to the first gas station where the union office is."

We observed further, according to the evidence in this case, the following question was put to Paye Goekpeh, appellee's third and final witness:

"Mr. witness can you give an estimation of the quantity of crops destroyed by the defendants' cattle according to you?

Again this witness gave the following ineffectual answer: "During my inspection on the said farm, I discovered that cattle ate the crops of the plaintiff such as rice, pepper, cassava and green corn. Usually, we the farmers do not count the number of the crops that we plant."

As can clearly be seem from all of the answers to questions propounded to the appellee and his witnesses by the legal counsel for the appellants, the questions invariably sought to obtain some indication as to what damages might have been sustained by the appellee. There is not a single answer given which could have been of any assistance to the court and jury. How did the jury then come up with a verdict of $11,000.00 is a mystery to this Court. Also, why the trial judge felt constrained to confirm and affirm the said verdict mystifies us.

Under our law, the plaintiff in all claims of damages, special or general, is required to plead with particularity and prove his case during the trial. This he must do even where, as in the instant case, the defendant has abandoned his defense and the plaintiff has prayed for a default judgment. It is noteworthy, however, that we point out that where the plaintiff fails to carry this burden of proof imposed upon him by law, the court should not uphold the verdict of the a jury. In the instant case, the jury brought a unanimous verdict of liable against the appellants and awarded the appellee $11,000.00 as general damages, which ' verdict the trial judge confirmed and affirmed. In our opinion, a motion for a new trial would have been appropriate. But again, the appellants chose not to file one. With respect to the enormous award in the verdict, the answers given to the questions put to the appellee and his witnesses should have, in our opinion, compelled a contrary result.

The holding of *Reeves v. Spiller*, 1 LLR 298 (1897) is that when a party to a suit before a court of competent jurisdiction fails to appear, either in person or by counsel, on a day assigned for the hearing of said case, such failure is sufficient cause for the opponent to ask for a default judgment. This was the exact situation in which the appellants found themselves when they failed to appear in time when the jury was charged and they brought in their verdict.

We will now consider the other issue in the case, whether the verdict of the jury is in harmony with the evidence. Appellants have contended here that the verdict is manifestly against the weight of the evidence. We are in agreement with this contention.

In *Liberian Oil Refinery Company v. Mahmoud*, [1972] LRSC 24; 21 LLR 201 (1972), this Court, in affirming the judgment of the trial court, held that when the jury has reached a conclusion after having given consideration to the evidence it found sufficient to support the verdict, the decision should be upheld. As do most jury verdicts, the one in the instant case reads:"We the petit jurors to whom the case. . . was submitted and after a careful consideration of the evidence at the trial of said case, we do unanimously agree that the defendants are liable for $11,000.00 general damages." When squared with the ruling in the *Liberian Oil Refinery Company* case, the verdict in the instant case is found wanting and should have been set aside and a new trial awarded pursuant to a motion. *Collins v. Republic*, [1972] LRSC 49; 21 LLR 366 (1972).

It is our opinion that as far as proof of damages at the trial is concerned, the appellee made no attempt to carry this heavy onus imposed upon him by law. In other words, if the questions and many more had been clarified at the trial, particularly with reference to the estimate and value of the crops allegedly devoured by the appellants' animals, the truthfulness or falsity of the two pleadings would have been established beyond dispute. In essence, the witnesses for the appellee and himself testified to the effect that they had not the vaguest notion as to the quantity of the crops involved and their value. There is no evidence in the entire records to show or even suggest the estimated value of crops. In the absence of any corroboration that he sustained financial loss, could the jury legally accept as truth the mere allegations of the appellee, especially where only general, not special, damages are sought? We do not think they should have.

Count five of the bill of exceptions deals with the verdict of the jury which is in the staggering amount of $11,000.00.Reviewing the evidence such as it is and as we have already observed, we find nothing to warrant a verdict in the amount, if an award at all. Although the appellee asked for general damages only, the jury should have been given some indication as to what their verdict could be based upon. In *Jogensen v. Knowland*, 1 LLR 266 (1895) and *Haid v. Ebric*, [1966] LRSC 85; 17 LLR 662 (1966), this Court held that "want of proof must defeat the best laid action". The Court also held in *Houston et al. v Fischer et al.*, 1 LLR 434 (1904) at 436, that the fundamental rule of pleadings and practice is that evidence must support the allegations or averments, since allegations are intended only to set forth in a clear and logical manner the party's claim constituting the offense complained of and if it is not supported by evidence, it can in no way amount to proof.

In this case one wonders what yardstick the jury used in arriving at $11,000.00 as general damages. In *The Salala Rubber Company v. Onadeke*, [1976] LRSC 2; 24 LLR 441 (1976), a

jury brought in a verdict for plaintiff, awarding a huge sum as general damages in a suit for malicious prosecution. In reversing the judgment because the appellee had failed to establish his claim, this Court observed that while it is true that it is the province of the jury to say what general damages should be, the amount awarded should always be based upon and be governed by the evidence adduced at the trial. "The Court will not uphold unreasonable amounts arbitrarily awarded by a jury as damages ...." We have not been able to find anything in the evidence to justify the $11,000.00. Courts should always remember that a mere allegation does not constitute proof; the burden of proof remains upon the shoulders of the one who makes the allegations.

According to the circumstances as appear in the record of this case, and in keeping with the law cited, we are of the opinion that the judgment of the trial court should be affirmed, but with the modification that the staggering amount of $11,000.00 in general damages be reduced to $3,500.00. We have taken this position because to do otherwise would violate our basic principles of law regarding pleading, burden of proof and damages.

In view of the foregoing, it is our opinion that the amount of $3,500.00 should be the judgment to be enforced with costs against the appellants. And it is hereby so ordered.

Judgment affirmed with modification

Rachid v Dennis et al [1986] LRSC 33; 34 LLR 272 (1986) (1 August 1986)

HABIB ABI RACHID, Appellant, v. **MAX DENNIS, EDA JOHNSON** and **SARAH FREEMAN**, Executors and executrices of the Testate Estate of the late FLORENCE McGILL HOWARD, Appellees.

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

Heard: June 23, 1986. Decided: August 1, 1986.

1. The Supreme Court can render such judgment in a matter upon appeal, which should have been rendered by the trial court.
2. A verdict awarding damages will be held excessive where the damages awarded exceeds the sum alleged in the complaint.

3. A party to a lease agreement, or one in privity with such party, will be estopped from denying the validity of the lease, especially where the complaining party or her successor in interest has received benefit under the lease over a period of time.

The testator of the appellees leased a parcel of **land** to a business man who subsequently subleased it to the principal of the appellant. Thereafter, the testator, the lessee and the principal of the appellant executed an addendum to the original lease. Notwithstanding the fact that the testator, during her lifetime, received rent pursuant to the addendum, the appellees instituted an action of ejectment seeking to evict the appellant. The trial jury returned a verdict, which provided that "the plaintiff is liable to his property, in said case, and the damages of $34,000.00." Judgment was entered on the verdict and an appeal taken therefrom to the Supreme Court.

The Supreme Court reversed the judgment of the trial court, holding that the appellees were bound by the contract of their testator.

Joseph Andrews appeared for appellant. *Joseph Findley* appeared for appellees.

MR. JUSTICE TULAY delivered the opinion of the Court.

On the 15t of July, 1961, the late Florence McGill Howard, grandmother of the plaintiffs/appellees herein, entered into a lease agreement as lessor with one Habib Abi Rachid, a Lebanese business man, as lessee, for her plot of **land** known as part of lot No. 81 in and lying in the corner of Benson and Lynch Streets, Monrovia. The leasehold agreement was to run from July 1, 1961 to June 30, 1981 with an optional period of another twenty years - 1981-2001 A. D., providing for an increased rental.

In March 1962; the lessee subleased the premises to a Mr. Fadalah Farage. Then in March 1966, an addendum was prepared by the lessor, lessee and the assignee in which paragraphs 2(a) and 2(b) were amended as follows to wit:

"1. Paragraph 2 of the original agreement of lease dealing with the amount of rental for the use of the premises which now reads as follows:-

` To HAVE AND TO HOLD the said premises with all the easements, outlet, buildings, appurtenances connected with the said demised premises unto the lessee for during the period of (20) twenty calendar years certain commencing from theist day of July, A.D. 1961 up to and including the 30th day of June, A.D. 1981 with the right to renewal of twenty (20) years, at One Thousand Five Hundred Dollars ($1,500.00) per annum after the expiration of the first period hereby granted' be deleted and substituted by the following provisions:

`To pay or cause to be paid to the lessor the rental of $1,200,00 (One Thousand Two Hundred Dollars) per annum payable monthly in advance at the rate of $100.00 per month during the life of the lease agreement it being understood, however, that the rental of . $900.00 for the year 1965 already paid by lessee to lessor, the receipt whereof is hereby acknowledged, prior to this agreement. The difference of $300.00 (Three Hundred Dollars) is to be paid at the signing of this agreement.'

2. That paragraph 2 respecting rental payment for optional period which reads as follows:

`With the right to renewal of twenty (20) years at One Thousand Five Hundred Dollars ($1,500.00) per annum after the expiration of the first period hereby granted' be deleted and substituted by the following provisions:

`Rental for the optional period shall be One Thousand Six Hundred Dollars ($1,600.00) per annum, payable monthly in advance in the sum of $133.33 per month on the first legal day of each and every succeeding month after the expiration of the basic period and during the life of the optional period.'

3. This addendum shall extend to the whole of the principal agreement and shall extend to and be binding on both parties hereto, their heirs, assigns, executors and/or administrators."

With these amendments the addendum was signed by the lessor, Florence McGill Howard, lessee, Habib Abi Rachid, and assignee, Fadalah Farage, thereby approving and confirming same. It was probated on March 27, 1966,

Decedent Florence McGill Howard collected and received rental under this lease agreement with its addendum from the assignee up to the time of her death in 1974. Around this time, the assignee went home and died leaving his widow, Marian Farage, in charge of the premises. She, of course, obtained letters of administration from the Probate Court.

In the course of time, Mrs. Farage, widow of the deceased assignee, took sick and being desirous to go abroad for medical treatment, gave one Habib Abi Rachid a limited power of attorney to take care of the premises and, in connection therewith, to do and perform any and all acts as she herself would have done if physically present.

On January 3, 1974, plaintiffs/appellees, Max Dennis, Ida Jordan and Sarah Tanoe Freeman presented to the probate court the last will and testament of their grandmother, Florence McGill Howard, verifying their appointments as executor and executrices, respectively, oftheir late grandmother estate. On the 29th day of May, 1974 they were granted the letters testamentary and were placed under oath accordingly.

After several letters were exchanged between plaintiffs/ appellees and appellant, in connection with the estate in point, appellees sued out an action of ejectment asking the court to evict appellant from the premises and to place them in possession of the estate, their heritage. For the benefit of this opinion, we give below counts 3 & 4 of the complaint, and the plaintiffs' prayer, which we consider salient:

"3. That notwithstanding the foregoing, defendant has entered upon said premises and wrongfully withholds possession thereof from plaintiffs who are rightfully entitled to possession of the parcel of **land**, part of lot No. 81, Monrovia aforesaid.

4. That defendant has been on the property and has withheld same from plaintiffs since July 1, 1981; the annual rental value of the property is $7,000.00 per annum, from July 1, 1981 to the present, October 1, '1982, i.e. to the institution of this suit, $15,750.00 in damages; computable at the rate of ($7,000.00) in rent per annum.

WHEREFORE and in view of the foregoing, plaintiffs demand judgment against defendant, praying this Honourable Court to evict him from the premises aforesaid, and grant unto plaintiffs

damages in the sum of $15,750.00 rental value of the property at $7,000.00 per annum with proportional increase during the pendency and up to emanation of this suit."

With the complaint, plaintiffs filed copies of the last will and testament of their grandmother and the letters testamentary from the Probate Court.

Along with defendant's responsive pleading, he attached copies of the lease agreement of June 1961 with its addendum of 1966 and the limited power of attorney from Mariam Farage, widow of Fadalah Farage, the assignee, to Habib Abi Rachid. A portion of appellant's responsive pleading is quoted herein below:

"2. And also because defendant submits that plaintiffs' complaint is void of legal merit and should be dismissed in that defendant is rightly entitled to the immediate possession of the premises held under lease agreement dated July 18, 1961 and addendum of lease dated March 21, 1966, granting the lessee a total period extending to and expiring on the 17th day of July A. D., 2001, executed between Florence E. McGill Howard, Lessor, whose estate plaintiffs profess to administer, and with whom plaintiffs are in privity and Emile Abi-Rachid's lessees as appears more fully by copies of the agreement of lease and addendum to said lease hereto annexed marked exhibits "A" and "B" and made profert of to form a part of this answer as if herein set forth word for word.

3. And also because defendant submits that while it is true that Florence E. McGill Howard did die seized of the parcel of **land** described in count two (2) of plaintiffs' complaint, the said Florence E. McGill Howard, by the agreements referred to in count two (2) of this answer, transferred her title and right of possession to said **land** to defendant's principal named in said lease documents until 2001, in consequence of which she, Florence E. McGill Howard, her heirs executors and assigns may not and cannot maintain an action of ejectment against defendant for the very parcel of **land**. The action should therefore be dismissed and defendant so prays."

The case was submitted to the jury for trial, and on March 28, 1983, the trial jury returned with a verdict which was announced in open court as follows:

"We the petty jurors to whom the case Max M.. Dennis, Florence McGill Howard - Lessors, plaintiffs versus Habib Abi Rachid, defendant in an 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 liable to his property in said case, and the damages of $34,000.00."

Appellant's motion for a new trial was denied.

On this verdict the trial court found for plaintiffs/appellees May 17, 1983 and awarded them damages in the sum of $34,000.00. Appealing from that judgment, appellant has brought the case before this Court on a four-count bill of exceptions. Count three of the bill of exceptions is sustained, as the judge should have granted the motion for new trial.

In count four (4) of said bill of exceptions, the judge has been charged with entering judgment on an uncertain, doubtful and capricious verdict. We most certainly sustain this count of the bill of exceptions because the clause: "Plaintiff is liable to his property" cannot be interpreted to mean that plaintiffs are entitled to their property, or that they are not entitled to it. Can it be construed that the $34,000.00 damages awarded is to the plaintiffs who are liable to their property, or to the defendant? Additionally, the verdict awarded is an amount more than what was prayed for in the complaint. *Wright v. Tay*, [1954] LRSC 39; 12 LLR 189 (1954). It cannot even be inferred that the award includes general damages as this was not asked for. But even if general damages were asked for, the verdict should have separated the award, naming a sum certain for special and another for general damages. *Seleh v. Montgomery*, [1972] LRSC 16; 21 LLR 125 (1972).

It is not argued that the 1961 lease agreement with the optional period specifically agreed upon, and the addendum of 1966, entered into by and between plaintiffs' grandmother and Fadalah Farage, is null and void, or that the time has expired. The point stressed by plaintiffs is that Habib Abi Rachid who presently manages the leased property by virtue of a limited power of attorney does so in the absence of a valuable consideration and as the lessee, his assignee and his widow are no longer residing in the country said property must revert to plaintiffs.

The lease agreement for 20 years certain, with its optional period of another twenty 20 years, and the addendum of 1966, specifically bind the lessor, her executors, administrators and heirs and the lessee and his assignees. The heirs of the testator have inherited this agreement and they are obliged to honor and keep it sacred; neither party can repudiate it. Habib Abi Rachid's assignees can even keep the premises closed up for the remainder of the lease period so long the annual rental is paid on time, plaintiffs would have no cause to complain as a contract may only be

avoided upon proof that performance is impossible, and it cannot be said that receiving the annual rental from the assignee's agent/representative presents any difficulty.

The issue that Habib Abi Rachid, agent of Mariam Farage, the widow of Fadalah Farage, occupies the premises without parting with valuable consideration is not tenable, as the doctrine of *nudum factum* advanced by counsel for plaintiffs during arguments before this Bench cannot be raised by a third party. Plaintiffs cannot challenge Habib Abi Rachid's occupancy of the premises. Only Mrs. Farage can seek the aid of the law of *nudum factum*, but it is she, by her limited power of attorney to Mr. Habib Abi Rachid, who placed him in charge of the premises. We also hold that plaintiffs cannot question any business transaction that exists between the widow of Fadalah Farage and the Ministry of National Defense concerning this leasehold.

Reverting to the verdict and the judgment entered upon it from which this appeal has come before us, we assert that said verdict is so unintelligible that judgment upon it cannot be affirmed.

The judgment appealed from is hereby reversed and, as this Court can render such judgment which should have been rendered by the trial court, we hold that plaintiffs herein are duty bound to honor and respect their grandmother's contract with Habib Abi Rachid and his assignees, and that they abide their time until 2001 A. D. *Cooper v. CFAO*, [1972] LRSC 68; 20 LLR 554 (1972). Until that time, they are barred from disturbing the leasehold agreement. Costs against appellees. The Clerk of this Court must instruct the court below to resume jurisdiction over the cause and execute this judgment. And it is hereby so ordered.

Judgment reversed

Cooper-Daniels et al v BIW Corp. [1985] LRSC 56; 33 LLR 557 (1985) (18 December 1985)

ESTHER LUKE COOPER-DANIELS, the only surviving Executrix of the Estate of the late **HENRY E. LUKE and his wife WILLIETTE LUKE**, both deceased, Appellant, *v.* **BUCCIMAZZA INDUSTRIAL WORKS CORP**., by and thru its General Manager and/or agent, Appellee.

Heard December 10, 1985. Decided: December 18, 1985.

1. If one party to case on appeal appears, and the other party does not appear but files a brief, the Court will proceed to hear the argument of the party appearing and render its decision on the basis of the briefs filed and the argument of the party appearing.
2. The appearance of a newly retained counsellor at the scheduled time for hearing of a case and the refusal of said counsellor to argue his client's brief, already filed, or to substitute it with his own, is regarded as not having appeared.
3. The refusal of a newly retained counsellor to argue his client's brief, already filed, or to substitute it with that of his own, is highly contemptuous.
4. Agreements are binding and one who is voluntarily a party thereto for consideration, however small or violative of the law, cannot impeach his own deeds by raising issues as to its illegality after enjoying said consideration.
5. A party who makes an illegal contract will not be allowed to take advantage of his own wrongs by showing the illegality of the contract; nor can he seek relief at law or in equity, either to enforce or annul his illegal act. This the doctrine of *estoppel* will not permit.
6. A lease for lands to a foreigner for fifty years, although repugnant to the Constitution, will nevertheless not be set aside at the instance of a party thereto, and that party will not be allowed to impeach his own act.
7. Where the parties to a lease agreement remain silent and acquiesce as regards the terms of the lease agreement during their life time are deemed to have waived the right to object to the terms of the said lease agreement, and the same amounts to a ratification of the agreement. Therefore, the persons acting as executor of the estate of a deceased person so place inherits the waiver and is bound by the ratification; and such executor or administrator can neither ratify nor revise the void transaction of the decedent.
8. The right to rescind a contract may be lost when there is a waiver or ratification, even in the instance where fraud is involved. The ratification may be expressed or implied, and the right to rescind the contract for any breach is lost when the breach has been waived by the injured party.
9. The failure and neglect of a retained counsel to exert interest in the defense or prosecution of his client's cause is no excuse to justify the postponement of the hearing of a case duly assigned for adjudication.

The appellant, administratrix of the estate of the late Henry E. Luke filed a bill in equity in the Civil Law Court for the Sixth Judicial Circuit for cancellation of the lease agreement entered into between the late Henry E. Luke and the appellee, claiming that the agreement granted to the appellee a fifty year lease, which was in violation of the Property Law of Liberia. The action was dismissed on the law issues. From this dismissal, appellant appealed to the Supreme Court for a review.

After several assignments by the Supreme Court, the addition of new counsel by appellant, and the refusal of appellant's new counsel to argue the case, the Court decided to hear the matter on the basis of the briefs filed by the parties and the argument by appellee's counsel.

The Court upheld the dismissal of the bill in equity, stating that although the agreement which

granted to a foreigner a fifty year lease to real property was violative of the laws of Liberia, the plaintiff/appellant was forbidden from challenging the same since both she and her predecessor had benefitted from the lease and had enjoyed the consideration specified by the agreement. The Court noted that a party who makes an illegal contract for which consideration was given and enjoyed cannot impeach his own deeds or to take advantage of his own wrong by showing the illegality of his act. The Court observed that such a person is estopped from seeking relief from law or equity, either to enforce or annul his illegal act. Additionally, the Court said, the appellant and her predecessor had waived their right to challenge the lease agreement by their long silence and acquiescence. The long silence and acquiescence, it said, was tantamount to a ratification of the agreement and precluded a challenge by the administratrix.
On the question of the refusal of appellant's counsel to argue appellant's side of the case, the Court opined that it regarded the said refusal as non-appearance, and held that under such circumstances the Court is justified in proceeding with the case.
On the basis of the foregoing, the Court affirmed the judgment of the trial court.

S. Raymond Horace appeared for the appellant. *H. Varney G. Sherman* of the Maxwell & Maxwell Law Offices appeared for the appellee.

CHIEF JUSTICE GBALAZEH delivered the opinion of the Court.

Esther Luke Cooper-Daniels, appellant herein, instituted this proceeding in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, in her capacity as the only surviving executrix of the estate of her late father, Henry E. Luke. During the September, 1981 Term of the Civil Law Court, the cancellation proceeding was dismissed by the trial court on the issues of law. The appellant having announced and perfected an appeal therefrom, the case is now before this Court for a review of said ruling.
When assignment for hearing of argument was served in 1983, the appellant, Esther Luke-Cooper-Daniels, on April 23, 1983, addressed a letter to the Bench requesting the Court for an opportunity to employ a new or additional lawyer because her original lawyers of record, Counsellors James Henric Smith and Lewis K. Free were all ill. The Court granted the request and permitted the appellant to retain the services of the Morgan, Grimes and Harmon Law Firm, which Law Firm, on May 23, 1983 filed a brief on behalf of appellant.

When the case was again assigned for hearing on December 2, 1985, Counsellor Lewis K. Free, one of counsel for appellant, who acknowledged the assignment was reported to be ill, but the appellant herself was in court and again requested a postponement to retain an additional lawyer, stating that Counsellor Morgan, her other lawyer was also ill in America. We must note here that although there are other lawyers in the Morgan, Grimes and Harmon Law Firm which had already filed a brief in the case, and even though Counsellors J. Henric Smith and Carlo Smith of the Free and Smith Law Firm had, since the opening of the present term of the Court, appeared

before this Bench for the law firm and argued a case before the Court, yet the appellant again requested a further postponement to retain an additional lawyer, the same as she had done in 1983. Notwithstanding, her request was again granted and the case was reassigned for the next day, December 3, 1985 at the hour of 9 o'clock, in the morning. Anticipating that a brief might be filed by the addition-al lawyer for the appellant in the other three cases relating to the same estate which were also dismissed on the law issues, and from which rulings appellant had also appealed, and believing that the several actions might be consolidated, we again re-assigned the case for the 10th of December, 1985, at the hour of 9 o'clock in the morning.

When the case was called for argument on the morning of December 10, 1985, Counsellor S. Raymond Horace appeared for the appellant and Counsellor Varney Sherman appeared for the appellee. Although briefs had been filed in favor of both parties to the cancellation proceeding, Counsellor Horace, who maintained that he had been retained only three days before the case was scheduled for argument, contended that he had not studied the brief filed by the Morgan, Grimes and Harmon Law Firm, and hence he would not argue the same before this Court, and that the case should therefore be postponed until the March Term, 1986. No legal reason was assigned as to why he had not studied the brief within three days before the scheduled argument, having accepted the retainer to represent the interest of his client and having known of the assignment of the case. The Court thereupon allowed Counsellor Horace 48 hours, from Tuesday, December 10, 1985, to Thursday, December 12, 1985, to file his brief in the other three cases. It however ordered that the cancellation proceeding, in which briefs had been filed by all parties, be proceeded with. Despite this order of the Court, Counsellor Horace, in open court, in the most repugnant manner, and in total disregard of the order of Court and his professional oath to obey the orders of Court, entered upon the minutes of Court his refusal to participate in the argument and flatly refused to read and argue the brief already filed in the interest of his client from whom he had received retainer to carry her legal interest in the case. We therefore proceeded to hear argument of appellee's counsel on the basis of the briefs filed by both parties. According to Rule 4, part 6 (c), of the Rules of this Court, if a party appears and the other party does not appear but files a brief, the Court will proceed to hear the argument of the party appearing and render its decision on the basis of the briefs filed and the argument of the party appearing. The appearance of Counsellor Horace for the appellant and his refusal to argue the client's brief already filed, or to substitute it with that of his own, is the same as not having appeared. The act of Counsellor Horace in this respect is not only reprehensible and unbecoming of a member of the legal profession, but also highly contemptuous. Counsellor Horace is perhaps the oldest legal practitioner in this Bar at the present time, and it is regrettable to see him demonstrate such behavior as an example of what he intends the young practitioners to follow. But as serious as we have regarded Counsellor Horace's attitude, displayed in open court, we have however left him to be judged by his own conscience.

The plaintiff basically contended that she is the daughter of Henry E. Luke, and the sole surviving executrix of the estate of her deceased father. She maintained that on October 12, 1957, her late father and his wife, Mrs. Williette Luke, had entered into a lease agreement with the defendant corporation for a five acre piece of **land**, located in Oldest Congo Town. She argued that both the duration of the lease agreement, which allowed for a twenty year period certain and two optional periods of twenty years each, and the payments agreed to for the optional periods, were violative of our statute on the lease of **land** to foreigners. In addition to said allegations, plaintiff also contended that the defendant corporation had in fact violated

paragraph six (6) of the lease agreement by sub-leasing the leased premises to two other companies, and that it had failed to insure the buildings it had erected on said premises, contrary to the terms of the lease which required that all buildings erected by the lessee be insured by it and the information communicated to the lessor.

The defendant, on the other hand, while agreeing that plaintiff was the sole executrix of the Luke Estate, and that a lease agreement for the parcel of **land** in question existed between the lessors and itself, argued that those facts present no triable issues. The defendant also averred in its answer that the plaintiff, as successor to the lessors, could not sponsor the cancellation of the said lease agreement in court simply because it was violative of statute relating to the leasing of **land** to foreigners after her predecessors and herself had benefitted therefrom all those years without questioning its legality. This is especially true, it said, because the contract provided in clause twelve thereof that the heirs and successors shall be bound by all of its terms. On the question of the sub-lease to others without informing the lessor, the defendant corporation maintained that the corporations referred to by the plaintiff were really a part of itself and not sub-lessees, and that it managed the other two companies from a common center maintained on the premises, even though they are known by different names. It argued further that the plaintiff, and Mrs. Luke before she died, was aware of the existence of the two companies.
The defendant corporation also contended that the escalation of payment in the optional periods stated in the lease agreement were not violative of the statute since in each case the defendant corporation had agreed to pay in excess of the required 10% escalation required for optional periods. Finally, it said that the lease provided that at least one or more buildings, to the value of up to $20,000.00, be built on the premises by the end of the lease, but that defendant had in fact erected buildings thereon to the total value of about $250,000.00. The buildings, it argued, were insured, and that both the policy and the premium payment receipts were shown to both plaintiff and Mrs. Luke while the latter was still alive. The defendant corporation therefore prayed that the action be dismissed and that the plaintiff ruled to pay the costs of court.

From the foregoing contentions, the trial court determined that the issue presented was whether or not the plaintiff had standing to sue for the cancellation of a lease agreement entered into between her predecessors, as lessors, and the defendant corporation, as lessee, on grounds of illegality after she and her said predecessors had benefitted therefrom. The trial court held that the plaintiff could not challenge the lease since, under said lease, heirs and successors of the lessors were bound by its terms. The court held that having benefitted therefrom over the years, neither the plaintiff's predecessors, if they were still alive, nor the plaintiff herself, as executrix, could question the validity of said lease agreement. The plaintiff excepted to this ruling and perfected her appeal to this Court.
Having carefully perused the records in this case, we agree that the issue presented for our determination is whether or not appellant, daughter and sole executrix of the estate of the late Henry E. Luke, can properly sue for cancellation of the lease agreement entered into by her predecessors (lessors) and the appellee corporation (lessee) after appellant's predecessors had benefitted therefrom, and when appellant herself had and was still benefitting from the said contract in spite of the alleged illegality complained of by her.
Clause twelve of the lease agreement under review reads thus:

"It is expressly agreed and understood by the parties hereto that all the provisions and stipulations together with the covenants as herein contained shall be equally binding on the parties hereto and shall extend to and be binding and include their heirs, executors, administrators, and assigns during the life of this agreement."
The provision above is unequivocal in stating that even the heirs, successors, assignees, administrators and executors shall be bound by the terms of the agreement during the life thereof. Agreements are binding and one who is voluntarily a party thereto for some consideration, however small or violative of the law, cannot impeach his own deeds by raising the issue of its illegality after enjoying said consideration. This Court so held in the case of *West v. Dunbar*, when it said that a party who makes an illegal contract will not be allowed to take advantage of his own wrongs by showing the illegality of the same; nor can he seek relief at law or in equity, either to enforce or annul his illegal act. This, the doctrine of *estoppel* will not permit. It further held that a lease for lands to a foreigner for fifty years, although repugnant to the constitution, will not nevertheless, be set aside at the instance of a party thereto; a party will not be allowed to impeach his own deed. *West v. Dunbar*, 1 LLR 313 (1897).

That case involved a lease agreement in which a foreigner acted as agent for a foreign corporation as lessee and secured under lease from the lessor premises for fifty years, for a consideration of Seven Hundred Dollars ($700.00) after expiration of the first term. The foreign company and its agent left the country, leaving the property to defendant West. The lessor, Madam Dunbar, brought an action of ejectment, alleging the illegality of the lease as being violative of the statute.
In the case under review, the lessors and the executrix, for twenty years or more, enjoyed the benefit of the lease agreement, including the annual rental, while at the same time the defendant corporation made considerable investment on the premises. Moreover, the lessee even went to the extent of insuring the buildings, as was required by the lease agreement. Under the circumstances, the lessors, deceased, had waived their right to object to the terms of the lease by their silence and acquiescence therein while they were still alive. Their acts amounted to a ratification of the agreement which the executrix inherited, together with other rights, if any, left behind by the deceased lessors, her predecessors.

"The right to rescind a contract may be lost as when there is a ratification or waiver. The ratification may be expressed or implied and the right to rescind it for any breach is lost when the breach has been waived by the injured party. Even the right to rescind for fraud or misrepresentation may be waived." 17 AM JUR. 2d., *Contracts*, § 489.

"In fact, neither an executor or administrator can ratify or revise the void transaction of the decedent." 21 AM. JUR. 2d., *Executors and Administrators*, § 230.

Now back to the question of granting another postponement to another term of Court in 1986, to allow Counsellor Horace to read the brief already filed since 1983, despite the fact that he had enough time to do so. In our opinion, it would have been unjust on our part and unfair to the appellee corporation, respondent in the court below, who, by the filing of this action against it, has been under the custody of the law since 1981. We strongly hold that as the briefs which were filed contain the arguments and legal authorities relied upon by the parties before the Court, there was no necessity for the Court to postpone the case. This Court cannot postpone a case merely

because counsel for the appellant deliberately neglects and refuses to exert any interest in his client's case by not reading the brief and records in the case, and for which he was retained. If he accepted the retainer in good faith, he could have obtained copies of the records from the office of the Clerk of this Court or the clerk of the trial court before the scheduled argument of the case. The failure and neglect of a retained counsel to exert interest in the defense or prosecution of his client's cause is no excuse to justify the postponement of the hearing of a case duly assigned for adjudication.

Having traversed the issues and cited legal authorities in support of our position, and because we are of the abiding conviction that the doctrine of *estoppel* will not permit the appellant in this case, as the surviving executrix of the estate of the late Henry E. Luke, or any person or persons in privity with the said Henry E. Luke for that matter, to seek the strong arm of equity to annul or cancel the lease agreement he executed during his life time with the appellee corporation on the ground that its terms and conditions were violative of the statute laws of this Country. It is therefore our holding that the ruling of the court below dismissing the proceeding should be, and the same is hereby confirmed and affirmed, with costs against the appellant. And it is hereby so ordered.

Judgment affirmed.

Trawally v Scott et al [1985] LRSC 32; 33 LLR 200 (1985) (21 June 1985)

LAMINIE TRAWALLY, Petitioner/Appellant, *v.* **HON. JENKINS K. Z. B. SCOTT,** Minister of Justice, R. L., His Deputies and Assistants, the Solicitor General, the County Attorney and all other Officers serving under the Ministry of Justice, AND ABRAHAM TRAWALLY, Respondents/Appellees.

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE DENYING THE PETITION FOR A WRIT OF PROHIBITION.

Heard: May 22, 1985. Decided: June 21, 1985.

1. Except in cases of treason or when the existence of the state is at stake, the Minister of Justice himself cannot arrest and jail a person who is a suspect.
2. The police and members of the Criminal Investigation Bureau are vested with the power to temporarily arrest and detain suspects, and to keep them in police custody, within a specified period of time, pending conclusion of the investigation. Thereafter,

within the specified period of time, the matter must be forwarded to the court of justice of the peace or magistrate where a proper writ of arrest is issued and the defendant bailed or committed to jail under a commitment of the court.

3. The Minister of Justice does not have the power to dispossess any person of property claimed by him and place another in possession thereof, as such action can only legally be done by a writ of possession, the issuance of which is a judicial function which no other agency of the government can perform.

4. The commitment of a person to jail can only be done legally by a writ or order, the issuance of which is exclusively a judicial function which cannot be assumed by anyone outside the Judicial Branch of the Government.

The petitioner/appellant filed a petition for issuance of a writ of prohibition against the Minister of Justice and others to prevent them from evicting petitioner from a disputed parcel of **land** , and to gain his release from imprisonment, done at the instance of the said Minister. The petitioner, who had made a part payment of $10,000.00 to the Dennis heirs for a parcel of **land** , had filed a caveat in the Monthly and Probate Court for Montserrado County, upon learning that the Dennis heirs had subsequently received $38,000.00 from the co-respondent Abraham Trawally and had executed a warranty deed to the said Abraham Trawally for the identical parcel of **land**. The probate judge ignored the caveat and ordered the warranty deed probated and registered. When petitioner did not vacate the premises, co-respondent Abraham Trawally sued out summary proceedings to recover the real property. The petitioner in the mean time brought an action for specific performance against the Dennis heirs. While the two actions were still pending, Abraham Trawally filed a complaint with the Minister of Justice, alleging that the petitioner was illegally withholding from him his real property. Thereafter, the petitioner was committed to jail on the orders of the Minister of Justice. It was from this action by the Minister that the petitioner filed the petition for prohibition.

The Justice in Chambers denied the petition, holding that the Supreme Court was not in the position to question the directive of the Head of State, upon which the Minister of Justice had acted.

On appeal to the full Bench the Supreme Court disagreed. The Court rejected the argument that ordinarily the Head of State has the authority to commit a person to jail, or that the Minister of Justice, acting upon the directive of the Head of State, had the authority to commit a person to jail. The Court pointed out that the President possesses such authority only with regard to treason and when the security of the States is at stake. The Minister of Justice, the Court noted, cannot himself arrest or jail a person, or dispossess such person of property except upon a criminal writ or a writ of possession issued by the court.

The Court observed that in the exceptional instance when such arrest is permitted, it can only be carried out by the police of the Criminal Investigation Division of the security organiza-tions, and such arrests are only temporary as the suspect must, within a specific period of time, be presented to the court and a proper writ of arrest issued. The Court therefore opined that the Minister of Justice had exceeded his authority when he com-mitted the petitioner to jail.

On the question of the eviction of the petitioner from the disputed property, the Court held that the Minister was likewise without authority to dispossess a person of disputed property, that authority being one vested strictly in courts of competent jurisdiction.

Since there was no legal commitment and the Minister of Justice is without the authority to

dispossess a person of his property, prohibition will lie to restrain the Minister, the Court concluded.

J. D. Gordon of the Carlor, Gordon, Hne and Teewia Law Offices appeared for the petitioner/appellant. *Francis Y. S. Garlawolo* and Deputy Minister of Justice *David M. Toweh* appeared for the respondents/appellees.

MR. AD HOC JUSTICE TULAY Delivered the opinion of the Court.

These proceedings spring from the handling of a **land**/house dispute between two Trawallys—Abraham Trawally and Lar-minie Trawally—who both negotiated, severally, with the Dennis heirs for the purchase of a piece of **land** with a house thereon. Abraham Trawally had a warranty deed executed to him by the Dennis heirs after he had paid them $38,000.00, and at a time when Larminie Trawally had already paid them the sum of $10,000.00, Upon hearing of the execution of the warranty deed to Abraham Trawally, Larminie Trawally filed a caveat before the People's Probate Court for Montserrado County to prevent its registration and probation. Despite this fact, however, the judge at the time admitted the deed into probate and regis-tration without informing the caveator, who then moved to the Supreme Court on error for a review of the matter. The error was heard and the probation of the deed declared null and void, with the Supreme Court ordering that Larminie Trawally, the caveator, be allowed to file his objections to the admission of Abraham Trawally's deed into probate and registration. The objection proceeding is still pending before that court.

On August 17, 1984, Abraham Trawally filed an action of summary proceeding to recover real property against Larminie Trawally in the Civil Law Court, Montserrado County. Plead-ings have rested and the case is pending before that court. There is also pending before the Civil Law Court, Montserrado County, another action of specific performance filed by the petitioner in these proceedings against Wilmot Dennis, et al., the Dennis heirs, for the same property. In November 1984, Abraham Trawally lodged a complaint with the Honourable Minister of Justice that Larminie Trawally was illegally with-holding his property from him. Larminie Trawally must have appeared before the Ministry and what transpired there must have led to his commitment to jail where he still was when his counsel, on the 19th of November, 1983, filed this petition for prohibition. The case awaited hearing for three months.
Abraham Trawally had sued out an action in summary proceeding to recover possession of real property, that is, to have Larminie Trawally evicted from the premises. Two months later he filed a complaint with the Minister of Justice for the same purpose, the eviction of Larminie Trawally from the property. We know that cases in court sometimes take long to be determined but we frown on the practice of people having one case before the Ministry of Justice, the Circuit Court, Ministry of Internal Affairs and the Executive Mansion, as this practice, instead of expediting the termination of the matter, rather prolongs it.

On the 5th of March 1985 the Justice in Chambers ruled on the petition, dismissing the same, quashing the alternative writ and denying issuance of the peremptory writ.
The petitioner appealed from this ruling and has brought his case before the full bench for review.
The ruling appealed from reads in part:

"Since we are not in the position to prohibit the directives of the Head of State, there being no law empowering us to do such, we shall accept the letter of directive from the Head of State as it is. Further to this, the respondents during the argument contented that while they were in the process of sending the petitioner to court for the prosecu-tion, he filed this prohibition proceeding. Otherwise, respondents would have prosecuted him through court now. In view of the foregoing circumstances, the sur-rounding facts and the laws cited, it is our ruling that since a writ of prohibition is to restrain the respondents from exercising jurisdiction but the respondents had proceeded contrary to rules which ought to be observed at (all) times, none of which exists in the instant case the petition is hereby denied, the alternative writ quashed, the peremptory writ denied."
From this ruling, we take it that the petition for the writ of prohibition was denied, the alternative writ quashed and the peremptory writ denied because the respondent Minister of Justice had jurisdiction over both the person of the petitioner and the subject matter; that he had jurisdiction to evict the petitioner from the premises and that he, the Minister of Jus-tice, by virtue of the power vested in him as Justice Minister, and by the directive received from the Head of State, had not proceeded contrary to rules which ought to be observed at all times when he arrested and jailed the petitioner.
We give hereunder the letter of directive of the Head of State dated January 10, 1985, the headings of which we have omitted:
“Mr. Minister:

The Head of State and President of the Interim National Assembly, CIC Dr. Samuel K. Doe, has received a letter from Mr. Abraham Trawally informing him of a property dispute which has been investigated under the Liberian Law and Islamic Laws, in which matter he was found to be the rightful owner of the property under both judicial systems.

According to the documents presented, the Ministry of Justice has adjudged that he is the rightful owner of the **land** and house occupied by Mr. Larminie Trawally, who has refused to vacate the premises even though requested to do so. Therefore, if your Ministry that has investigated the matter, evict Mr. Larminie Trawally and have Mr. Abraham Trawally his house turned over to him without delay.

In the cause of the people, the struggle continues.

Very truly yours,

Signed: J. B. Blamo

Major J. Bernard Blamo

Minister of State."
We shall say more about this letter in another place.
This ruling, of course, is in line with the argument ad-vanced before the full bench by counsels for respondents when they pointed out that the Minister of Justice has the authority to, and that by the directive of the Head of State, can arrest and commit anyone suspected of the commission of a given crime. Under that authority, they said, the petitioner was committed to jail under a commitment duly signed by the Assistant Minister of Justice for Litigation.
We were not, and we are not convinced by this argument, for, except in cases of treason or when the existence of the State is at stake—in which case, the suspect is kept at the post stockade, not in the central prison yard—the Minister of Justice cannot himself arrest and jail a person who is a suspect, as he did in this case. The law relied on by the respondents vests in the police and members of the Criminal Investigation Bureau the power to temporarily arrest and detain suspects, and to keep them in police custody within a specified period of time, pending the conclusion of an investigation. Thereafter, within the specified period of time, the matter must be forwarded to the court or a justice of the peace or magistrate where a proper writ of arrest is issued and the defendant is then bailed or committed to jail under commitment of the court.

Reverting to the January 10, 1985 letter, christened by counsel for respondents as the "directive", anyone reading the letter in point cannot but conclude that it could not have influenced the arrest and incarceration of the petitioner in November, 1984, six weeks before it was written and received. We therefore deprecate the act of counsel for respondents in leading the Justice in Chambers to believe that the “directive” had direct connection with the arrest and jailing of the petitioner. Acts like this certainly defeat the oath subscribed to by lawyers not to intentionally and knowingly mislead the court, as misleading the court frequently causes the court to arrive at regrettable conclusions. Lawyers must refrain from such surreptitious acts.
We would like to observe here that the Minister of Justice, being a strong pillar of the laws of the **land** and the chief legal advisor to the government of Liberia, must be very candid for candidness is the first and foremost quality of a lawyer with the Chief Executive who, to a greater degree, depends on his advice.
When the Minister received the directive requesting, not ordering, him to evict Larminie Trawally from and put Abraham Trawally in possession of the disputed premises, the Minister should have at once informed the Chief Executive that his Ministry could not dispossess a person of his property and place another in possession of said property, as this could only be done by a writ of possession, the issuance of which is a judicial function. More than this, his information could have included the fact that Abraham Trawally had instituted an action of summary proceedings to recover real property against Larminie Trawally for the same property; and that said case was still pending before the People's Sixth Judicial Circuit, Montserrado County; that the Ministry was preparing criminal prosecution against Larminie Trawally for criminal trespass; and that the eviction therefrom could be stayed until the criminal prosecution against Larmine Trawally ended. Of course the question yet remains whether or not an indictment for criminal trespass can serve as a possessory writ.
We have seen that the letter of “directive”, dated January 10, 1985, addressed to the Honourable Minister of Justice could not have influenced the arrest and incarceration of the petitioner in November 1984. Indeed, that directive only re-quested the Honourable Minister of Justice to evict petitioner, Larminie Trawally, and place co-respondent Abraham Trawally in possession of the premises in point. But that was a task assigned to the Ministry which it could not legally

perform as, we repeat, to dispossess one of and place another in possession of a given property, is a judicial function which no other agency of government can legally perform.

We therefore hold that the Honourable Minister of Justice, in arresting and committing petitioner to prison, exceeded his sphere of duty, and that in so acting he proceeded contrary to rules which must be followed by Ministers of Justice at all times. For, to commit to jail can only be done legally by commitment, and the issuance of a commitment is exclusively a judicial function which cannot legally be assumed by anyone outside the judicial branch of government. There was, there-fore, no commitment under which petitioner was admitted to Monrovia Central Prison Yard, as the document issued by the Assistant Minister of Justice for Litigation was a legal nullity *ab initio*.
With the above holding, we cannot but reverse the ruling appealed from and grant the petitioner's petition. And we so hold.

Petition granted.

Klutsey v Bong Mining Co. [1985] LRSC 14; 33 LLR 37 (1985) (20 June 1985)

JOSEPH KLUTSEY, Appellant**, *v.* BONG MINING COMPANY,** Appellee**.**

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

Heard: May 8, 1985. Decided: June 20, 1985.

1. In negligence cases, where special damages are claimed, the onus is usually upon the injured party to prove the negligence situation to the court, except in situations where the accused is held under strict or absolute liability.
2. Liability for injury resulting to another accrues in the absence of an account of the standard of care exercised.
3. Negligence can constitute a ground for legal liability even though the fault upon which it is predicated is attributed to imprudence or to a lack of skill rather than to a conscious design to do wrong.

4. All legal principles governing or which ought to govern the charge of negligence should be proved by the injured party.

Appellant Joseph Klutsey brought an action of damages against the appellee, Bong Mining Company, accusing it of contributory negligence in constructing a railway adjacent to appellant's **land** without also constructing tunnels crosswise to serve as flood outlets. Appellant's house, which had been constructed nine years following the construction of the rail-way, was engulfed by flood when the waters rose as a result of heavy rains. Appellant demanded $10,000.00 as compensation for the damages to his house.
The jury returned a verdict in favor of appellee, thus denying appellant any right of recovery. Thereafter, trial court entered judgment confirming the verdict. From this judgment, appellant appealed to the Supreme Court for a review of the case.

The Supreme Court affirmed the judgment of the trial court, holding that appellant had failed to prove that the appellee had been negligent in constructing the railway or that the construc-tion of the railway had caused the damage to appellant's house which was constructed subsequent to the construction of the railway. The Court opined that the appellant should have had engineers inspect the area prior to constructing his house thereon. This, it said, might have alerted appellant to the condition of the **land** and assist him in deciding not to build his house thereon. The Court observed that it could not place on the appellee the burden of criss-crossing its railway with flood outlets when there was no house on the adjacent **land** at the time. Finding that there was no error in the jury's verdict of not liable and in the trial court's judgment confirming the said verdict, the Court proceeded to *affirm* the judgment.

Topor appeared for the appellant. *S. Edward Carlor* of the Gordon, Carlor, Hne, and Teewia Law Offices appeared for the appellee.

MR. JUSTICE JANGABA delivered the opinion of the Court.

This is a case involving Joseph Klutsey, the appellant in this case, and the Bong Mining Company, appellee herein. The appellant claims to own a building which is located in the Settlement of Caldwell, near the appellee's railway. It must be noted, here that the appellee was licensed by the Government of Liberia to mine iron ore in the country. In pursuit of that concession, the appellee had built a railway from Monrovia to the Bong Mining geological area, starting the said construction in 1962 and completing the same in 1965.
According to the records, the appellant purchased a parcel of **land** the same time the railway construction begun. In fact, to be exact, the appellant's deed was dated 1973, some nine years after the railway was built and came into full use. As was expected of a landlord or owner, the appellant built a house on his premises. Unfortunately, however, the tropical rains took their toll; the waters began to rise and soon the house that the appellant had built was engulfed by flood.

Enraged at the destruction of his house by the flood, the appellant found that he could point an accusing finger at the appellee, Bong Mining Company. He averred, among other things, that because appellee had failed to build tunnels cross-wise under its railways which were adjacent to the appellant's property and which could have served as flood outlets, the omission contributed to the flood which caused damage to his house. He therefore accused appellee of negligence.
On November 25, 1975, the appellant, plaintiff below, filed suit, claiming damages in the amount of $10,000.00 against the defendant company, representing the said amount to be compensation for his house. The plaintiff/appellant's optimism was seriously misplaced by the judgment in the lower court which found the defendant company not liable. From this judgment the appellant announced an appeal, filed a 25 count bill of exceptions and perfected the appeal to this Court.
After a careful analysis of the facts in this case *pro et con*, the following issues become paramount over all others:

(1) Whether or not the appellee was negligent in constructing the railway through the contiguous **land**?

(2) Whether or not the appellant is entitled to recover damages as prayed for ?
In negligence cases, where special damages are claimed, the onus is usually upon the injured party to make a clean breast of the negligent situation to the court, (*See Brown v. Brown*, 1 LLR 14 (1861); *Shamag v. Turkett*, [1965] LRSC 10; 16 LLR 257 (1965); *Vianini v. Cole*, [1964] LRSC 42; 16 LLR 95 (1964)), except in situations where the accused is held liable under strict liability or absolute liability. *See* 38 AM. JUR., *Negligence*, § 4. Under this law, liability for an injury resulting to another accrues in the absence of an account of the standard of care exercised. More-over, negligence can constitute a ground for legal liability even though the fault upon which it is predicated is attributed to imprudence or to lack of skill rather than to a conscious design to do wrong. See *The Montet Allegre*, US 616.

In the facts of this case, the appellant has simply attributed negligence to the appellee without actually proving the charge against the appellee. The only reference to the injury is made when the appellant stated in count one of his 25 count bill of exceptions that it was negligent for the appellee to construct a railway line without constructing a drainage system under said railway lines. This Honourable Court does not find it sagacious to perch such herculean burden upon the shoulders of the appellee to criss-cross his railway with flood outlets. The record shows that it was the appellant who came to the **land** some nine years after the railway system had come into full operation. One wonders therefore whether or not the appellee foresaw that the construction of its railway system would cause damage to the appellant's house which had not yet been built. The same view could also be expressed concerning the conduct of the appellant in erecting his house in what we are inclined to term 'troubled waters'. By this we mean the appellant owed a duty to himself to seek expert advice through qualified engineers to find out whether the area on which he eventually built his house was suitable for that purpose. This Court is sure that had such engineering advice been sought, or the Zoning Law conformed with, the construction of the house on such a flood trap would have been discouraged. Instead, what we have here is a situation in which the appellant went ahead and built a house at a lower basin of a flat plain, making the house extremely susceptible to flooding during the rainy season. It was only after the occurrence of the incident that appellant pointed an accusing finger at the appellee

company. It was only then also that both parties went out to seek engineers from the Public Works Ministry to correct an already hopeless situation. Of course, that help never materialized. Under the circum-stances, a charge of negligence cannot be sustained against the appellee, especially so where it was not proven.

On the other issue of whether or not the appellant could recover special damages against the appellee, we must make a brief journey into the past to see what this Court has stated about that. The legal principles governing, or which ought to govern the charge of negligence, should be proven by the injured party. Reliance: *Nimley v. Cole et. al.*, 13 LLR 356 (1959). In the case before us, where the appellant failed to prove the charge of negligence against the appellee in the construction of its railway system, the issue of whether or not damages should be awarded cannot be prematurely passed upon. Consequently, we are of the opinion that the judgment of the court below in favor of the appellee company should be, and the same is hereby affirmed. Costs disallowed . And it is hereby so ordered.
Judgment affirmed.

Sirleaf v Badio et al [1983] LRSC 75; 31 LLR 262 (1983) (7 July 1983)

MOIGBE SIRLEAF, Plaintiff-In-Error, v. **HIS HONOUR HALL W. BADIO**, Assigned Circuit Judge presiding over the August Term, A. D. 1980, of the Tenth Judicial Circuit, Lofa County, **LASANNA KUYETE** and **ALHAJI KUYETE,** Defendants-In-Error.

APPEAL FROM A RULING OF THE CHAMBERS JUSTICE DENYING A PETITION FOR A WRIT OF ERROR.

Heard: May 3, 4, 1983. Decided: July 7, 1983.

1. One of the grounds for the granting of a motion for continuance is illness of a counselor absence of a material witness.

2. It is error on the part of a trial judge not to deputize an attorney to take a decree or judgment of court on behalf of an absent party.

3. On cancellation of a deed to real property, the title reverts to those owning the property before the issuance of the deed.

4. An issue must first be raised by the party who wants to benefit thereunder before it can be passed on by a court of law.

Plaintiff-in-error filed a motion for continuance before the lower court on ground that he was ill and undergoing medical treatment. Plaintiff-in-error attached a medical certificate evidencing his illness. The trial judge ignored the certificate, assigned the case for disposition of the law issues, disposed of the law issues and ruled the case to trial. Several other excuses sent to the trial judge upon receipt of the new assignments were also ignored by the judge, who ruled that the plaintiff-in-error had abandoned his case and accordingly proceeded with the trial thereof in the absence of the plaintiff-in-error. On the same day of the hearing, after the presentation of evidence, the trial judge entered a decree, again in the absence of the plaintiff-in-error, cancelling the latter's public **land** sale deed. In entering the said decree in the absence of the plaintiff-in-error, the trial judge failed to appoint counsel to take the ruling on behalf of the absent plaintiff-in-error, as provided by statute. A writ of error was therefore applied for by the plaintiff-in-error. The Chambers Justice denied the petition for a writ of error and quashed the alternative writ. The Full Bench reversed the Chambers Justice's ruling, holding that the trial judge had erred in not appointing counsel to take the ruling for the plaintiff-in-error. The Court noted that one of the grounds stipulated by the statute for granting a motion for continuance was illness of a party or his counsel. The Court, observing that the plaintiff-in-error had filed a motion requesting continuance of his case due to illness, and had presented a medical certificate in support of his assertion of illness, concluded that the trial judge had misapplied the law in granting the application for abandonment against the plaintiff-in-error. Under the circumstances, the Court said, the trial judge should have appointed counsel to take the ruling so as to afford the plaintiff-in-error the opportunity to except to and appeal from the ruling and have the Supreme Court review the same. The Court held that a failure by the trial judge to comply with the statutory requirement rendered the judge's action erroneous and provided a legal basis for issuance of a writ of error. The Court therefore reversed the ruling of the Chambers Justice, granted the petition and ordered the writ issued.

M Fahnbulleh Jones appeared for plaintiff-in-error. John A. Dennis appeared for defendant-in-error.

MR. JUSTICE MORRIS delivered the opinion of the Court.

The plaintiff-in-error was a respondent in a cancellation proceeding instituted in the Tenth Judicial Circuit, Lofa County, by the Republic of Liberia through the Ministry of Justice and represented by the County attorney of Lofa County. The records revealed that the respondent was served with a notice of assignment and he filed a motion for continuance on the ground that the late Mr. Justice Bortue had given him 30 days to look for a counsel since his original counsel in person of Counsellor Robert G. W. Azango was disbarred from representing him because of Rule 28 of the Circuit Court Rules of Court, in that Counsellor Robert G. W. Azango presided as a judge over an injunction case pertaining to the same property. He also wrote a letter on the 5 th of September, 1980, informing the judge of his motion that he had filed for continuance. Despite the motion filed on the 15th day of August, 1980, and the letter written September 5, 1980, the judge proceeded on the 15th of September 1980 to dispose of the law issues in the absence of plaintiff-in-error and his counsel and dismiss the plaintiff-in-error's answer without deputizing any attorney to take the ruling for him.

The records disclosed that the judge ordered the issuance of an assignment for Monday, December 22, 1980, at 10:00 a.m. for the trial of the case on the same day he disposed of the law issues. On September 19, the plaintiff-in-error again wrote the judge informing him of his illness and that he was still under medical treatment and attached to his letter a medical certificate from Dr. J. B. Titus' Clinic, Warren Street, P.O. Box 2626, Monrovia, dated September 19, 1980, indicating that he was sick and undergoing treatment for weeks suffering from urethritis and chronic prostatitis. The judge again ignored the medical certificate and the accompanying letter from the plaintiff-in-error and proceeded with the trial in the absence of the plaintiff-in-error and his counsel on September 22, 1980 under what he termed abandonment. Having concluded trial on the same day, the judge rendered final decree on the 23rd of September, 1980, canceling plaintiffs-in-error's public **land** sale deed without any notice to him or his counsel, and without appointing an attorney to take the ruling for the plaintiff-in-error.

The plaintiff-in-error, not being satisfied with the procedure adopted by the trial judge, petitioned the Chambers of the late Mr. Justice Bortue with a petition for a writ of error. The respondents filed their returns through their counsel the Solicitor General of Liberia in person of Counsellor James Geizue. Plaintiff-in-error also filed an answering affidavit and subsequently a submission. These were resisted, argued and the peremptory writ denied and the alternative writ quashed by the Justice in Chambers. The plaintiff-in-error has appealed from the ruling of the Justice in Chambers. Hence, this case is now before us for final determination. We wish to state also that after the final rendition of judgment on the 23rd of September 1980, the Clerk of the Tenth Judicial Circuit, by the direction of the judge, issued a writ of possession in favour of the late Alahaji Mamadee Kuyete or his heirs who were never a party to the cancellation proceeding. According to the records before us, the parties to the cancellation proceeding were the Republic of Liberia, plaintiff versus Moigbe Sirleaf of the City of Voinjama, Lofa County, defendant, action - bill in equity for the cancellation of fraudulent public **land** sale deed and a relief against fraud.

We quote the last paragraph of the judge's decree:

"The clerk of this court will issue a writ of possession and have same placed in the hands of the sheriff of this county commanding him to put the heirs of the late Alahaji Mamadee Kuyete in possession of the property heretofore owned, controlled and possessed by Moigbe Sirleaf, the respondent herein whose deed has been cancelled under this Decree using the metes and bounds described hereinabove and granted to the late Alahaji Mamadee Kuyete on April 23, 1966 and the Republic this hundred and nineteenth year. The clerk shall also order the sheriff to inform all or any individual occupying said property or exercising any color of right of ownership in said property whether in person, by designation or by an agent that said property has been turned over to the heirs of the late Alahaji Mamadee Kuyete and therefore they should cease any manner of control over said property and have same relinquished to the heirs of the late Alahaji Mamadee Kuyete in keeping with the writ of possession and the orders of this court. AND IT IS HEREBY SO ORDERED. MATTER SUSPENDED."

Given under my hand in open Court, this 23rd day of September, A. D. 1980. Sgd. H. W. Badio ASSIGNED CIRCUIT JUDGE PRESIDING" We shall also quote for the benefit of this opinion the two last paragraphs of the judge's ruling on the law issues: "Therefore, and in view of the

foregoing, it is the ruling of this court that the respondent's amended answer be and the same is hereby dismissed and he is now ruled to a bare denial of the facts outlined in the petition in this proceeding. AND IT IS HEREBY SO ORDERED. THE COURT: The clerk of this court is hereby ordered to prepare an assignment for the trial of this case on Monday, December 22, 1980, at 10:00 a.m. The assignment will be placed in the hands of the sheriff of this county to be served on the respondent in keeping with law and procedure. AND IT IS HEREBY SO ORDERED.

Given under my hand in open Court this 15' day of September, A. D. 1980. Sgd. H. W. Badio ASSIGNED CIRCUIT JUDGE PRESIDING"

Despite the fact that he ordered the trial assigned on Monday, December 22, 1980 at 10:00 a.m., yet the judge heard and disposed of the case on September 22, 1980 contrary to his own ruling thereby depriving plaintiff-in-error his day in court.

The judge has misapplied Rule 7 of the Circuit Court Rules when he granted the application for abandonment after plaintiff-in-error had filed a motion for continuance and, besides, wrote the judge informing him of his illness which letter was buttressed by a medical certificate from Dr. Titus' Clinic, one of the reputable and renown doctors in Liberia. We quote Rule 7 relied upon by the judge:

"The issues of law having been disposed of in civil cases, the clerk of court shall call the trial docket of these cases in order. Either of the parties not being ready for trial, shall file a motion for continuance, setting forth therein the legal reasons why the case might not be heard at the particular term of court; the granting or denying of which shall be done by the court in keeping with law, and in its discretion. A failure to file a motion for continuance or to appear 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 hereon or, dismiss the case against the defendant, and rule the plaintiff to cost, according to the party failing to appear. In no instance might a case be continued beyond the term for which it is filed and set down for trial, except upon a proper motion for continuance; provided, however, that should the business of the court be such that a particular case is not reached during the session, such case or cases shall be continued as a matter of course. Clearing the trial docket by the disposition of cases shall be the foremost concern of the judge assigned to preside over the term." Plaintiff-in-error having filed a motion for continuance, and having written to the judge indicating his illness, which was supported by a medical certificate, it was error for the judge to have proceeded with the trial to finality. One of the grounds for the granting of a motion for continuance is illness of a counselor absence of a material witness. Granting that the counsel was available, could he have testified for the respondent in the lower court and plaintiff-in-error in these proceedings? We answer in the negative. The plaintiff-in-error had to take the stand and testify on his own behalf and produce evidence, in support of his denial, since he was ruled on a bare denial. Civil Procedure Law, Rev. Code 1: 9.1(2) and 26.3.

It was also error for the judge not to have deputized an attorney to take the decree of the court on behalf of plaintiff-inerror. Ibid. 1:9.1(2), 51.6.

Section 51.6 of the aforementioned Civil Procedure Law, under the caption Announcement of taking of the appeal, provides:

"An appeal shall be taken at the time of rendition of the judgment by oral announcement in open court. Such announcement may be made by the party if he represents himself or by the attorney representing him, or, if such attorney is not present, by a deputy appointed by the court for this purpose." Counts 6, 7, 8, 9 of the petition and 7 and 8 of the answering affidavit are therefore sustained as against the entire returns of the respondents.

In counts 6 and 11 of the answering affidavit and 10, 11 and 13 of the petition, plaintiff-in-error contended that the judge erred when he ordered issued a writ of possession and placed Lasanna Kuyete and Malike Kuyete, who are not parties in the cancellation proceeding in possession of the **land**. In the case Pratt, et. al v. Smith, et. al[1977] LRSC 32; , 26 LLR 160, 167 (1977), this Court held that cancellation proceeding was not a possessory action. In that case, His Honour John A. Dennis had decreed, in a cancellation proceeding instituted by the Republic of Liberia against one Dawoda Harmon for a 15-acre tract of **land** situated in Fanima Town, canceling Mr. Dawoda Harmon's deed which decree was affirmed by the Supreme Court. In executing the mandate of the Supreme Court, His Honor Frank W. Smith then presiding over the Civil Law Court of the Sixth Judicial Circuit issued a writ of possession directed at John T. Pratt, Vice Grebo Governor et al., representing the Grebos and Krus of Fanima Town, and the Supreme Court held that it was error to issue a writ of possession for the **land** in question, because on cancellation of a deed to real property, the title reverts to those owning the **land** before the issuance of the deed who may then institute an action to evict trespassers. The contentions of the petitioner in the above counts are therefore sustained.

With reference to counts 18 and 19 of the petition and 13 and 14 of plaintiff-in-error answering affidavit and submission, we have also discovered that the cancellation proceeding was instituted against the same property for which the ejectment suit was instituted and finally decided by this Court in favour of plaintiff-in-error. In order to avoid untold litigations, we have decided to withhold the mandate in the ejectment suit in abeyance pending the final determination of the cancellation proceeding. If the cancellation proceeding is finally adjudicated in favour of the plaintiff-in-error then and in that case both mandates will be executed together; but if the plaintiff-in-error loses the cancellation proceeding the mandate will accordingly indicate as to its execution. However, we hold that everything should remain in status quo, that is, the property in question should remain under the supervision of the court and the sheriff of Lofa County is authorized to collect all rents due and have the same kept in escrow pending final determination of the cancellation proceeding. If at all the writ of possession ordered issued by Judge Badio was served, same is hereby declared a legal nullity and the property ordered reverted under the supervision of the court as stated above.

Our distinguished colleague in denying the petition for the peremptory writ of error maintained that the plaintiff-in-error had violated the statute by not alleging in the petition that the execution of the judgment is not complete. Whilst this is the provision of the statute, yet, the issue must first be raised by the party who wants to enjoy the benefit of such provision, because the Court not being a party cannot raise issues but must pass on issues raised by the parties. A careful perusal of the records revealed that the respondents never raised such an issue in their returns.

Hence, this Court cannot sua sponte raise such issue and at the same time decide on it. We therefore disagree with our colleague in this respect.

In view of all that we have narrated and the laws cited, it is the opinion of this Court that the ruling of the Justice in Chambers be and the same is hereby reversed and the decree given by the judge canceling plaintiffs-in-error deed is ordered vacated and set aside. The Clerk of this Court is ordered to send a mandate to the court below instructing the judge presiding therein to resume jurisdiction over the case and dispose of the cancellation proceeding commencing with the disposition of the law issue. Costs to abide final determination. And it is hereby so ordered.

Ruling reversed; case remanded.

Cooper v Macintosh [1944] LRSC 27; 8 LLR 400 (1944) (15 December 1944)

HENRY J. R. COOPER, Sr., Appellant, v. RICHARD MACINTOSH, boat carpenter, Harper, Maryland County, Appellee.
APPEAL FROM THE CIRCUIT
COURT OF THE FOURTH JUDICIAL CIRCUIT, MARYLAND COUNTY.

Argued December 4, 6, 7, 1944. Decided December 15, 1944. 1. The title of a case need not necessarily be stated in the body of the affidavit, especially where the affidavit sufficiently describes the deponent as a party to the suit. 2. To warrant the allowance of an injunction it must clearly appear that some act has been done or is thereby threatened which will produce irreparable injury to the party asking an injunction. 3. A court should not grant an injunction to allay the fears and the apprehensions of individuals.

Appellant filed a suit for an injunction against trespass. On appeal from decision in favor of appellee, judgment affirmed. D. Bartholomew Cooper son, Jr., for appellee.

for appellant.

A. Dash Wil-

MR.
Court.

JUSTICE

BARCLAY delivered the opinion of the

The records in this case disclose that on June 22, 1943 appellant saw fit to file a complaint in equity against appellee in an injunction proceeding against trespass. Appellant stated that he is owner of a piece of real property in the city of Harper, Maryland County, filing as evidence thereof a copy of a deed ; that appellee had

unjustly entered upon said land and was forcibly using a portion thereof, which was unlawful, injurious, and damaging to appellant's right and interest; that appellant was about to commence and institute an action at law in yin-

dication of appellant's claim and legal right to said property, but that in the interval of doing so and pending the trial of the right serious irreparable damage and injury could be done to the aforesaid piece of real property which would be injurious to the plaintiff and not in contemplation of either law or equity. Defendant, now appellee, in his answer set up several defenses, among which are the following : r. That appellant's averment of intention to file an action of ejectment was misleading in that appellee was there under lease from the trustees of the estate of the late Teah Tobey who had used said property for a number of years without question by the said appellant. 2. That the land in question was bought by the late Teah Tobey from appellant who was not only the vendor but also the surveyor, and who led the said Teah Tobey to believe that that was the identical piece of land paid for by him. (Appellee also filed a copy of his deed as evidence of the title of the said trustees, his landlords.) 3. That it is not within the function of an injunction or of a court of equity to decide title to real property. Appellant should first file his action of ejectment. 4. That his use of the premises under a verbal arrangement with the trustees of the estate of the late Teah Tobey, who claim fee simple right to said property, was only to carry on operations in the exercise of his profession as a boat carpenter. Appellee concluded with a prayer that the injunction be dissolved. Those are the principal questions raised in the pleadings which extended to the sur-rejoinder. The records further disclose that appellee also filed an application for permission to remove his personal property, the boat then in process of construction and other materials connected therewith, from the land which

is the subject of these proceedings, and offered to file a bond indemnifying appellant for any loss or damage he might sustain by reason of such removal. Appellant's counsel, on the other hand, resisted said application on the ground that it was not supported by a proper affidavit, pointing out what he considered the defects therein. He also objected to the filing of a bond by appellee, but contended that the personal property should remain on the land, that appellant would give a bond indemnifying appellee from all loss or damage appellee might sustain by reason thereof. The said bond was prepared and filed. The bill of exceptions in which this appears is before us. It consists of two counts which read as follows : "Appellant submits that the following errors were committed of said action, namely :"r. Defendant filed a Renewed Application

for Order of Court to Remove Personal Property. Said application was objected to by plaintiff because of reasons substantially stated and appears in the record, as follows, to wit :-- "Because the affidavit thereto containing issues of fact not of record is seriously defective and bad, for the reason it does not refer to the title of the action as is provided by law. "And also because it does not appear by the affidavit that the defendant in said cause is the identical and same person who swore as deponent, in that, the defendant in this action is known to the court as 'RICHARD MACINTOSH, Boat Carpenter, Harper, Md. Co., defendant,' whereas one R. A. Macintosh signs as deponent who swore to the affidavit . . . whether the R. A. Macintosh as deponent is the defendant known to the court in these proceedings. "Plaintiff insisting that for such defects the affidavit should have been rejected and simultaneously the application upon which it was founded, or which it pur-

ported to support, citing L. Van Der Werf v. Logan, L.L.R. 521. The court overruled the objections and plaintiff excepted, as appears from the Clerks' record herein. "2. Defendant filed an application for dissolution of the Injunction on the znd day of July A.D. 1943, whereupon plaintiff resisted said application by citing the court's attention to the law controlling on that score. "That Court overruled plaintiff's resistance and accordingly proceeded to render Final Decree dissolving the Injunction, as appears from the Clerk's record herein, which also shows the plaintiff excepted and entered a Notice of appeal to the Supreme Court of the Republic of Liberia at its April Term A.D. 1944." With reference to the first point in the bill of exceptions, upon an inspection of the copy of the application and its supporting affidavit we do not see that the contention of appellant is tenable and hence we are in full accord with the trial judge who ruled inter alia: "When it comes to the first objections of the plaintiff and a recourse to said affidavit in question, said affidavit shows the title of the case upon its face, and since there has been produced no law showing that the title of the case must be stated in the body of the aff idavit the court finds itself unable to concede the point." We have also to sustain the ruling of the judge with reference to the second point that the affidavit sufficiently describes the deponent as a party to the suit. As regards the second count of the bill of exceptions, we are of the opinion that the court did not err in dissolving the injunction for in the first instance it is fundamental law that an injunction is not an action to try and to determine title to real property. From the records and from the pleadings in this case it appears that appel-

lant filed a suit for an injunction to prevent a trespass upon land, the title to which was in dispute, without first filing his action of ejectment. "Where the right of a party is doubtful, an injunction

will not in general be granted to prevent an interference therewith until the right is established at law. Nothing is better settled 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 of law, and which question has never been adjudged in his favor 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 courts 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. . . ." 16 Am. & Eng. Encyc. of Law Injunctions 359-60 (1900).

Appellant further applied for the injunction because of some apprehension or fear that irreparable injury could be done to the property pending his filing an action of ejectment and the termination of such an action. This is not ordinarily a ground for the granting of an injunction unless it is clear that some act is being done or is threatened which will produce irreparable injury. Nowhere in the record did appellant make it clear that any irreparable injury would happen to the property which was only being used by appellee for the building of a boat. "To warrant the allowance of a writ of injunction it must clearly appear that some act has been done, or is threatened, which will produce irreparable injury to the party asking an injunction. Unless this be made to appear, an injunction should be denied. If, however, the injury threatened be irreparable, chancery will interfere by injunction. An injury is ir-

reparable either from its own nature, as when the party injured cannot be adequately compensated therefor in damages or when the damages which may result therefrom cannot be measured by any certain pecuniary standard, or when it is shown that the party must respond is insolvent, and for that reason incapable of responding in damages. "The court cannot grant an injunction to allay the fears and apprehensions of individuals. They must show the court that the acts against which they ask for protection are not only threatened, but will in all probability be committed, to their injury. . . ." Id. at 360. We are of the opinion that the decree of the court below dissolving the injunction should be affirmed, with costs against appellant; and it is hereby so ordered.
Affirmed.

Tarpeh v Dennis [1977] LRSC 11; 25 LLR 468 (1977) (18 February 1977)

AUGUSTA BARBOUR-TARPEH, et al., Informants, v. SAMUEL FORD DENNIS, et al., Respondents.
BILL OF INFORMATION.

Argued February 3,
1977. Decided February 18, 1977. 1. Where a judge of a lower court attempts to execute in a wrong manner the mandate of the Supreme Court, the proper procedure to bring the matter to the attention of the Supreme Court is by a bill of information. 2. A decree cancelling a deed merely invalidates any conveyances purportedly made by such deed and does not confer title, which is determined by an action of ejectment. 3. 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.

This was a bill of information filed in the Supreme Court to prevent the improper execution of the mandate of the Court in a suit in equity brought by the parties who are the respondents in the present case for the cancellation of a warranty deed. Informants were not made parties to those proceedings. The Supreme Court in the cancellation proceedings held in favor of the parties who are the respondents in the instant case and ordered the lower court to enforce the decree by causing the deed to be cancelled. The judge of the lower court, however, issued a writ of possession, commanding the sheriff to put the respondents herein in possession of the parcel of land which is claimed by the informants and which is also the subject of an action of ejectment pending against the informants in the same court. The Supreme Court decided that the Circuit Court judge had acted erroneously in attempting to carry out the mandate of the Supreme Court in the cancellation proceedings by issuing a writ of possession. It directed the lower court to rescind its order in that respect, to execute properly the mandate in the cancellation proceedings, and to proceed promptly in the ejectment ac468

LIBERIAN LAW REPORTS

469

tion then pending. The bill of information was sustained.
J. C. N. Howard for informants.
latse for respondents. MacDonald Aco-

MR. JUSTICE Court.

HENRIES

delivered the opinion of the

According to the bill of information filed by the informants, in 1964 the respondents filed a bill in equity in the Civil Law Court for the Sixth Judicial Circuit, Montserrado

County, for the cancellation of a warranty deed because of fraud for two hundred acres of land situated in Paynesville, Montserrado County. The informants were never made a party to the cancellation proceedings. In 1969 the respondents obtained a decree in their favor in the cancellation suit. The respondents in that action excepted to the decree and appealed to the Supreme Court. In 1970 the appeal was dismissed upon motion by the respondents in the information proceedings, and the lower court was ordered to resume jurisdiction in the cancellation suit and enforce its decree granting the cancellation. In 1972 the respondents instituted an action of ejectment against informant Augusta Barbour-Tarpeh for the same parcel of land which was the subject of the cancellation suit. She answered asserting ownership to one hundred fifty acres of the parcel of land by virtue of title being vested in her late grandfather, Thomas R. Barbour, and alleging that the Barbours have continuously occupied that parcel of land for 115 years. The ejectment action is still pending in the Civil Law Court for the Sixth Judicial Circuit. Despite the fact that this Court only ordered the cancellation of the warranty deed, and notwithstanding the

pendency of the ejectment action, former Judge John A. Dennis, who was presiding over the March 1976 Term of the aforesaid Circuit, ordered the issuance of a writ of possession, commanding the sheriff to put the respondents in possession of the parcel of land which is the subject of the pending ejectment action. The informants have requested that this Court revoke the writ of possession and order the immediate hearing and determination of the ejectment suit. In their returns, the respondents admitted most of the allegations laid in the bill of information, but they contended that the cancellation proceedings out of which the information grew have been finally determined, hence this Court is without authority to assume jurisdiction and hear this information. They also contended that it is improper for this Court to order a circuit judge to revoke an order of another circuit judge when both have concurrent jurisdiction. Before going into the issues presented in the information, we must' first dispose of the issues raised by the respondents since they tend to question this Court's authority to hear the information or grant the relief prayed for. While it is true that the cancellation proceedings have been finally determined, it is the enforcement of the decree or the execution of the mandate which finally puts the case to rest. The information alleges that the judge of the lower court has attempted to execute in a wrong manner this Court's mandate in the cancellation proceedings. Where a judge attempts to proceed in such a manner, the proper way to bring it to this Court's attention is by information, and this has been the practice from time immemorial. Raymond International (Liberia) Ltd. v. Dennis, [1976] LRSC 35; 25 LLR 131 (1976). With respect to the question of concurrent jurisdiction of the two circuit judges, the first question that comes to mind is how could Judge Dennis order the issuance of a writ of possession in cancellation proceedings when his

colleague, who enjoys concurrent jurisdiction with him and who heard the matter, had decreed that the deed be cancelled. Isn't an interference by one circuit judge with the decree of another circuit judge prohibited? It appears to us that the respondents are estopped from invoking this rule when they themselves are attempting to benefit from the violation of the rule. He who seeks equity must do equity. Where a judge of an inferior court proceeds to carry out the mandate of this Court in a wrong manner, this Court has the authority to revoke the action of the said judge and order any judge who is presiding over the said court at the moment to proceed properly. Let us now turn to the issues raised in the information: (7) Are the informants bound by the decree in the cancellation proceedings; and (2) Is an action for cancellation of a deed for fraud a possessory action? Taking the latter issue first, an action brought to cancel a deed is not a possessory action. A decree cancelling a deed merely makes invalid any conveyances purportedly made by such a deed. Richardson v. Gabbidon, Is LLR 434. (1963). Such a decree does not confer title; all it does is to cancel any conveyance acquired by reason of fraud, misrepresentation, misinformation, or concealment of facts. Davies v. Republic, [1960] LRSC 67; 14 LLR 249 (7960). Ejectment decides title, and this is why the respondents instituted the action of ejectment against one of the informants.
As to the other issue, the informants, not being a party to the cancellation proceedings, are not bound by any decree arising therefrom.
It is well settled that a judgment is not binding upon a party who has neither been fully cited to appear before the court nor afforded an opportunity to be heard. Tubman v. Murdoch, [1934] LRSC 26; 4 LLR 179 (1934) ; Gbae v. Geeby, [1960] LRSC 50; 14 LLR 147 (1960) ; Schilling & Co. N?. Tirait, [1965] LRSC 3; 16 LLR 164 (1965). Therefore it was grossly irregular for the lower court, in its attempt to execute our mandate in the cancellation suit, to issue a

writ of possession which would have the effect of evicting the informants from property they have been occupying allegedly as a result of title which was first vested in their ancestor over a hundred years ago, especially when the informants were not parties to the proceedings from which the writ of possession emanated and also when an action of ejectment between the same parties for the same piece of property is pending in the same court. Because the lower court has proceeded wrongly in executing the mandate of this Court in the cancellation proceedings, the clerk of this Court is ordered to send a mandate down to the court below directing it to resume jurisdiction over the cancellation proceedings; rescind its order with respect to the issuance of the writ of possession; execute properly our mandate of June II, 1970; and proceed to hear and determine without further delay the ejectment action between the parties herein which is now pending in the said court. Costs are placed against the respondents.
And it is hereby so ordered. Bill of information sustained.

Gbeh v Koroma [1977] LRSC 2; 25 LLR 404 (1977) (18 February 1977)

WESSEH GBEH, Petitioner, v. EMMANUEL S. KOROMA, et al., Respondents.
PETITION FOR WRIT OF MANDAMUS TO THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued January 10, 11, 1977. Decided February 18, 1977. 1. A writ of mandamus will be denied where
the duty sought to be enforced has already been performed. 2. Mandamus will not be accepted as a substitute for an appeal in order
to review an exercise of judicial discretion, even though the lower court may have erred in its conclusion.

Petitioner sought a
writ of mandamus to enforce a mandate of the Supreme Court granted in a case of ejectment on a previous application for mandamus
by the same petitioner. The mandate ordered the lower court to issue a writ of possession and specified the manner in which it was
to be executed. After the writ had been executed, petitioner filed a motion in the lower court to set aside the returns for want
of effective service and enforcement. The Circuit Court judge denied the motion, whereupon petitioner excepted and announced an appeal
to the Supreme Court but also proceeded by a petition for mandamus, which is now before the Court. The Court found that the mandate
on the previous petition had been carried out in conformity with its orders, and held also that mandamus was not a proper remedy
when an appeal was available. The petition was denied. Nete-Sie Brownell for petitioner. Jones for respondents.
MR. JUSTICE HORACE

M. Fahnbulleh

delivered the opinion of the

Court. This is the third time this matter is before us in one form or another. The
first time it was an appeal in an

ejectment case sued out in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, by Henry G. Russell and Wesseh Gbeh against Gabriel N. Nah. Because of the failure of appellants Russell
and Gbeh to perfect their appeal, it was dismissed on a motion to dismiss filed by appellee Nah and the case was sent back to the

trial court for enforcement of its judgment. Russell v. Nah, [1973] LRSC 15; 21 LLR 515 (1973). Due to what she considered a wrong and irregular execution of the mandate of the Supreme Court, Wesseh Gbeh applied to the Justice in chambers for a writ of mandamus to compel the sheriff for Montserrado County properly and legally to execute the mandate. The alternative writ of mandamus was ordered issued by the Justice in chambers, but because the matter related to a mandate of the Court en banc, he ordered the record sent forward to the full bench for determination. The Supreme Court held that its mandate in the ejectment case had indeed been irregularly executed by the sheriff and therefore granted the peremptory writ of mandamus and ordered the sheriff to execute its mandate in a proper and legal manner. Gbeh v. Flomo, [1976] LRSC 28; 25 LLR 58 (1976). When the mandate was executed by the deputy sheriff for Montserrado County, petitioner in these proceedings, Wesseh Gbeh, again felt that the deputy sheriff had erred in the execution of the Supreme Court's mandate. Consequently, she filed a "motion to set aside Deputy Sheriff Samuel E. Moore's return to the writ of possession for want of effective and conclusive service and enforcement thereof in conformity with the opinion, judgment and mandate of the Honorable Supreme Court of Liberia, and to appoint another team of surveyors to carry out the mandate of the Supreme Court," setting forth her reasons for said motion. The motion was resisted by respondent and after hearing arguments of opposing counsel, the trial judge, His Honor Emmanuel S. Koroma, presiding over

the June 1976 Term of the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, entered a ruling upholding the deputy sheriff's returns to the writ of possession he had executed. In order to throw some light on the issue, we quote the return of the sheriff : "On the 8th day of July 1976, Samuel E. Moore a deputy sheriff for Montserrado County, did serve the within writ of possession. Present to direct him were surveyors Dominic K. Hena and Brown Pyne. According to the map shown the green lines surround Gabriel N. Nah's two lots ; the red lines represent Wesseh Gbeh. However, the surveyors say that Wesseh Gbeh's land falls within Gabriel N. Nah's lots and I now make this as my official returns to the office of the Clerk of Court, and place Gabriel Nah in possession in keeping with the map and the surveyor's report. Dated this 8th day of July, 1976. [Sgd.] P. EDWARD NELSON, II, Sheriff, Mo. Co., R.L."

The movent in the court below, petitioner in these proceedings, excepted to the ruling of the judge and announced an appeal to the Supreme Court by a remedial process in the nature of mandamus. In passing we must remark that this announcement seems strange coming from a venerable counsellor of this Court. If the announcement had stopped at an appeal to the Supreme Court, the outcome might have been different. In keeping with his announcement, counsel for Wesseh Gbeh, on September 3, 1976, filed in the chambers of Mr. Justice Horace a petition for a writ of mandamus against the judge presiding over the Civil Law Court, the deputy

sheriff who executed the writ of possession, the sheriff who made returns thereto, and Gabriel N. Nah to enforce a mandate of the Supreme Court. We summarize the petition as follows :

1. That pursuant to an opinion, judgment, and mandate of the Supreme Court a writ of posession was duly issued and purportedly served on July 8, 1976. 2. That the deputy sheriff in the service of the writ failed to carry out the mandate, that is, to put the party litigants and disputants in possession of their property after the area in dispute had been delimited by the surveyors according to the metes and bounds of the deeds of disputants in strict conformity with the map or diagram of the area prepared by the arbitrators-surveyors. 3. When the deputy sheriff, with the surveyors and petitioner Wesseh Gbeh and her counsel resorted to the area but contrary to the mandate of the Supreme Court, the deputy sheriff simply said he "put" Gabriel Nah in possession of his property in keeping with the writ of possession without causing the surveyors to mark the respective areas in keeping with the map and diagram which was attached to the writ of possession. 4. That because of the failure of the sheriff to properly carry out the opinion, judgment, and mandate of the Supreme Court by refusing to turn over petitioner's one-half lot shown on the map to her, she filed a motion before the judge presiding over the June 1976 Term of the Civil Law Court to appoint a new team of surveyors to carry out the opinion, judgment, and mandate of the Supreme Court. 5. That the trial judge called attention to the apparent confusion of who was plaintiff and who was defendant in the ejectment suit because the Supreme Court had in its opinion of April 23, 1976, ordered that the plaintiff be put in possession of the property. 6. That Gabriel Nah was never plaintiff in the ejectment suit nor petitioner in the mandamus proceedings and therefore it was error to put him in possession. 7. That the ruling of Judge Koroma attempted to obliterate and declare nonexistent the title rights of petitioner contrary to the opinion, judgment, and mandate of

the Supreme Court rendered on April 23, 1 976 , and should therefore be overruled by this Court. The alternative writ was issued on September 23, 1976. Respondents filed their returns stating the principle issues as follows : "I. That petitioner should have proceeded by information or submission before the Supreme Court en bane if, in her opinion, the judge had not executed the judgment of this Court, and not by mandamus to compel the judge to sustain the motion and appoint another team of surveyors to carry out the mandate of the Supreme Court. "2. That while it is true that the Supreme Court during its March 1976 Term granted the peremptory writ of mandamus, it specifically stated that the court below should execute its mandate strictly in accordance with the diagram or map submitted by the arbitratorssurveyors and the ruling of the court below as well as

to have the original members of the board of arbitration or any three competent public land surveyors proceed to the premises in question with all parties in interest while 'plaintiff' was being put in possession of his property. This procedure was strictly followed because the parties in interest as well as the two original surveyors representing the parties were present, and Dominic Hena who represented Wesseh Gbeh did not object to placing Gabriel Nah in possession of the property in keeping with the diagram or map. "3. That in the original ejectment case both parties applied to the trial court for a board of arbitrators to decide the issue of ownership. The board was appointed with both parties represented thereon and a chairman appointed by the court. It was these surveyors who prepared the map or diagram which showed that Gabriel Nah's lots surrounded the two half lots of Henry Russell and Wesseh Gbeh and it was upon this map and diagram that the trial judge

based his ruling awarding the disputed property to respondent Gabriel N. Nah. "4. That it would have been error on the part of the judge in executing the mandate of the Supreme Court to set aside the original surveyors and appoint a new team of surveyors when the original surveyors were not available but actually present when Nah was placed in possession of the property. "5. That it must have been a typographical error in the opinion of April 23, 1976, to say that the 'plaintiff' be placed in possession of the property when according to the map and the majority report of the arbitrators, Nah, who was defendant, was the successful party and so declared by the trial judge. It was from this judgment declaring Nah the successful party that Russell and Gbeh appealed to the Supreme Court in the ejectment suit. "6. That the sheriff employed the services of the original surveyors to measure and delineate the property in keeping with the signed map or diagram." These are the issues raised in the petition for mandamus and the returns. Because the contention related to a mandate of the Supreme Court en banc, the Justice in chambers again ordered the matter forwarded to the full bench. When the first petition for mandamus was filed, the issue was that the sheriff had failed to carry out the orders of the judge presiding over the Civil Law Court in his execution of the mandate of this Court. In the petition, it was shown that the sheriff had simply given a copy of the writ of possession to Wesseh Gbeh and left a copy of said writ of possession with Henry Russell. Neither of the plaintiffs nor their counsel was present when Gabriel Nah was put in possession of the property. Further, the assistance of a surveyor or surveyors was not procured when Nah was put in possession. This, we felt, was wrong because the sheriff is not a professional surveyor to be able to determine the metes and bounds of

property

which he, in the line of his duty, may be called upon to handle. During the March 1976 Term of the Supreme Court the peremptory writ of mandamus was granted and the matter returned to the lower court with specific instructions as to how to execute the mandate of this Court. In the opinion of this Court delivered by Mr. Justice Azango on April 23, 1976, it was stated : "The Clerk of this Court is hereby ordered to immediately send a mandate to the court below informing it of this judgment, and to resume jurisdiction over the cause of action, proceed to have a writ of possession issued in favor of the successful party [emphasis supplied] in this case strictly in accordance with the diagram or map submitted by the arbitrators-surveyors, the original ruling of the court below, and to have the original members of the board of arbitrators or any three competent public land surveyors employed to proceed to the premises in question with all parties in interest present while the plaintiff is being put in possession of his land." Gbeh v. Flomo, [1976] LRSC 28; 25 LLR 58, 66 (1976). Many points of interest have been raised in the petition, the returns and the arguments before this Court. The first is that both parties agree that in the execution of the mandate of the Supreme Court, two of the original members of the surveying team appointed as arbitrators were present--one representing the plaintiff and the other representing the defendant. Also present was petitioner in these proceedings, one of the plaintiffs in the ejectment suit, and her counsel. The original diagram or map signed by all three members of the surveying team was in possession of the deputy sheriff who under a writ of possession was to put the successful party in the ejectment suit in possession of the property. It might be of interest ta note that although the surveyor representing the plaintiff filed a minority report with respect to the arbitration award, he signed the diagram or map which showed the

entire property in the area as being that of Gabriel N. Nah. We simply mention this in passing.

Based upon the diagram or map and with two of the original mem-bers of the surveying team present to point out the property, Gabriel N. Nah was put in possession and a return made accordingly. The return has already been quoted in this opinion. There is no record to show objections on the part of the surveyor representing petitioner except the mere allegation of the motion before the lower court that when they were on the spot at the time of putting Nah in possession, petitioner's surveyor measured Gabriel N. Nah's land and stated that it ended at the corner of his house which was shown on the map and the rest of the land was Wesseh Gbeh's. We regret that we cannot go into this phase of the matter as that would require the hearing of evidence which under the Constitution we cannot do. The next point of interest is that the parties in the ejectment case had common grantors. Co-respondent Gabriel Nah contended that he was the first purchaser and that Gbeh and Russell were later sold the same property by his grantor. Here again we find ourselves unable to go into this phase of the matter, however interesting it might be, because we are by the opinion of February 2, 1973, inhibited

from going into the merits of the case for reasons stated in that opinion. We cannot resist the urge, however, to mention that all does not seem above board on the part of co-respondent Nah from the arguments put forward during the hearing in these proceedings.

A. further point of interest is that petitioner's counsel stressed the point that the opinion of April 23, 1976, directed that plaintiff, meaning petitioner, be put in possession of his property. A careful look at that part of the opinion dealing with this issue clearly says that the successful party should be placed in possession. Moreover, the plaintiff concerned is a woman, Russell having appar-

ently abandoned interest in the matter, and it is stated: "while plaintiff is being put in possession of his land." Taking the first part which clearly states that the successful party be put in possession, it is obvious that the word "plaintiff" in the latter part is an error. Gbeh v. Flomo, supra, at 66.

Respondents have raised the contention that mandamus will not lie to compel the sheriff to do what he had already done in strict conformity with the mandate of this Court. The sheriff's returns support the contention that he went about his duty in keeping with the mandate. He had the original surveyors on the spot. The petitioner and her counsel were there. He had the original diagram or map delineating the property. All this did conform to the opinion and mandate of this Court. As pointed out before, the sheriff did none of these things when he purportedly carried out the first mandate.

To grant another peremptory writ of mandamus in face of the facts hereinabove stated would be encouraging endless litigation in a particular matter. "As in other cases, the writ may be denied when sought for such purposes where the petitioner has another remedy, or where the duty sought to be enforced has already been performed, or if an appeal, if ordered, would be useless." 52 AM. JUR. 2d, Mandamus, § 351 (1970). We wonder why petitioner, after taking exceptions to the judge's ruling on his motion and announcing an appeal, did not proceed by regular appeal. Perhaps in that case we could have reviewed certain aspects of the matter which we cannot do in mandamus proceedings. This Court has held that mandamus will not, as a general rule, issue to review an exercise of judicial discretion, even though the court may have erred in its conclusion. Further, that mandamus is not a substitute for an appeal or a writ of error where they offer an adequate remedy to the aggrieved party. King v. Randall, to LLR 225 (1949).

Taking all of the facts and circumstances into consideration, we feel compelled to deny the petition and quash the alternative writ. The Clerk of this Court is hereby directed to send a mandate to the court below to resume jurisdiction and enforce its judgment. Costs disallowed. And it is so ordered. Petition denied.

Gbeh v Flomo [1976] LRSC 28; 25 LLR 58 (1976) (23 April 1976)

WESSEH GBEH, Petitioner, v. JUDGE ALFRED B. FLOMO, et al., Respondents.
PETITION FOR WRIT OF MANDAMUS TO THE CIRCUIT COURT, SIXTH
JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued March 28, 1976. Decided April 23, 1976. 1. A writ of possession is required to be executed
in accord with its instructions. 2. A writ of mandamus will be issued to command an inferior court, officer, or person when he is
required to perform a particular duty that is incumbent upon him to do. 3. Mandamus will issue when ordinary proceedings are powerless
to afford relief to the petitioner.

Gabriel N. Nah, the plaintiff in an ejectment action, appealed the ruling of a Board of Arbitrators,
to whom the parties had submitted. The court awarded plaintiff a final judgment. The defendants both appealed the judgment and ,sought
a writ of mandamus against the respondent judge who had refused approval of certain appeal documents. Both remedies were refused
by the Supreme Court which sent its mandate to the lower court. The judge who issued the writ of possession made it a point therein
that the sheriff was to employ a surveyor when he found its execution difficult due to the complicated map. The sheriff did not do
so and the presiding judge did not make his returns as required, after Wesseh Gbeh, one of the defendants had been deprived, she
claimed, of part of her property which the plaintiff acquired. She thereupon sought a writ of mandamus to compel the sheriff to properly
execute the writ of possession and to have the judge make his proper return thereto. The Supreme Court found that the writ of possession
had not been executed in accord with its instructions. The petition was granted and a mandate embodying the findings was referred
to the Circuit Court.
58

LIBERIAN LAW REPORTS

59

Nete-Sie Brownell for petitioner. respondents.

Momo F. Jones for

MR.
Court.

JUSTICE AZANGO delivered the opinion of the

According to the record, Wesseh Gbeh and Henry G. Russell were sued in an action of

ejectment by Gabriel N. Nah in the March 1972 Term of the Civil Law Court for the Sixth Judicial Circuit, Montserrado County. By stipulation of the parties, the case was submitted to a panel of surveyors constituting a Board of Arbitrators to survey the area in dispute. Gabriel N. Nah, plaintiff in ejectment, filed his objections to the report of the arbitrators thereto, which were disposed of and final judgment rendered in favor of plaintiff on February 15, 1973, to which ruling defendants announced an appeal to this Court for review; but because of their failure to perfect the appeal and the trial judge's refusal to approve certain of the appeal documents, they prayed for mandamus against the respondent judge in order to compel him to approve the appeal papers. The mandamus proceedings were dismissed and a mandate was sent to the court below ordering it to resume jurisdiction over the cause of action and enforce its judgment based on the arbitrators' award. Before acting on the mandate of this Court, the court below observed that the surveyors had submitted to it a map or diagram of the area in dispute, which carried a legend for its guidance in the adjustment of the respective boundaries. Judge MacDonald Krakue, to whom the mandate was transmitted, perceived that to intelligently conform to the findings of the Board of Arbitrators it would be necessary for a surveyor to go on the spot and delineate the respective boundaries of the disputants, in keeping with the award. Hence, in ordering the writ of possession issued, he specifically directed the sheriff of Montserrado County that where he found it difficult in the execu-

tion of his writ of possession to determine metes and bounds, he should use the deed of the plaintiff with a qualified Public Land Surveyor, at the expense of plaintiff in keeping with the court's final ruling. The sheriff, instead of adhering to the orders of the court as contained in the writ of possession, neglected to carry out the directive of the court in that respect. Consequently, he made the following returns on the back of his writ: "On the 22nd day of February, 1973, P. Edward Nelson II served the within writ of possession on the within named appellants by placing a copy of the writ in the hand of Mrs. Wesseh Gbeh and placed a copy on Mr. Henry G. Russell's desk in his office, because he was not in at the time the plaintiff went on the spot and placed Mr. Gabriel N. Nah on the said property. And I now make this as my official return to the office of the Clerk of Court." Because there was no delineation of the metes and bounds of the property in question, respondent Gabriel Nah transcended the bounds laid down in the map of the arbitrators and proceeded to construct a house covering the area belonging to petitioner Wesseh Gbeh, without due regard to her property rights as determined by the court and based on the arbitrator's award. Consequent upon this action of respondent Gabriel Nah, petitioners Wesseh Gbeh and Henry G. Russell filed a submission in the Circuit Court for the Sixth Judicial Circuit, Montserrado County, sitting in its December 1973 Term, praying the court to order the sheriff to employ the services of a surveyor in keeping with the directive of Judge MacDonald Krakue as contained in the

writ of possession. According to respondent Gabriel Nah, without denying the allegation of encroachment set forth in the submission, he resisted said submission on the grounds of jurisdiction and agreed that the Supreme Court was the proper forum to appeal for the relief sought. From the contentions raised by counsel for the parties,

it appears to us there is but one issue which claims our attention for adjudication. That is, has the mandate of this Court been fully executed, and in accord with the law governing executions of judgments? In other words, did the judge, or for that matter the sheriff of Montserrado County, use ordinary skill and diligence in carrying out our command? We shall address ourselves to these questions later. However, before proceeding to do so, we would like to remind parties of the law. "The command of an alternative writ of mandamus is equivalent to a conclusion of law, deducible from the facts alleged, showing the particular act which the law specifically enjoins as a duty resulting from an office, trust, or station ; the failure, neglect, or refusal of the defendant to comply therewith; and the right of the relator to insist on its specific performance. It is the mandatory part of the writ, moreover, to which the defendant must look to discover the specific act which he is commanded to perform, and hence the particular thing or things required to be done must be clearly and distinctly specified therein. It is only necessary, however, to describe the thing to be done with reasonable certainty, with such certainty that the defendant will know what is required of him. And it is held that this rule is peculiarly applicable to public officers who are commanded to perform a public duty, and especially where the facts constituting the act are within their personal knowledge. The mandatory part of a writ of mandamus should conform to the allegations of the writ, and it should not, in general, require more to be done than is justified by such allegations." i8 R.C.L., Mandamus, § 298 (1917). We must express our disagreement with the issues raised in counts I to 7 of the respondents' returns, for we found them untenable in law. Recourse to the record in the case reveals that on February 6, 1973, this Court commanded Judge MacDonald J. Krakue that in keeping

with the accompanying copy of the judgment handed down on February t, 1973, he should execute the foregoing judgment immediately and file his official returns to the mandate as to its execution. Irrespective of this command, the record shows that on February 19, 1973, the sheriff of Montserrado County was commanded to put Gabriel N. Nah in possession of the described premises. "Commencing at the Northwest angle of 1/4 acre owned by Gabriel N. Nah on Lynch Street and running on magnetic bearing North 25 degrees East 132.o feet to wall fence of the Public Health to a point, hence running 65 degrees West 62.5 feet to a point; thence running North 65 degrees East 82.5o feet to the place of commencement

and containing 1/4 acres of land and no more. "The said Gabriel N. Nah of Monrovia, Liberia, being the above-named plaintiff is entitled to the said premises by virtue of judgment duly made by this Court on the 15th day of February, 1973, in the aboveentitled proceedings. "Further, whereas you find it difficult as to the metes and bounds you will use the deed of the plaintiff with a qualified Public Land Surveyor at the expense of plaintiff as in keeping with the Court's final ruling. "And you are further commanded to return this writ of possession to my office at this present session of Court, December 1973 Term." And the record further shows that on February 22, 1973, P. Edward Nelson II, sheriff of Montserrado County, served a writ of possession on Gabriel Nah by placing a copy of it in the hand of Mrs. Wesseh Gbeh and placing a copy on Mr. Henry G. Russell's desk in his office because he was not in at the time, and that he found no other person living on the said property. However, Judge MacDonald Krakue has failed to file any official return to this Court informing it as to how he executed

the mandate's instructions transmitted to him from this Court. It is, therefore, reasonably concluded that the mandate of this Court, dated February 6, 1973, has not been executed and the accompanying judgment still remains unenforced. The rule of this Court provides : "Mandates to the courts below commanding the execution of judgments shall be transmitted immediately upon the adjournment of the term of court. 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 his returns to a Justice in chambers, shall make and file a return showing the action taken by him in the premises. Should the judge of any court fail to make a return as required, he shall be deemed guilty of contempt. All such returns recorded, and the clerk shall present the original to the Court on the first day of the term, when return calendar shall be read and disposed of." Revised Rules of the Supreme Court, XI, Part r. However, respondents' counsel has contended that the mandate has been executed and the plaintiff was put in possession of his property. Even though there was a description of the metes and bounds in the writ of possession by which the sheriff should have been guided, and even though he was ordered to put the plaintiff in possession of the premises, by virtue of the judgment duly made on February 15, 1973, and though he was told that if he found it difficult to follow descriptions he should use the deed of plaintiff together with a qualified Public Land Surveyor in keeping with the final ruling that substantially relied on the report of the Arbitrator Surveyors who clearly and distinctly drew up a map, nevertheless, for unknown reasons, the return of the

sheriff failed to show in detail how he served the writ of possession and put Gabriel N. Nah in possession of his one-quarter acre of land. Nor did the sheriff meet two of the parties to the suit, nor did he employ the services of any surveyor who could have assisted him to point out the markers of the parties so as to avoid further confusion. It appears to us that since there were three parties to this action, he should have required them all to be present while he put Gabriel Nah in possession of his property. Moreover, he should have confined himself to the final judgment which is supported by the summary report of the Board of Arbitrators, dated February 20, 1971, and refer if necessary to the minority report which is dated March 23, 1971. Considering the technical observations made by the arbitrators and reduced to the form of a diagram or map, the sheriff should have carried out the instructions of Judge Krakue by, seeking the aid of the surveyors who could have aided and assisted him in pointing out the markers or delineating the metes and bounds on the ground as are indicated on the diagram, since he is not a technician in this field. And should this have proved impossible, he should have made this known to Judge Krakue. This he failed to do, and has made an irregular return to the writ of possession. Respondents' counsel has also contended that petitioner had a right to appeal from the decision of Judge Alfred B. Flomo and, therefore, cannot use mandamus. However, the issue before us is improper performance of a duty as well as the refusal to properly execute the mandate of this Court. Did or did not the sheriff of Montserrado County execute the order of Judge Krakue which was given in implementation of the mandate, is the question for consideration. As to petitioner's right of appeal, was the decision of Judge Flomo an appealable judgment, order, or decree?

That is, was this decision of Judge Flomo of a nature that was capable of being subjected to an appeal? We hesitate to answer. Moreover, it is common knowledge that mandamus is to command an inferior court, officer, or corporation or a person requiring the performance of a particular duty that is incumbent upon his office to do. On his failure to do so, he will be compelled, if it is within the pale of law. Judge Flomo was requested to perform an official act, but refused on grounds stated. Could the party be required to pursue an appeal? We think it proper to have resorted to a writ of mandamus in the circumstances. Respondents' counsel has argued also that mandamus cannot be resorted to when there is an adequate and complete remedy available at law. On this point we wish to observe that while it is true in cases of lower courts of original jurisdiction that the existence of another adequate remedy will preclude the higher court from granting a writ of mandamus, it is not true in this case, since no other remedy was adequate to afford the relief required. Furthermore, mandamus is an extraordinary remedy in cases where the usual and ordinary modes of proceedings are powerless to afford remedies to the parties aggrieved, and when without its aid, there would be a failure of justice. , The submission made to the court below was in the nature of an express request to the respondent judge to perform in accordance therewith, and hence

any neglect or other conduct that was equivalent to a refusal to act rendered further demand and refusal unnecessary. "Whilst we are prepared to agree that mandamus will lie to compel performance of an act requested and refused, we also hold that the performance of a plain duty necessary to the just determination of a cause, in other words, a certain class of duty, should never have to be requested of a judge. And, whether or not a request for its performance is made and refused, man-

damus will still like to compel the neglected performance of it." Perry v. Richardson, [1960] LRSC 48; 14 LLR 116, 130 (1960). It is our opinion that the mandate of this Court together with the ruling of Judge Krakue have not been fully executed and returns made thereto accordingly. The act of the sheriff of Montserrado County in respect to executing the writ of possession in favor of Gabriel N. Nah is irregular and void to all intents and purposes. The petition is therefore granted. The Clerk of this Court is hereby ordered to immediately send a mandate to the court below informing it of this judgment, and to resume jurisdiction over the cause of action, proceed to have a writ of possession issued in favor of the successful party in this case strictly in accordance with the diagram or map submitted by the arbitrators-surveyors, the original ruling of the court below, and to have the original members of the board of arbitrators or any three competent public land surveyors employed to proceed to the premises in question with all parties in interest present while the plaintiff is being put in possession of his land. Costs are disallowed. And it is hereby so ordered.
Petition for writ of mandamus granted.

Freeman v Kini [1974] LRSC 68; 23 LLR 413 (1974) (24 May 1974)

SEKU FREEMAN, et al., Petitioners, v. A. KINI, et al., Respondents.
PETITION FOR A WRIT OF ERROR TO THE CIRCUIT COURT, FIFTH JUDICIAL CIRCUIT, GRAND CAPE MOUNT COUNTY.

Decided May 24, 1974. 1. The sheriff's return showing service is presumed to be correct, but the presumption is rebuttable and not conclusive. 2. A certificate of counsel is not a document which is subject to a stamp tax. 3. An application for a writ of error must have an affidavit submitted therewith by the petitioner verifying that the writ is not being sought for mere harassment or delay. 4. An appellate tribunal can only take cognizance of the record and not of other matters placed before the appellate court. S. The procedure related to obtaining remedial writs must be strictly observed by the petitioner.

Plaintiffs
in error instituted an action in the lower court objecting to the probation and registration by the defendants of a public land deed.
The plaintiffs applied for a writ of error on April 21, 1971, on the principal ground that they had not been served with notice of assignment and they condemned the return of the sheriff attesting to due and proper service as false. The defendants in error in
their return argued primarily that service was made and that no affidavit verifying that the application had not been made for mere harassment or delay was not submitted, thereby rendering the application invalid. The Justice in his ruling was regretful that the contention of defendants in error as to the invalidity of the application for failure to append the required affidavit had to be
sustained. However, he had doubts as to proper service by the sheriff and, reinforced by the inequities possible in a dispute over an area so large, therefore, although he denied the petition he ordered the lower court to conduct an investigation into the issue
of service
413

of notice of assignment and proceed in the matter thereafter in accord with the lower
court's findings, contemplating a day in court for plaintiffs in error if service was found lacking. The petition, as aforesaid,
was denied but costs were disallowed because of the petition's merit.
HENRIES,

J., presiding in chambers.

Plaintiffs in error applied
for a writ of error on the ground that they had not had their day in court in an action concerning objections to the probation and
registration of a public **land grant for 2,325 acres of land** in the Garwular Chiefdom, Grand Cape Mount County, filed on February
26, 1969, in the Fifth Judicial Circuit Court of that County, presided over by Hon. Alfred B. Flomo, Assigned Circuit Judge. Incidentally,
this case was first heard by this Court in 1968. See Caine v. Freeman, [1968] LRSC 5; 18 LLR 238 (1968). The plaintiffs in error denied being served with any notice of assignment after that of May 1, 1970, until the disposal of their objections in a ruling adverse to them by the trial judge on March 3, 1971, and, therefore, contended that the sheriff's return
on the notice of assignment issued on February 23, 1971, was false. The sheriff's return has been quoted. "By virtue of the within
Notice of Assignment, I have duly served same on the within names: Seku Freeman, Varney Manoballah, Lasini Manoballah, with the exception of George B. Caine who is dead. And now have them before this Court. Dated this 2nd day of March, 1971. (Sgd.) "S. M. DAVID, Deputy
Sheriff, "First Judicial Circuit Court, "Grand Cape Mount County, R.L." The plaintiffs in error, after the disposition of the case,
filed an affidavit on April 20, 1971, swearing the sheriff's return was false.

This was the situation as it existed when they filed their application for a writ of error on April 21, 1971. The defendants in error filed returns consisting of three counts. tf I. Because respondents say that the petition is defective and bad and the writ should be quashed because the petition is not verified in keeping with law, that is to say, there is no verification to the petition stating that the petition has not been applied for, .. . the mere purpose of delay or harassment. "2. And also because respondents submit that the petition should be dismissed for the further reason that the purported certificate of counsel does not bear the required revenue stamp of 5o cents. "3. Respondents hereby refute the facts stated in the petition that the petitioners were not served with process. The records belie this assertion and the attention of this court is respectfully drawn to the return of the sheriff and the certificate of the clerk of court." We shall resolve the issues raised in the returns in reverse order. Count three of the return refers to the sheriff's return, which we have already quoted above, and the certificate of the clerk of court, which is totally irrelevant to the issue of service. More important, however, is the sheriff's return which shows service of process. This Court has consistently held that a sheriff's return is presumed to be correct. Perry v. Ammons, [1965] LRSC 11; 16 LLR 268 (1965). This Court has also held in Perry v. Ammons, [1965] LRSC 31; 17 LLR 58 (1965), that in an application for reargument, the sheriff's return is proof of service unless shown to be false. It is our opinion that the affidavit of the plaintiffs in error raised a doubt as to service of notice of assignment which should warrant an investigation for three reasons: (I) the tract of land which is the subject of the action is very large, 2,325 acres, and a judgment thereon should be thoroughly

considered before rendition; (2) the parties to the action are two or more clans composed of persons perhaps numbering in the hundreds, in Grand Cape Mount County, all having a keen interest in the land and, therefore, should not be unjustly deprived of the right to enjoy all of the uses and benefits that can accrue from the land; and (3) in order to be just the service of the notice of assignment should be conclusively established. With respect to the second count of the returns of the defendants in error, concerning the absence of a fifty-cent revenue stamp on the certificate of counsel, they have cited the Revenue and Finance Law which provides that a "certificate, notarial or court" should have affixed to it a revenue stamp of so cents. 1956 Code 35:570(1o). It is our opinion that a certificate of counsel does not fall within the category of a certificate issued by a notary public or a clerk of court and, therefore, this contention cannot be sustained. A certificate of counsel is not one of the documents that are subject to the revenue stamp tax. Finally, as to the first count, which relates to the absence of an affivadit

to the petition for a writ of error verifying that the application was not made for the purpose of mere harassment, it must be stated that there is none, even though plaintiffs in error contend that they did file one. This Court can only take cognizance of the record before it and, therefore, much to our regret must give credence to what appears before us in the record and not the verbal assurance of counsel for the plaintiffs in error. Our Civil Procedure Law contains the procedure for the application for a writ of error and states clearly that the application should be verified. Rev. Code :16.24(1)(a). This Court in Harmon v. Republic, [1934] LRSC 29; 4 LLR 195 (1934), and Montgomery v. Kandakai, decided May 3, 1974, has held that the procedure relating to remedial writs should be strictly followed. Under the

circumstances we cannot grant the writ of error requested in the application since it has not met all of the legal requirements. In view of the foregoing, we must deny the issuance of the writ of error on the application as filed. However, relying on Kanawaty v. King, [1960] LRSC 66; 14 LLR 241 (196o), it is our opinion in the interest of justice that the question of the service of the notice of assignment should be looked into in order to establish clearly that the plaintiffs in error were not denied their day in court. It is, therefore, our orders that the Clerk of this Court send a mandate to the court below, commanding the judge assigned therein to resume jurisdiction over the action and to investigate whether or not the notice of assignment was actually served on the plaintiffs in error. If, after the investigation, it is found that there was no service of the notice of assignment, the court will proceed to correct this error in the interest of justice. If the sheriff's return to service is correct, then the court will proceed to enforce its judgment. Because we feel that the petition was meritorious, although not verified, we have disallowed any costs in these proceedings. It is so ordered.
Petition denied; investigation ordered.

Sandfish et al v Varmuyah [1971] LRSC 94; 20 LLR 391 (1971) (1 January 1971)

JAMES SANDFISH and all persons working directly or indirectly with or under him on a parcel of land situated in the Township of Kakata, Appellants, v. ALHAJI VARMUYAH, Sheriff of Monrovia, Appellee.
JUDGMENT WITHOUT OPINION.

Date of decision not indicated.*

Philip
Brumskine of counsel for appellants. Fahnbulleh Jones for appellee.

Momo

At the call of the case, appellants were represented by counsellor Philip Brumskine of the Garber Law Firm and appellee was represented by counsellor Momo Fahnbulleh Jones. At this stage, counsel for appellants noted for the record that the ruling in this case having been modified by the Justice in chambers upon application of appellants in respect to the amount of the fine imposed, he moved to withdraw the appeal. After due consideration, it is hereby adjudged that the motion is granted and the case ordered stricken from the docket, with costs against appellants, and that appellants may not continue operations upon the subject premises during the continuation of an appeal in the case.
* The Chief Justice did not sit.

391

Lib Trading Corp. v Cole [1971] LRSC 93; 20 LLR 390 (1971) (1 January 1971)

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. 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. 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.

2. 3.

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

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LIBERIAN LAW REPORTS

99

date to the court below informing it of this judgment and ordering it to resume jurisdiction and proceed immediately to enforce its judgment. And it is hereby so ordered.
Motion granted, appeal dismissed.

LIBERIAN LAW REPORTS

107

their motion to dismiss amended to embrace the relief sought in the application thus denied. The application to modify the bond is, therefore, denied. And it is hereby so ordered.
Application denied, with reservation.

Paterson et al v Witherspoon [1970] LRSC 5; 19 LLR 411 (1970) (29 January 1970)

PATERSON, ZOCHONIS AND COMPANY, LIMITED, represented by its manager, Appellant, v. AMOS JAMES WITHERSPOON and W. V. S. WITHERSPOON, Appellees.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued November 5, 1969. Decided January 29, 1970. 1. The property of an infant may not be disposed of without making proper application to a probate court and in the absence of the court approval the disposition of the infant's property right is voidable. 2. In the case at bar, therefore, the leases are properly subject to cancellation, having been disaffirmed by those who were the actual owners of the property. 3. Under statute, real property may not be leased to a foreign person or concern for a period of time in excess of twenty-one years, with two optional periods of similar length, provided that the rental provided for in each of the extended periods is at least ten percent more per annum than the rental for the last prior twenty-one year period.

In 1946, the father of the appellees purchased two lots in the names of his infant sons, born in 1932 and 1934. The same year the father, as the natural guardian, leased the property to the appellant, a foreign corporation, for a total period of time, including options to renew, amounting to sixty years, at a fixed annual rental for the duration. In 1969, the sons brought suit for the cancellation of the leases, alleging they had been deprived of the full enjoyment of their property without their consent and that the leases were invalid, and further, on the ground that they exceeded the permissible limits of occupancy accorded to foreigners under real property leases. The trial court awarded judgment to the petitioners and the respondent took an appeal. The judgment was affirmed, but modified in that money damages to the petitioners were stricken from the judgment.
411

412

LItERIAN LAW REPORTS Laurence A. Morgan and John W. Stewart, Sr., for appellant. Joseph Findley and Jacob H. Willis for appellees.
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MR. court.

JUSTICE

SIMPSON delivered the opinion of the

On June 17, 1946, Anthony Barclay and his wife, Etmonia, sold two parcels of land known as lots 351 and 352, within the confines of the City of Monrovia, to Amos James and William V. S. Witherspoon, respectively. The two grantees, then minors, were issue of William N. Witherspoon, now deceased, William having been born in 1932 and Amos in 1934. On December 18, 1946, William N. Witherspoon, as natural guardian of his sons, William and Amos, executed two agreements of lease with Paterson, Zochonis and Company, Limited. 'The appellants continued in possession of the premises from the time of the execution of the two leases up until March 28, 1969, when the appellees, then petitioners, filed a bill in equity for cancellation of the lease agreements. Due to what we consider the special gravity and peculiarity of the nature and scope of the petition and the averments therein contained, we have deemed it proper to include herein the six counts of the petition.
"I. That they are the owners in fee of lot Nos. 351 and 352, situated, lying and being on Ashmun Street, City of Monrovia, as will more fully appear by copies of the warranty deeds issued to them by Anthony Barclay and his wife, copies of which are hereby made profert to form part of this petition. "2. And petitioners further pray your Honor that these parcels of land having been acquired for them in fee during their minority, their father, the late William N. Witherspoon, being their natural guardian, undertook for and on their behalf to lease the said

parcels of land to respondents for a period of sixty years, knowing well that during such period they would have reached their majority, as they have, and would be entitled to the possession and enjoyment and control of their properties, which act shows patent fraud on part of the lessors to dispose of their fee simple properties, as will more fully appear by copies of said lease agreements. "3. And petitioners further submit that for their late father to have deprived them of the use and benefit of their property for such a period of time at a meager sum of $ioo and $75 per annum, respectively, for the full period of sixty years, a period almost equivalent to the entire life span of petitioners, is basically fraudulent and should be frowned on by this court. "4. And also because petitioners say that the said lease agreements were fraudulently executed, in that the lessor, as well as the lessee, knew fully well that at that time of execution the statute in vogue granted only twenty-one years certain within which a lease agreement could be entered into between a Liberian citizen and a foreign national, company or corporation, and for them, respondents and the late William N. Witherspoon to have entered into said agreements for a period of sixty years certain was in total violation of the statute controlling the leasing of realty to foreigners. "5. And petitioners further pray that notwithstanding the fraudulent acts of their late father, together with respondent, in spite of several attempts to give respondent the right to continue enjoying the properties under reformed leases, respondent has flatly refused to accept petitioners' proposal and are fraudulently depriving petitioners of the use and benefits of their said parcels of land, as will more fully appear from copies of letters written to respondent by peti-

tioner's several counsel, the Simpson law firm and the Henries law firm, herewith proferted. "6. And petitioners further pray that for their natural guardian, their late father, to have executed such agreements beyond the age of their maturity, his acts were ultra vires and, hence, fraudulent, and were not in keeping with the true intent and meaning of the law and equity creating guardianships over minors, lunatics and aged persons." The petitioners thereupon prayed that a decree be issued canceling and making null and void the above described agreements. The prayer further included the usual request for such other and further relief as equity and law might deem applicable in the premises. Thereupon, respondents filed a formal appearance and answered on March i 1 1968, contending, firstly, that two separate actions should have been filed, since the two properties involved were distinct and owned by two separate individuals in their separate individual capacities and not jointly. Further, answering the petition, the defendants, now appellants, contended that the late William N. Witherspoon purchased the two

tracts of land with his own funds in the names of his minor children and that he did have the right to make contracts with reference to land purchased with his own funds in any manner which he deemed best, and that his children are bound by his acts, being in privity with him. While pleading in the court below, the respondent further contended that there was no specification of the fraud allegedly perpetrated by petitioners' father and respondent, and that a mere allegation of fraud is insufficient to confer jurisdiction in equity. Lastly, the respondent contended that count four of the petition was both false and misleading, in that the statute at the time of the execution of the agreements of lease did not restrict the lease of land to foreigners to only twenty-one years, but provided for options.

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After pleadings had progressed to the rejoinder, the parties rested and after hearing arguments on the issues of law, Judge Emmanuel N. Gbalazeh proceeded to rule on them during the June 1969 Term of the Circuit Court for the Sixth Judicial Circuit, Montserrado County. In his ruling, the judge held that the averment as contained in respondent's answer relating to the matter of fraud did not properly traverse the allegations laid in the complaint because the mere act of leasing the property of the appellees without an order of court constituted fraud. He additionally held that even though the allegation of fraud must be proved at the trial, direct proof is unnecessary. He held that although these properties were bought by petitioners' late father for them, the transfer of them without the knowledge and consent of the mother who had custody at the time, in his opinion, constituted concealment to defeat ownership.

The case was thereupon ruled to trial. On July 1o, 1969, the trial was held, presided over by Judge Emmanuel N. Gbalazeh. A final decree was rendered by the judge on July 16, 1969. In his decree he held that no parent, except upon orders of the probate court, has any legal right to dispose of a minor's real property. Additionally, the said probate court may grant temporary or total disposition thereof only after a showing of proper reason for this action. In support of this position the Judge cited authority. Unfortunately, the authority failed to support the propositions expounded. Nevertheless, the Court at this point hastens to add that it concurs with a legal proposition propounded by the trial judge in respect to the particular issue, in view of the provisions of our Judiciary Law, 1956 Code, tit. 18, § 53o (f), which holds that the Monthly and Probate Court for Montserrado County is possessed of sole jurisdiction to appoint and remove guardians of minors and to direct and control their conduct and to settle their accounts. By virtue of this provision,

we must hold that where the properties of minors are concerned, they may not be disposed of by anyone without making proper application to and obtaining permission of the probate court upon grounds that the particular act sought to be done is deemed essential for the maintenance, support and/or education of the minor. Unless these prerequisites are complied with, the act of alienation of the minor's property becomes voidable. The next issue that we find ourselves concerned with relates to the provisions of our Property Law as it limits the right of citizens to create estates in foreigners. The petitioners in their complaint averred, inter alia, that the estate created by their father in the respondent exceeded in time the period allowable by statute. In countering this contention, in the answer of respondent, it is held that the particular law cited by the petitioners for a specific limitation of such estates, was not in being at the time the indentures of lease were executed in 1946. A study of our laws shows that this point was dealt with by the Legislature in an act passed by that body during the session in 1897-98 and again during the succeeding session of the Legislature. The particular provision of law as is now found in our Property Law, holds that, "Lease 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 optional twenty-one year periods of a term certain, but for each additional term there shall be an increase of rentals fixed for the term certain of not less than ten per cent. . . ." 1956 Code 29 :20. According to this statute, a citizen of this Republic may not lease real estate to a foreign person or foreign concern for a period exceeding twenty-one years. Where the foreign person or concern desires a lease for a period

of time in excess of twenty-one years, it may be substantially effected only by obtaining from the lessor one or two options, each covering an additional period of twentyone years, but no more. In addition, for these optional periods to be valid there must be a rental increase for each such optional period of an amount not less than ten per cent of that amount payable during the last preceding term certain granted in the particular indenture. In the case at bar, a look at the leases shows that the consideration charged for the optional periods stipulated in the agreement were the same as those required during the terms certain. This, of course, renders the agreements voidable, subject to cancellation under proper circumstances. Lastly, the trial judge, though not specifically requested to do so in the counts contained in the petition, nor in the prayer for relief, proceeded to award damages at the time of the rendition of final decree in the amount of $.5000.00,

to each of the petitioners. The judge again cited authority therefor, which this Court seems unable to locate. Doubtlessly the error was unintentional. However, for the future guidance of bench and bar this Court would like to make clear that it considers deliberate attempts to mislead this Court a serious offense, and could subject the offender to contempt proceedings. We hold now that where the parent of a minor executes an agreement in favor of such minor issue the agreement becomes a voidable instrument that may be disaffirmed by the actual property owner. In the case at bar, the law is that such agreements are subject to cancellation, and for this reason the judgment of the court below is hereby affirmed, with the modification that the damages awarded are to be stricken from the decree. Costs in these proceedings are ruled against appellant. And it is hereby so ordered. Affirmed as modifed.

Deshield et al v Cole et al [1970] LRSC 2; 19 LLR 395 (1970) (30 January 1970)

W. 0. DESHIELD, JAMES H. DESHIELD and HARIETTA WILLIAMS-BANGURI, Appellants, v. JOSEPH J. MENDS COLE, MAUDE FAGANSFREEMAN, by and through her husband, GEORGE M. FREEMAN, and MABEL FAGANS-HILL, by and through her husband, SAMUEL D. HILL, surviving heirs of EDMUND CHAVERS, Appellees.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued October 15, 1969. Decided January 30, 1970. 1. A judge is not disqualified by reason of the fact that counsel to a party and he are married to sisters. 2. A judge may reverse a ruling he has made during the course of a proceeding, and in the absence of error his judgment in retrospect is not a ground for reversal. 3. Although the illness of a party is a justification for granting a motion for continuance, the supporting papers in all such motions must set forth and establish that the testimony of the unavailable witness or party is relevant and material to the issues to be tried, and that the continuance is sought in good faith and not for the purpose of delay.

An action in ejectment was commenced by plaintiffs, who are appellees herein, by which they sought to recover the property they contended was illegally claimed by the defendants. Both sides alleged title by descent through the same person in a suit going back to 196o, motions for continuance of the trial having frequently been made by defendants, although plaintiffs appeared anxious for trial. At the trial of the action the trial judge denied defendants' motion to disqualify himself because of consanguinity to counsel through marriage, but acceded to the request, and then reversed himself after argument, adhering to his original ruling. He also denied a motion by defendants for a continuance on the ground of the illness of one of them. The jury returned a verdict for plaintiffs and defendants appealed from the judgment entered against them. Judgment sustained.

Alfred L. Weeks and 0. Natty
B. Davis for appellants. Morgan, Grimes and Harmon for appellees.
MR. CHIEF JUSTICE

WILSON delivered the opinion of

the court.
During the December 196o Term of the Circuit Court of the Sixth Judicial Circuit, Montserrado County, the appellees brought suit as surviving heirs of Edmund Chavers, in an action of ejectment against appellants, contending that the defendants were wrongfully withholding from them a 6o-acre parcel of land described in title deeds made profert with their complaint, which they contended descended to them from the late Edmund Chavers. The defendants appeared and answered. Pleadings progressed as far as the surrebutter. According to the record the issues of law were resolved, but although assignment for trial was requested several times by the plaintiffs, the defendants filed motions for continuance from term to term. During the June 1967 Term Judge Joseph P. Findley, presiding by assignment, upon request of plaintiffs, assigned and called the case for trial. The defendants again filed a motion for continuance on the ground that James H. DeShield, one of the defendants, was ill. This motion was opposed, argued and denied. In a further attempt to delay the trial, defendants filed a motion requesting the trial judge to excuse himself on the ground that he and one of the counsel for plaintiffs were married to sisters, and, therefore, he was disqualified from serving impartially as judge. This motion was also opposed, argued, and its legal sufficiency denied, but the trial judge held that because it appeared that defendants did not want the case tried by him, he would excuse himself. To his recusation plaintiffs objected on the ground that the trial judge was without authority to disqualify himself from the trial of the case and thereby promote further delay in the administra-

tion of justice, especially so when the ground laid in the motion had been overruled. The trial judge, conceding this contention, rescinded the recusation and ordered the trial to proceed, to which defendants excepted. The trial before a jury began and the first of plaintiffs' witnesses was
Mabel Fagans-Hill, who testified to plaintiffs' relation to Edmund Chavers and produced two title deeds for 3o acres each, issued in favor of Edmund Chavers by President Warner, dated August io, 1866. She testified that defendants had entered upon the premises involved and were illegally in possession. Mrs. Margaret Robinson, the second witness for plaintiffs, testified that Edmund Chavers and Marenna Chavers were brother and sister, and Edmund died without issue, resulting in the property descending to Marenna. She

further testified that she was married to Jerome Fagans from which union Maude and Mabel were born, who inherited said property per stirpes, as tenants in common with Joseph J. Mends Cole, son of Maude Skinner, who had married Dr. Mends Cole. According to her, she never heard of any other person laying claim to the property in question from the year 1922 on, the year of her marriage into the family, until 1959, when the DeShields contended that they were also heirs of Edmund Chavers and entitled to the property. She further testified that Claudius Skinner, her brother-in-law, had used the property as his farm, where he raised cattle, chickens and planted fruits, all without molestation from any person or persons. One Momo Toomey testified that his father was the caretaker of the premises for the appellees for many years, and after his father's death, he had lived on the premises and had never been approached by or heard of the appellants laying claim thereto. According to the record, Mr. Toomey was in a position to point out a boundary line which was in dispute between Mr. Mends Cole, one of the appellees herein, and one Nathaniel

Richardson, of the City of Monrovia. According to Mr. Toomey, the first time he ever saw or heard of the DeShields was when he was approached by Mr. Richardson, in company with one of the DeShields, who asked him to point out the Mends Cole boundary line, which he did. The last witness for appellees, J. J. Mends Cole, in testifying, confirmed the testimony of Mabel Fagans-Hill and Chavers. He testified that the possession by the family of the land went back as far as he could remember and that the original deeds for the premises were in their possession. Further, that in 1951 the Govenment of Liberia announced by newspaper publication that the Government had need for a portion of the area for the construction of an airfield and invited all landowners to produce their title deeds in the Department of Public Works and Utilities, which was done and a survey made which took in a majority of their land. He pointed out that in obedience to this publication four other families presented deeds to the Department, but that the appellants did not as much as appear to claim title to premises in the area. He testified, further, that much later in 1959, the DeShields, in his presence, presented to one Slagmoleun of the Department of Public Works, a deed, contending that the instrument covered the property in these proceedings. That the said Mr. Slagmoleun, upon inspection of the deed, informed the DeShields that the instrument presented by them, by its description, applied to property separate and distinct from that claimed by appellees. According to Mr. Mends Cole, the instant proceedings were made necessary when some time later he had to leave the Republic to seek medical treatment abroad and the defendants herein, taking advantage of his absence from the Republic, illegally entered upon the premises, commenced to sell portions at a price so low as when selling stolen goods, and that immediately upon his return and discovery of this situation, these proceedings were instituted to retrieve the property.

399

The foregoing testimony, together with the two title deeds, a map, and sundry letters offered in evidence, constituted the case of the plaintiffs, the appellees herein. Plaintiffs having rested, Mrs. Harietta Williams-Banguri was sworn, took the stand and testified in her own behalf that she was the great great-granddaughter of the late Governor A. D. Williams, and that her grandmother was married to the late John Chavers, brother of the late Edmund Chavers, who never married, but had a sister and died without any issue. That she and the codefendants are his next of kin. According to her, the old folks told her about their ancestors and people, as did Marenna Williams, wife of the late Col. A. D. Williams, once Secretary of War. That the said Marenna Williams often told her about her ancestors, especially when she had misbehaved. That she was told about John, their grandfather and about Edmund Chavers, and that Marenna did not know whether he was living or dead. She testified, further, that when she was a child, Monrovia was not developed, that people living on Crown Hill did not know each other, though they were friendly, so that nobody paid any mind to Edmund Chavers, or whether he was dead or alive and thus they lost contact with others. That in 1959, or thereabouts, Mr. Nathaniel Richardson and Hon. Joseph J. Mends Cole, got into a dispute about the airfield and someone's house located there, at which time they exchanged some caustic letters. That it was Mr. Nathaniel Richardson who at that time informed them of the land which they have claimed as theirs, which they immediately investigated. That they thereafter consulted their lawyer, Counsellor Dukuly, who said they had discovered more land belonging to them. According to her, Counsellor Dukuly is supposed to have told them that he had never heard of Joseph J. Mends Cole being a Chavers; that the only Chavers existing in Libera were the defendants. They thereafter took more definitive steps. She testified that she again

400

LIBERIAN LAW REPORTS

went to the airfield, this time with her son, John Taylor, and others, to inspect the newly discovered property, and there met Mends Cole, in possession of a paper which he called a will. She did not deny selling the land, but contended that the land was not sold at low prices but rather at high prices, from seven to eight hundred dollars a lot. On cross-examination, in answer to a question, she stated that she could not remember how old she was when she was told about Edmund Chavers, nor did she know her present age. When asked to locate her dwelling place at that time of her life, she could not remember. She stressed that J. J. Mends Cole was not a Chavers, but did not know the Chavers family herself, and that those relatives who had told her about Edmund. Chavers did not know his whereabouts, or whether he was dead or alive. The evidence having been presented by both sides, argument was entertained, the jury was charged by the court and returned a verdict in favor of plaintiffs to which defendants excepted and gave notice of intention to appeal. In accordance with this notice,

defendants filed a motion for a new trial which was opposed, argued and denied, and a final judgment entered in favor of the plaintiffs, from which they have appealed on a bill of exceptions containing sixteen counts. During the October 1968 Term this Court granted a motion for a continuance of the hearing because counsel substituted for defendants' deceased counsel was out of the country. During the October 1969 Term this case was called for hearing. Appellants contended : (1) that the trial judge erred in rescinding his ruling denying the motion for recusation and (2) that the trial judge erred in denying the motion for continuance on the ground of the illness of codefendant James H. DeShield. Appellees contended that the denial of the latter motion by the trial judge was in accord with the law and that to rescind and/or modify

a ruling is a prerogative of the court, especially so when the initial ruling was contrary to the law. Appellees contended that in the absence of any legal ground the trial judge is unauthorized to disqualify himself and that the judge in the instant case, having realized that his disqualification was without legal foundation had no alternative but to rescind his ruling, and in so doing, did not err. "A judge is not disqualified by the fact that the husband of his wife's sister is a party to the cause, there being no relation by affinity between them." 3o Am. JUR., Judges, § 69. "A judge will not ordinarily be disqualified by reason of the fact that the judge's spouse is related by consanguinity to the spouse of a party." Gardner v. Neal, 13 L.L.R. 422 (1959). And upon amending a prior ruling: "Upon motion of a party made before the end of the session of court or upon its own motion, the court may at any time during such session amend its findings or make additional findings and amend the judgment accordingly. . . ." Civil Procedure Law, 1956 Code 6:824. We are, therefore, of the opinion that the ruling denying the motion for disqualification after the judge had disqualified himself was in accord with law, because the grounds of the motion did not permit the judge to disqualify himself, and he rightly rescinded the recusation. We come now to count 2 of the bill of exceptions in which it is contended that the trial judge erred in denying the motion for a continuance supported by a medical certificate. Illness of a material witness or a party is ground for the granting of a motion for continuance. But, certain essentials must be present. "The party applying for the motion of continuance must in all cases make it appear that his application

is made in good faith and not for the purpose of delay, and the continuance may be refused if the circumstances cast suspicion on the good faith of the application and induce the belief that it was intended only for delay." 9 CYC. 1378. In order that the court may judge the materiality

of the evidence sought to be introduced at the trial, the affidavit should set forth the substance of the testimony desired. And when it fails to state facts necessary to make the testimony of the absent witness relevant and material, the presumption is that it is not so and the continuance will be denied. Moving papers in a motion for continuance must allege that the continuance is not sought for the mere purpose of delay. Tugba v. Republic, [1955] LRSC 5; 12 L.L.R. 218 (Dm) The supporting papers in the motion are deemed insufficient in that they failed to show : (a) that it was not filed for the mere purpose of delay ; and (b) that the witness was incapacitated or otherwise not available ; and (c) it does not state what is intended to be proved by the witness in order to substantiate the materiality of his testimony. In view of the foregoing, the application for continuance was properly denied. It is therefore our opinion that the judgment of the court below is in accord with the evidence and the law and is hereby affirmed. And it is so ordered.

Good-Wesley v Dwalubor [1969] LRSC 25; 19 LLR 282 (1969) (13 June 1969)

JESTINA GOOD-WESLEY, by and through her husband, REGINALD A. WESLEY, and CHARLES ALEXANDER GOOD, sole surviving heirs of JULIA CLARK-GOOD, Appellants, v. DWALUBOR, alias LARSANNAH, Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued May 1, 1969. Decided June 13, 1969. 1. An affirmative defense, such as adverse possession, 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. 2. Color of title is title in appearance only, and is a semblance of title, not constituting a claim of right, such as adverse possession, hence, they may be simultaneously pleaded, free from attack as duplicity in pleading, for color of title merely asserts the manner in which adverse possession commenced.

Plaintiffs brought an action of ejectment, alleging they held title to acreage wrongfully in possession of the defendant. The defendant set up the defense of adverse possession, alleging he had occupied the site for thirtyfour years, to the time when plaintiffs' mother, from whom the property descended to them, was alive, to her knowledge and the knowledge, as well, of plaintiffs. In furtherance of the defense of adverse posSession, the defendant, though admitting to the legal title of the plaintiffs as they alleged, averred his occupancy of the premises had resulted from the sale of the realty to his grantor by a co-owner of the property, during the lifetime of plaintiffs' mother, and to her knowledge; the deed was then duly probated. The trial judge struck down the affirmative defenses of the defendant, on the ground that possession by color of title and adverse possession were inconsistent, and held the defendant to a general denial. The jury found for the defendant,

and plaintiffs appealed from the judgment. The judgment was re282

LIBERIAN LAW REPORTS 283 versed and the case remanded for reargument on the issues of law, and for trial of the issues of fact thereafter. Nete Sie Brownell for appellants. The Simpson law firm, by G. P. Conger-Thompson and Momo F. Jones,

of counsel, for appellee. MR. court. JUSTICE

SIMPSON delivered the opinion

of the

On February 14, 1967, an action of ejectment was filed in the Circuit Court of the Sixth Judicial Circuit, Montserrado County, by Jestina Good-Wesley, et al., against Dwalubor, alias Larsannah, of the Township of Caldwell, in Montserrado County. The plaintiffs substantially alleged that their grandfather, the late Thomas Henry Clark, of Caldwell, had died seized of, among other things, a zoo-acre tract of land situated, lying and being in the aforesaid Settlement of Caldwell, and that this property had, in fact, become his by virtue of a deed executed by the Republic through its then President, J. J. Cheeseman, in 1892, in consideration for certain services performed during the Bassa Expedition of 1889. The plaintiffs in the court below further showed that the above-alluded-to ancestor had died testate and that in his testamentary document, particularly the third paragraph thereof, he devised the usufruct in rights to the aforesaid property to his infant daughter, Charlotte, for her maintenance and support until reaching adulthood or becoming espoused. He further said in the same paragraph that it was his desire "that my native folks" now residing on the above-described premises should not be molested by his heirs or executor so long as they behaved properly, as they had done during his natural life. Since there was no specific devise of the fee by the testator, the codicil dated August II, 1911, in disposition of the residual estate, also disposed of the said fee.

Therein, the testator evidenced his desire to have his executors convey to his heirs the residue of his estate not theretofore made the subject of a specific devise. The complainants further alleged that the property had devolved upon them via their mother, Julia Clark Good, daughter of Thomas Henry Clark. They thereupon made recitals of unlawful detainer and their alleged right of recovery, and requested in their prayer for relief that they be awarded possession of the property together with damages for its unlawful possession by the defendant herein. After being served with the complaint and other documents, the defendant, through his counsel, the Simpson law firm, filed a formal appearance on February 17, 1967, and thereafter, on the 24th of the same month, filed a twocount answer, denying the right of plaintiffs' recovery. The answer stated

that the defendant admitted that the plaintiffs were co-owners of the disputed property as described in the complaint and supporting document, but contended that defendant's father, Dwalubor, alias Larsannah, had purchased the property from Charlotte D. Dunson, co-owner of the land with plaintiffs' mother, Julia Clark Good, in 1933, and the deed evidencing this transaction had been duly probated and registered according to law on October 19, 1933, approximately 34 years prior to the institution of the present action. In buttressing this contention, the defendant maintained that this transaction was conducted during the lifetime of the plaintiffs and their mother, and in the circumstances the statute of limitations precluded and forever barred them from asserting rights in and to the property in question. Additionally, the defendant alleged that he had enjoyed physical, open, and notorious occupation of said property from the time of purchase up to the present without any molestation from plaintiffs' mother when she was alive. For the salient reasons mentioned by defend-

ant in his answer, he contended that the plaintiffs were without a right of recovery.
In their reply, the plaintiffs held that since the defendant had averred the existence of a deed given to his father, and, therefore, by privity, to him, he should have made profert of the same in his answer, and his failure to do so constituted prejudicial error.
Further replying to defendant's answer, the plaintiffs contended that a deed purportedly executed by their mother in 1933 was of necessity fictitious, for their mother was already dead in the year 1932 and, therefore, could not have been a signatory to any such document. We should interject at this point that since there are two plaintiffs it is a determinable question of fact as to whose mother had been alluded to in the answer, since all plaintiffs do not have a common mother. The other vital issue joined by the parties had to do with whether or not the defendant, having pleaded title, should have made profert of the deed, and whether his failure to do so constituted a proper defense in the answer. In ruling on the issues of law, the trial judge maintained that the plea of the statute of limitations as made by the defendant constituted a bad plea, in that he had also mentioned the existence of a deed, and a party may not at the same time rely upon paper title and the statute of limitations. Predicated upon this, the judge dismissed the entire answer and supporting pleadings as filed by the defendant. The defendant was thereupon ruled to trial on the bare denial of the facts contained in the complaint. After the evidence was presented, the jury was charged, and returned a verdict in favor of the defendant, finding him entitled to the 200-acre tract described in the complaint. Exceptions to the verdict were taken, and a motion for a new trial duly filed and thereafter denied. Consequently, final judgment was rendered in favor of the defendant, to which exceptions were taken and duly

noted. Thereafter a i6-count bill of exceptions was prepared, approved and filed in the clerk's office. In endeavoring to resolve the several issues that have been brought before us, we have determined to first review the judge's ruling on the issues of law raised in the pleadings. Since both the answer which the judge dismissed and the ruling itself are relatively short, we shall include them here in to to. "Answer Because defendant says that while it is true that plaintiffs are co-owners of the two hundred acres of land as described in their complaint and supported by their exhibits, 'A' and 'B,' yet defendant's father, Dwalubor, alias Larsannah, purchased the said parcel of land from Charlotte Dunson, co-owner of the said parcel of land with plaintiffs' mother, Julia ClarkGood, in the year 1933, which deed was probated and registered according to law on the 19th day of October, 1933, approximately thirty-four years before the institution of this action by plaintiffs and said transaction was made during the lifetime of plaintiffs' mother. Defendant maintains that under the statute of limitations, plaintiffs are forever barred and estopped from instituting any action against him for the recovery of the said parcel of land. 2. And also because defendant says that he has enjoyed physical, open, and notorious occupancy of said property from the time of the purchase up until now without molestation from plaintiffs' mother who was living at the time of the transaction, and plaintiffs themselves, a period of over thirty-four years. Defendant maintains that plaintiffs are, therefore, barred under the statute of limitations from ever claiming and/or asserting their right to property. "The Court's Ruling "This suit of ejectment was filed on the 14th day of "

February, 1967; the defendant appeared, answered ; the pleadings rested on the 3rd day of April, 1967. Throughout the pleadings, that is, from the answer to the surrebutter, is this one contention, whether or not the defendant is pleading the statute of limitation or setting up a defense under the color of a title referred to in his answer but not made profert therein. "While it is true that the defendant relies upon counts 1 and 2 of his answer to a title which he said he purchased in 1933, yet he made no profert of it under notice; his attention was called to this error in the reply and even though plaintiffs put defendant on his guard, yet in the rejoinder the defendant insists that this plea, being in the nature of statute of limitations, proferts of the deeds referred to in the answer were not necessary. "The plea of statute of limitation is held to be a plea and an unequivocal one in which the rule of confession and avoidance applies; whenever defendant raises this issue he must firstly confess, either in plain language or by implication, that plaintiffs are owners of the property sued for. Now when defendant sets up another paper title, he naturally does not invoke the title [sic] of limitations, but sets up a plea which by this title shows better title in him, the defendant. "In view of the foregoing, the answer and all of its supporting pleadings, that is, the rejoinder and rebutter, are overruled; the supporting pleadings with the complaints sustained,

and the case is ruled to trial on the complaint, and the defendant is ruled on a bare denial thereof. And it is hereby so ordered.
"To which ruling the defendant excepts." Further reference to the answer shows that the defendant recognized ownership of the property in the plaintiffs but has contended that he has been in possession of the property under color of title. He has further contended that this color of title is predicated upon a pur-

ported paper title executed in his favor by ancestral privies of the plaintiffs. In ruling on the issues of law, the judge has contended rightly that adverse possession constitutes a plea of confession and avoidance. And being an affirmative defense you must first set up the truthfulness of the claim of the plaintiffs and thereafter show valid reasons why this claim is no longer an exercisable legal right. When this case was being argued before this Court, we endeavored to elicit from the appellants' counsel the legal import of the ruling when the judge stated that where a defendant sets up another paper title, he naturally does not invoke the title [sic] of limitations but sets up a plea which by this title shows better title in him, the defendant. It was contended that the mere mention of paper title negates the effect of the plea of statute of limitation and a fortiori invokes duplicity, thereby rendering the whole defense subject to dismissal. We are of the firm opinion that this position is not in accord with the law, for there exists a distinct difference between "claim of right" and "color of title." Although the two may be legally exercised at one and the same time, they represent distinct legal niceties. The term "claim of right" when employed in an action wherein the defense of adverse possession is being invoked, means nothing more than the intention of the person to appropriate and use the land as his own to the exclusion of all others, irrespective of any semblance or shadow of actual title or right. Bessler v. Power River Gold Dredging Company, 185 P. 753; I AM. JUR., Adverse Possession, § i85, et seq. "Color of title," on the other hand, is that which gives the semblance or appearance of title but is not title in fact. It is that which, on its face, professes to pass title but fails to do so because of a want of title in the person from whom it comes or the employment of an ineffective means of conveyance. It is a title in appearance only. If an in-

strument actually passes the title, it is clear that it is not color of title. The term implies that a valid title has not passed. Barrett v. Brewer, 42 L.R.A. (NS) 403; Powers v. Malavazos, 158 N.E. 654, 655· "Color of title" is not a legal title at all, it is a void paper having the semblance of monument of title, to which, for certain purposes, the law attributes certain qualities of title. Its chief office is to define the limits of the claim under it. Nevertheless,

it must purport to pass title. In form it must be a deed, a will, or some other paper instrument by which title usually and ordinarily passes. Such qualities as are imputed to it by law, for limited purposes are purely fictitious and are accorded to it only to work out just results. State v. King, 87 S.E. 170, LRA 1918 E, 1044; I AM. JuR., Adverse Possession, § 185. From the above, it is readily seen that where the contention of a defendant claiming adverse possession in an action of ejectment finds him relying upon color of title as a means of establishing the extent of occupancy by construction rather than total occupancy in actuality, it is imperative that the plea include a provision relating to some sort of paper title, though ineffectual for the purpose of passing title. Therefore, it is not incompatible with the plea of adverse possession to make profert of monument of title irrespective of the actual invalidity of the same. In the circumstances, the judge erred in dismissing the answer and all subsequent pleadings of the defendant in the lower court, predicated upon what has been impliedly ascribed to duplicity in pleading. A look at the record showing the evidence adduced at the trial clearly demonstrates that there were innumerable errors committed by the trial judge in respect to objections interposed during the course of trial. These all, however, pertained to matters of evidence and did not raise any issues relating to errors of a substantive nature committed by the trial judge. In the circumstances, we

find it unnecessary to pass upon these errors in singular fashion. The ruling on the issues of law clearly contravened the law relating to the plea of adverse possession as a bar to recovery in an action of ejectment. Therefore, we deem it imperative that there be a reargument on the issues of law and a ruling made thereon, the trial thereafter to be conducted, since we are here involved with a mixed question of law and fact. The case is, therefore, remanded for a new trial commencing with arguments on the issues of law, costs to abide final determination of the case. And it is hereby so ordered.
Reversed and remanded for trial, after reargument below on issues of law.

Simpson v Peters [1969] LRSC 11; 19 LLR 185 (1969) (6 February 1969)

ELFREDA SIMPSON, Appellant, v. MOSES PETERS, Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued October 15, 1968. Decided February 6, 1969. 1. An action for specific performance of a contract will lie only when it seeks to compel performance of an act other than the payment of money. 2. Equity cannot be invoked where there is an adequate remedy at

law.

A contract for the sale of real property was entered into, but appellant failed to deliver the deeds, though the purchase price was paid. During the trial of the action for specific performance brought by the appellee, as petitioner, he indicated a willingness before suit to accept the price paid in lieu of the undelivered property. A decree was issued ordering delivery of the deeds, from which the appeal was taken. The judgment was reversed and the decree vacated.
The Garber law firm by Philip J. L. Brumskine for appellant.
The Henries' law firm, by Joseph F. Dennis and Moses K. Yangbe, for appellee.
MR. JUSTICE court.
SIMPSON

delivered the opinion of
the

On May 3, 1963, a bill in equity for specific performance of a contract was brought by the appellee herein against appellant, in the Sixth Judicial Circuit Court, Montserrado County, sitting in its Equity Division, during the June 1963 Term. The bill of complaint substantially alleged that during the year 1956 the petitioner had agreed to purchase from respondent a half lot in Sinkor, and one whole lot adjoining the premises of one J. P. Pratt on the Stockton Creek,
185

in Bushrod Island, in the City of Monrovia. It was further contended that in consideration for the sale of these two parcels of land the petitioner agreed to pay, and respondents to receive, $150.00 and $200.00 for the properties at Sinkor and Bushrod Island, respectively. Appellee, however, held that irrespective of several requests and demands for appellant to sign and deliver unto the said appellee the subject pieces of property, the said appellant, to the injury of the appellee, neglected and refused to comply therewith. Additionally, the appellee averred that there was available to him no adequate remedy at law and in the circumstances he had to seek the assistance of a court of equity for specific performance of the contract theretofore entered into between himself and the appellant. After the filing of the formal appearance, the appellant, then respondent, filed an answer in court on May 16, 1963. In count one of the answer appellant alleged that she had never herself agreed to sell to the appellee any property at Sinkor. She additionally alleged that the receipt made profert of by the appellee in respect to land at Sinkor was fraudulent, since she had, in fact, issued him no receipt in any such manner. Count two of the answer averred that neither had the respondent agreed to sell to the petitioner any property situated at Bushrod Island. To the contrary, it was contended that the petitioner had importuned her to approach one Lahai Cooper and request of him that he sell to the petitioner a parcel of property situated at Sinkor. When shown the land, however, the petitioner claimed a dislike therefor and was thereupon offered in substitution therefor a second piece of land at Bushrod Island by Mr. Lahai

Cooper. In his reply the petitioner reaffirmed his position taken in the complaint and, thereupon, pleadings rested. This case was called by Judge Morris for hearing dur-

ing the June 1964 Term of the aforesaid Circuit Court. At that time the appellee, petitioner therein, was called upon to testify in his own behalf. Upon taking the stand he testified to the effect that in 1956 he had paid the appellant for the sale of two parcels of property at Sinkor and Bushrod Island, both in the City of Monrovia. As to the Sinkor land, he contended that it was virtually impossible to have a survey of the area effected by virtue of the fact that all surveyors approached by him refused to carry out the survey, for they contended it was contrary to government regulations in respect to surveying a half lot in Sinkor. Turning to the Bushrod Island property, on crossexamination the following questions were propounded to the appellee : "Q. So after she promised to give you the money for the half lot in Sinkor you agreed to accept it, not so? "A. Yes. If she had given me I would have accepted it. "Q. Did I also understand you have said that after defendant allegedly refused to convey title to the land at Bushrod Island you thereafter demanded the refund of the amount you paid and it is because of her failure to pay this amount that you decided to bring a suit? "A. Yes." The above testimony clearly shows that the initial understanding reached between the parties in respect to obtaining the purchase was nullified when the appellee consented to have cash in lieu of the land.
The relevant portion of our law regarding specific performance reads : "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

[emphasis ours]. Such actions are referred to briefly as actions for specific performance."
Civil Procedure Law, 1956 Code 6:x63 (b). Coupled with what has been stated above, there is a legal principle hoary with age to the effect that where a cause of action is ascertainable in terms of dollars and cents, the aid of equity may not be sought. This is true, for equity will not lie where there is an adequate remedy at law. In the case at bar, the petitioner in equity himself held that his bringing of the present writ was for the purpose of collecting a sum of money unjustly withheld. In the circumstances, the application for relief should have been addressed to a court of law and not equity. In view of the above, the decree ordering deeds issued in favor of petitioner, now appellee, had no basis in law, and the same is, therefore, reversed, with costs against appellee.
And it is hereby so ordered.
Reversed

Brown et al v Sesay et al [1968] LRSC 49; 19 LLR 86 (1968) (14 June 1968)

JAMES W. BROWN, Sheriff of Montserrado County, G. WALTON TAY, et al., Relators, v. AMBULAI SESAY, Attorney in Fact for DAVID JONES, ALFRED L. WEEKS, counsellor at law, et al., Respondents.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued June 13, 1968. Decided June 14, 1968. 1. A lawyer who institutes and prosecutes proceedings which he knows, or should have known, are in defiance of, or an effort to circumvent, a judgment of the Supreme Court, is guilty of contempt of court. 2. Contempt of court is a despising of the authority, justice, or dignity of the court, and he is guilty of contempt whose conduct is such as tends to bring the authority and administration of the law into disrespect or disregard. 3. When a proceeding concerned with the defiance of a judgment of the Supreme Court is being considered, no contention can be raised that such proceeding must defer to the appeals or litigation pending in those very matters giving rise to the proceeding concerned with the defiance of the Supreme Court's judgment.

The respondents in these contempt proceedings had instituted suit for an injunction against the relators, who thereafter, during pendency of the appeal from the judgment denying the restraining injunction, sought to have plaintiffs held in contempt of court, by a bill in contempt. Relators alleged that the injunction suit was an effort to circumvent the judgment of the Supreme Court, which had decided title to the land in favor of the relators, the defendants in the suit for a restraining injunction. They also pointed to another proceeding instituted by the same persons, which, under the guise of an action to remove cloud on title, in effect sought the negation of the deed's validity, which had been upheld by the Supreme Court. In these proceedings, the Supreme Court adjudged the lawyer, who had prepared the legal papers in the aforementioned matters complained of, guilty of contempt of court, a fine was assessed, and he was ordered to discon86

LIBERIAN LAW REPORTS

87

tinue the suits evincing contempt of the Supreme Court's

judgment.

J. Dossen Richards for relators. pro se and for respondents.

Alfred L. Weeks,

MR. CHIEF JUSTICE WILSON delivered the opinion of

the court. This appeal arose out of an action of injunction filed in the March 1968 Term of the Circuit Court of the Sixth Judicial Circuit, Equity Division, by the above-named respondents, as plaintiffs, against relators, as defendants, to enjoin and restrain defendants and all other persons acting directly and indirectly, under and with them, from : a. Unlawfully entering upon the premises in question for the purpose of exercising any right of ownership ; b. Further molestation of the peaceful possession by the plaintiffs, as well as any other tenants or possessors who may hereafter enter the said premises with the will and consent of the co-plaintiff, David Jones; c. Attempting to evict the occupants thereof until the case of the cancellation referred to is determined, or a legal judgment is obtained in ejectment against the parties or their privies in favor of the defendants ; d. And such other and further relief as may be just and necessary. Information was related by defendants to this Court by a bill in contempt of court, which, in substance, charged the plaintiffs in the injunction suit with stealthily trying to induce this Court to have a subordinate court review a decision and judgment of the Supreme Court in effect, by virtue of the complaint in the injunction suit, counts s to 8 thereof, a copy of which was proferted, and is exhibited, in the bill of information now before us.

To be more precise, the following is a summary of these relevant counts. At the October 1967 Term of this Court, in an appeal growing out of an ejectment suit filed by one Walton Tay to evict Nagbe Seh, et al., Teetee Borbor intervening in the suit thereafter, this Court reversed the judgment of the Circuit Court and decreed the property in dispute as being that of the relators and not the respondents, whereupon a mandate to the Circuit Court directing the eviction of respondents, and placing relators in possession of the property, was executed by a writ of possession, duly served by the sheriff of the County of Montserrado, who put the relators in possession. As alleged in the bill of information, when the sheriff first went on the premises to put Tay in possession of his **land**, a riot ensued, and the sheriff was obstructed in his attempt to execute the judgment of the Court. Not having succeeded in preventing the sheriff from executing the mandate of this Court, a bill in equity was brought to cancel Tay's deed, even though Tay's deed had been passed on by the Supreme Court and declared genuine. This cancellation suit not being before us, we will now pass on to the injunction suit which, relating to the same **land, seeks to restrain the sheriff this time not from placing co-relator Tay in possession of the land** decreed by this Court as being his, but from evicting those who in defiance of the mandate of this Court have re-entered the premises of Mr. Tay and placed new tenants thereon, thereby rendering the judgment of this Court meaningless and ineffective, which could make all future judgments of this Court subject to disregard and their enforcement challenged with impunity. In their return, the respondents admitted

the institution of cancellation proceedings against the deed of Walton Tay, already passed upon by the Court as valid in support of his claim of ownership to the land, consisting of I-Y2 acres, notwithstanding the decision of this Court. The

respondents have sought cancellation of this deed under the pretext of removing a cloud on title, by the proceedings instituted by them in the Sixth Judicial Circuit Court, which they are attempting to appeal to this Court because of the decision of the Circuit Court against them. Respondents contend in said return that because of a pending appeal from the judgment of the Circuit Court, it would be in violation of their right of appeal for this Court to entertain these inforthation proceedings which could prejudice their appeal already prayed for and granted by the Circuit Court. They further contend that the action of ejectment recently decided by this Court in favor of Mr. Tay involving the identical property, the deed for which they have moved the Circuit Court to cancel under the pretext of removing cloud on title, did not affect them since they were not parties to the action. At this point of argument by respondents' counsel, he was asked why he did not intervene, as did Teetee Borbor who was not made a party at the initial filing of the ejectment suit against his tenants-at-will. He held that the writ of possession which placed Mr. Tay in possession of the property having already been served by the sheriff, there was nothing before the Court to intervene in and defend against. This being so, he was asked why the sheriff was made a party in his cancellation proceedings to remove cloud on title. His reply was that the sheriff was intended only as a nominal party. This, of course, did not alter the fact that the deed sought to be canceled had in all respects been declared by this Court as genuine. Hence, any attempt to void it in any respect through a subordinate court cannot but be regarded as a defiance of the judgment and mandate of this Court. Count seven of said return gives notice to this Court that growing out of the same injunction proceedings filed by counsellor Alfred L. Weeks for respondents, he was held in contempt and sentenced, and though the penalty

imposed has been paid by him, he has appealed from said ruling of the judgment since, as he says, he paid the fine under protest. Therefore, it should bar this Court from entering upon the merits of the bill of information now before us. This constituting the only point of opposition to the bill of information, we consider it necessary to resolve the issues involved in these proceedings within the context of what could be the only grounds on which to decide this case, namely : whether a cause on appeal, though its subject matter arose from an effort to defy a judgment of this Court, must be given priority over a proceeding concerned with such

defiance of the Court. It is clear from all of the facts and circumstances made known to this Court by the relator and the respondents, that the injunction, and other proceedings filed by respondents in the Circuit Court to render void and ineffective the title of Mr. Tay to the property in question, which has already been declared clear and genuine by this Court, is and must be regarded as contemptuous. In re Coleman in II L.L.R. 432 (1954), at p. 44o, the Court said about contempt : "For it is our opinion, point of view, and firm position that, whenever we have any occasion to penalize any person, whether lawyer or layman, for contempt, we do it not merely because we regard their conduct as offensive, but rather because the Supreme Court must always be exalted and its dignity maintained." Also see In re Coleman, I I L.L.R. 350 (1953). Contempt has been defined in 6 R.C.L. 488, Contempt, § : "Contempt of court has been defined as a despising of the authority, justice, or the dignity of the court; and he is guilty of contempt whose conduct is such as tends to bring the authority and administration of the law into disrespect or disregard, or to interfere with or prejudice parties litigant or their witnesses during

the litigations. Contempts are classified as direct or indirect, and as criminal or civil; a direct contempt being such as is offered in the presence of the court while sitting judicially; and an indirect or, as it is sometimes called, a constructive contempt being such as tends by its operation, though not committed in court, to obstruct and embarrass or prevent the due administration of justice." It is clear from the related facts and the cited opinions of this Court, that counsellor Alfred L. Weeks, who prepared and filed these injunction proceedings against the enforcement of this Court's judgment, as well as the cancellation proceedings, as an officer of this Court knew, or should have known, that his actions were contemptuous, and is hereby adjudged guilty of contempt. The penalty which counsellor Weeks is deserving of has been greatly mitigated by the sympathy which prevailed among the members of this Court. Consequently, a nominal fine of $roo.00 is hereby imposed on him, to be paid within one week from the date hereof, and he is required to withdraw all actions filed against the deed of relator to the land in question, whether such actions are pending or on appeal. And it is so ordered.
Contempt of Court adjudged.

Hope et al v Ward [1966] LRSC 41; 17 LLR 390 (1966) (30 June 1966)

MATILDA A. HOPE and JOSEPH DUDLEY LAWRENCE, Executors of the Estate of PRESTON HOPE, Deceased, Appellants, v. T. EBENEZER WARD, Appellee.

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

Argued April 28, 1966. Decided June 30, 1966. Judicial cancellation of a deed on equitable grounds of undue influence, mistake, or wrongful inducement in the execution, must be supported by proof of facts constituting the necessary elements of the action and cannot properly be decreed merely on the basis of allegations in the pleadings.

A decree ordering cancellation of quitclaim deeds to real property on equitable grounds was reversed and the suit remanded for new trial on the issues raised in the pleadings.
Momolu S. Cooper for appellants. Lawrence A. Morgan and J. Dossen Richards for appellee.
MR. JUSTICE MITCHELL

delivered the opinion of the

Court. The present appellee instituted this case by a petition filed in the equity division of the circuit court, praying that certain deeds be cancelled and naming the present appellants as respondents. The petition alleged, in substance, as follows : 1. That petitioner and the Rev. Preston A. Hope, now deceased, late of the City of Monrovia, were joint tenants of Lot No. 16 (a 7-acre block of land) situated in the City of Monrovia, by virtue of a warranty deed issued to them by Ella E. Maurice et al. 2. That this property remained unpartitioned and continued to be held in joint tenancy by petitioner
390

LIBERIAN LAW REPORTS

391

herein and the said Preston Hope up to the death of the latter in the year 1948. 3. That the Rev. Preston Hope, in his last will and testament, nominated Joseph Dudley Lawrence and Matilda A. Hope as executor and executrix of his estate, who not being conversant with the law controlling joint tenancy, after assuming administration of the estate, prepared and took to the petitioner two quitclaim deeds, telling him that he was required to sign said deeds to enable them to administer the estate of the testator. 4. That petitioner, being ignorant of the law controlling joint tenancy and having implicit confidence in executor Joseph Dudley Lawrence, signed the said deeds, which act was in consequence of his mistake and ignorance of the law controlling and which has led to Matilda A. Hope and her tenants taking possession of and enjoying petitioner's bona fide property against his will and consent and in prejudice to his property rights. 5. That learning of the principle of survivorship controlling the doctrine of joint tenancy, petitioners approached respondent Matilda Hope and offered to permit her to live on the premises for her lifetime without compensation, which offer she refused and claimed ownership to the tract of land according to the quitclaim deed. 6. That there has been no consideration given to petitioner by the estate of the late Preston Hope for which the said estate might claim

interest in said land, nor is the estate legally entitled thereto by operation of law, since the quitclaim deed was executed in error and ignorance. The pleadings rested on the rebutter. Respondents, now appellants, attacked the petition on the ground of estoppel and also denied all the facts alleged in the petition.

The case was called and heard in the lower court on the 29th day of December, 1964, with His Honor A. Lorenzo Weeks presiding over the December term of the civil law court. The presiding judge rendered a very extensive decree on the pleadings, concluding with the following statement: "The court is therefore of the opinion that ignorance of the law controlling joint tenancy and survivorship due to undue influence, misrepresentation, and inducement aided or accompanied by the conduct of the other party are positive inequities containing elements of wrongful intent; and the doctrine of estoppel could not operate to bar the relief thus sought from the consequences of the error. Moreover, the entire estate being that of the petitioner after the death of cotenant Hope, the quitclaim deed from the respondents to petitioner is of no legal effect and a nullity because the said property was not theirs by descent or otherwise to have quitclaimed same to the petitioner. The property was that of petitioner by the doctrine of survivorship and could not be made the means of consideration given to petitioner in return for the quitclaim deed executed in favor of petitioner being void ab initio." The court thus having ordered the quitclaim deeds cancelled, the appellants, defendants below, excepted to the decree and appealed their cause before the Supreme Court for review on a two-count bill of exceptions. The two counts read as follows : "1. That Your Honor, in disposing of the issues of law raised in the pleadings, overruled respondents' pleas of estoppel to the effect that petitioner and his wife having voluntarily signed the quitclaim deed conveying the property in question to respondent Matilda A. Hope on the II day of May, 1948, petitioner should not be allowed to impeach his own deed under the plea of ignorance of the law, relating to said estate in joint tenancy and seek to have same cancelled.

This is especially so in the absence of any evidence in support of petitioner's mere allegation in his petition to the effect that he was induced by respondent Joseph Dudley Lawrence to sign the said deed. "2. And also because respondents submit that respondent Joseph Dudley Lawrence having, in Count 3 of the amended answer, categorically denied the truthfulness of the allegation in Count 2 of the petition for cancellation, made to the effect that he informed petitioner that he was required to sign said deed so as to enable the executors of the estate of Rev. Preston A. Hope to completely administer said estate but that, to the contrary, the signing of said instrument by petitioner and his wife was an act of their own free will and accord and was not

induced by any suggestion, demand, advice, or persuasion of him the said J. Dudley Lawrence, thereby joined issue with the petitioner on this very material point on which the court should have heard evidence before decreeing the cancellation of the aforesaid quitclaim deed, which was not done in the instance case." The records before us show that the 7-acre tract of land in Monrovia was bought jointly by petitioner and Rev. Preston A. Hope on the 6th day of February, 1915. The parties held this property jointly and Hope erected a dwelling house on the northern portion of said land. In the year 1948, Hope died leaving his widow who has occupied the said dwelling house even until now. When this case was sued out in the year 1964, quite 16 years after the death of Hope, the respondents pleaded the doctrine of estoppel. This is a plea that goes in bar when rightly and effectively pleaded and must be considered and thoroughly explored by any court on the issues of law. From the facts made clear in this case from the records, this particular tract of land was held by Ward and Hope in joint tenancy, under which the principle of survivorship operates because all four of the unities are supposed

to be created at one and the same time--and therefore the interest of the two persons in ownership to the property was one and the same up to the time of the death of Preston Hope, at which time the principle of survivorship was to operate. But since quitclaim deeds were exchanged and the respondents pleaded estoppel, the trial judge was, in our opinion, bound to consider this issue in a more exploratory manner. It was also incumbent upon the court to take oral testimony on the issues of fact raised by the pleadings. This was clearly necessary when petitioner alleged that he was induced and influenced by respondent Joseph Dudley Lawrence to sign the quitclaim deed and did so in ignorance of the law--which allegations respondent Lawrence categorically denied, thereby joining issue that could not have been properly disposed of except on the testimony of witnesses. This proceeding being one in chancery, as a court of conscience, the judge performs the duties of both judge and jury; and all issues raised in cancellation proceedings are to be disposed of by the judge on the basic principle of relieving against the harsh rule of the law. In our opinion, the trial judge's ruling is inconsistent with natural justice applied in honesty and right, and can be appraised as nothing less than a conglomeration of words. By no stretch of good conscience should the trial court have relied upon undue influence, misrepresentation, misapprehensions, and inducement as the basis for ordering cancellation of the quitclaim deeds except by the preponderance of evidence. Counts i and z of the bill of exceptions are therefore sustained, since there is nothing apparent in the records upon which the trial court reached equitable conclusions. Under the circumstances, therefore, we are left with no option than to reverse the decree of the court below and order a remand of the case so that equity will be meted out to the parties concerned on the law and the facts in harmony with the principles controlling. It is therefore our

opinion that the case be and the same
is hereby remanded for a reargument of all of the issues of law raised in the pleadings and the admission of oral testimony, if the
circumstances require it, to prove or disprove all of the facts raised in the pleadings and to facilitate substantial justice in
the case. Costs in this case shall abide the final determination ; and the clerk of this Court is hereby ordered to send a mandate
to the lower court, commanding the judge presiding to resume jurisdiction and proceed to execute these orders. Decree reversed and
suit remanded.

King v Simpson [1966] LRSC 12; 17 LLR 226 (1966) (20 January 1966)

JACOB KING, Appellant v. A. D. SIMPSON, Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued November 23, 1965. Decided January 20, 1966. 1. 2. Nonjoinder of a party in an ejectment action may be cured by amendment,
and is not sufficient ground for dismissal of the action. 1956 CODE 6:1125. A valid, duly registered deed will prevail over mere
possession as evidence of title in an ejectment action.

On appeal from a retrial ordered in Chambers on a writ of error in an ejectment
action, the judgment was
affirmed. Albert A. Reeves for appellee.

for appellant.

Simpson Law Firm

MR. CHIEF JUSTICE WILSON

delivered
the opinion of

the Court. The present appellee instituted an ejectment action to evict the present appellant from a parcel of land
which the appellant claimed to have acquired by government deeds dated January 5, 1959, covering Lot. No. 19, situated in the Township
of Tubmanville, near Bomi Hills, Senjeh, Gola Chiefdom, then Western Province of the Liberian Hinterland. Because of patent errors
committed by the trial judge in the first trial of the case, a retrial was ordered by the Chambers Justice on a writ of error. Following
the second trial the case has now found its way before this Court on a regular appeal. This therefore brings us to consider first,
the issues of

law raised in the pleadings, and then the facts adduced at
226

LIBERIAN LAW REPORTS

227

the trial in order to determine
whether or not there is any merit in this appeal. All law writers are agreed that a nonjoinder of parties in an action may be timely cured by an amendment to supply the omission and it is not ordinarily a ground for dismissal of an action. Comment on this point seems unnecessary since appellant failed to lay a legal premise on which to base his contention, in that there is nothing of record to show that a lease was executed between himself and the claimed omitted party, George Bleh, who was alleged to have become an indispensable party to the action by reason of said lease. At the time of the filing of this action, appellant based his claim to ownership of the property on an unsigned and unprobated deed, alleging that finalization or the processing of said deed was in progress as appellee produced a deed complete in all of the legal requirements to give fee simple title to appellee in the property. Thus one of the instruments, namely that of appellant, was in the category of a naked document as against a genuine paper title, a deed bearing no voidable character but complete in all of its legal requirements. Appellant charged that the trial judge committed reversible error when he declared the half lot occupied by appellant to be within the property right of appellee. The surveyor who delimited the property certified that it was not within the area claimed by appellee who asserted fee simple right to said property by title deed executed in his favor by the President of Liberia, probated and registered according to law and produced at the trial of the case in the court below. This deed, however, was denied admission into evidence by the trial judge, which denial constitutes one of the assignments of error in appellant's bill of exceptions. We must now take recourse to the objections raised by appellee as plaintiff below to the admissibility of the title deed sought to be admitted into evidence by appellant

228

LIBERIAN LAW REPORTS

and the trial court's ruling thereon.
The main ground of these objections as disclosed by the record, is that the presidential deed was not proferted in the pleadings to give plaintiff notice of its existence as the statute prescribes in the following language. "The fundamental principle on which all pleadings shall be based shall be that of giving notice to the other parties of all facts it is intended to prove." 1956 CODE 6:252. On the misjoinder or nonjoinder of parties, the statute further provides : "Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the action on any terms that are just. Any claim against a party may be severed and 1956 CODE 6:125. proceeded with separately."
Along with this important objection is the fact that the deed under which appellant claims title, besides not being probated or registered,

was not signed by the purported grantor ; hence appellant's claim of naked possession cannot prevail against a paper title--the paper title of appellee being legally genuine in all respects. Ruling on the issue thus joined, the trial court made the following statement.
"The test for the admissibility of a legal document is that of identification. Document marked D 1 constitutes defendant's exhibit C and from an inspection thereof is not signed by the President of Liberia so as to have given the opposite party notice thereof, nor is there any indication of the same having been admitted into probate and registered ; hence it is denied admissibility. Documents marked D3, D4, D7, D8, and D9, as also D io, having been pleaded in the answer of the defendant and a legal test fully met, are hereby admitted into evidence to be expounded to the empan-

eled jury by the court as to their relevancy and effect. And it is so ordered." Buttressing the contention of appellee and supporting the legal soundness of the trial court's ruling on the point is the opinion handed down by this Court in Minor v. Pearson, 2 L.L.R. 82 (191[2) , and summarized as follows in Syllabus 2 of that case : "A naked possession of land by an intruder cannot prevail against a paper title." The following statutory provision is also apposite. "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 duly probated and registered." 1956 CODE 29:6. The more so do the circumstances in this case preponderate in favor of the appellee on this point because not only is appellee's claim based on a legal paper title, but said paper title or deed was executed, probated, and registered prior to the naked possession on which appellant makes claim of ownership to the property. In the absence of law, statutory or common, to the contrary, we have no alternative but to sustain and confirm this ruling of the trial court on this point.
The bare denial on which appellant was placed by the court as his defense is legally sound and is therefore upheld. Traversing the testimony recorded at the trial and relevant to the point of appellant's claim of title, we find the following questions and answers made on the crossexamination of the appellant himself when testifying in his own behalf. "Q. At the time of the institution of this action by the plaintiff, did you have title to the land in dispute?

"A. I had my tribal certificate, but my deed was not processed. "Q. I mean Mr. Witness, that when the plaintiff sued out this action against you, did you hold a title deed to the property subject of these proceedings signed by the President of Liberia, since the land in controversy is public land?
"A. No. "Q. So you subsequently, during the pendency of this action got the President to sign your deed on September 1o, 1963, not

so? "A. I do not know when the President signed it; I know I got it during that time." We must conclude from the foregoing questions and answers that at the time of the filing of this action, appellant had no finalized title to the land which he claimed ; nevertheless he asserted that the property for which he had allegedly obtained a deed from the President of Liberia did not fall within the property of plaintiff. On review of the record we find a desperate effort on the part of appellant to establish that the half town lot claimed by him, for which a title deed was in course of being processed, did not fall within Lot No. 19, the established fee title property of appellee. However, there is nothing in the record to show that the said half town lot to which appellee is claiming title is separate, distinct, and without the area covered by Lot. No. 19, which would have justified the court and jury in excluding same from their findings and judgment declaring same not to be within the property of appellee. The following principles of law are controlling. "Actions of ejectment may be brought against any person holding property by possession adverse to the interest of party plaintiff." Couwenhoven v. Beck, 2 L.L.R. 364 (192o) Syllabus 2. "If a title deed although apparently valid, shall not have been probated and registered within four months

from date of execution, it is not error to reject it as evidence upon objections properly taken." Id. Syllabus 7. "In ejectment the plaintiff must recover, if at all, upon the strength of his own title." Id. Syllabus 8. The charges that the trial judge inflamed the minds of the jury, prejudicing the interests of the appellant, is not borne out by the record and hence must be considered as unmeritorious in point of fact; it is therefore rejected by this Court. Finalizing this opinion, we must conclude in all fairness, equity, and justice, that the ruling of the trial judge on the law issues advanced in this case, as well as the verdict of the empaneled jury and subsequent rulings of the court, together with the final judgment of the court decreeing the eviction of appellant from the property in question and vesting possession in appellee, are legally and factually sound and are therefore hereby sustained and affirmed with costs against appellant. And it is hereby so ordered.
Judgment affirmed.

Richardson et al v Gbassie [1962] LRSC 8; 15 LLR 50 (1962) (1 June 1962)

KPUNEL, A. GARGAR RICHARDSON, et al., Appellants, v. Clan Chief ARMAH GBASSIE and JAMES W. HUNTER, Assigned Judge of the Circuit Court of the Sixth Judicial Circuit, Montserrado County, Appellees.
APPEAL FROM RULING IN CHAMBERS ON APPLICATION FOR WRIT OF PROHIBITION

TO THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued April 9, 10, 1962. Decided June 1, 1962. 1. Contempt proceedings may be either criminal or civil in nature. 2. The purpose of criminal contempt proceedings is to vindicate the dignity of the court. 3. Civil contempt proceedings are instituted by private individuals for the purpose of protecting their rights. 4. Civil contempt proceedings must be instituted by a written complaint or bill of information which must be duly served upon the defendant or respondents by the aggrieved party who is called the informant or relator. 5. Contempt proceedings are distinct from any litigation from which they may arise, and must be separately tried and adjudicated. 6. A writ of prohibition will not be granted to correct irregularities in contempt proceedings wherein the petitioners for prohibition inexcusably failed to appear as defendants. 7. The basic function of pleadings is to give notice of facts which the pleader intends to prove. 1956 Code, tit. 6, § 252.

Appellant Kpunel instituted an action for damages in the circuit court, naming appellee Gbassie as defendant. During pendency of the action for damages, which involved a controversy over title to land, appellee Gbassie orally applied to appellee Hunter, as trial judge, for an order requiring appellant Kpunel, and appellant Richardson as counsel for appellant Kpunel, to show cause why they should not be held in contempt of court. Appellants failed to appear to defend in the contempt proceeding, but applied to the Justice presiding in Chambers for a writ of prohibition to the circuit court against the contempt proceeding. A ruling in Chambers denying

prohibition was appealed to the Supreme Court, en banc by the petitioners. The ruling was of firmed.
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A. Gargar Richardson for appellants. George for appellees.
MR. JUSTICE WARDSWORTH

Peter A.

delivered the opinion of

the Court. Petitioners in the above-entitled cause are before this Court on appeal from the ruling of the Justice presiding in Chambers who, after hearing arguments pro et con upon the petition and returns of the parties herein, disposed of said cause by denying said petition and ruling petitioners to costs. Petitioners, not being satisfied with the ruling thus rendered, have come hither for a review of said matter by this Court en banc.
The genesis of these prohibition proceedings, as culled from the records before us, may be succinctly stated as follows. A dispute

arose between Kpunel and Armah Gbassie over a certain parcel of land allegedly owned by Kpunel, situated within the tribal reserve of the tribal area wherein Kpunel is resident upon permission granted him by the tribal authorities. Gbassie claimed this parcel of land which was occupied by Kpunel, alleging that it had been previously given to Gbassie by the tribal people of the area. The contention between Kpunel and Gbassie over this parcel of land grew tense and bitter, and eventually resulted in a suit at law instituted by Kpunel in the Circuit Court of the Sixth Judicial Circuit, Montserrado County, claiming damages for a wrong. Armah Gbassie, having been served with process in said matter, appeared and filed an answer claiming title to the land. The question of ownership of the parcel of land in dispute was raised in Counts i and 2 of the answer, and without the court passing upon the merits or demerits of the complaint and an-

swer, although said matter had been ruled to trial by Judge Dennis on Counts i and 4 of the complaint, and and 4 of the answer, plaintiff entered upon the premises and commenced operation thereon by cutting sugar cane, grinding it, and distilling domestic liquor. In the light of this, the defendant gave information to the court that plaintiff had informed defendant that plaintiff's counsel, A. Gargar Richardson, had advised plaintiff to enter upon the premises and cut the sugar cane thereon and convert the proceeds to his own use. The court thereupon sent a summons to plaintiff and counsel to appear and show cause why they should not be held in contempt of court for interfering with property constituting the subject of litigation pending before the court. The contempt proceedings having been assigned for hearing on July 17, 1961, the said plaintiff and counsel, electing not to appear as directed by the writ of summons in the said contempt proceedings, fled to the Justice presiding in chambers with a petition for a writ of prohibition dated July 12, 1961, five days prior to the assignment date for the hearing of the contempt matter. Contempt of court is divided into two classes : criminal, which is for the purpose of vindicating the dignity of the court; and civil, which is brought by information filed by private individuals for the purpose of protecting their rights. I do not consider it relevant to the issue here to consider whether what happened could be construed as direct or constructive contempt. But it would seem that civil contempt was intended to be charged, since the suit was commenced by information given the judge by counsel for one of the parties in the case, apparently in protection of his client's rights. The questions before us in this case, then, are : ( ) whether it was regular in civil contempt to have issued a writ for a party to answer in the circuit court on the verbal allegation of an informant; and (2) whether prohibition would lie to review the proceedings where the judge

attempted
to have the respondent answer on the said verbal allegation of the informant. In the first place, all matters of civil contempt must
be brought before the court upon a complaint of the aggrieved party, who is usually called the informant or relator, which complaint
is called a bill of information. Matters can only be adjudicated upon the institution of some suit; and the institution must necessarily
begin by complaint in order to give the defendant or respondent notice of the charge. Most particularly is this true in courts of
record ; and the more mandatorily is this required to be in writing. "In the case of a civil contempt the proceeding for its punishment
is at the instance of the party interested and is civil in its character." Gibson v. Wilson, [1943] LRSC 10; 8 L.L.R. 165, 170 (1943). Contempt, even where it grows out of a matter pending, is a separate and distinct matter in itself, and may be determined
without necessarily affecting the results of the case out of which it grows. This being so, how very irregular and contrary to recognized
procedure in courts of record it is for civil contempt proceedings to be commenced upon the information, or oral allegation of counsel
on one side in a civil case against his adversary on the other. In the contempt proceedings brought against Secretary of State Gabriel
L. Dennis by Rufus Porte, information as to the acts which were held to have constituted contempt was given in a written bill of
information filed by Mr. Porte as relator. In re Dennis[1947] LRSC 17; , 9 L.L.R. 389 (1947). Likewise, in all of the reported cases, civil contempt proceedings in our courts of record were commenced by the filing of
bills of information by informants or relators; and we rely upon the following cases to support the position we have taken : Ricks.v.Worrell[1928] LRSC 6; , 3 L.L.R. 21 (1928) ; Harris v. Kaidbey, [1944] LRSC 30; 8 L.L.R. 4.44. (1944) ; Gibson v. Wilson, supra. In addition to these decisions, there are numerous others to show

that
civil contempt proceedings before courts of record in this country must be commenced by written bill of information filed by a relator
or informant. In the instant case, the court ordered a writ issued to bring Counsellor Richardson and his client to answer in contempt
upon the informal representation of Attorney Perry Baker, of counsel representing the parties on the other side in the action for
damages. The strangeness and irregularity of such a procedure is so apparent that it should at once attract the attention of anyone
who has practiced before courts of record. Then, there is the question of contempt growing out of damages where no restraining writ
has been issued, the disobedience of which could have been considered contemptuous. We are of the firm opinion that, had the respondents
been required to file returns to a written bill of information--which is the regular procedure--these, and perhaps other irregularities,
might not have been questioned. But on the other hand, it is possible that no defense might have been made against the complaints
laid in the bill. The fact still remains that the procedure of putting the information in writing would have been regular and in
keeping with what is known to our practice. Buttressing the foregoing, we also have the following: "The prosecution of a constructive

contempt, as distinguished from a direct contempt, involves many of the characteristic features of a formal trial, including the making of charges and giving notice thereof to the contemner. A constructive contempt is usually brought to the knowledge of the court by an affidavit, by information setting forth the facts, or by some equivalent proceeding which fairly informs the contemner of the charge." 12 AM. JUR. 435-436 Contempt of Court § 68. There is no showing by respondent that the above conditions were met by the judge or court below, in the

absence of which the court in the initial stage of the contempt proceedings committed an incurable legal blunder. Our statutes provide : "The fundamental principle upon which all pleadings shall be based shall be that of giving notice to the other parties of all facts it is intended to prove." 1956 Code, tit. 6 § 252. In Count io of the petition, the petitioners made clear that the contempt case, in which a writ of summons had been duly issued and served upon the alleged contemner, and the sheriff's returns thereto duly made, was assigned to be heard on July 17, 1961, by the respondent judge. Instead of petitioners abiding the time, appearing according to the assignment made, and putting in any defense they had, they preferred substituting prohibition for appearance, based upon certain allegations made in their petition for prohibition, as also brought out in Counsellor Richardson's argument before this bar that, because of certain circumstances which prevailed in a former contempt matter growing out of the same case, which led to the said Counsellor Richardson's imprisonment, he entertained fears that the same condition would obtain if he appeared before the court in obedience to the assignment mentioned supra. Although several irregularities were committed by the respondent judge, as pointed out supra, yet petitioners, having failed to put in their appearance and prosecute their legal interest in the contempt proceedings in the court below, not only abandoned their defense, but further committed contempt of court when they failed to appear. Had they appeared in this case, they would now be in a better position to point out the irregularities in the hearing of the matter; and if the respondent judge had ordered their imprisonment, they would have had a remedy at law for their release. In the face of the abovementioned facts, prohibition does not lie.

In view of the foregoing, it is our considered opinion that the ruling of the Justice presiding in Chambers should be affirmed with costs against petitioners. And it is hereby so ordered.
Affirmed.

Toles v Williams [1961] LRSC 21; 14 LLR 382 (1961) (19 May 1961)

J. LAFAYETTE TOLES, Appellant, v. C. L. WILLIAMS, Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued April 12, 1961. Decided May 19, 1961. 1. In a jury trial in an action of ejectment it is error for the judge to charge the jury : "You will agree with me that the plaintiff does not have a better title than the defendant." 2. A new trial should be granted on a showing of newly discovered evidence which, by due diligence, could not have been discovered in time for introduction at the previous trial. 1956 Code, tit. 6, § 820.

On appeal from a judgment on a jury verdict in an action of ejectment, reversed and remanded.
Simpson Law Firm for appellant. erspoon Law Firm for appellee.
MR. JUSTICE MITCHELL

Barclay and With-

delivered the opinion of the

Court. The records certified to us in this case show that C. L. Williams of Montserrado County sued out an action of ejectment against J. Lafayette Toles of the same county on August 29, 1959 for the recovery of a certain parcel of land situated on Broad Street in the City of Monrovia, Republic of Liberia, described as Lot Number 349. The said records further show the following facts. Plaintiff, C. L. Williams, bought half of Lot Number 349 on October 4, 1904, from Gabriel D. Potter and Caddie Potter, his wife, and thereby from that time became the sole owner and possessor of title thereto. In 1915, C. L. Williams left Liberia, and thereafter resided in foreign countries until 1947, when he returned to Monrovia, being still possessed of title to the aforesaid piece of property. Defendant J. Lafayette Toles detained the said

tract of land from the plaintiff, and refused to release ownership thereof to him on the ground that the said defendant had bought the said piece of property in fee and had thereby acquired ownership thereto in preference to the plaintiff's title. The pleadings in the case progressed as far as the surrejoinder and rested. The law issues controlling were heard and disposed of on June to, 196o, and thereafter the case found its way for trial on the facts before a jury who heard the evidence and submitted a verdict in favor of the plaintiff on July 4, 196o. Subsequently, the defendant filed his motion for new trial, which motion was heard by the court and denied. For the purpose

of enjoying the benefit of a review of his cause on appeal, the defendant later filed a motion in arrest of judgment, which motion was also denied. The motion for new trial is herein quoted below for the purpose of laying some of the groundwork of this appeal. "1. Because defendant avers that the verdict of the jury was patently against the weight of the evidence, in that plaintiff did not establish by preponderance a better title in and to said parcel of land over and above the defendant's, in that defendant submits that plaintiff should have proved his title to said parcel of land by at least two witnesses. He not having done so, the jury was without authority to bring the verdict they brought. "2. And also because defendant avers that the verdict of the jury was manifestly contrary to the charge of the court, in that the judge, in charging said jury, instructed them, inter alia, that under our law, when the owner of a parcel of **land sits down supinely and permits another to take possession of his land** and improve it and notoriously occupy it for a period of over twenty years, his title is as good as though it emanated from the State, and the court will not oust an industrious occupant.

"3. And also because defendant avers that he has recently come in knowledge of the fact that, apart from plaintiff leaving W. H. Ketter to take over his property in Liberia, plaintiff also did return to Liberia before the year 1947." To this motion for new trial, plaintiff's counsel made strong resistance in five counts, and the court in a very elaborate ruling, denied the motion. Although the motion was denied, Counts "2" and "3" have attracted our attention. We would like to take recourse to the complete records brought before us. It is quite difficult for us to understand why the court below refused to entertain the aforesaid motion. The defendant, being dissatisfied with the verdict of the jury and the rulings and the final judgment made in the court below, excepted to them all and brought his appeal before this Court for further adjudication on a bill of exceptions of five counts. Of these five counts, for the purpose of concentrating attention on the actual merits of the case, we will hereunder quote and consider Counts "2," "4," and "s" thereof. "2. And also because defendant avers that Your Honor in charging the jury made the following statement : 'You ladies and gentlemen will agree with me that plaintiff does have better title than defendant,' which was tantamount to a directed verdict. Defendant submits that the law controlling and the facts adduced at the trial of the aforesaid cause were not sufficiently clear and convincing in favor of plaintiff for Your Honor to have so instructed the jury, which charge amounts to a directed verdict, and which charge defendant contends did influence the minds of the jury to have arrived at the verdict it did. "4. And also because defendant avers that Your Honor ought not to have entered final judgment on said verdict for the reason that the verdict of

the jury should be governed by the facts adduced at the trial. Defendant submits that a plaintiff must prove his case by preponderance of evidence; and although such evidence may be credible and convincing to the mind, yet a jury cannot properly act upon the weight of the evidence in favor of one having the burden of proof, unless it overbears in some degree the weight upon the other side. The evidence adduced by the plaintiff at the trial did not overweigh the evidence of the defendant, and Your Honor therefore should not have entered final judgment on the verdict. "5. And also because defendant avers that the jury returned a verdict in favor of the plaintiff, to which the defendant excepted and filed a motion for new trial. Your Honor overruled said motion, and on the 2oth day of July, 196o, entered a final judgment on the verdict of the jury and the defendant excepted and prayed an appeal to the Supreme Court, sitting in its October, 196o, term." This case, having been assigned for hearing, was called with both parties represented. Appellant's counsel, in his argument, strongly stressed the question of his motion for new trial, and stated in the course of the said argument that, although it was alleged in his aforesaid motion and brought to the notice of the court below that the newly discovered facts referred to in this motion had not come to their knowledge until after the trial was concluded, and which motion they felt was sound ground legally for the setting aside of the verdict of the petty jury and the awarding of a new trial, yet the court in an arbitrary manner denied this right. Appellant also argued that it is against our court practice and the law controlling for the judge to tell the jury in his charge to them : "You will agree with me that the plaintiff does have a better title than the defendant," because such a statement, coming from the trial judge, by all indications must influence the verdict of the

jury and motivate and activate it against the interest of the defendant, which did happen in this case in the court below. For the benefit of this opinion, let us first ascertain what authority our law confers upon a judge in this respect. "It is the function of the court to decide upon the competence of witnesses and the competence and admissibility of evidence. It shall expound to the jury all written evidence produced at the trial. . . ." 1956 Code, tit. 6, § 626. "The court shall instruct the jury after the parties' arguments have been made. The court may summarize the evidence, but it shall limit its instructions to points of law which have a bearing on the case." 1956 Code, tit. 6, § 627. In view of these statutory provisions, we are satisfied that the functions of the judge in charging a jury have been sufficiently made clear. Only where a motion is made during the trial for dismissal of the cause, or where the facts adduced at the trial warrant a general verdict, will the law permit a directed verdict; and not unless these conditions prevail would a judge have

the sanction of the law to do this. In the instant case the statement made by the trial judge in his charge to the jury was clearly improper and constituted reversible error. No judge has the right to state in his charge to a jury what may or may not be his personal opinion of the facts submitted in any given case. The moment he exceeds his authority in this respect, or attempts to do so, he shows himself partial or biased ; hence, any verdict arrived at after such a violation should be set aside and a new trial ordered. The more so is this principle applicable, when the party against whom the verdict is brought asserts the right under the law. "The principles of impartiality, disinterestedness and fairness on the part of the judge are as old as the history of courts of justice, and it is those three cardinal

principles supposed to exist which give credit and tolerance to the decrees of judicial tribunals." Republic v. Harmon, [1936] LRSC 30; 5 L.L.R. 300 (1936), Syllabus 5. Now then, considering Count "4" of appellant's bill of exceptions, we regard it worthy to note that we have not been sufficiently convinced by any legal authority to warrant our agreement with the court below. Our statutes, as well as the common law, are agreed that newly discovered evidence constitutes good ground for a new trial, since such evidence might well have a tendency to cause a change in result of the termination of the case if a new trial were granted, and should have the consideration of the court as material evidence discovered by all diligence before the trial ended. In this appeal, it is shown that the defendant was seeking to have the case tried anew so that he would have the privilege to introduce new evidence for the purpose of proving a very pertinent and important question in issue. The denial of that right by the trial court was inconsistent with law and our court practice. Appellee's counsel argued that, since appellant's own witness had testified in the court below and put into evidence the fact that the appellee had not returned to Liberia or from the time he left for foreign parts in the year 1915 until he returned in the year 1947, this was sufficient proof ; that it would have been against practice and law for the trial judge to have permitted the defendant below to introduce other evidence which he purported to be newly discovered to discredit the testimony of his said witness, and that, therefore, the trial court did not err in denying the aforesaid motion for a new trial. Arguing further, he stated that the facts adduced at the trial below were sufficiently clear and convincing to have warranted the trial judge in charging the jury as he did; hence, the verdict and the judgment thereupon were legally right and should be upheld by this Court. Finally, appellee's counsel contended that the verdict ar-

rived at by the petty jury was not a directed verdict because the statement of the judge, which is made a part of the appellant's bill of exceptions, could have had no influence on the minds of the jury, who were judges of the facts, and who arrived at their verdict exclusively upon the facts submitted to them. In our codified statutes the following are enumerated as grounds for new trial : "When an action has been tried by jury, a new trial may be granted to any or all of the parties on all or part of the issues on any or all of the following grounds : (b) If the verdict is manifestly against the evidence, the law, or the instructions of the court; or (d) On the basis of newly discovered evidence which by due diligence could not have been discovered in time for introduction at the trial." 1956 Code, tit. 6, § 82o. We are of the opinion that the statement made by the trial judge in his charge to the jury did have a tendency to influence their minds; moreover, the denial of appellant's motion for new trial which embraced other legal grounds, was reversible error ; hence, we have no alternative than to reverse the judgment of the court below and remand the case for a new trial with costs to abide the final determination thereof. And it is hereby so ordered.
Reversed and remanded.

Koffah v RL [1958] LRSC 15; 13 LRSC 232 (1958) (19 December 1958)

EDWARD KOFFAH, Appellant, v. REPUBLIC OF LIBERIA, Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT, SINOE COUNTY.

Argued October 14, 1958. Decided December 19, 1958. 1. Sureties qualified to indemnify appellees by recognizance are required to be freeholders possessing sufficient real property to cover the bonded penalty. 2. Where the sureties described as freeholders in a bail bond for indemnification by recognizance are actually not freeholders, the bond is void. 3. Under the Constitution of Liberia, only persons of Negro descent can be citizens, and only citizens can hold real property in fee ; consequently only citizens can constitutionally qualify to indemnify appellees by recognizance. 4. Neither a foreign corporation nor an alien individual can constitutionally be a freeholder of real property in the Republic of Liberia. 5. Judicial construction of Liberian statutes is constitutionally restricted to determination of legislative intent as stated in the statutes themselves. 6. The Supreme Court will overrule its own decision if contrary to a provision of a duly enacted statute. 7. Indemnification of parties in civil and criminal cases, and of appellants in cases on appeal, must be either by tender of checks, bonds, or other negotiable securities, by surrender of deeds for unencumbered real property, or by recognizance with at least two sureties who shall be freeholders possessed of sufficient unencumbered real property.

On appeal from a judgment of conviction of manslaughter, appellee's motion to dismiss the appeal was
granted. Richard A. Henries
for appellant. Assistant Attorney General J. Dossen Richards for appellee.

MR. JUSTICE PIERRE delivered the opinion of the Court.
Edward Koffah was an employee of Le Tourneau, Ltd., an American company doing business in Sinoe County within the jurisdiction of
the Circuit Court of the Third Judicial Circuit. He was indicted for manslaughter, tried, convicted, and sentenced. He took exceptions
and announced appeal from the judgment rendered against

him ; and it is this appeal which the appellee
filed a motion to dismiss on the ground that the said appeal is not supported by a valid appeal bond. The motion alleges the existence
of material defects in the bond which render it a nullity. The one count which the motion contains reads as follows : "Because appellee
says that the appellant has failed to file a legal and valid appeal bond, that is to say, the sureties to said bond, namely, Gustav
Dick and Harry W. Kenke (they being white Americans), are not citizens of the Republic of Liberia, and therefore cannot be freeholders
or householders within this Republic and as such cannot be sureties to said bond. The said appeal bond is therefore materially defective
for want of legal sureties." Appellant Koffah filed resistance to the motion, and in five counts raised, in substance, the following
points : T. That the bond was not defective since it had fulfilled all of the necessary legal requisites of an appeal bond. 2. That
the signing of the bond by the two Americans as sureties was not a material defect sufficient to render the bond invalid and dismissable,
because these Americans, one of whom was manager of the company, as is shown on the face of the bond, were sureties for an appellant
who was a Liberian citizen and owned real property. 3. That the said company, having been engaged by the Liberian Government to construct
a road from Harper to Webbo, is by contract with the Liberian Government, carrying on operations on 500,000 acres of land at Baffu
Bay in Sinoe County, under agreement for 8o years and owns assets more than ioo percent over the penalty of the bond. 4. That the
Supreme Court in Van Ee v. Gabbidon, L.L.R. 65 (1951), decided that, so long as a corporation or firm is established and doing busi-

ness in the Republic of Liberia with assets above the penalty of a bond in a suit in litigation, the agent of said corporation or firm may be surety for the company as a party in litigation. 5. The appellant finally submitted
that the appeal bond in question, because of this position of the Supreme Court in a previous case, was not defective, and prayed
that the motion be denied. Countering this resistance of the appellant, the appellee filed an answering affidavit; and because we

think it is of the greatest importance to the proper determination of the motion, we have quoted its five counts, word for word.
They read as follows : "1. Because appellee says that the purported resistance of the appellant is insufficient to defeat the motion, in that, although appellant's appeal was completed and perfected within statutory time, yet this is not the ground upon which appellee has predicated the motion to dismiss. According to the statute on appeal, the filing of a materially defective appeal bond (although approved and filed in time) is ground for the dismissal of an appeal. Appellee contends that, where the sureties to an appeal bond are not freeholders or householders within this Republic in the contemplation of the statute, they are incompetent to stand said bond. Gustav Dick and Harry W. Kenke, being white Americans, cannot legally be sureties to any bond. "2. Further answering the resistance of the appellant, appellee submits that the decision of the Honorable Supreme Court relied on by the appellant, does not and cannot apply in this case because the purported sureties to the appeal bond did not sign said bond as manager or agent for any corporation, but in their private and individual capacities; nor does the bond bear the seal of any corporation or company, so that there is no analogy between the

case cited and relied on by the appellant and the instant case. 1 And also because appellee says, in further answering the resistance of the appellant, that same is uncertain and indefinite in that, in Count appellant contends that the sureties stood the bond as representatives of Le Tourneau, and relied on the decision of this Honorable Court in support of said submission; yet Count '5' of the resistance alleges that the sureties are freeholders and householders within this Republic. Appellee submits that this mode of pleading is bad for uncertainty and indefiniteness. Further answering Count '5' of appellant's resistance, appellee says that the sureties of appellant's appeal are not freeholders as asserted in Count '5' of the resistance, because, under the law, a freeholder is one who holds property in fee, for life, or for an indeterminate period. Having merely a leasehold title to said 500,000 acres of the Government's property for eighty years certain, does not make them freeholders within the meaning of the law, since they hold said property for a determinate and certain period. Moreover, the soo,000 acres of land is not the property of the aforesaid sureties. It is the property of the Liberian Government, and it is unreasonable to say that the appellant can consistently indemnify the appellee with appellee's own property; for could the property be sold in the event the condition of the bond is breached? Certainly not. "5. Appellee respectfully submits that the decision of the Honorable Supreme Court relied on by the appellant is not supported by the statutes of this country on the question of bond, in that our statute has provided four, and only four conditions under which one may become surety to a bond, and these
(3.

are, without any exceptions, namely: (a) by recognizance with competent sureties who are householders or freeholders within the Republic ; (b) by tendering a cash bond ; (c) by surrendering title deeds for unencumbered real property held in fee simple; (d) by the giving of negotiable securities which can easily be converted into cash. It is very strongly submitted and insisted by the appellee that, the statute of the country having positively and unequivocally prescribed the conditions under which one may become surety to a bond, such a statute should be strictly adhered to and complied with, and the Court is without authority to add any other condition. Appellee respectfully submits, further, that it is the legal and constitutional duty of the Court to construe and interpret existing statutes, but not to legislate. Appellee submits that, where the language of the statute is clear and unambiguous, the Legislature intended no exception, and the courts are without legal authority to make any by construction. What seems to give appellee a still stronger case is the fact that this Court, in its decision in Van Ee v. Gabbidon, supra, neither cited nor quoted any law supporting the conclusion arrived at on this point. But, even if it had, could any common law provision supersede our statute? Appellee most respectfully submits to Your Honors that the Van Ee v. Gabbidon decision, supra, is the cause of very much disturbance, confusion and mischief, and renders the interest of parties litigant insecure, especially in such cases as attachment, injunction, replevin, etc. It is a fact to be conceded that the object of law is to secure the maximum benefit and security to the rights and interests of litigants. That the decision cited, supra, is unsupported by our statutes, that it is the cause of untold confusion

and embarrassment, and that there is a growing tendency to misapply the principle enunciated in the aforesaid decision, was made manifest in a case involving. Farrell Lines, where the trial court, in his applying that decision, permitted the captain of a ship, defendant in the case, to sign his own bond as principal and surety; and thereafter the ship took up anchor and left Liberia, leaving Farrell Lines, the plaintiffs, without redress. Appellee therefore respectfully submits that the said decision should be overruled, and hereby so prays." The main questions presented by this motion, would seem to be : 1. Is the appeal bond in question defective in keeping with our statutes controlling bail? 2. Who are freeholders as contemplated by our bail statutes? 3. Does the enjoyment of a leasehold right for a definite term of years make the lessee a freeholder of the property so leased? The bond in question reads, word for word, as follows : "Know all men by these presents : That we, Edward Koffah, the above-named principal and appellant, and Gustav Dick, Manager of R. G. Le Tourneau of Liberia, Ltd., and Harry W. Kenke, sureties, each of us being freeholders within the Republic of Liberia, are held and firmly

bound unto the sheriff of Sinoe County, in the sum of seven hundred and twenty dollars ($720), to be paid to the Republic of Liberia, the above-named appellee, or her legal representative, for which payment, we bind ourselves and our personal representatives jointly and severally by these presents. "The condition of this obligation is that we will indemnify the appellee from all costs and from all injury arising from the appeal taken by the above-named

 appellant, and will comply with the judgment of the court to which said appeal is taken, being the Honorable Supreme Court of Liberia, at its October, 1957, term, or any other to which said action may be removed. "In witness whereof we have hereunto subscribed our names this 5th day of June, 1957. "In the presence of : [Sgd.] CLARENCE TUNING ["] DAVID FRAZIER] DONALD E. STAUD [[ ] EDWARD KOFFAH, Appellant and Principal ["] GUSTAV DICK, Surety ["] HARRY W. KENKE, Surety

"Approved for the sum of $720 this 6th day of June, 1957. [Sgd.] RODERICK N. LEWIS, Circuit Judge, Presiding."

According to the specific wording of the bond and the undenied allegation of the appellee, the sureties, who are alleged to be freeholders therein, are aliens in Liberia, being citizens of the United States of America. According to our bail statutes, whenever the appellee in any case on appeal to the Supreme Court is sought to be indemnified by recognizance, the sureties must be freeholders or householders, possessed of sufficient unencumbered real property to cover the penalty of the bond. That would seem to pose our second question : Who are freeholders, as the sureties to this bond have designated themselves to be? Authorities are in agreement as to the meaning of the term. Bouvier has defined it to be: "One who owns lands in fee or for life, or for some indeterminate period." BOUVIER, LAW DICTIONARY Freeholder (Rawle's 3rd rev. 1914).

It is also defined by another authority as follows : "Generally speaking, one who holds lands in fee or for life, or for some indeterminate period ; a tenant; one who holds freely; one having title to real estate; a person who has a legal title to real estate ; a person who has a freehold estate; one who holds a freehold estate in fee simple, fee tail, or for a term of life. . . ." 20 CYC. 843 Freeholder.

The third question then arises as to whether a lessee who holds for a definite term of years can be regarded as a freeholder. There is a marked difference between

an estate in fee simple and an estate for years. Whilst a tenant in fee simple holds lands to him and his heirs forever, an estate for years is held under a leasehold contract and in strict conformity with the provisions of the contract for the time specified therein, at the expiration of which time the estate is at an end. Thus, it is not hard to see the great difference between a freeholder and a leaseholder ; the one holding absolutely and indefinitely for him and his heirs forever, whilst the other is controlled by time and stipulation. This would seem to have answered our third question : Does the enjoyment of a leasehold right for a definite term of years make the lessee a freeholder of the property so leased? We have no hesitancy in saying it does not. Under our Constitution, only persons of Negro descent can be citizens, and only citizens may hold lands in fee ; in other words, only citizens can be freeholders. We have not been able to find any legal authority which makes or entitles a foreign corporation or company to be a freeholder in Liberia, and this Court is without authority so to hold in contradiction of Article V, Sections 12th and 13th of the Constitution. This is irrespective of whether the said corporation or company might be in contractual relations with our Government, or whether its assets might be over and above the amount involved in litigation or the amount representing the penalty of the bond. Thus the wisdom of the legislation relative to bail

would seem to clearly reveal itself; for our bail statutes make provision that not only may citizens be sureties, but aliens as well. In the case of the latter, however, instead of the indemnifying security being unencumbered real property, it might be either cash or negotiable security readily convertible into money. Consequently there would seem to be no justifiable legal reason or excuse for an alien who desires to be surety to a bond in Liberia to erroneously hold himself out as a freeholder. Besides the fact that such a representation is false, it is also unconstitutional. We are of the considered opinion, therefore, that not only is the bond in question shown to be without proper sureties who are freeholders, as is indicated therein and required by law, but the document itself is a nullity, since it seeks, unconstitutionally and in violation of our bail statutes, to name aliens as freeholders within the Republic of Liberia. "Every appellant shall give a bond in an amount to be fixed by the court with two or more sureties, who shall be householders or freeholders within the Republic." Rev. Stat., § 426. The bond is therefore defective, and should be dismissed. This brings us to consideration of another phase of the matter before us. In appellant's resistance to the motion to dismiss, as well as in appellee's answering affidavit, reference has been made to the decision of this Court in Van Ee v. Gabbidon, II L.L.R. 65 (i95i), whilst appellant has relied upon that decision as being stare decisis as to the point under consideration. Count "5" of the answering affidavit asks for the overruling of the said opinion, on the ground that it is not supported by any statute, and that it has already been productive of untold embarrassment, mischief and confusion. To intelligently pass upon the issue, we

think it necessary to review the case in point, and that portion of it which is relevant to the case now under review. Samuel Gabbidon filed a bill in equity to cancel a lease

agreement between the Oost Afrikaansche Compagnie, a Dutch mercantile firm, and his minor son. The cancellation of the said document was decreed and the Oost Afrikaansche Compagnie announced appeal from the judgment to the Supreme Court. They filed an appeal bond in which their General Agent, one D. Van Ee, a Dutch national, declared himself a "freeholder within the Republic of Liberia," and in said capacity of such alleged freeholder, became surety for his appellant company. When the case came on for hearing at this bar in the March, i95i, term, Gabbidon filed a motion to dismiss the appeal. The second and third counts of that motion, being, in our opinion, identical with, and based upon the same grounds laid in the motion to dismiss in the present case, we quote the said two counts as reported at ri L.L.R. 66: LI 2. The purported surety, D. Van Ee, not being a freeholder or householder within this Republic,

should have, in keeping with the Act of Legislature approved February zo, 1940, made tender of the amount required as bail, in cash, checks, stocks or other negotiable securities capable of being readily converted into money; this he failed to do ; hence the appeal bond filed by appellants is fatally defective and should be dismissed. "3. Appelle further submits that the appeal bond filed in this case is not only fatally defective, but is deceptive and calculated to mislead this Court, in that D. Van Ee the purported lone surety, styles himself as a freeholder within the Republic of Liberia when indeed he is not a freeholder within this Republic, and never can be under our Constitution." To this motion the Dutch firm filed a resistance, in Count "z" of which they contended that: "The point raised in Count 1 2 1 of said motion is a mere technicality and should not prevent an appellate court

from hearing an appeal. This Court, in Daniel v. v. Compania Transmediterranea, [1934] LRSC 10; 4 L.L.R. 97 (1934), settled the principle that a foreigner representing a foreign corporation with assets in Liberia can be surety in a cause pending before our courts." They contended in their next count that there was no intention on their part to deceive the Court, since the two words "freeholder," and "householder," were synonymous because the definition of the word "freeholder" in an estate refers to the word, "tenement," and a "tenement" is a house or homestead ; "hence said word appearing in said bond does not render defective said bond because appellant is a 'freeholder.' " We might mention in passing that, earlier in this opinion, we had followed the universally accepted definition for "freeholder," which does not harmonize with the definition relied upon in this resistance. This court, in

passing upon the motion to dismiss, and the resistance filed thereto, both of which we have quoted herein, took the following position in the opinion handed down from this bench on May 11,1951, as reported at it L.L.R. 71-72: "We shall now pass upon Counts 4 2' and '3' of the motion together. Count t 2 1 sets forth that D. Van Ee, surety on said bond, is not a freeholder because he does not own property in fee simple, and as such he should have followed the statute of 1940 cited by appellee. In Count '3,' appellee further stresses the point of D. Van Ee not being a freeholder, and of his incapacity to be one because of a constitutional prohibition.
"While it is true that D. Van Ee is not a freeholder, it is also true that persons other than those owning real estate in fee simple can become sureties under certain conditions. For instance, corporations duly registered and operating in Liberia, owning property, although not real estate in fee, may be sureties." Mr. Justice Davis speaking for the Court went further

in the said opinion, and we continue to quote him, as reported at II L.L.R. 72 : "Since appellee did not allege that D. Van Ee is not liable to the ordinary process of the court, or that he is not able to pay the sum set forth in the appeal bond, it follows that the financial sufficiency of the bond has not been attacked. In all appeal bonds in civil cases, financial sufficiency is the prevailing feature, because the sole objects of an appeal bond in such cases are the indemnification of the successful party, and payment of costs. Therefore, it is our opinion that the attack upon the appeal bond is not sufficient to justify dismissal of the appeal. The appeal bond, in our opinion, is enforceable. This Court, in Williams v. Johnson, i L.L.R. 247 (1893) , and in Smith v. Page, io L.L.R. 104. (I9so) , has held that a bond which is sufficiently descriptive in its construction to make its conditions clear and intelligible, and capable of enforcement, though lacking in other respects, is nevertheless legal." As reasonable as such a conclusion might appear, there are two things against it. One is that it is without any statutory foundation, and the second thing is that reliance upon this conclusion has already done incalculable harm and injustice to parties in litigation before our courts.
To consider a case in point, Farrell Lines, an American steamship company, brought an action of debt by attachment against the captain of a ship lying in port in Monrovia; the amount involved was in the neighborhood of twenty-seven thousand dollars. In keeping with the principles set forth in Van Ee v. Gabbidon, supra, the defendant captain was allowed to sign his bond as surety upon the strength of his assets being over and above the amount sued for. Before the case could be brought to determination, however, the defendant took up anchor and stealthily departed from the jurisdiction of the courts of Liberia, leaving Farrell Lines, the plaintiffs, without their money, and

also without any indemnification against the loss of the amount sued for. This could
not have happened if the provisions of our bail statutes had been carried out and the defendant required to tender cash or negotiable security, or even if two or more freeholders
with unencumbered real property had executed a recognizance to indemnify the plaintiffs against the loss. In keeping with the Constitution,
the powers of this Government are divided into three separate and distinct departments ; and no one belonging to any one of these
departments shall exercise any of the powers belonging to any of the others. Thus, the power to legislate law is purely and solely
the Legislature's, and neither of the two other sister branches can assume that power without infringing the constitutional powers
of the Legislature. It is not sufficient that the separation of constitutional powers should be stated and specifically designated
; the proper working of the checks and balances of the Constitution compels the enforcement of that separation. In interpreting statutes,
this Court is only empowered to pass upon the specific wording of a statute and place a legal interpretation upon the text. Our power
to construe and interpret does not extend to adding words or phrases to the text of a statute. That power belongs solely to the Legislature.
It is their constitutional right to amend statutes, and not this Court's. We can only interpret what has been legislated. So, whilst
some might contend that it is within the province of this Court to ascertain the intention of the Legislature in passing a statute,
we are of the opinion that this Court's power of interpreting said intentions must be confined to what is written in the statute.
Beyond that, this Court is without constitutional authority to go; we cannot add or subtract words or phrases from the text of the
statute. Authorities are agreed upon this position, and we will quote for reliance as follows : "In the interpretation and construction
of statutes

the primary rule is to ascertain and give effect to the intention of the legislature. As
has frequently been stated in effect, the intention of the legislature constitutes the law. All rules for the interpretation and
construction of statutes of doubtful meaning have for their sole object the discovery of the legislative intent, and they are valuable
only in so far as, in their application, they enable us the better to ascertain and give effect to that intent. Even penal laws,
which it is said should be strictly construed, ought not to be so construed as to defeat the obvious intention of the legislature.
"The intention and meaning of the legislature must primarily be determined from the language of the statute itself, and not from
conjectures aliunde. When the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no
occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious
meaning. This principle is to be adhered to nothwithstanding the fact that the court may be convinced by extraneous circumstances
that the legislature intended to enact something very different from that which it did enact. The current of authority at the present

day is in favor of reading statutes according to the natural and most obvious import of the language without resorting to subtle and forced constructions for the purpose of either limiting or extending their operation. If the words of the act are plain and the legislative purpose manifest, a contrary conception of it, however produced, cannot legitimately be permitted to create an obscurity to be cleared up by construction, influenced by the history of the legislative labors which constructed the law. No motive, purpose, or intent can be imputed to the legislature in the enactment of a law other than such as are apparent upon the face and to be gathered from the

terms of the law itself. A secret intention of the lawmaking body cannot be legally interpreted into a statute which is plain and unambiguous, and which does not express or imply it. Seeking hidden meanings at variance with the language used is a perilous undertaking which is quite as apt to lead to an amendment of a law by judicial construction as it is to arrive at the actual thought in the legislative mind. It has been said that where an ambiguity exists, whether because of an uncertainty as to the meaning of the words employed, or because of an apparent conflict with other statutes, or between the statute and the construction, then, and then only, are the courts permitted to look beyond the words of the particular statute to discover the legislative intent.

"The courts have no legislative powers, and in the interpretation and construction of statutes their sole function is to determine, and within the constitutional limits of the legislative power to give effect to, the intention of the legislature. They cannot read into a statute something that is not within the manifest intention of the legislature as gathered from the statute itself. To depart from the meaning expressed by the words is to alter the statute, to legislate and not to interpret. If the true construction will be followed with harsh consequences, it cannot influence the courts in administering the law. The responsibility for the justice or wisdom of legislation rests with the legislature, and it is the province of the courts to construe, not to make the laws." 25 R.C.L. 960-64 Statutes § 216-18. "The intention of the legislature must primarily be determined from the language employed, and ordinarily the courts have no right to insert words and phrases so as to incorporate in a statute a new and distinct provision. The courts cannot by construction supply a casus omissus by giving force and effect to the

language of the statute when applied to a subject about which nothing whatever is said, and which, to all appearances, was not in the minds of the legislature at the time of the enactment of the law. No mere omission, no mere failure to provide for contingencies, which it may seem wise to have provided for specifically, justify any judicial addition to the language of the statute. It is not for the court to say, where

the language of the statute is clear, that it shall be so construed as to embrace cases because no good reason can be assigned why they were excluded from its provisions. In a case in which the court was called upon to construe a federal statute in which the words 'lands claimed under any foreign grant or title' occurred, it was contended that the word 'lawfully' should be placed before 'claimed,' but the court said there is no authority to import a word into a statute in order to change its meaning. The courts have frequently adverted to the fact that if the legislature had intended to accomplish a particular end it would have been a very simple matter for it to have employed appropriate language to express its intention; 'it would,' it has sometimes been said, 'have been easy to say so.' " 25 R.C.L. 973-74. Statutes § 225. According to the unamended Act of 1940 relied upon by the appellee in the motion to dismiss, there is no provision which would qualify an appellant to be surety merely because he has assets over and above the requirements of the bond. Let us again review the said statute, and ascertain anew the only four enacted means whereby an appellee might be legally indemnified in matters on appeal; they are: 1. By two sureties, who must be freeholders or householders possessed of unencumbered real property sufficient to cover the penalty. 2. By tender of cash. 3. By tender of checks, bonds or other negotiable se-

curity capable of being readily converted into cash. 4. By surrender of deeds for unencumbered real property.

If the lawmakers had intended that a fifth mode of indemnifying an appellee should be allowed, they would have so legislated. We are therefore of opinion that this Court should not have implied that the Legislature intended more than was specifically expressed. Any decision of this Court which can be properly shown to be contrary to and in excess of specific requirements of the enacted statutes of Liberia, or which might not be supported by such existing statutes on a given point, should properly be overruled. In view of all that has been said herein, we think it is legally and constitutionally correct that that portion of the Gabbidon opinion which provides that agents and managers of corporations and firms, whose companies have assets over and above amounts named in a bond might be surety, should be, and the same is hereby overruled. We are convinced that, besides the fact that there is no statute providing for this mode of indemnifying an appellee, the practice affords convenience for dishonesty and fraud. We therefore lay it down in this opinion that, hereafter, indemnification of parties in all civil and criminal cases, and of appellants in all cases on appeal, shall be in accordance with our bail statute ; that is to say, either by tender of cash or by tender of checks, bonds or other negotiable securities, or by surrender of deeds for unencumbered real property, or by recognizance with at least two sureties who shall be freeholders possessed of unencumbered real property to cover. That, in our opinion was the purport of the statute, and that shall be our interpretation. We are therefore of the opinion that the motion to dismiss the appeal in the case under review before us, should be, and the same is hereby granted.

Appeal dismissed.

Yangah v Melton [1954] LRSC 37; 12 LLR 178 (1954) (10 December 1954)

D. TOGAI, Appellant, v. WESLEY JOHNSON, Appellee.
APPEAL FROM THE PROVISIONAL AND MONTHLY COURT OF THE DISTRICT OF CAREYSBURG.

Argued
November 9, 1954. Decided December 10, 1954. 1. An action may not be dismissed on the pleadings alone after commencement of trial of the facts. 2. Issues of law raised in the pleadings must be decided before trial of issues of fact.

Appellant instituted an action of debt against appellee in the court below, which ruled the case to trial without having disposed of all issues of law raised in the pleadings. The trial was adjourned, and subsequently the complaint was dismissed on the pleadings by the new trial Judge. On appeal to this Court, reversed and remanded for reconsideration of issues of law and, if necessary, re-trial of facts..

J. Dossen
Richards for appellant. W. J. Johns for appellee.
MR. JUSTICE BARCLAY delivered the opinion of the Court.* This is a case on appeal from the Provisional Monthly and Probate Court of the District of Careysburg. It appears from the record before us that appellant, plaintiff in the court below, instituted an action of debt for $290 balance allegedly due him on $30o which he claimed and demanded as damages from said defendant, Wesley Johnson, now appellee, for cohabiting with his wife, she being at the time pregnant. Appellant alleged that defendant had admitted the act, and had agreed to
Mr. Chief Justice Russell was absent because of illness, and took no part in this case.

dred acres, occupied by said Mulley Yangah, and from operating and building houses thereon, or from carrying on building construction on said premises pending the disposition of the aforesaid action of ejectment, thereby protecting and covering appellant's property rights in and to said portion of land during litigation. The pleadings progressed as far as the rejoinder, and the trial of the law issues was held. The trial court dismissed the complaint and dissolved the injunction on the ground that the complaint was filed in the law division of the court and not the equity division. The plaintiff, in his reply, had averred that the insertion of the word, "law," was typographical and had asked the court to amend it; but the court refused to

do so on the ground that none of the letters which spell "law" spell "equity," neither do any of the letters which spell "equity" spell "law." That was the main ground upon which the action was dismissed. To this the plaintiff, below, now appellant, excepted and has brought the case before this Court upon a bill of exceptions containing two counts which are as follows : "1. Because appellant says that Your Honor erred when, on May 8, 1952, Your Honor dismissed the entire law pleadings of plaintiff, to which ruling appellant duly excepted. "2. And also because appellant says that, upon application to the clerk of court on May 19, 1952, for a copy of Your Honor's ruling rendered on May 8, 1952, in order that appellant might traverse the errors complained of in said ruling, the clerk of court wrote to the counsel for appellant the following note : `Dear Counsellor Johns, the rulings are in possession of the Judge for correction; hence I am not in position to furnish you requested copies.' To which practice on the part of the court the appellant excepts as prejudicial to his interests in that said ruling should have been filed in the office

of the clerk of court immediately after its rendition by the Judge and should not afterwards be taken home by the Judge and altered in anywise after its rendition in court." We shall now proceed to consider in regular order the exceptions of the appellant as contained in his bill of exceptions. The Legislature, in creating the Circuit Courts, directed that all matters in equity shall be entitled : "in Equity Division." L. 1911-12, p. 5, sec. 6. The complaint of the plaintiff below, now appellant, is venued in the law division of the court, although it is well settled that actions of injunction fall within the equity jurisdiction. This Court cannot concede the contention of the appellant that the word, "law," in the venue of his complaint is typographical, since the word, "law," is spelled differently from the word, "equity." This Court would regard it as a typographical error if, for instance, the letter, "u," or "i," had been left out of the word, "equity." That would give the word a pronunciation pretty near the correct pronunciation, and under the doctrine of "idem sonans," the omission of the letter, would be regarded as typographical, and the lower court would be required to amend same so as to mete out substantial justice. Rev. Stat., § 305. But since no such typographical error is involved in the present case, Count "1" of the bill of exceptions is not sustained. Count "2" of the bill of exceptions alleges that appellant applied to the clerk of the court on May is, 1952, for a copy of the Judge's ruling rendered on May 8, 1952, in order to traverse the errors complained of in said ruling, but that the clerk of the court wrote him that because the ruling was in the possession of the Judge for correction, the said clerk was not in a position to furnish appellant with a copy thereof. Such practice on part of the Judge, appellant excepts to as prejudicial. The clerk of the court wrote counsel for appellant that the Judge had the ruling in his possession for correction,

but counsel, in the latter portion of Count "2" of his bill of exceptions, charges the Judge with having
altered the ruling. It is settled law that a court may correct its records or judgment 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. Although the act of the Judge in removing the ruling from the clerk's office and keeping it for several days before returning
it, as alleged by the counsel for plaintiff, might not have proceeded from a sinister motive, and we verily believe did not, we strongly
deprecate such a practice because the human mind is apt to think to the contrary, since "the imagination of man is continually evil."
We therefore warn all Judges of subordinate courts against such practice. Counsel for appellant not having made any showing before
this court that the ruling was altered, and the pleading upon which it is predicated showing that the ruling includes nothing extraneous,
this Court is of the opinion that the interests of the appellant have not been prejudiced, and hereby warns counsellors and attorneys
against charging a Judge with commission of an act which they cannot prove. Cotint "2" of the bill of exceptions is therefore not
sustained. Another issue was raised by defendants in Count "4" of the answer, but not included in the bill of exceptions: "A writ
of injunction should not issue to enjoin a defendant from the use of property of which he is in possession under a claim of title
adverse to that of plaintiff. Exhibit 'C,' herein made profert, not only clearly indicates the adverse possession of the defendant
in this suit, but also the fact that said defendant is in actual occupancy and possession of the one hundred acres of land the subject
of these proceedings." This Court is of the opinion that the action was brought to restrain and enjoin the defendants not from operating
and building houses on the lands for which Melton holds

title, which are Lots Numbers 66-72, but from
entering upon and building houses and operating on any portion of plaintiff's land, which is Lot Number 14; and if, indeed, defendant
did by mistake, overstep his own **land and begin operating on any portion of the plaintiff's land**, he could not claim adverse possession
thereby, since possession thus obtained cannot be regarded as adverse. Therefore, in such a case, a writ of injunction may legally
issue to conserve and protect property rights in and to said property, as well as to restrain a trespass on such lands pending the termination of a suit
at law, as for instance an action of ejectment. The trial Judge, therefore, under the circumstances, erred in sustaining this contention.
It is the opinion of this Court that the ruling of the lower court dismissing the action because the complaint was not venued in
the equity division of that court is correct ; and said ruling is affirmed with costs against the appellant. And it is hereby so
ordered. Affirmed.

Togai v Johnson [1954] LRSC 36; 12 LLR 176 (1954) (10 December 1954)

D. TOGAI, Appellant, v. WESLEY JOHNSON, Appellee.
APPEAL FROM THE PROVISIONAL AND MONTHLY COURT OF THE DISTRICT OF CAREYSBURG.

Argued
November 9, 1954. Decided December 10, 1954. 1. An action may not be dismissed on the pleadings alone after commencement of trial of the facts. 2. Issues of law raised in the pleadings must be decided before trial of issues of fact.

Appellant instituted an action of debt against appellee in the court below, which ruled the case to trial without having disposed of all issues of law raised in the pleadings. The trial was adjourned, and subsequently the complaint was dismissed on the pleadings by the new trial Judge. On appeal to this Court, reversed and remanded for reconsideration of issues of law and, if necessary, re-trial of facts.

J. Dossen
Richards for appellant.
appellee.

W. A. Johns for

MR. JUSTICE BARCLAY delivered the opinion of the Court.* This is a case on appeal from the Provisional Monthly and Probate Court of the District of Careysburg. It appears from the record before us that appellant, plaintiff in the court below, instituted an action of debt for $290 balance allegedly due him on $30o which he claimed and demanded as damages from said defendant, Wesley Johnson, now appellee, for cohabiting with his wife, she being at the time pregnant. Appellant alleged that defendant had admitted the act, and had agreed to

* Mr. Chief Justice Russell was absent because of illness, and took no part in this case.

dred acres, occupied by said Mulley Yangah, and from operating and building houses thereon, or from carrying on building construction on said premises pending the disposition of the aforesaid action of ejectment, thereby protecting and covering appellant's property rights in and to said portion of land during litigation. The pleadings progressed as far as the rejoinder, and the trial of the law issues was held. The trial court dismissed the complaint and dissolved the injunction

on the ground that the complaint was filed in the law division of the court and not the equity division. The plaintiff, in his reply, had averred that the insertion of the word, "law," was typographical and had asked the court to amend it; but the court refused to do so on the ground that none of the letters which spell "law" spell "equity," neither do any of the letters which spell "equity" spell "law." That was the main ground upon which the action was dismissed. To this the plaintiff, below, now appellant, excepted and has brought the case before this Court upon a bill of exceptions containing two counts which are as follows : "1. Because appellant says that Your Honor erred when, on May 8, 1952, Your Honor dismissed the entire law pleadings of plaintiff, to which ruling appellant duly excepted. "2. And also because appellant says that, upon application to the clerk of court on May 19, 1952, for a copy of Your Honor's ruling rendered on May 8, 1952, in order that appellant might traverse the errors complained of in said ruling, the clerk of court wrote to the counsel for appellant the following note : `Dear Counsellor Johns, the rulings are in possession of the Judge for correction; hence I am not in position to furnish you requested copies.' To which practice on the part of the court the appellant excepts as prejudicial to his interests in that said ruling should have been filed in the office

of the clerk of court immediately after its rendition by the Judge and should not afterwards be taken home by the Judge and altered in anywise after its rendition in court." We shall now proceed to consider in regular order the exceptions of the appellant as contained in his bill of exceptions. The Legislature, in creating the Circuit Courts, directed that all matters in equity shall be entitled : "in Equity Division." L. 1911-12, p. 5, sec. 6. The complaint of the plaintiff below, now appellant, is venued in the law division of the court, although it is well settled that actions of injunction fall within the equity jurisdiction. This Court cannot concede the contention of the appellant that the word, "law," in the venue of his complaint is typographical, since the word, "law," is spelled differently from the word, "equity." This Court would regard it as a typographical error if, for instance, the letter, "u," or "i," had been left out of the word, "equity." That would give the word a pronunciation pretty near the correct pronunciation, and under the doctrine of "idem sonans," the omission of the letter, would be regarded as typographical, and the lower court would be required to amend same so as to mete out substantial justice. Rev. Stat., § 305. But since no such typographical error is involved in the present case, Count "1" of the bill of exceptions is not sustained. Count "2" of the bill of exceptions alleges that appellant applied to the clerk of the court on May 15, 1952, for a copy of the Judge's ruling rendered on May 8, 1952, in order to traverse the errors complained of in said ruling, but that the clerk of the court wrote him that because the ruling was in the possession of the Judge for correction, the said clerk was not in a position to furnish appellant with a copy thereof. Such practice on part of the Judge, appellant excepts

to as prejudicial. The clerk of the court wrote counsel for appellant that the Judge had the ruling in his possession for correction,

but counsel, in the latter portion of Count "2" of his bill of exceptions, charges the Judge with having altered the ruling. It is settled law that a court may correct its records or judgment 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. Although the act of the Judge in removing the ruling from the clerk's office and keeping it for several days before returning it, as alleged by the counsel for plaintiff, might not have proceeded from a sinister motive, and we verily believe did not, we strongly deprecate such a practice because the human mind is apt to think to the contrary, since "the imagination of man is continually evil." We therefore warn all Judges of subordinate courts against such practice. Counsel for appellant not having made any showing before this court that the ruling was altered, and the pleading upon which it is predicated showing that the ruling includes nothing extraneous, this Court is of the opinion that the interests of the appellant have not been prejudiced, and hereby warns counsellors and attorneys against charging a Judge with commission of an act which they cannot prove. CoUnt "2" of the bill of exceptions is therefore not sustained. Another issue was raised by defendants in Count "4" of the answer, but not included in the bill of exceptions: "A writ of injunction should not issue to enjoin a defendant from the use of property of which he is in possession under a claim of title adverse to that of plaintiff. Exhibit `C,' herein made profert, not only clearly indicates the adverse possession of the defendant in this suit, but also the fact that said defendant is in actual occupancy and possession of the one hundred acres of land the subject of these proceedings." This Court is of the opinion that the action was brought to restrain and enjoin the defendants not from operating and building houses on the lands for which Melton holds

title, which are Lots Numbers 66-72, but from entering upon and building houses and operating on any portion of plaintiff's land, which is Lot Number 14 ; and if, indeed, defendant did by mistake, overstep his own land and begin operating on any portion of the plaintiff's land, he could not claim adverse possession thereby, since possession thus obtained cannot be regarded as adverse. Therefore, in such a case, a writ of injunction may legally issue to conserve and protect property rights in and to said property, as well as to restrain a trespass on such lands pending the termination of a suit at law, as for instance an action of ejectment. The trial Judge, therefore, under the circumstances, erred in sustaining this contention. It is the opinion of this Court that the ruling of the lower court dismissing the action because the complaint was not venued in the equity division of that court is correct; and said ruling is affirmed with costs against the appellant. And it is hereby so ordered. Affirmed.

Moore v Mensah et al [1953] LRSC 5; 11 LLR 339 (1953) (29 May 1953)

A. L. MOORE, Appellant, v. ALFRED MENSAH, STEPHEN LAWSON, and CHARLES C. CHEEKS, Appellees.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued March 18, 1953. Decided May 29, 1953. 1. One who seeks an injunction to prohibit an invasion of real property must prove his title or interest in the property. 2. Equity will not grant an injunction to prohibit an invasion of real property where the petitioner's title is uncertain.

Appellant instituted a suit to enjoin appellees from surveying property to a portion of which appellant claimed title after pleadings were filed. Appellees moved for dissolution of the writ, and the Circuit Court granted the motion. On appeal to this Court, judgment affirmed.
T. Gyibli Collins for appellant. Richard A. Henries

for appellees. MR. Court.
JUSTICE SHANNON

delivered the opinion of the

This is an appeal from the Civil Law Court of the Sixth Judicial Circuit, Montserrado County. Appellant instituted an action of injunction seeking to prohibit the appellees from performing a survey which appellant alleged was aimed to cut off a portion of her property. We quote as follows from the petition by which the

instant proceeding was commenced : "A. L. Moore, plaintiff, complains that she is the lawful owner of two blocks of land situated in the settlement of Upper Johnsonville, in the County and Republic aforesaid, the same being one ten-acre block

and one twenty-five-acre block, both containing rubber, and both of which pieces of property she is at present operating for livelihood ; and that the above-named defendants intend to survey said tracts of land in order to cut off the said twenty-five-acre block without any just cause whatsoever. "Wherefore she, the said plaintiff, prays this court to enjoin and restrain the said defendants from doing the said act or acts which they intend to do as aforesaid." After the writ of injunction as prayed for had been duly issued, the appellees appeared and filed an answer alleging that the twenty-five-acre block of land which they intended to survey had been regularly and legally acquired from the estate of the late John M. Moore, who, during the argument of the case before us, was shown to have been the husband of the appellant A. L. Moore. It was also shown that the deed executed by the estate was signed by the said A. L. Moore as a co-administrator. Furthermore the appellees alleged as follows in their answer: "And also because defendants submit that an injunction may not properly be issued without proof of title; and, in the prayer of plaintiff's petition, there appears nothing tending to establish the plaintiff's ownership of the twenty-five-acre block referred to. The complaint should therefore be dismissed, and the defendants so pray. Plaintiff should have filed a main suit in which she could show title to the property she now seeks to enjoy unlawfully." Despite the nature of the answer the appellant filed only a general reply worded as follows : "A. L. Moore, plaintiff, denies that the allegation contained in the answer filed by the defendants to her complaint, as relating to the twenty-five acres of land alleged to have been bought by Stephen Lawson from the administrators of the late John M. Moore's estate, as evidenced by a purported copy of deed marked-Ex-

hibit 93' of the said answer, furnishes a sufficient defense to this action ; and also denies the truth of the allegations." This Court finds it difficult to understand why, in view of the answer, wherein an administrator's deed from the estate of the late John M. Moore, which deed appears on its face to have been signed by the appellant as one of the administrators, was adduced, the appellant elected to file only a general reply, without pleading a special traverse. The appellees moved the court for dissolution of the injunction, as provided by our statutes and supported by common law. 1 Rev. Stat. 460, sec. 344 ; 43 C·J·S· 977 78, Injunctions, §§ 24o-55; 28 Am. Jur. 831, Injunctions, § 318; 14 R.C.L., 466-67, Injunctions, § 167. This motion was heard and granted. Our statutes declare : "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. . . ." 1841 Digest, pt. II, tit. II, ch. I, sec. 8; z Hub. 1525. Under the well-known equitable maxims that "He who comes to equity must come with clean hands," and "He who seeks equity must do equity," it cannot be gainsaid that, before the powers of a court of equity can properly be exercised, there must exist some specifically equitable right to such relief, particularly in the case of an injunction, which has always been characterized as the "strong arm of equity." This principle is in perfect harmony with our statutory definition, supra; of an action of injunction. In the present proceeding the appellant seeks to enjoin the appellees from surveying a portion of land over which the said appellant claims ownership but without alleging the nature of such ownership. The bare allegation that "she is the lawful owner of two blocks of land

situated in the settlement of Upper Johnsonville, in the County and Republic aforesaid," without stating the nature and character of her ownership, gives her no right either in law or in equity. "Injunctions, like other equitable remedies, will issue only at the instance of a suitor who has sufficient title or interest in the right or property sought to be protected. . . . An impending or threatened invasion of some legal right of the complainant, and some interest in preventing the wrong sought to be perpetrated must be shown. It is always a ground for denying Injunction that the party seeking it has insufficient title or interest to sustain it, and no claim to the ultimate relief sought--in other words, that he shows no equity. Want of equity on the part of the plaintiff in attempting to use the injunctive process of the court to enforce a mere barren right will justify the court in refusing the relief even though the defendant has little equity on his side. The complainant's right or title, moreover, must be clear and unquestioned, for equity, as a rule, will not take cognizance of disputes respecting title, and will not lend its preventive aid by injunction where the complainant's title or right is doubtful or disputed. He must stand on the strength of his own right or title, rather than on the weakness of that claimed by his adversary." 28 Am. Jur. 516-17, Injunctions, § 26. This principle of law has the support of virtually all leading authorities. In the case before us the appellant failed to show title to the property; and, consequently, no court could properly apply the powers of equity in her favor. In answer to questions from the bench seeking information as to her title, her counsel sought to explain that she derived it from her late husband, but was silent as to how the said title had passed to her. Counsel for appellant apparently assumed that the ruling of the trial judge dissolving the injunction rested upon

the theory that an action in ejectment should have
been filed. In so assuming, counsel lost sight of several other pertinent
issues and made the following the only point of his brief
: "Where there is an ouster of one party and possession of another, ejectment
can only be maintained by one out of possession." The
appellee rightly contended that there should have been a principal action to
try title to which the appellant's application for an
injunction should have been ancillary. But such an action need not
necessarily have been one of ejectment. We therefore affirm the
decree of the trial judge with costs against the appellant, plaintiff below,
without prejudice to other actions or remedies; and
it is hereby so ordered. Affirmed.

Railey v Brewer et al [1945] LRSC 9; 9 LLR 64 (1945) (4 May 1945)

JAMES A. RAILEY, Administrator of the Estate of the Late LOUIS A. RAILEY,
Plaintiff-in-Error, v. GEORGE T. BREWER and His Honor NUGENT
H. GIBSON, Commissioner of Probate, Montserrado County, Defendants-in-Error.
PETITION FOR WRIT OF ERROR TO MONTHLY AND PROBATE COURT,
MONTSERRADO COUNTY.

Argued April 4, 1945. Decided May 4, 1945. A decree of distribution by a
Commissioner of Probate is in error
if it grants rights to a person claiming as widow of the decedent where there
is some question about whether she has been divorced
and also if it is not known whether there were just claims against the estate
which remained unsettled.

Claimants to the estate
of Louis A. Railey petitioned in the Monthly and Probate Court of Montserrado
County for an accounting and closing of the estate.
Said petition was substantially granted by the Commissioner of Probate. The
plaintiff-in-error, the administrator of the estate,
respondent in the Probate Court, applied for a writ of error to bring the
case before this Court for review. Mr. Justice David in
Chambers heard the petition and denied same. On appeal to this Court en banc,
petition for writ of error granted.
Charles B. Reeves
and James A. Railey for plaintiffin-error. D. Bartholomew Cooper for
defendant-inerror.

MR. JUSTICE SHANNON delivered the opinion
of the Court. This is a writ of error proceeding growing out of another case
pending before the Monthly and Probate Court, Montserrado
County, entitled, "Petition for

Proper Accounting and Closing of the Estate of the late Louis A. Railey,"

and the facts culled from the records submitted and from the briefs of the parties are substantially as follows: Louis A. Railey, late of the city of Monrovia, died and, it appearing that he executed no last will and testament, his brother James A. Railey, who afterwards became administrator and is also a party to these proceedings, applied to the aforesaid court to administer the estate of his said late brother, which application was granted, and he and the late Charles H. A. Scott, also of this city, were appointed administrators. At this stage and perhaps earlier commenced what appears to us to be nothing short of an attempt to commit a crusade of frauds by the said James A. Railey upon the estate of his late brother Louis A. Railey. It is necessary to here mention as is also gathered from the said records that the late James A. Railey, Senior, father of the present James A. Railey and the late Louis A. Railey, died possessed of a certain parcel or lot of land situated and being in the city of Monrovia and, according to the records of said city, described as lot Number two on Ashmun Street, which said lot also appears to have been exempted under the Homestead Exemption Act by the said James A. Railey, Senior, and such exemption never revoked during his lifetime. Many years after the demise of the said James A. Railey, Senior, the present James A. Railey actually mortgaged this identical piece of land to the J. J. Roberts Fund of the Methodist Church and, the mortgage period having expired or being about to expire, he was unable to raise the money required, and so the responsibility to do so, upon his the said James A. Railey's application, devolved upon his brother Louis A. Railey who did so and thereby dissolved the mortgage lien that was on the property. Because of this, the said James A. Railey and his wife Ethel Railey executed a quitclaim deed in the

year 1931 to the said Louis A. Railey for what was their right and interest in and to said piece of land, and this quitclaim deed was duly admitted to probate and registered apparently without protest from anyone whatever. Therefore, at the time of the demise of the said Louis A. Railey in 1939, he was, to all intents and purposes and by virtue of said quitclaim deed, entitled to the possession and enjoyment of said property as against the said James A. Railey and his wife Ethel Railey. James A. Railey, well knowing this fact, after the death of the said Louis A. Railey sought to mortgage said lot of land, claiming it to be his deceased brother Louis A. Railey's, with a view, as he claimed in a written instrument proffered in the briefs of the defendants-in-error, to meeting the burial expenses of his said late brother Louis A. Railey. And not only did he do this but he also joined with his coadministrator in listing this said piece of land in the inventory taken by them of the property, both real and personal, of the said Louis A. Railey. This effort at mortgaging having proved abortive, his next move was to apply to the judge of the probate court to cause to be deleted from the inventory of said estate this piece of land for reasons shown in his said application, that it was not the property of the said Louis A. Railey but rather that of the late James A. Railey, Senior, their father, who during his lifetime

had exempted it under the Homestead Exemption Act which said exemption had not up to the time of his death been revoked by him. The judge seemed to have granted this application, obviously without having caused a hearing to be had on said application. James A. Railey, by virtue of his appointment as administrator of his late brother's estate, commenced the administration of the estate, and, his co-administrator, Charles H. A. Scott, having died, the said administration was apparently left solely to him, the said James A.

Railey. It was at this time that George T. Brewer, Senior, holding a power of attorney from Annie Railey and Louis A. Railey, claiming to be widow and heir respectively of the late Louis A. Railey, petitioned the probate court for a proper accounting and closing of the estate of their claimed husband and father. Answering this petition, James A. Railey, besides raising several issues against the probate court entertaining and granting said petition, yielded the contention of the heirship of Louis A. Railey, the minor son of Annie Brewer Railey, to the late Louis A. Railey, but contested the correctness of Annie Brewer Railey's claim as widow of the said Louis A. Railey, deceased, because of the alleged termination of divorce proceedings between the said Annie Brewer Railey and Louis A. Railey, deceased, wherein, it is contended, judgment had been entered and a bill of divorcement had been issued. It is necessary to mention that the matter of the property in question, lot Number two situated and lying on Ashmun Street, Monrovia, was involved in this petition for a proper accounting and closing of the estate, the petitioners before the probate court claiming it to be part of the estate of the late Louis A. Railey whilst the respondents insisted that it was no part of said estate because it was a piece or lot of land exempted under the Homestead Exemption Act by the late James A. Railey, Senior, deceased, a long time before his death which said homestead exemption has never since been revoked. The Commissioner of Probate overruled the several issues raised in the answer of the respondents and granted the petition substantially. It is upon this ruling of the Commissioner of Probate that a writ of error has been prayed to review same, since indeed under the facts and circumstances narrated in the petition for a writ of error it is apparent that a regular appeal could not have been prayed for and taken. Upon hearing of the petition by

His Honor Mr. Justice David in Chambers he denied it, and so the matter has been brought on an appeal from his Chambers to the full bench. This Court looks with great disfavor upon the several acts of James A. Railey, plaintiff-in-error, both as an administrator and in his personal capacity as brother of the late Louis A. Railey which, to all intents and purposes, carry semblance of intended fraud on his late brother's estate and minor child; and it does not require strain to say that courts

of justice will not and cannot lend aid and support to such practices. The courts are not expected to permit parties to take advantage of their own wrong. However, from what is observed hereinafter, the writ of error as prayed for is granted. We reserve to ourselves a more elaborate expression on these acts of the said James A. Railey. We quote the following from the ruling of His Honor Mr. Justice David who presided in Chambers: "After considering the issues presented by the pleadings in this cause as also the facts brought out by the arguments of both the plaintiff-in-error and counsel for defendants-in-error, this Court says that supposing the contention set up by said plaintiff-in-error against Annie Railey enjoying any share and/or interest in and to the estate of the late Louis A. Railey who it is alleged had been divorced be taken as sufficiently cogent, still the fact remains that since there is no dispute as to the heir being legitimate and according to the Deed of Purchase filed in this Court the real property in question was the fee simple property of the late Louis A. Railey up to the time of his death--James A. Railey having sold his share and interest in and to said piece of real property to Louis A. Railey for $503.00 as appears by copy of the Deed of Purchase filed by defendants-in-error in this cause, the ruling of His Honour the Commissioner of Probate relating to this matter ought not to be disturbed :

therefore the petition of the plaintiff-in-error should be denied with costs of these proceedings against him ;
AND IT IS HEREBY
SO ORDERED."

We are in absolute accord with the premises of His Honor Mr. Justice David and with the conclusion that because of this there is no dispute about the heirship of the minor child of Annie Railey; but because of the still disputed and quite unclear claim of Annie Railey as a widow of the said Louis A. Railey, which dispute and lack of clarity has been accentuated by the certificate filed by her and by her son and issued to them by the clerk of the Circuit Court for the Fourth Judicial Circuit, Maryland County, we find ourselves compelled to disagree with the final conclusions denying the petition for, if Annie Railey has not succeeded in showing and proving her widowhood, then the one-third right and interest given her by the decree of the Commissioner of Probate must be corrected. The said certificate reads as follows: "CERTIFICATE OF NON-ISSUANCE OF BILL OF DIVORCEMENT IN THE CASE: RAILEY VERSUS RAILEY. "Annie R. Railey, plaintiff Action of versus Divorce for Louis A. Railey, defendant Desertion. "I hereby certify that although Final Decree of Divorcement in the above entitled action was rendered by His Honour Nete Sie Brownell, Judge first judicial circuit, assigned to preside over the fourth judicial circuit at its November Term A.D. 1938; yet up to the writing of this certificate, no bill of divorcement has been issued by the Clerk of this Court. "I further certify that after said Final Decree of Divorcement was rendered by the above named Judge, plaintiff in the year 1939 on the 9th day of October filed in the Office of the Clerk a Petition for

relief ; said cause was docketed and remained on the docket until the year 1943 when it was ordered
stricken from the docket by the Judge. (See Clerk's report for December Quarter A.D. 1943.) "Issued this 7th day of March A.D. 1944.
[Sgd.] J. CYRIL GIBSON for W. FRED GIBSON (Seal) Clerk 4th Jud. Cir. Court, Md. Co." Further to the above, since the proceedings
were instituted for the purpose of seeking and obtaining a proper accounting of the administrator and an eventual closing of the
estate, it appears to us both puzzling and inexplicable how the Commissioner of Probate assumed to distribute the said estate in
the manner done without first having received and passed upon the report of the administrator which would carry the accounts as prayed
for and which said report alone could have given the information as to whether or not there were just claims against said estate which remained unsettled, since it is only
upon the settlement of all such just claims against an estate that the residue, if any, is handed the heirs. In view of these anomalies,
together with the still unclear claim of Annie Brewer Railey to widowhood of the late Louis A. Railey, we are of the opinion that
the writ of error as prayed for should be granted so that alleged errors complained of may be reviewed, and to this end the clerk
of this Court is directed to send a mandate to the said probate court to the effect that certified copies of all and sundry records
in the matter be prepared and sent to this Court within ninety days from the receipt and recording of the judgment and opinion of
this case, costs to abide final determination of the matter ; and it is hereby so ordered.* Petition granted.
· Mr. Justice David
does not agree with the conclusions reach-d by the majority of his col!.,:tues in this opinion and therefore dissents.

Zogai et al v Gemayel Bros et al [1938] LRSC 10; 6 LLR 238 (1938) (22 April 1938)

CHIEFS ZOGAI and GIJEY of Ghbli Town, Appellants, v. GEMAYEL BROTHERS, represented by HENRY GEMAYEL, Agent for GEMAYEL BROTHERS in Liberia, Appellee.
APPEAL FROM JUDGMENT IN ACTION OF TRESPASS.

Argued April 5, 6, 1938. Decided April 22, 1938. 1. In common law cases as the subject of this case, affidavit to the complaint is unnecessary, and if attached and defective, should be rejected as
mere surplusage. 2. All persons who have a joint interest in the result of a suit must join in an action to protect their interest,
but where they have a separate interest and sustain a separate damage they may and must sue separately. 3. In section 23, page 44,

of Chapter IV, Old Blue Book, the word "bar" is a typographical error and should be "bail."

Plaintiff-appellants brought an action for trespass against defendant-appellees, which was dismissed on the law by the trial judge. On appeal to this Court, reversed and remanded for trial. Anthony Barclay and S. David Coleman for appellants. L. Garwo Freeman and A. B. Ricks for appellees.

MR. CHIEF JUSTICE GRIMES delivered the opinion of the Court. The plaintiffs in this case complain substantially that I) they are the lawful owners of a certain tract of land in their complaint described, same being part of a five hundred eighty-five acre reserve granted them by a deed from the Republic of Liberia dated the 2oth day of July, 1928; that some time previous to the 2nd day of November, 1934, Gemayel Brothers, defendants, unlawfully and forcibly entered upon and took possession of the premises which, on said znd day of November, 1934, the plaintiffs had demised unto Elias Brothers and, in

spite of notice from said plaintiffs to said defendants to vacate the premises so demised as aforesaid, remained in possession, thus depriving plaintiffs of the rents that would otherwise have accrued to them from the agreement of lease duly executed to Elias Brothers as aforesaid. 2) That by reason of the premises they, said plaintiffs, had been compelled to engage lawyers to file an action of ejectment against defendants, which action terminated by two pleas in the answer of defendants filed on September 3, 1936, averring that said defendants had vacated said premises which pleas, the complaint further alleges, were filed one year, ten months and one day after the illegal and forcible entry of defendants thereon. 3) That said defendants carried on mercantile business in a house on said premises which, when vacating same, they, the said defendants, left in a dilapidated condition. The defendants filed an answer which contained nine pleas, most of them dilatory, and to three of which we shall soon give very careful attention, after which the pleadings continued up to the rebutter before issue was finally joined. During the reading of the records at the bar of this Court it was discovered that when the case was on trial in the court below His Honor Judge David, the trial Judge, considered and passed upon three only of the many questions raised in the voluminous pleadings; hence not only are said three points the only ones legitimately before us for consideration, but also the respective parties have mutually agreed that upon the decision of said three questions they are content to stand or fall. To these three points we shall now therefore proceed to give our attention. In the second plea of the answer it is submitted that the affidavit to the complaint is defective since affiants in subscribing the jurat signed : "Chiefs Zogai and Gijey,

plaintiffs" instead of "Chiefs Zogai and town, plaintiffs." In the sixth and seventh pleas of
the answer the contention is made that plaintiffs twice withdrew the suit of ejectment, and after the second withdrawal filed this
action of damages for trespass ; that inasmuch as section 23 on page 44 of chapter IV of the Old Blue Book provides that "The plaintiff
may once amend his complaint or withdraw it, and file a new one at any time before the case is ready for trial, but he must pay the whole costs of the action, incurred by both parties, up to
the time of such amendment, and if he change his form of action, he shall lose the benefit of bar; if any has been given." Therefore
plaintiffs were barred from bringing this suit. These were the three points upon which the trial Judge dismissed the case, and to
which exceptions having been taken the cause was regularly appealed to us for review. Dealing with these points seriatim the Court
here desires to reiterate what has repeatedly been expressed in a less formal manner, that according to the rules in vogue in courts
of equity an affidavit to the complaint (more correctly termed "bill" in equity pleadings) always had a special use that it would
not have in the course of common law. Nor was it customary to attach affidavits to pleadings in common law cases in this country
until after the adoption of the Revised Statutes, which merely gives forms of affidavits in sundry cases, unless the plaintiff was
applying for writ of attachment or writs of attachment and arrest, in which cases, and in but a very few others in our common law
courts, the statutes provide that the complaint must be verified by affidavit, and the gist of what such affidavit must contain.
Carefully examining the question during the two days that the case was pending at this bar and since, we have not been able to discover
any statute which prescribes as a general rule that an affidavit must necessarily be attached to a corn-

plaint or other pleadings in common law cases as is necessary to be done in proceedings in the equity and perhaps admiralty
courts. That the construction we now put upon the question submitted is not our mere ipse dixit seems to be borne out by the following
statement from 31 Cyclopedia of Law and Procedure, page 526, paragraphs B (r) and (2) which read : "A verification as used in this
title is a statement under oath, that a pleading is true. "In actions at law pleadings need not in general be verified by oath, where
no verification is required by statute. But statutes or rules in many states have made it necessary to verify certain pleadings or
pleadings setting up certain causes of action or defenses. Under some statutes all pleadings must be verified ; in others, if any
pleading is verified, all subsequent pleadings of fact must be verified, which implies that, where a pleading is unverified, each
subsequent pleading may be verified. . . . The chancery rule requiring verification applies to pleadings in an equity suit, and not
to statutory equitable pleadings in a law action." Hence, it is our opinion that in the common law case, 6f. as in the one now under

review, an affidavit to the complaint was unnecessary, and if attached and defective as alleged by defendants, should have been rejected as mere surplusage. But was it really defective as defendants contended here? According to the law providing for the government of the aboriginal districts under which the **land in question was granted to plaintiff, the land** was granted to the Chiefs Zogai and Gijey as trustees for the people of Gleeta. Every family, it is true, had a right to have up to twenty-five acres assigned it for agricultural purposes, but such possession in common as the law provides does not entitle any owner to vote or to exercise such other

acts of dominion as are a concomitant of fee simple ownership, unless upon petition to the Executive Government for a division of the **land** in severalty, which the Executive may grant following certain conditions stated in the enactment, viz. : being satisfied that the people are sufficiently intelligent and civilized. Acts 1904-05, page 25, section 2. According to the deed it would appear that the Chiefs Zogai and Gijey were the cestuis que trust. They both signed the jurat as affiants, hence if the affidavit had been necessary, and we have just held that it wasn't, two signatures would have been sufficient in consonance with the provision that: "Where several parties join in a pleading, it is held as a rule, in the absence of any statutory provision to the contrary, that a verific a tion thereof by one of them is sufficient. Some of the codes, however, provide that the verification by one of the parties shall be sufficient only when they are united in interest,. and this is held to apply even where the parties joining in the pleading are husband and wife. Where husband and wife are sued for a debt of the wife when sole, her oath and not that of her husband is required to support the pleadings." 31 Cyc. 538, ¶ VIII, B, 3b. This opinion of ours does not conflict with that in the , case Blacklidge v. Blacklidge, 1 L.L.R. 371 (1901) which, it will be observed, was a suit in equity, and moreover an action of injunction controlled by a specific statute, that found on page 38, section 37 of Chapter 2, of the Old Blue Book. Coming to the second point, we must first inquire what is meant by the legal term "non-joinder." The general principle of law is that all persons who have a joint interest in the result of a suit must join in an action to protect their interests. Limiting our consideration, at this time, to actions ex delicto we find in Bouvier the following:

"Joint owners must, in general, join in an action for a tortious injury to their property. . . . "The grantor and grantee of **land cannot join in a counter-claim for continuing trespasses on the land** sold, since their rights of action are not joint. .. ." 2 B.L.D. 170I, "Joinder." Also in is Encyclopaedia of Pleading & Practice, page 541, paragraphs (a)--(c),

we have the following: "Where two or more persons have a separate interest and sustain a separate damage they may and must sue separately, and cannot join even though their several injuries were caused by the same act. Thus, owners of property in severalty may not join as plaintiffs in an action for an injury to such property. This rule is but an application of the principle already stated that persons with and without interest cannot join as plaintiffs. "Persons who have a separate interest, but who sustain a joint damage by reason of the defendant's tort, may sue either jointly or separately at their option. "Persons who have a joint interest must sue jointly for an injury to such interest. Joint owners of property must unite as plaintiffs in one action for an injury thereto or for a conversion thereof." Applying the above test, could Elias Brothers have legally been made joint plaintiffs without violating another rule, that of misjoinder of plaintiffs? Plaintiffs, according to the allegations contained in the complaint filed, are suing: First, for a forceable entry by defendants, now appellees, upon premises which were appellants', and which appellees attempted to occupy by adverse possession, while the relation between appellants and Elias Brothers was that of landlord and tenant. In the second count appellants based their claim to damages upon appellees' having forcibly ejected their tenants, which deprived appellants of the rents they would have been entitled to receive from their tenants Elias Brothers had

their tenancy not been thus forcibly invaded and determined. In the third count they sue for their vacating the premises, leaving the building thereon out of repair. Only on the first one of these counts might Elias Brothers have been entitled to an action against appellees, which action, it would seem, would be separate and not in conjunction with that of appellants. Hence, in our opinion the trial judge incorrectly decided that there was a nonjoinder of parties plaintiff. The arguments advanced on the third point that claimed the attention of the trial judge were very interesting, and the research necessary to arrive at a correct decision was not only illuminating but profitable to us, and we hope will be of benefit to the practice at large. Section r of Art. V of the Constitution of Liberia provides that: "All laws now in force in the Commonwealth of Liberia and not repugnant to this constitution, shall be in force as the laws of the Republic of Liberia, until they shall be repealed by the Legislature." Among those laws thus ordered incorporated into our old statutes commonly called the Old Blue Book were the legal forms and principles printed on pages 22 to 82 of said book. The one of these which was the subject of attack in the sixth count of defendants' answer is section 23 on page 44 of Chapter IV which reads : "The plaintiff may once amend his complaint or withdraw it, and file a new one at any time before the case is ready for trial, but he must pay the whole costs of the action, incurred by both parties, up to the time of such amendment, and if he change his form of action, he shall lose the benefit of bar, if any has been given." But going back to the old statutes of the days of the Commonwealth, said provision which is also section 23 of Chapter IV, reads : "The plaintiff may once amend his complaint or withdraw it, and file a new one at any time

before the case

LIBERIAN LAW REPORTS

245

is ready for trial, but he must pay the whole costs of the action, incurred by both
parties, up to the time of such amendment, and if he change his form of action, he shall lose the benefit of bail, if any has been
given." Hence the two are identical in every respect save that in transcribing copyist obviously changed the word "bail" to "bar."
Making that one correction, the whole section becomes clear and eliminates all the ambiguities, suppositions, and sophistries that
were advanced. For other reasons it had become clear to us that that section was inapplicable to the case at bar, and this discovery
has made what was already plain still clearer. It follows then that his honor the trial judge having, in our opinion, erred in each
one of the points upon which his decision is placed, we have no alternative but to reverse said judgment, and remand said case so
that plaintiffs may have an opportunity of establishing by evidence the allegations of fact contained in their complaint. Costs of
these proceedings to be paid by appellees; and it is hereby so ordered. Reversed.

Cole v Cole [1949] LRSC 8; 10 LLR 110 (1949) (6 January 1949)

JAMES W. DAVIES, Plaintiff-in-Error, v. ERNEST J. YANCY, Executor, OLIVE E. DENT, Co-Executrix, and HELENA E. YANCY-ELLIS, Co-Executrix,
of the Will of the Late ALLEN N. YANCY, and His Honor W. MONROE PHELPS, Defendants-in-Error.
WRIT OF ERROR TO THE CIRCUIT COURT OF
THE FOURTH JUDICIAL CIRCUIT, MARYLAND COUNTY.

Argued November 23, December 8, 1948. Decided January 6, 1949. 1. 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. 2. Illness of counsel is good ground for a continuance of a cause. 3. Judges ought
never to hurry to dispose of a matter if so doing would be prejudicial to the interests of the parties.

Ernest J. Yancy, a defendant-in-error
herein, offered an executor's deed for probate to which James W. Davies, plaintiff-in-error herein, filed objections; withdrew them,
and filed new objections. The circuit court postponed the case on notice that the leading lawyer for the objector, plaintiff-in-error

herein, was ill, and asked for briefs from both parties which, in addition to presenting their respective positions, were to include answers to questions propounded by the judge. The case was resumed and, without arguments, the judge dismissed the objections on the ground of alleged nonpayment of costs when new objections were filed, a point which was not in the questionnaire. Upon resumption the assisting attorney, Cooper, took over the case without instructions to do so, and did not except to the ruling in the case. The case is now before this Court on writ of error issued by Mr. Justice Shannon in chambers on petition of plaintiff-inerror. Judgment reversed and case remanded and the Bar Committee directed to require Attorney Cooper to show cause why he should not be disbarred and to report its findings to this Court.

J. G. Kolenky and John Cooper for plaintiff-in-error. 0. Natty B. Davis for defendants-in-error.
MR. JUSTICE RUSSELL

delivered the opinion of the

Court. On September 8, 1945, an application for a writ of error was filed in the office of the clerk of this Court by one James W. Davies, plaintiff-in-error, in the above-entitled cause against His Honor W. Monroe Phelps, Ernest J. Yancy, and the executrices of the last will and testament of the late Allen N. Yancy of Maryland County. The said application was heard in the chambers of our distinguished colleague, His Honor Mr. Justice Shannon, who handed down an exhaustive opinion granting said writ. A transcript of the records of the trial court was sent hither for review by this Court so that if any errors were found to have been committed at the trial same could be corrected. After hearing the case and inspecting the records sent hither for our review, we are so much in agreement with the ruling handed down by the Justice presiding in chambers that we shall, with a view to giving an adequate background for the facts in the case, quote at length therefrom. "Before the Circuit Court for the fourth judicial circuit, Maryland County, Ernest J. Yancy, one of the defendants-in-error in these proceedings, offered an Executor's Deed for admission to probate, to which James W. Davies, plaintiff-in-error, filed objections ; but upon the filing of an Answer which seriously attacked the legal sufficiency of said objections, they were withdrawn and new objections substituted and filed. "At the May Term A.D. 1945 of Court for that Circuit, presided over by His Honour Judge Phelps, the matter came up for hearing on the 25th day of May when the following record was made:

" 'Case No. 3 on the Probate Docket--Yancy
versus Davies, objections to the probation of a deed was called, when
Counsellor Wilson gave notice that he represented the respondents
and Attorney John R. Cooper gave notice that he and Attorney Milton
represented the objector, but that Attorney Milton is the leading lawyer, and
not being in Court, he is not able to proceed in his absence as Attorney
Milton is in possession of all
the pleadings and documents relative to the case. " 'In this respect the
court says that it is in possession of a note under this
date from Attorney Milton advising that he is ill and consequently cannot do
any work today in the line of argument. The court postponed
the arguments for Monday the 8th inst., the asst. counsel to Attorney Milton
to notify him accordingly.' "It appears from the above
record made that the court was correct to accept and regard Attorney Milton
as the leading lawyer in the case on behalf of the objector
especially since there is nothing on the record to show that the respondents
made the least objections to the making of said record
or even excepted to its being made. "However, before suspending the cause,
the same record shows that because of an apparently voluminous
and burdensome set of pleadings in the case, the court, `in order to enable
it [to] give ample and adequate consideration and [a]
decision in the controversies pleaded,' ordered 'counsel for both parties to
the action to condense their pleadings in the form of
briefs, in which the law upon which their contentions rely must be cited,'
and in the preparation of said briefs certain questionnaires
were put to the respective counsels for 'response' therein." Quite strangely
and without any record of court to show that the barrier
which was in the way of . hearing and disposing of the objections was
removed, or that the reason

which
necessitated the postponement no longer existed, the judge on May 31, 1945,
resumed the case and, without hearing the arguments and
without a record of waiver of the same having been shown, proceeded to give
his ruling on the legal issues, wherein he dismissed
the objections and ordered the deed admitted to probate. The ruling was based
upon the solitary point of the alleged nonpayment of
costs at the time of renewing said objections, which issue was not included
in the questionnaires referred to above; and said ruling
did not pass upon the points which the judge, in said questionnaires,
considered necessary and salient to a decision upon the pleadings
of the cause. The question as to nonpayment of costs on the amendment or
withdrawal of a complaint has long been settled by this
Court in the case Ernest v. McFoy, 2 L.L.R. 295 (1918), involving debt, when
Mr. Justice Johnson, later Chief Justice, speaking for the Court, said inter
alia: "By the statute laws
of Liberia, a plaintiff may once amend his complaint, or withdraw it and file
a new one; but he must pay the whole costs of the action

up to the time of such withdrawal. (See Lib. Stat., ch. IV, p. 44, sec. 23.) "This, however, does not apply to a withdrawal of the whole case; for by such withdrawal, the case being withdrawn from its jurisdiction, the court has no power to award costs. "Where, however, a case is withdrawn and reentered, the court may make the payment of the first costs a condition for hearing the case; a failure to pay such costs before re-entering the case is not however legal grounds for dismissing the action. The costs may be paid nunc pro tune." Id. at 296. It is therefore evident that the trial judge erred when he dismissed said cause on the ground of nonpayment of costs. It is not explained how it is that the matter was re-

sumed and the ruling entered in face of the record of May 25, 1945, evidencing Attorney Milton's illness. In addition, a certificate issued by Attorney Milton and filed as an exhibit to the application and not attacked or resisted clearly shows that his illness continued to the extent that he was obliged to enter the hospital of Firestone Plantations Company, which is where he was when the said ruling was entered, and consequently he was unable to enter exceptions thereto whereby the objector, plaintiffin-error herein, would be enabled to prosecute a regular appeal. We quote Attorney Milton's certificate :

"HARPER, CAPE PALMAS,

June 6,1945.

"To WHOM IT MAY CONCERN:

"THIS IS TO CERTIFY that the case Yancy versus Davies of the fourth judicial circuit, Maryland County, as docketed, was called for hearing by the Assigned Judge W. Monroe Phelps, the undersigned being the leading lawyer and in possession of all the pleadings and facts was not at because of illness on the day when it was called for hearing. In making announcements the Asst. Atty. J. H. R. Cooper said that because of the fact Atty. Milton being the leading lawyer etc., as per record of the court he could not proceed with the case. The court accepted his observations and had the case postponed. Very unfortunately we did not get better, but instead got worse and had to go to the hospital for treatment where we were confined for five days, and in our absence, despite the fact that we had informed the court of our illness and requested the postponement of all our cases before it, the judge went into the matter in our absence, using the Asst. Atty. who had already given notice as per the records of the court of his inability to conduct the case, and rendered judgment in said matter to the detriment of our client's interest. "The Court was not even in possession of our con-

densed pleadings as per its request, neither did objector know that his matter was being had at the time in order that he might except to the ruling and give notice of appeal. "Said action on part of the court we feel was most unprofessional and further unfair to us and inequitable to our client. "Respectfully, "N. THEO. MILTON, Attorney-at-law."

The hostile attitude, however, of Attorney J. H. R. Cooper toward the interest of his client is shown by the following facts of record in this matter now before us. Despite his expressed inability to carry on and prosecute his client's interests in the absence of his colleague, Attorney Milton, the leading lawyer in the case, because said leading lawyer had all the pleadings and documents in his possession, Attorney Cooper subsequently was willing to carry on said interest in the absence of said Attorney Milton without either being briefed or instructed by the leading lawyer so to do. And further, the apparently careless and indifferent manner in which he handled said interest depicts either his actual incapacity or the fact that he had sold out his client's interest. This latter conclusion can be easily deduced from the certificate that Attorney Cooper was willing to give the opposing side, of which they have made profert in their resistance to the application for the writ of error. Said certificate reads as follows :
"To WHOM IT MAY CONCERN : "THIS IS TO CERTIFY that I, John H. R. Cooper,

Attorney-at-law, and qualified practitioner of the Maryland legal bar was retained as one of counsel by one James W. Davies of Gedetarbo in association with Attorney N. T. Milton and continued to defend said case in his behalf till the rendition of final ruling of Judge Phelps dismissing our renewed objections to

the probation of a certain Executor's Deed of the estate of the late Allen N. Yancy in favour of Ernest J. Yancy. "That the final taxing in court of the items of . . . [cost] as paid by the respondents, executor and executrices of the estate up to the time of withdrawal of our withdrawn objections, was done by me in association with counsel of the other side; and that because of my associate counsel N. Theo. Milton having told me previous to the final disposition of said matter that he was not much concern about the case [and] because of other obvious reasons justifying my actions from a legal and factual standpoint, I had no cause to except to the ruling of His Honour Judge Phelps and therefore did not except to said ruling on behalf of my said client. "JOHN R. COOPER, SR., Attorney-at-law.
"CAPE PALMAS, October I, 1945."

It must remain a mystery how

Attorney Cooper was both willing and able to handle the case to its conclusion in the face of the record he made on May 25, 1945, or why he was permitted so to do by the court in the absence of proof that he was either briefed or instructed by the leading lawyer in the case. We have carefully noted that Attorney Cooper in issuing said certificate to the opposite side did so with the express intention of prejudicing the interest of his client. For argument's sake, we might take it for granted that Attorney Milton did state to him that he was no longer concerned with the case. Nevertheless that should not have prevented Attorney Cooper from calling his client and exposing to him the situation as he saw it. However, Attorney Cooper preferred, though present, to refuse and neglect to announce exceptions or to pray an appeal from a judgment manifestly prejudicial to the interest of his client. We are of the considered opinion

that these acts of Attorney John H. R. Cooper disclosed by the records in the case at bar should be referred to the proper forum for investigation and discipline. It is also a cardinal rule that judges ought never to hasten in the disposal of a matter if so doing would be prejudicial to the interest of parties. In the case Burney v. Jantzen, [1935] LRSC 14; 4 L.L.R. 322, 2 New Ann. Ser. 162 (1935) involving debt, it was held that: "The law governing 'Continuances' as outlined by both criminal and civil law writers is plain and ought not to be misconstrued or misapplied. Among these grounds it is specifically stated that illness of counsel is good ground for 'Continuance' of any cause. We fail to see the sense of justice in the trial judge when he proceeded with the trial of said case and rendered final judgment against the defendant, now appellant. "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." Id. at 326. We are also of the opinion that the judge erred when he resumed the case, even though the time of postponement had been reached; and the court, in the absence of proof that Attorney Milton had recovered, should, in face of the record, have refused to accept the willingness of Attorney Cooper to proceed unless due care were taken to remove every possibility of a miscarriage of justice.
We are also of the opinion that Counsellor Wilson, who was of counsel for the defendants-in-error in the trial court, did not exercise that fraternal relationship which should pervade the atmosphere among advocates when

he demanded in the
absence of his adversary that the case be heard and determined. Burney v. Jantzen, supra. In view of the above and after a careful
review of the said records sent hither, we are of the opinion : ( ) that the judgment of the trial should be reversed and the case
remanded with instructions that it resume jurisdiction and hear the case de novo commencing with the arguments on the legal pleadings;
(2) that the clerk of this Court be instructed to send a certified copy of this opinion and the judgment which follows to the bar
committee of Maryland County, directing that it cite to appear before it the said Attorney John H. R. Cooper and require him to show
cause why he should not be forever disbarred from the practice of law in this Republic, and that it submit a record of its findings
and ruling in said matter to this Court at its March term, 1949; and (3) that costs of these proceedings be ruled against defendants-in-error;
and it is hereby so ordered.
Reversed.

PHILIP A. Z. BANKS for himself, for his Wife, AMY BANKS, and for his minor children, WILLIAM
BANKS and STELLA BANKS, Appellant, v. M. LULU HAYES, Appellee.
APPEAL FROM RULING CANCELLING WARRANTY DEED.

Argued November 16,
1948. Decided January 6, 1949. Equitable relief, affirmative or defensive, will be granted when the ignorance or misapprehension
of a party concerning the legal effect of a transaction in which he engages, or concerning his own legal rights which are to be affected,
is induced, procured, aided, or accompanied by inequitable conduct of the other parties.

On appeal to this Court from a ruling cancelling
a warranty deed and permitting the grantor to execute a corrected deed, Judgment affirmed and modified to require appellee to execute
a corrected deed.

T. Gyibli Collins for appellant. for appellee.
MR. JUSTICE REEVES

Richard A. Henries

delivered the opinion of
the

Court. Appellee M. Lulu Hayes, plaintiff in the lower court, filed a bill in equity for the cancellation of a warranty deed
which she had granted voluntarily to her niece Amy Banks and to her grandniece and grandnephew Stella Banks and William Banks with
the understanding that it was for the eastern half of lot number z68, a lot devised to her by her late brother H. B. Hayes of Monrovia.
However, appellee was subsequently apprised of the fact that said deed, which she had instructed Philip A. Z. Banks, the husband

of her said niece Amy Banks, to prepare, and which when presented was signed by her without scrutiny because of the confidence she reposed in the

said Philip A. Z. Banks, contained as boundaries a description of the whole lot, thereby fraudulently making the niece Amy Banks and the grandniece and grandnephew Stella and William Banks owners of the whole lot, contrary to her voluntary gift, and depriving her of the western half of the lot on which appellee had built a small house and there resided. Pleadings were conducted as far as the rejoinder. During the trial of said case, the court questioned counsel for defendant, now appellant: "Q. What quantity of **land** [did] Mrs. Hayes, petitioner, intend to convey to your client? A half or a whole lot? "A. Half of a lot, eastern half of lot No. z68. "Q. Looking at the title deed filed executed to you by Mrs. Hayes, petitioner, we find that although it refers to the eastern half of lot No. 268, yet still it goes on to say that the quantity of **land** transferred was one acre and since there are four lots to each acre of **land** in Monrovia, does it appear to you there is a contradiction in said deed since it is not certain whether one-half lot is intended to be conveyed or one acre? "A. It does not appear to me to be contradictory because of this additional clause in the description, to wit: 'meaning hereby to convey to the said Amy, William and Stella Banks the Eastern half of lot No. (268) Two hundred sixty-eight being the Eastern half of lot No. 268 Two hundred sixty eight and containing one quarter (%) acre of **land** and no more.' Without the prior explanatory clause, the description would be contradictory, but with this clear designation of the eastern half it is clearly obvious that the intention of the party was to convey the eastern half only and the surplusage does not make it contradictory.

"Q. Suppose at some future date this deed becomes the subject in a law suit and the question arose whether or not one-half of a lot or an acre was intended? If the parties to same be all dead, would not the court be justified in ruling in favour of those parties claiming under the grantee since it is a fundamental principle of law that deed must always be construed as against the grantor? "A. My previous answer clearly shows that the description was intended for the eastern half, but owing to the surplusage thereunder contained de fendants hold that if any action is necessary to eliminate or make clear that surplusage 'and concontaining one quarter ('4) acre of **land**,' a clear case of reformation would accrue to plaintiff and to [sic] cancellation, for obvious reasons, because the issue of fraud raised has been sufficiently traversed by defendants.
"Q. At the time this deed was executed and before this case was filed, was your client's attention drawn to the fact that although the deed called for half lot, yet still it also shows that one acre was conveyed? "A. I instructed my client when I was first retained

that she should discourage litigation and that although it was clear from the title deed in question that it was intended for the
eastern half only and not the whole that we should insert the boundaries of the eastern half and offer same to plaintiff before filing
any answer. This was done, that is, a deed was prepared with the boundaries of the eastern half of said lot, and delivered to plaintiff.
Subsequently we got to know that plaintiff denied doing equity by refusal to sign said deed in order that the reformation sought
might be conceded. We acted upon the principle of the maxim, 'he who seeks equity must also do

equity.'
By this refusal of plaintiff we came to know that she was [not] after correction of the deed, but wanted to deprive defendants of
the entire premises without any legal grounds therefor." The court then made the following ruling : "COURT IN RULING SAYS That since
the Defendant admits that the Plaintiff intended to convey to his client only the Eastern half of the lot Number 268 and since title deed proceeds further to show that one fourth
(%) of an acre was intended to be conveyed, it is apparent that a doubt arises whether one half of the lot, the whole lot being
equivalent to one (%) of an acre, was conveyed. This being the case, the court is of the opinion that there remains nothing to be
done but to cancel the deed and permit Mrs. Hayes to execute a deed for the Eastern half and if she refuses and defendant feels that
he has a legal and equitable right, he must proceed in an action of specific performance to compel her so to do. The court takes
this position because Equity not only discourages a multiplicity of suits, but delights to do justice in whole and not by halves.
And it is so ordered. To which Defendant excepted and announced an appeal to the Honourable Supreme Court to the October Term A.D.
1948. Costs against Defendant. Case suspended. Amount of bond $ioo.00." The following authority is pertinent: "Whatever be the effect
of a mistake pure and simple, there is no doubt that equitable relief, affirmative or defensive, will be granted when the ignorance
or misapprehension of a party concerning the legal effect of a transaction in which he engages, or concerning his own legal rights
which are to be affected, is induced, procured, aided, or accompanied by inequitable conduct of the other parties. It is not necessary
that such inequitable conduct should be intentionally misleading, much less that it should be actual fraud ;
:-

it is enough that the misconception of the law was the result of, or even aided or accompanied by, incorrect or misleading statements, or acts of the other party. When the mistake of law is pure and simple, the balance held by justice hangs even; but when the error is accompanied by any inequitable conduct of the other party, it inclines in favor of the one who is mistaken. The scope and limitations of this doctrine may be summed up in the proposition that a misapprehension of the law by one party, of which the others are aware at the time of entering into the transaction, but which they do not rectify, is a sufficient ground for equitable relief. A court of equity will not permit one party to take advantage and enjoy the benefits of an ignorance or mistake of law by the other, which he knew of and did not correct. While equity interposes under such circumstances, it follows a fortiori that when the mistake of law by one party is induced, aided, or accompanied by conduct of the other more positively inequitable, and containing elements of wrongful intent, such as misrepresentation, imposition, concealment, undue influence, breach of confidence reposed, mental weakness, or surprise, a court of equity will lend its aid and relief from the consequences of the error. The decisions illustrating this general rule are numerous, and it will be found that many of the cases in which relief has been granted contained, either openly or implicitly, some elements of such inequitable conduct." 2 Pomeroy, Equity Jurisprudence § 847, at 1727 (4th ed. 1918). It is therefore the considered opinion of this Court that . such part of the ruling of the judge of the lower court that is in harmony with the principles of equity be affirmed with an amendment to read as follows: That since the appellant admits that the plaintiff, now appellee, intended to convey only the eastern half of lot number 268 and since title deed proceeds further to show

that one-fourth of an acre was conveyed, it is apparent that a doubt arises whether one-half of the lot or the whole lot, which is equivalent to one-fourth of an acre, was conveyed. This being the case, the Court is of the opinion that there remains to be done nothing but to cancel the deed and to have Mrs. Hayes, appellee, have said lot surveyed and to execute with the least possible delay the deed as intended for the eastern half of said lot number 268 to her niece Amy Banks and to her grandniece and grandnephew Stella Banks and William Banks, on which her resident building does not stand; costs are adjudged against appellants; and it is hereby so ordered.

Affirmed as modified.

JOHNNY E. B. STUBBLEFIELD, Appellant, v. REPUBLIC OF LIBERIA, Appellee.
APPEAL FROM THE CIRCUIT
COURT OF THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued December 9, 1948. Decided January 6, 1949. A person criminally charged is entitled under our Constitution to have compulsory process to obtain witnesses in his favor, and it is error to deprive him of such. Where the sheriff did not attempt to summon a witness, it was error for the court during the trial to refuse to suspend the trial in order to obtain said witness.

On appeal from conviction of assault and battery with intent to kill, judgment reversed and case remanded.
Richard A. Henries for appellant. licitor General, for appellee. D. B. Cooper, So-

MR. JUSTICE SHANNON delivered the opinion of the Court. Appellant, defendant in the court below, was indicted, tried, and convicted of the offense of assault and battery with intent to kill before the Circuit Court for the First Judicial Circuit, Montserrado County, Criminal Assizes, presided over by His Honor W. 0. Davies-Bright, circuit judge by assignment. Appellant took exceptions and prayed an appeal to this Court.
The bill of exceptions presented to us for our consideration contains seven counts, the first two excepting to rulings entered by the trial judge upon objections made by the prosecution to questions propounded by the defense to witness James Moore, one of the private prosecutors, whilst on cross-examination. The first of the two questions sought to elicit from said witness whether or not the act charged against the defendant was committed "with malice aforethought," and

against it the prosecution interposed objections tending to show that the question of malice, according to sundry opinions of the Supreme Court, is one of law and should not be answered by the witness, but rather should be left to be determined from the facts and circumstances given in evidence, particularly from the character of the weapon used and the degree of injury inflicted. In addition, the prosecution contended, the question required expert testimony. The second question was, "Did the defendant use upon you or any of the other private prosecutors a deadly weapon?" The position of the trial judge in deciding against these questions upon the grounds that they required expert testimony and usurped the function of the jury is well founded in law and is therefore supported. The following is the third count of the bill of exceptions : "On the 12th of February 1948, the defendant appellant made the following observation and request of Court: 'defendant at this stage says that witnesses Joseph, Greboe and Amy Mingle persons referred to by both the prosecution and the defendant during this case as being on the spot, when the alleged incident took place, were by defendant requested to be summoned

to appear at Court on the morning of the loth February 1948, to testify on behalf of defendant. The Sheriff's returns shows that he could not find Joseph and Greboe, but does not show that he has made any effort to have Amy Mingle who is a very material witness and whose name also appears on the writ of summons summoned. The defense respectfully says that the testimony of these three witnesses are indispensible in his defence and therefore asks that the court will not conclude the case without the testimony of three witnesses being given for and on behalf of the defendant.' The court denied the said request, to which defendant excepted. (See records February 12, 1948.)"

The records certified to us disclose that when this request was submitted by the defendant, the prosecuting attorney, before resisting it, requested the court to have the defendant give the whereabouts of the supposed, as he called it, witness Amy Mingle so that the sheriff might diligently search for her and to have the defendant state the evidence which the three witnesses, who in the mind of the prosecution did not exist as evidenced by the sheriff's returns, would give, so that the prosecution could determine whether or not it would concede said testimony. Upon the court granting the request of the prosecution, the defense counsel said that to the best of his knowledge Amy Mingle was at Owensgrove. As to the demand that the defendant state the evidence which the three witnesses would give, the defense made the following statement as of record : "Joseph and Greboe having both been referred to by the private prosecutrix and the private prosecutors as being the two whoever were fighting on that evening makes it crystal clear that Joseph and Greboe do exist. The defendant in his testimony referred to and stated that it was Joseph who came to his rescue, and that both Greboe and Joseph were on the scene. They will enlighten the court as to how it happened that the private prosecutors and prosecutrix became burnt." Because of this record thus made by the defense, the prosecution waived objections and joined in requesting the court to suspend the case until the following morning at nine o'clock with a view particularly of finding Amy Mingle whose whereabouts had been given by the defendant; but notwithstanding this, the trial judge refused the application and ordered the case proceeded with. The trial judge seemed to have taken the position that the defendant ought to have secured these witnesses before the trial commenced and that since he had not done so he left no other impression but that they were not important or material witnesses. We find ourselves unable to agree

with this position, especially in face of the fact that these persons were referred to during the trial by both sides as being present at the time and place the offense charged was alleged to have been committed. The Constitution is so jealous of the rights of a person criminally charged that among the privileges and rights conserved to him are the right "to have compulsory process for obtaining witnesses in his favor; and to have a speedy, public and impartial trial by a jury of the vicinity," and the right not to "be deprived of life, liberty, property or privilege, but by judgment of his peers, or the law of the land." Lib. Const. art. I, §§ 7, 8, I Lib. Code 4. We are of the opinion that the request of the defendant for suspension of the trial until the next morning with a view to securing the attendance of his witnesses was sound and reasonable and the prosecuting attorney must have conceded this when he yielded and joined the defendant in making the request; its denial was, to say the least, a deprivation of defendant's constitutional rights, which should be frowned upon and deprecated. The motion for new trial ought therefore to have been granted. We are in substantial harmony with the ruling given by the trial judge on the motion in arrest of judgment. We might mention, however, that there appeared to be discrepancies in the several copies of the indictment furnished, but since the original was not before us and since we have decided to remand the case for a new trial we hesitate to make any comments thereon. These discrepancies are responsible for count two of the defendant's motion in arrest of judgment. The attention of the prosecution is called to it for such action to be taken as may clarify the situation. Because of what has been said herein, we have arrived at the conclusion that the judgment of the court below should be reversed and the case ordered remanded for new trial; and it is hereby so ordered. Reversed.

Case No. I. B. J. K. ANDERSON, III, Executor of the Estate of the Late B. J. K. ANDERSON,
II, Appellant, v. ALFRED ANDERSON, a Legatee of the Late B. J. K. ANDERSON, II, Appellee. Case No. II. J. F. B. COLEMAN, Appellant, v. EDWIN BARCLAY, Appellee.
MOTIONS TO DISMISS APPEALS.

Argued November 16, 18, 1948. Decided January 6, 1949. 1. The failure to file an appeal bond duly approved by the trial judge within sixty days after the rendition of final judgment is ground for the dismissal of the appeal. 2. The court will not entertain a case legally deficient in its records, and the omission of a copy of the appeal bond in the records is fatal.

On motions to dismiss appeals for want of jurisdiction, motions granted. No appearance for appellant in Case No. 1. Samuel C. M. Watkins for appellee in Case No. 1. A. B. Ricks for appellant in Case No. 2. Momolu S. Cooper for appellee in Case No. 2.
MR. JUSTICE
RUSSELL

delivered the opinion of the

Court. Because the points upon which the determination of the above-entitled causes hinge
are really the same, we have decided to blend our consideration of them in one opinion. The first cause, Anderson v. Anderson, involving
a petition to recover a legacy, emanates from the Monthly and Probate Court for Montserrado County. The latter

cause, Coleman v. Barclay, involving an action of debt, is brought on appeal from the Circuit Court for the Sixth Judicial
Circuit, Montserrado County. In each case the appellant, dissatisfied with the several rulings and final judgment of the trial court,
announced exceptions and prayed an appeal to this Court for a review of the proceedings in the court below. However, before either
of these causes was called for hearing, motions to dismiss were filed by each appellee, as follows: In the case Anderson v. Anderson:
"Because appellee says that there is no approved appeal bond filed by appellant to give this Honourable Court jurisdiction, in keeping
with law, therefore because of this palpable neglect and failure appellee submits, renders said appeal fatal; and this appellee is
ready to prove." In the case Coleman v. Barclay: "Because appellee says appellant failed and neglected to file an appeal bond, which
is one of the jurisdictional steps to be taken by a party wishing to appeal to this Court of dernier resort." Upon inspection of
the respective records, we have found the allegations in appellees' motions to be true; that is to say, no approved appeal bond was
filed in the former case, and no appeal bond at all was filed in the latter case. The principle involved in these two cases has been
so repeatedly enunciated from this Bench that any pronouncement that we might make can only be a repetition of what has already been
handed down by this Court in causes already heard and determined. Morris v. Republic, [1934] LRSC 16; 4 L.L.R. 125, i New Ann. Ser. 203 (1934). In the case Delaney v. Republic, [1935] LRSC 3; 4 L.L.R. 251, 2 New Ann. Ser. 86 (1935), involving forgery, His Honor Mr. Justice Dossen, speaking for the Court, said inter alia: "The Court
will not entertain a case legally defi-

cient in its records ; and the omission of a copy of the appeal bond in the records is fatal to an appeal. . . ." Id. at 254. It is quite clear therefore that the errors committed by appellants in the above-entitled causes are fatal to their appeals and consequently the appeals must be dismissed. Before concluding, however, we should like to again sound a warning note about the careless, indifferent, and reckless manner in which some advocates are wont to attend to the legal interests of their clients. We can comprehend no sound reason why a lawyer should fail to file an approved appeal bond, which is one of the cardinal steps necessary to be taken in the consummation of an appeal, and the lawyers who were responsible for bringing the appeals hither could not make any satisfactory reply when queried on this point by this Court. Such matters, in our opinion, are fit objects of inquiry for the bar committee, whose duty it is to assist in maintaining the highest standards for the bar. In view of the foregoing, we have no alternative but to dismiss the appeals and remand the cases to the respective trial courts with instructions that they resume jurisdiction and execute their judgments; costs ruled against appellants; and it is so ordered.
Motions granted.

CHARLES D. COLE, Appellant, v. WILLIETTE C. COLE, Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued November 17, 1948. Decided January 6, 1949. 1. Pleadings in a divorce action shall be conducted as in other civil cases except where such procedure is irreconcilable with the provisions of the Matrimonial Causes Act. 2. After denying a motion for new trial a judge cannot dissolve a verdict of the jury.

On appeal in divorce action from judgment for defendant, now appellee, which judgment also dissolved the verdict of the jury in favor of plaintiff, now appellant, judgment reversed. T. G. Collins for appellant. 0. Natty B. Davis for

appellee.
MR. JUSTICE REEVES

delivered the opinion of the Court.

In the December term, 1947, of the Circuit Court for the Sixth Judicial Circuit, Montserrado County, sitting in its law division, Charles D. Cole, appellant then plaintiff, instituted a divorce action, for desertion against Williette C. Cole, defendant now appellee.
A writ of summons was duly issued by the clerk of said court for the appellee and handed to the sheriff for Montserrado County to execute, which, according to his returns, he executed in the following manner: "On the 22nd day of November A. D. 1947 (Saturday) I duly summoned the within named defendant, Williette C. Cole and I gave [her] a copy of the complaint. I further notified her to

file her formal appearance on or before the 25th day of November A. D.

1947. I now submit this as my
Official Returns to the Clerk's Office. "Dated this 24th day of November, A. D. 1947. "[Sgd.] URIAS DIXON
Sheriff."

Although appellee
was summoned, nevertheless she neglected to appear or to file an answer. However, when the case was called for hearing the judge
of the lower court ordered the plea "not entitled to divorce" to be entered for the defendant, which order, although in conformity
with the Divorce Act of 1908, was an error because said act had been repealed by the subsequent Divorce Act of 1935-36 which does
not authorize such a position to be taken. "Pleadings in actions of divorce shall be conducted as in other civil causes except where
such procedure is irreconcilable with the provisions of this Act." L. 1935-36, ch. XVII, § 27. The appellee was confined to a bare
denial of the facts set forth in appellant's complaint. The case was tried and, according to records certified to this Court, the
jurors handed down a verdict entitling appellant to his divorce. On December 17, 1947, appellee, dissatisfied with said verdict, filed a motion for new trial on December 2o, 1947, which was considered
by the court which on January 5, 1948, handed down a ruling which denied said motion for new trial, and adjudged that the verdict
of the jury be dissolved as though it never existed and that the appellant, Charles D. Cole, be not entitled to divorce because of
the deception appellant practiced upon the court and upon the defending spouse. From this final judgment appellant, dissatisfied,
announced his appeal to this Court. We cannot imagine where the judge of the lower court obtained his authority to dissolve a verdict
of a jury, for under the statute when he denied the motion for new trial it was his imperative duty to have rendered final judgment
on said verdict.

"The court may set aside the verdict or decison of
the jury, and order a new trial,
whenever it shall be proved that the jury or any of them have received a bribe, or have conversed otherwise than openly in the presence
of the court, with any party to the suit, or agent of such party, on the subject of the trial, after being affirmed; or if any juryman
was related to either of the parties, or to the wife of either of the parties, as father, son or brother, or had himself any pecuniary
interest in the cause, or if the verdict shall be manifestly against the evidence, the law, or the legal instructions of the court,
or if the debt or damages found by the jury, be greatly too much or too little, when compared with the evidence in the cause.

"When

a verdict is set aside, it shall be the duty of the court to appoint as early a day, as conveniently may be, for a new trial." Stat. of Liberia (Old Blue Book), ch. VII, § 16, 19, 2 Hub. 1544. A judge in dispensing justice should always be guided by the law and not allow his personal motivations or his whims to actuate his taking any step or doing any act unauthorized by law. Finding ourselves unable to support such an unauthorized position taken by the judge of the lower court, we have arrived at the conclusion that the final judgment entered by him should be reversed, and because of what has been said herein this Court adjudges that the case be remanded with instructions to the lower court to assume jurisdiction and, upon the strength of the verdict which the trial court refused to disturb on a motion for new trial, to enter a final judgment dissolving the matrimonial covenant and relationship between appellant and appellee, with costs against appellee; and it is hereby so ordered. Reversed.

Williams et al v Tubman [1960] LRSC 47; 14 LLR 109 (1960) (6 May 1960)

JOHN N. WILLIAMS and ELLA E. WILLIAMS, Appellants, v. WILLIAM A. TUBMAN, Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT, MARYLAND COUNTY.

Argued April 5, 1960. Decided May 6, 1960. 1. Where an interest in real property is granted as security for a loan, the transaction is deemed a mortgage, and the grantor may claim an equity of redemption, subject to the conditions of the loan agreement. 2. The Supreme Court, upon review of the record on appeal, may affirm, reverse or render such other judgment as will, in its opinion, best effectuate the administration of justice, equity and law. 3. The statutory maximum legal rate of interest is ten percent per annum. 4. In foreclosure proceedings on a mortgage agreement which provides for payment of interest at a rate in excess of the statutory maximum legal rate, the court may render judgment including interest computed at the statutory maximum legal rate.

On appeal from a judgment of foreclosure of a mortgage, the Supreme Court modified the judgment of the court below with respect to rate of interest and equity of redemption. D. B. Cooper for appellants. appellee.
Momolu S. Cooper

for

MR. JUSTICE MITCHELL
delivered the opinion of the Court. The law of the land is clear and unequivocal that whenever a conveyance, assignment or any other

form of transfer of an estate in land is intended by the parties as security for money, whether this intention appears from the instrument or is established by other proof, the transaction is deemed a mortgage, and consequently the property is redeemable upon the performance of the conditions agreed to. Moreover, in a mortgage transaction, an action of debt will not lie. 1956 Code, tit. 29, § 155.

On May 13, 1956, John N. Williams and his wife, Ella E. Williams of the City of Harper, Maryland County, Republic of Liberia, executed a transfer deed to -William A. Tubman of the Settlement of Pleebo, Maryland County, for a certain parcel of farm land situated in Sodoke, in consideration of the sum of $2,240, according to the reading of the said deed. Concurrently with this transaction, William A. Tubman, the assignee, delivered to the grantors the following instrument : "Know all men by these presents that William Alfred Tubman has promised to sell John Williams forty acres of land (farm) more or less situated in the Sodoke District for the sum of two thousand two hundred and forty dollars ($2,240). This promise is good for eighteen (18) months. If the amount is paid within eighteen (18) months from date, will grant him a discount of 10 Jo monthly for the months lacking to make up the said eighteen months. This amount of $2,240 is made up of the principal of $800 paid to John Williams for said property as covered by his deed executed in my favor, plus the interest of to% monthly for eighteen months amounting to $2,240." [Sgd.] W. A. TUBMAN [Typed]
Wm. Alfred Tubman
"PLEEBO,

March 13, 1956." At the expiration of the eighteen-month period within which grantors, John N. Williams and his wife, Ella E. Williams, had promised to pay the amount according to the terms agreed upon, they had failed to make either partial or full payment; so then the mortgagee was obliged to file his petition in the equity division of the Circuit Court of the Fourth Judicial Circuit, Maryland County, for a foreclosure of the mortgage transaction between himself and the mortgagors now appellants. Respondent John N. Williams being without the bailiwick of the court at the time of the issuance of the sum-

mons, Ella E. Williams was summoned. She appeared and filed a special answer and special rejoinder; but before the case was heard, John N. Williams was summoned, and he too filed his answer and rejoinder. All issues of law involved were disposed of and matters of fact ruled to trial. At the May, 1959, term of the aforesaid court, evidence on both sides was heard. Depositions taken at the trial are voluminous and very interesting; but, for reasons which we shall explain later in this opinion, we feel it unnecessary to take recourse to them. The trial judge passed upon the evidence in a very elaborate and exploratory manner and tendered a final decree on May II,

1959, which he concluded in this wise: "Predicated upon the principles of law quoted above and the facts and circumstances brought out by the evidence, the court is of the mind that the allegations contained in the bill of the petitioners have been sufficiently proven by the evidence ; and the respondents are hereby ordered to pay forthwith over to the petitioner the amount of $2,240, constituting principal and interest up to and including September 13, 1957 which is the amount according to the agreed terms of the parties herein ; for under the law, the execution of any statement concurrently with the execution of a deed related to the same transaction is taken to have been issued along with the warranty. The fact of the issuance of the statement by the petitioner which the respondents admit receiving, showing the amount of principal and interest to be $2,240, to be paid within eighteen months as from March 13, 1956 to September 13, 1957, at a discount of ten percent should the said amount be paid in less than this period of time, with full right to have said piece of property without any objections from the respondents, binds them thereunder. In furtherance of the principles of equity and the evidence in this case, interest on said loan from

September 13, 1957, up to the date of this final decree is not allowed to run against the respondents herein. "Upon the failure of the respondents herein to make payment of the said amount of $2,24.0 forthwith, the court will have the said piece of property auctioned by the sheriff to the highest bidder and make payment of the said amount over to the petitioner ; the residue, if there be any, to settle the costs of this court herewith adjudged against the respondents herein. Costs against the respondents; and it is so ordered." Respondents excepted to this final decree and brought their appeal before this Court for review and final determination. The case was assigned and called for hearing on April 5, 1960, during the sitting of the March, 1960, term of this Court; and appellee's counsel through his brief filed, made a formal request which we quote here : "Since the facts and circumstances in this case are similar to those in Gibson v. Tubman, 13 L.L.R. 610 (1960), counsel for appellee prays the Court to give such judgment as will be just and equitable, ruling appellants to all costs." Appellants' counsel being present, the Court inquired of him if he acceded to the request of appellee's counsel or had objections to make thereon ; and he then sought permission and recorded the following on the records of the Court: "Counsel for appellants does not contest the position taken in the appellee's brief, but rather joins in requesting the Court to give such judgment as will be just and equitable; however, he differs with counsel for the appellee in so far as his request concerns the costs being ruled against the appellants, because the circumstances surrounding this case are not completely the same as those shown in Gibson v. Tubman, 13 L.L.R. 610 (1960), in that there is no showing according to the records in this case that fraud is apparent; but instead, the records show that effort was made by the

appellants herein, respondents below, to settle the transaction, which was not so in the Gibson case." Predicated upon the above-quoted records, counsel on both sides waived arguments; and because of that record, we deem it unnecessary to quote in this opinion any portion of the deposition in the court below. The conscientious approach made by counsel representing both appellants and appellee in this case does, in our opinion, exemplify outstanding integrity in professional conduct. This we regard to be a great mark of progress in the growing practice in our courts. A lawyer's integrity is one of his greatest tools. Considering the principles of law involved in this case, we shall first direct our attention to the question of the payment of costs raised by appellee's counsel and resisted by appellants' counsel. According to common law writers, before the passage of the Statute of Gloucester during the reign of Edward I, no costs were assessed against either of the parties in litigation ; but since that statute, it has been an accepted principle in all judicial forums that costs are awarded to the party who recovers in any court proceedings against his adversary. In this particular case at bar, it does appear from the records before us that appellants did attempt to redeem the mortgage transaction ; but it must be remembered that, although the mortgage was attempted to be redeemed, yet the attempt was not consummated ; and this has necessitated these foreclosure proceedings. Whereas it might not appear that there was any deliberate intent to deprive the appellee of his just and equitable claim against the appellants, yet, in consequence of appellee recovering against the appellants, there is no principle of law that would equitably authorize the assessment of costs against the appellee ; and therefore appellants' request in the respect cannot be conceded except the circumstances permitted the disallowance, which does not obtain. In the Gibson case, cited, supra, which has been referred to by counsel in this case, the actual amount

received was $2,000, on which the interest assessed was $3,600. In the case at bar, with the identical appellee, the amount received was $800, on which interest was required in the sum of $1,440, being charged at the rate of io% per month, or 120% per annum. The law frowns upon interest computed at so high a rate, and it must be regarded usurious. The court below, in considering the evidence and the law controlling, decreed that, since the respondents agreed to the interest computed, they could not at that point disavow their own acts, and therefore ordered the same paid together with the principal ; but since, under our law, this Court has the right, after the examination of the records presented in any case, to affirm, reverse or award such other judgment as within its opinion will best conserve the interest of law, justice and equity, we feel it our duty to give such judgment as justice and equity demand. We shall first quote the statute governing the permissible rate of interest: "It shall be permissible

by express agreement to charge any rate of interest not exceeding ten percent per year. When there is no express agreement as to the rate of interest to be charged in case of open accounts, promissory notes, bills of exchange, other negotiable paper, or other debts or obligations, the creditor shall be allowed six percent per year and no more." 1956 Code, tit. i 5, § 500. Although appellant John N. Williams, when on the witness stand, among other things, said in his statement in chief that there was no interest assessed to be paid on the amount which he then received when he assigned his property, yet, further stating, he admitted that, after expiration of the time agreed upon, he made effort to pay principal with interest of ten percent per annum. So then, this statement of his carries the conclusion that some rate of interest was decided upon to be paid by the mortgagors ; otherwise, it would have been our bounden duty to corn-

pute interest on the basis of six percent per annum and no more. In the absence of proof to the contrary, we are left with no alternative than to reverse the final decree of the court below in so far as it affects the interest computed on the principal, and reduce the same to that which is legally authorized, to the sum of ten percent per annum, beginning from March 13, 1956, which is the date on which the mortgage transaction was instituted, to the date of the rendition of this opinion. The principal amount being $800, interest thereon for this period totals $331.30, making the grand total of $1,131.30 and no more. This being a suit in equity, the appellants, respondents below, are hereby granted the period of six calendar months from the date of this judgment to exercise the right of equity redemption at the same rate of legal interest to be assessed on this additional period ; and if they fail to make redemption at the period above specified, which will extend to November 6, 1960, their rights in this respect shall be forever forfeited, and they shall be forever barred, both in law and equity ; at which time the court below is authorized to resume jurisdiction and dispose of the property by public auction, according to law, to the highest bidder by the Sheriff of Maryland County, and he shall apply the proceeds accruing from the aforesaid auction in paying over to the appellee in this case the sum of $1,131.30 with additional interest which may have accrued up to the time of the sale and all costs of court that may be then due, if any. The appellants are hereby ruled to pay all costs in these proceedings. And it is hereby so ordered.
Modified.

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Kollie v Kontoe et al [2001] LRSC 6; 40 LLR 398 (2001) (5 July 2001)

JOHN M. KOLLIE, Plaintiff-In-Error, v. HIS HONOUR J. BOIMA KONTOE, Assigned Circuit Judge, Sixth Judicial Circuit, Montserrado County, and PETER SOGBE, Defendants-In-Error.

PETITION FOR A WRIT OF ERROR AGAINST THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: March 21, 2001. Decided: July 5, 2001.

1. The denial of a request by a party for a jury trial is interlocutory and therefore reviewable by a writ of certiorari, and a party who fails to seek such review suffers laches and is precluded from seeking further remedial redress from the Supreme Court.

2. Where a lease agreement under which a party claims the right to occupancy of a parcel of **land** expires, a claim by the lessor to the property does not involve title, and hence, summary proceeding to recover real property is the appropriate remedy to pursue and will lie.

3. A trial judge is under no obligation to allow or permit a party defendant to produce evidence in a case at the call of the case for rendition of final judgment after a default judgment has been entered and the plaintiff has been allowed to produce and rest evidence.

4. In this jurisdiction, there is a time set by the trial judge for the trial of a case and a time for the rendition of judgment; a trial judge is therefore under no obligation to allow a party to produce evidence at the time of rendition of final judgment.

5. The application for a writ of error on the ground that the plaintiff-in-error has been deprived of his day in court is properly denied when a notice of assignment was duly served upon counsel for the plaintiff-in-error who had failed to appear in court on the trial date for trial.

6. A day in court means not so much the time appointed for hearing, as it does the opportunity to present a claim or right in a proper adversary proceeding before a competent tribunal.

7. A writ of error will issue only to a party who for good cause has failed to take an appeal from a judgment, decree, or order of a trial court or has lost his right to statutory appeal without laches on his part.

8. The term “good reason” means a disability or other cause over which the party had no control and which actually prevented the party from appearing before the trial court at the time of the rendition of the judgment, decree, or order in question.

The plaintiff-in-error, John M. Kollie, sought a writ of error against the trial judge and the co-defendant-in-error, Peter B. Sogbe, claiming that the trial court had entered judgment in his absence and that he had therefore been denied his day in court. The plaintiff-in-error, who had been sued by the co-defendant-in-error in summary proceeding to recover real property, asserted ownership to the same property claimed by the co-defendant-in-error. Neither the plaintiff-in-error nor his counsel was present in court at the call of the case for hearing on the merits. On application of the co-defendant-in-error, the trial judge entered a default judgment against the plaintiff-in-error and permitted the co-defendant-in-error to present evidence to substantiate the allegations made in the complaint and reply. Thereafter, when the case was assigned for the rendition of final judgment, the plaintiff-in-error moved the court to allow him to introduce evidence in his defense before a jury. The motion was denied and final judgment was rendered. The plaintiff-in-error contended that the trial judge's denial of his motion was a violation of his constitutional right to defend his property, and constituted a denial of his day in court, for which error will lie. He also argued that it was error for the judge not to allow him to present evidence to the jury to pass on the issue of fraud raised in his answer, and that summary proceeding to recover real property was not the right action since the parties in litigation had both claimed ownership to the disputed property.

The Supreme Court rejected the contention of the plaintiff-in-error that he was denied his day in court, noting that contrary to the assertion of the plaintiff-in-error's counsel that he was present in court at the time the case was assigned but that the trial judge and the co-defendant-in-error were absent, the records of the trial court clearly showed that on the date of the hearing the judge was in court and the plaintiff-in-error was absent; that the conclusion was buttressed by the records of the Gardnersville Magisterial Court which showed that on the same day the summary proceeding case was assigned for hearing, the counsel for the plaintiff-in-error was appearing in the aforementioned magisterial court, in preference to the superior circuit court; and that this fact was further confirmed by the affidavit executed by opposing counsel in the magisterial court case. The Court therefore concluded that the plaintiff-in-error had failed to show good reason why he was not present in court at the time the default judgment was prayed for and entered by the trial court.

With regard to the plaintiff-in-error's other claim that he was deprived of his day in court by the trial court's refusal to allow him to produce evidence at the time of rendition of final judgment, the Court noted that the trial judge was under no obligation to allow the introduction of evidence after it had entered a default judgment, permitted the introduction of evidence by the co-defendant, and assigned the case for the sole purpose of rendering final judgment.

The Court rejected the plaintiff-in-error's contention that summary proceedings to recover possession of real property was the wrong action, holding that since the lease agreement between the plaintiff-in-error and the co-defendant-in-error had expired, the issue of title was moot, and therefore the proper action was summary proceeding to recover possession of real property. Hence, it said, the trial court had jurisdiction over the matter. Accordingly, the Court denied the application for error and ordered the enforcement of the trial court's judgment.

James W. Zotaa of the Liberty Law Firm appeared for the plaintiff-in-error. Francis S. Korkpor of the Tiala Law Associates, Inc. appeared for the defendant-in-error.

MR. JUSTICE SACKOR delivered the opinion of the Court.

"A party against whom judgment has been taken, who has for good reason failed to make a timely announcement of the taking of an appeal from such judgment, may within six months after its rendition file with the clerk of the Supreme Court an application for leave for a review by the Supreme Court by writ of error". Civil Procedure Law, Rev. Code 1:16.24.

The co-defendant-in-error herein, Peter B. Sogbe, instituted in the Sixth Judicial Circuit Court, Montserrado County, during its March Term, A. D. 1998, an action of summary proceedings to recover possession of real property against the plaintiff-in-error, John Manady Kollie. Pleadings in the case progressed as far as the filing of an answer and rested upon the filing of the reply. The trial court ruled the case to trial following the disposition of the law issues and several motions filed by the plaintiff-in-error. Several notices of assignments were issued, served, and returned served, but the case was never heard by the trial court.

The case was assigned for hearing on May 13, 2000 at the hour of 10:00 a.m., upon a notice of assignment duly issued by the trial court, served, acknowledged by both parties, and returned served. The records in this case revealed that counsel for co-defendant-in-error prayed the trial court for an imperfect judgment due to the absence of the plaintiff-in-error and his counsel on the date of the hearing of the case. The application was granted by the trial court and the co-defendant-in-error was permitted to produce evidence, thereby making the imperfect judgment perfect. His Honour J. Boima Kontoe, presiding over the trial court by assignment, reserved ruling for the 17th day of May, A. D. 2000.

Thereafter, a notice of assignment was duly issued, served and returned served for the rendition of final judgment in the case on the 17th day of May, A. D. 2000. The records show that the parties appeared before the trial court on the 17th day of May, A. D. 2000, pursuant to the notice of assignment for the rendition of final judgment. At the call of the case for final judgment, counsel for the plaintiff-in-error made a submission praying the trial court to permit and allow his client, plaintiff-in-error herein, to introduce evidence in the case. The submission was resisted, argued, and denied. The plaintiff-in-error excepted to the ruling, which exception was noted by the trial court.

The final judgment was subsequently rendered in favor of the plaintiff in the court below, Peter W. Sogbe, now co-defendant-in-error. The clerk of the trial court was ordered to prepare a writ of possession to oust and evict the plaintiff-in-error from the premises and to place the co-defendant-in-error, Peter Sogbe, in possession of the subject property. The counsel for the plaintiff-in-error excepted to the final judgment and gave notice that he would take advantage of the statute. The exception was also noted by the court. The records in this case are devoid of any evidence that the plaintiff-in-error announced an appeal from the final judgment of the trial court, notwithstanding the presence of his legal counsel at the time of the rendition of the said judgment.

Meanwhile also, on the 17th day of May, A. D. 2000, the plaintiff-in-error filed a five-count petition for a writ of prohibition before Mr. Justice Wright, presiding in chambers during the March Term, A. D. 2000 of this Honourable Court. The plaintiff-in-error, petitioner in the prohibition proceed-ings, principally contended that the trial court had denied him his day in court. On the 18th day of May, A. D. 2000, the Chambers Justice issued a citation citing the parties to a conference on Friday, May 26, 2000, and stayed all further proceedings in the case pending the outcome of the conference. The conference was held on Thursday, June 1, 2000, following which the Chambers Justice denied the issuance of the writ. The trial court was mandated on the 1st day of June, A. D. 2000, to resume jurisdiction over the case and enforce its judgment. The trial court received this mandate on the 5th day of June, A. D. 2000, at the hour of 2:30 p.m. The records in this case do not show whether the mandate was read and enforced.

On the 19th day of June, A. D. 2000, the plaintiff-in-error filed a seven-count petition for a writ of error, and the alternative writ was ordered issued on the 20th day of June, A. D. 2000. In counts 2 and 3 of the petition, the plaintiff-in-error contended that he was denied his day in court, in that he and his counsel were present in court on May 13, 2000 from 9:30 a.m. up to 10:45 a.m.; that the case was heard at 11:45 a.m. after their departure; that the trial judge was not physically present for the hearing of the case; and that the counsel for the co-defendant-in-error acted as judge. The plaintiff-in-error annexed affidavits to his petition to prove that the trial judge was absent on the date scheduled for the hearing of this case.

This Court deems count 5 of the petition to be the only count relevant to the determination of this case. We hereunder quote the same verbatim for the benefit of this opinion.

“That on May 17, A. D. 2000, at 10:00 a.m. plaintiff-in-error and his counsel appeared and at the called of the case for final judgment, counsel for plaintiff-in-error announced representation and requested the co-defendant-in-error judge to make a submission, which was permitted. The submission in summary prayed the judge that since witnesses, three in number, were present in court, they be given the chance to take the stand in the interest of transparency given the circumstances under which the “trial” was held on May 13, 2000. The trial judge refused to give this chance to plaintiff-in-error, thereby denying the participation of plaintiff-in-error in the trial; and because of this denial plaintiff-in-error never had the opportunity to appeal the final judgment. This is another error which plaintiff-in-error prays to this court.”

The plaintiff-in-error raised and argued three contentions in his brief before this Honourable Court. The first contention raised by the plaintiff-in-error was that the denial of his request by the trial court to produce evidence in support of his claim before the rendition of final judgment on the 17th day of May, A. D. 2000 was a violation of his constitutional rights to defend his property and a denial of his day in court, for which the petition for the writ of error should be granted. The plaintiff-in-error maintained that the trial judge should have granted his request and allow him to participate in the trial, so that the judge could be able to weigh the evidence on both sides before rendering his final judgment.

The second contention raised by the plaintiff-in-error was that the denial of his request for a jury to pass on the issue of fraud raised in his answer, constituted an error. The counsel for the plaintiff-in-error argued that one of the parties had committed fraud, in that the probated copy of the lease agreement annexed to his answer stated that at the end of the 10 years of the lease, the ownership of the warehouse would be vested in him and that the house should be surrendered to the co-defendant-in-error, Peter B. Sogbe. On the other hand, he said, the copy of the lease exhibited with the complaint by the co-defendant-in-error indicated that both the warehouse and house should be surrendered to the co-defendant-in-error, plaintiff in the court below, at the end of the lease. In that regard, the counsel for plaintiff-in-error contended that his request for a jury trial should have been granted because of the two opposing statements of the lease, and that the failure of the judge to allow him to present evidence was a denial of the right of participation by plaintiff-in-error in the trial. He maintained that because of that denial, he did not have the opportunity to appeal from the final judgment.

The third and final contention raised by the plaintiff-in-error and argued before this Honourable Court was that summary proceeding to recover possession of real property cannot lie where both parties to the litigation claim ownership to the disputed parcel of **land** by paper title, and that the proper remedy is an action of ejectment. The plaintiff-in-error asserted that he relied on a squatter's right instrument, while the defendant-in-error relied on his lease agreement with the plaintiff-in-error and a squatter's right certificate, all of which were forms of paper title which should had been tried by a jury in an action of ejectment. On the basis of the foregoing, the plaintiff-in-error therefore prayed this Honourable Court to reverse the judgment of the trial judge and to remand the case for a new trial.

On the 27th day of June, A. D. 2000, the co-defendant-in-error, Peter B. Sogbe, filed a ten-count returns to the petition for a writ of error. We deem counts, 2, 3, 5, 9, and 10 to be worthy of determination of the case. In count 2 of the returns, the co-defendant-in-error contended that he invoked the rule on default judgment because of the absence of the plaintiff-in-error on the 13th day of May, A. D. 2000, the date assigned for the trial of the case, and that his application for default judgment was granted; and that, as provided by law, he was allowed to produce evidence to substantiate his claim. He maintained that the co-defendant-in-error judge, His Honour Boima Kontoe, was present in court on the 13th day of May, A. D. 2000, as evidenced by exhibit "DE/1" in bulk, being photocopies of minutes from the court for May 13, 2000, indicating the

matters handled for that day, including the reading of mandates from this Honourable Supreme Court. This Court hereunder quotes verbatim count 2 of the returns for the benefit of this opinion:

"That to show that the lawyer for plaintiff-in-error was not in court, it is an irrefutable fact that Counsellor James W. Zotaa, lawyer for the plaintiff-in-error was at the Gardnersville Magisterial Court in the case Winston Sandy v. Layee Kromah and Others to be identified on May 13, 2000 at 10:00 a. m., the same date, day and time on which the case, subject of this writ of error was assigned. Instead of attending to the circuit court matter, Counsellor Zotaa elected to subordinate the superior court case to that of the inferior court. In other words, he was present at the Gardnersville Magisterial Court on May 13, 2000, at 10:00 a. m. This is the real reason why he was not in court and therefore his client was adjudged in default and rightly so. DE/2 attached, which consists of a clerk's certificate and an affidavit from Counsellor Marcus R. Jones, perfectly substantiates this point.

In count 3 of the returns, the defendants-in-error contended that the default judgment was regularly prayed for and granted; that Co-defendant Sogbe had established his cause and rested evidence; that the trial judge had reserved his ruling; and that the only thing that remained to be done was for the co-defendant judge to give his final judgment, rather than permit the plaintiff-in-error to produce evidence in the case. We deem it expedient to hereunder quote verbatim count 5 of the returns for the benefit of this opinion:

"That also further to counts 4, 5 and 6 of the petition, co-defendant-in-error says that when final ruling was being rendered in the case, the lawyer for plaintiff-in-error was in court. He filed motion to be allowed to produce witness and this was resisted and denied. This infuriated him and he walked out of the court. But his associate, in person of Attorney Gbeisaye, was in court and he, instead of announcing an appeal, excepted to the court's final ruling and gave notice that he will take advantage of the statute made and provided. Your Honours are respectfully requested to take judicial notice of the records in the case, especially the final ruling made on May 17, 2000".

In count 9 of the returns, the defendants-in-error strongly contended that the writ of error could not take the place of an appeal, where a party was in court at the time of rendition of the final judgment but failed to announced an appeal. The defendants-in-error maintained that a writ of error cannot lie where a party excepts to the ruling and announces that he will take advantage of the law, rather than announcing an appeal from the ruling or judgment.

In count 10 of the returns, the defendants-in-error contended that a writ of error will lie where the plaintiff-in-error has failed to announce an appeal from a judgment due to a good cause. The defendants-in-error vehemently maintained in the said count that the plaintiff-in-error in the instant case had failed to state a good cause as to why he did not announce an appeal from the final judgment in this case. By this failure, they said, the plaintiff-in-error had not fulfilled the requirements for the granting of the writ of error.

The defendants-in-error argued three (3) points in their brief filed with this Honourable Court. The first contention was that the default judgment was correctly and regularly granted by the trial court, and that the granting of the said default judgment was due to the failure of plaintiff-in-error to appear for the hearing of this case upon a notice of assignment duly served on the parties and returned served. The defendants-in-error also argued before this Court that the trial judge was under no obligation to permit the plaintiff-in-error to take the stand and produce witnesses at the time of rendi-tion of final judgment when the plaintiff-in-error had failed to appear for the hearing of the case on May 13, 2000. Hence, they said, the trial judge properly dismissed the plaintiff-in-error's motion to be permitted to produce evidence.

The third point raised and argued by the defendants-in-error was that the plaintiff-in-error was present in court at the time of the rendition of the final judgment, but that his counsel failed to announce an appeal. The defendants-in-error also contended that the plaintiff-in-error had failed to state a good cause as to why he did not announce an appeal from the final judgment when he was present in court at the time of the rendition of the said judgment and when he was allowed to make a motion. The defendants-in-error therefore prayed this Honourable Court to deny and dismiss the writ of error and to mandate the trial court to resume jurisdiction over the case and enforce its judgment.

The salient issues for the determination of this case are:

1. Whether or not the plaintiff-in-error was denied his day in court for which a writ of error can be granted?

2. Whether or not the trial judge was under a legal obligation to allow and permit the plaintiff-in-error to produce evidence at the time of rendition of final judgment?

We pause for a moment to decide other issues raised in the brief and argued by the plaintiff-in-error. The plaintiff-in-error contended that one of the parties to this litigation committed fraud by changing the wordings of the lease. He argued that the reported copy of the lease exhibited by him with his answers provided that the warehouse be owned by him and that the house annexed thereto would be surrendered to the co-defendant-in-error at the end of the 10 year period of the lease. On the other hand, he said, the copy of the aforesaid lease, annexed to the complaint by the co-defendant-in-error, stated that both the warehouse and the house should be turned over to the co-defendant-in-error at the end of the lease. The plaintiff-in-error therefore argued that the denial of his demand for a jury trial constituted an error.

We observed from our review of the mentioned lease agreement that there was no provision therein which provided that the warehouse should be owned by the plaintiff-in-error at the end of the lease agreement, as contended and argued by him. But in any event, the denial by the co-defendant-in-error, Judge Kontoe, of the plaintiff-in-error request for a jury trial was interlocutory and therefore reviewable by a writ of certiorari. The plaintiff-in-error therefore suffered laches and waiver by his failure to seek a remedial redress from this Court.

The second contention advanced by the plaintiff-in-error before this Court was that summary proceedings to recover possession of real property cannot be granted where title is involved. The plaintiff-in-error relied on the strength of his squatters' right document, while the co-defendant-in-error relied on his squatter's right certificate and a lease agreement executed between him and the plaintiff-in-error. We deem it expedient to examine these instruments for the benefit of this opinion.

The squatter's right instrument issued by the Monrovia City Corporation under the signature of Mayor L. Kwia Johnson, dated April 15, 1980, granted to the plaintiff-in-error a parcel of **land** in West Point, measuring 35ft wide and 37ft long for the sole purpose of constructing a warehouse and a room (attached). The records in the case are devoid of any evidence indicating the construction of a warehouse and a room by the plaintiff-in-error on said parcel of **land**. The plaintiff-in-error exhibited an instrument marked "D15", which was a memorandum of understanding executed between the parties to this litigation and issued from the Office of the Township Commissioner of West Point, Honourable Dominic Jarteh, dated March 20, 1988. We herewith quote plaintiff-in-error exhibit "D/5" for the benefit of this opinion:

"This office, having intervened into the house issue between Mr. Peter B. Sogbe and Mamady Kollie with regards to the renovation and construction works due to the request of Mr. Mamady Kollie, it was agreed upon and understood that:

1. Mr. John Mamady Kollie, the tenant renovates and construct a four (4) room house attached with a warehouse on his own account and said expenses be liquidated by rental deduction partly.

2. Mr. John Mamady Kollie will occupy this house for the period of ten (10) years, and while living on this premises, Mr. Kollie shall pay the amount of ($850.00) eight hundred and fifty dollars annually, for which 50% shall go to the landlord and 50% goes to the tenant as payment against three (3) of the four (4) rooms.

3. After the total completion of the house and the liquidation of the expenses, the tenant, Mr. Mamady Kollie shall pay the full rent of the three (3) rooms and the warehouse and one room shall be given to him as his personal property for constructing the building.

4. Any law to the contrary not stipulated within this memorandum of understanding is notwithstanding."

A careful scrutiny of the above quoted memorandum of understanding clearly showed that the co-defendant-in-error was the owner and landlord of the subject property and that the plaintiff-in-error was his tenant; that the plaintiff-in-error, upon completion of the renovation and construction of the four-room house, which was to be attached to a warehouse, should have been given one room for constructing the premises; and that the period of occupation by the plaintiff-in-error was to be 10 years, for which he was to pay the annual rental of $850.00. The instrument

also provided that the tenant was required to renovate and construct the property at his own expense, and that 50% of the due annual rental was to be payable to the landlord while the other 50% was to go against the expenses incurred by the tenant in constructing the buildings. The instrument exhibited by the plaintiff-in-error, as tenant therein, negated his claim of ownership to the subject property.

The facts are clear therefore that the plaintiff-in-error, as lessee, and the co-defendant-in-error, as lessor, made and entered into a lease agreement on November 7, 1987, to take effect on January 1, 1988, for a warehouse and one room in the area known as Power Plant, West Point, for the annual rental of L$850, covering the period of 10 years. We quote verbatim clause 1 (one) of the lease agreement for the benefit of this opinion:

"1. I, Mr. Peter B. Sogbe, do agree to lease my warehouse and one room in Power Plant, West Point, to Mr. Mamady Kollie for the amount of $850.00 (eight hundred and fifty dollars) yearly. This amount will be divided into half for part of his expenses annually in the amount of $425.00 (four hundred and twenty-five dollars) to be given to me."

It is crystal clear from the language of clause I (one) of the lease agreement that Peter B. Sogbe, co-defendant-in-error, was the owner of the warehouse and a room located in Power Plant, West Point, leased by the plaintiff-in-error for the period of 10 years for the annual rental of L$850.00. The lease agreement is not disputed by the plaintiff-in-error. We hold therefore that there was no title in issue following the expiration of the lease agreement. Thus, summary proceeding to recover possession of real property can lie. Civil Procedure Law, Rev. Code 1:62.21.

We shall now decide the two salient issues in this case in the reverse order. The first issue is whether the trial judge was under a legal obligation to allow and permit the plaintiff-in-error to produce evidence at the rendition of the final judgment in this case? The answer to this question is no. The records in this case show that the notice of assignment was duly issued, served and returned served for the rendition of final judgment in the case. We disagree with the contention of the plaintiff-in-error that he should have been permitted and allowed to produce evidence at the time of rendition of final judgment. It is an elementary principle of law, practice and procedure hoary with age in our jurisdiction that there is a time set forth by the trial judge for a trial and a time for rendition of final judgment in a case. The trial judge was therefore under no obligation to have allowed the plaintiff-in-error to produce evidence at the time of rendition of final judgment in this case.

The second and final issue for the determination of this case is whether or not the plaintiff-in-error was denied his day in court for which a writ of error can be granted? The plaintiff-in-error contended that he appeared on the 13th day of May, A. D. 2000, for the hearing of the case, but that he left the court at 10:45 a.m. due to the absence of the co-defendant-in-error and the trial judge. However, the records in the case do not support the averments of the plaintiff-in-error. A clerk's certificate from the Gardnersville Magisterial Court, dated the 28th day of June, A. D.

2000, under the signature of G. Ezekiel U. Koon, Sr., shows that Counsellor James W. Zotaa and Counsellor Marcus Jones were in a case involving Winston Sandy and Layee Kromah et al. on the 13th of May, A. D. 2000, at the hour of 10:00 a.m. This clerk's certificate is also buttressed by an affidavit executed by Counsellor Marcus R. Jones indicating that he and Counsellor Zotaa were present at 10:00 a.m. at the Gardnersville Magisterial Court on the 13th day of May, A. D. 2000, in an action of summary proceeding to recover possession of real property involving Winston Sandy and Layee Kromah et al. Further, the minutes of the Gardnersville Ministerial Court clearly showed that Counsellor Zotaa was present at the Magisterial Court on the 13th day of May, A. D. 2000, at the hour of 10:00 a.m., for the hearing of the aforesaid case. It is strange that the learned Counsellor could have left the trial court at 10:45 a.m. when in fact he was present at the Gardnersville Magisterial Court at 10:00 a.m. We therefore hold that the plaintiff-in-error was not present on the 13th day of May, A. D. 2000, for the hearing of this case notwithstanding the fact that he acknowledged receipt of the notice of assignment for the said hearing. This Court has held that a "plaintiff-in-error applying for a writ of error on the contention that they have been deprived of their day in court are properly denied the relief sought when a notice of assignment of their case for trial was duly served upon their lawyer, who failed to appear in court on the trial date." Benson et a!. v. Findley et a!.[1968] LRSC 14; , 18 LLR 285 (1968); Mulbah et al. v. Dennis et al.[1973] LRSC 33; , 22 LLR 46, text at 49 & 50 (1973). We observed from the records in this case that the learned Counsellor gave preference to a case in a subordinate court rather than to the circuit court contrary to our rules of court.

In the case Paterson, Zochonis and Company v. Flomo, [1971] LRSC 52; 20 LLR 404 (1971), text at 412, this Court held "that a day in court means not so much the time appointed for hearing, as it does the opportunity to present a claim or right in a proper adversary proceeding before a competent tribunal." The plaintiff-in-error was therefore given his day in court, but failed to avail himself of the opportunity afforded him for the hearing of the case. We observed also from the records in the case that the trial judge was present in court on the 13th day of May, A. D. 2000, as evidenced by the minutes of the trial court of the matters he handled, including the reading of the mandates from this Honourable Court.

We note that the plaintiff-in-error and his counsel were present in court on the 17th day of May, A. D. 2000, for the rendition of the final judgment in this case, and that counsel for plaintiff-in-error made a submission which was resisted and denied before the rendition of final judgment. We further note from the records in the case that counsel for plaintiff-in-error excepted to the final judgment and gave notice that they would take advantage of the statute, which exception the trial judge noted. The plaintiff-in-error failed to announce an appeal from the final judgment in the case notwithstanding his presence in court.

In the case Brown Boveri v. Lewis, [1977] LRSC 33; 26 LLR 170 (1977), text at 174, this Court held that "a writ of error will issue only to a party who for good reason has failed to take an appeal from a judgment, decree, or order of a trial court or has lost his right of statutory appeal without laches on his part." In the case at bar, the plaintiff-in-error was present in court at the time of rendition of the final judgment, but failed to take an appeal therefrom without any good cause being shown to this Court or any indicator that the loss of his right of statutory appeal was

not due to his fault. This brings us to the question of what is a good reason? In Cole v. Industrial Building Contractors, [1966] LRSC 56; 17 LLR 476 (1966), this Court held that "the writ of error is suitable only to a party who has failed for good reason to take an appeal from a judgment, decree, or order of a trial court. When viewed in the context of a petition for a writ of error, the term 'good reason' means a disability or other cause over which the party had no control and which actually prevented the party from appearing before the trial court at the time of the rendition of judgment, decrees, or order in question."

We have seen no legal justification indicating that the plaintiff-in-error was not afforded the opportunity for a fair and impartial trial in the trial court. We hold that the plaintiff-in-error has failed to show and convince this Court of a disability or other cause beyond his control which actually prevented him from taking an appeal from the final judgment when he was physically present at the time of rendition of said judgment. The plaintiff-in-error therefore failed to meet the legal requirements for the issuance of the writ of error by this Court of last resort.

Wherefore, and in view of the foregoing, it is the opinion of this Honourable Court that the petition for the writ of error should be and the same is hereby denied. The alternative writ is quashed and the peremptory writ denied. 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. Costs are ruled against the plaintiff-in-error. And it is hereby so ordered.

Petition denied.

Jappeh v Thian [1988] LRSC 39; 35 LLR 82 (1988) (29 July 1988)

AUGUSTINE JAPPEH, Informant, v. **ALPHA** and **AIDA THIAN**, Respondents.

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

Heard: March 24, 1988. Decided: July 29, 1988.

1. Appeal in the Liberian jurisdiction is controlled by statutory provisions which are mandatory and which must be strictly followed at all times.

2. The steps required for the completion of an appeal are (a) the announcement of the taking of an appeal, (b) the filing of an approved bill of exceptions, (c) the filing of an approved appeal bond, and (d) the filing and service of a notice of completion of appeal. A failure to comply with any of these requirements within the time allowed by statute shall be ground for dismissal of the appeal.

3. The statute also provides for the dismissal of an appeal by the appellate court upon the failure of the appellant to appear for hearing of the appeal.

4. One of the main grounds for the dismissal of an appeal is the lack of jurisdiction on the part of the appellate court. Completion of the prerequisites for perfection of an appeal is necessary to give the Supreme Court jurisdiction over the subject matter and the parties in an appeal; and jurisdictional requirements cannot be waived even by the appellee in the absence of statutory authorization. This being the case, the Court must of necessity, and even upon its own motion, always consider the question of its jurisdiction primary over any issue brought before it, since it is bound to take notice of the limits of its authority.

5. The Court will not do for parties that which they ought to do for themselves.

6. A bill of information is resorted to only in answer to matters of contempt of the Supreme Court, in requests for the recusal of a Justice or Justices of the Supreme Court from hearing a particular matter before the Court, or to bring to the attention of the Court irregularities or failure in the execution of an order emanating from the Supreme Court to some lower court or other lower authority.

The appellant was sued in ejectment in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County. Although duly served with summons and the complaint, the appellant failed to file an answer. Almost one year thereafter, the appellee, having obtained a clerk's certificate regarding the non-filing of an answer by the appellant, applied to the court for a judgment by default. The application was granted, a default judgment entered and appellee permitted to present her case. Following the presentation of evidence by the appellant, the jury returned a verdict of liable against the appellant and award damages of five hundred dollars against him. Thereupon, but prior to the entry of final judgment, appellant effected a change of counsel. However, neither the appellant nor his new counsel was present when final judgment was rendered by the trial court and the appellant ordered ejected from the disputed premises. The court nevertheless designated counsel to take the judgment, except thereto, and announce an

appeal on behalf of the appellant.
Thereafter, an approved bill of exceptions was filed, but no further steps were taken by the appellant to perfect his appeal. Instead, after more than two months, appellant filed in the trial court a motion for enlargement of time to perfect his appeal. Whereupon, appellee obtained the necessary clerk certificates stating that no approved appeal bond and notice of completion of appeal had been filed and served. A motion to dismiss the appeal was the filed, with the certificates as exhibits to support the contentions of the motion.

In response to the motion, the appellant filed a resistance and a bill of information. In the resistance, the appellant stated that the motion for the enlargement of time was still pending before the trial court and that he had expended more than $80,000.00 in constructing apartments on the premises. He prayed that the motion to dismiss be denied as he had not had his day in the trial court, and that his failure to complete his appeal was excusable. In the bill of information, the appellant requested the Supreme Court to remand the case so that he could be accorded his day in the trial court.

The Supreme Court consolidated the motion and the information, denied the information, granted the motion to dismiss and dismissed the appeal. The Court noted that the statute clearly stated the prerequisites for perfecting an appeal, the noncompliance of which rendered the appeal dismissible.

The Court observed that the appellant had not met two of the requirements of the statute, i.e. the filing of an approved appeal bond and the filing and service of a notice of completion of appeal. The Court characterized the failure of the appellant to comply with the statutory requirements governing appeals as an inexcusable neglect. It opined that in the absence of a fulfillment of the mandatory statutory requirements, it (the Court) was without jurisdiction of the persons of the parties and the subject matter of the case.

Regarding the bill of information, the Court ruled that the bill was inappropriate and did not constitute any of the basis upon which the same could be entertained. The Court noted that a bill of information is resorted to only in answer to matters of contempt of court, recusal of Justices of the Court from hearing a particular matter before it, or to bring to the attention of the Court irregularities or failure in the execution of an order emanating from the Supreme Court to a lower court or other lower authority. None of these existed in the instant case, the Court observed. Moreover, the Court noted that for the same reasons for which the appeal was dismissed, the information was also not properly before it. Accordingly, the Court ordered the information *dismissed.*

J. Emmanuel Wureh appeared for the appellant. *M Fahnbulleh Jones* appeared for the appellees.

MR. CHIEF JUSTICE GBALAZEH delivered the opinion of the Court.
The party litigants in this cause of action had each disputed the claims of the ether to the ownership of a certain parcel of **land** located in Paynesville, Montserrado County.

According to the records transmitted to this Court, respondents' counsel wrote informant on November 7, 1986, inviting him to a conference in a bid to amicably resolve the said matter without court intervention, but the latter refused to cooperate in the matter. Therefore, on December 17, 1986, respondents filed an action of ejectment in the Sixth Judicial Circuit Court, Montserrado County, praying the ejectment of the informant from the aforementioned property, and asking for the return of possession of the property to respondents and to award respondents general damages.

On December 30, 1986, the respondents obtained a certificate from the clerk of court indicating that up to that date, the informant had not filed an answer to the complaint, even though the sheriffs returns, dated December 19, 1986, confirmed that he had served both the writ of summons and the complaint on the informant on that date. On November 11, 1987, almost one year after suing and obtaining the said clerk's certificate in this matter, respondents counsel applied to the court to have informant called thrice at the door of the courthouse. When he did not answer, a judgment by default was rendered against him and a plea of not liable was entered in his favor. A regular panel of jurors was obtained to perfect the imperfect judgment by the production of evidence for the respondents. After the presentation of evidence and following the instructions of the court, the jury retired to its room deliberation and later returned with a unanimous verdict of liable against the informant. The jury also awarded general damages in the amount of $500.00 against the informant for wrongfully depriving the respondents of their property. The jury also held the informant liable to pay the costs of the proceedings.

Shortly thereafter, on November 20, 1987, informant filed a notice for a change of counsel from the then Counsellor Robert G. W. Azango, to Counsellor J. Emmanuel Wureh, the present counsel. Apart from the sheriffs returns indicating service of the summons and complaint on him; there is nothing in the records before us to show that the informant has in any way acted in defence of the suit brought against him.

On November 27, 1987, one week after the filing of the notice of change of counsel, the lower court rendered its final judgment in the matter, affirming the verdict of the jury and placing a writ of possession in the hands of the sheriff to evict the informant from the premises and ordering respondents restored to possession of the disputed **land** as its owners. Since the

new counsel for informant was also absent at the rendition of this final judgment, the court rightfully designated Counsellor Patrick W. Sanyene to receive the judgment for and on behalf of counsel for the said informant. The designated counsel thereupon excepted to the judgment and announced an appeal to this Court of last resort. The trial court noted the exceptions and granted the appeal.

The new counsel for appellant thereafter filed an approved bill of exceptions on December 7, 1987. Rather surprisingly, however, informant decided to file before the lower court on February 12, 1988, a motion for enlargement of time to perfect his appeal, instead of proceeding to meet the other requirements for completing the said appeal. On the other hand, the respondents obtained another certificate from the clerk of court stating that to the date of the issuance of the certificate, informant had not filed an approved appeal bond nor a notice of completion of appeal as the law requires for appeals to the Supreme Court.

Based upon the latter certificate of the clerk of the lower court, respondents filed a motion on February 18, 1988, before this Court praying for the dismissal of the appeal earlier announced to this Court by the informant. The motion was resisted by the informant on February 29, 1988.

In the said motion to dismiss, consisting of two counts, counsel for respondents contended that even though the informant had filed an approved bill of exceptions, no approved appeal bond and notice of the completion of the appeal had been filed as required by law, as evidenced by the clerk's certificate; that the aforementioned documents should have been filed within sixty (60) days from the date of the final judgment, which fell on January 27, 1988; and that since the statutory requirements had not been met, the appeal should be dismissed in accordance with the several opinions of this Court and the controlling statute. Thereafter, on February 26, 1988, counsel for respondents obtained yet another certificate from the clerk of the trial court to the effect that the sheriffs' returns of February 12, 1988, indicated that informant was served with a notice to tax the records before transmission of the same to this Court, but that he refused to comply with the notice.

On February 29, 1988, informant's counsel filed a nine-count resistance to the motion to dismiss stating, among other things, that his motion for enlargement of time before the trial court had not been disposed of that no notice was served on him to tax the records; that the sheriffs returns were false; that the said sheriff should be investigated by this Court and punished accordingly; that the motion to dismiss should be denied since the informant did not have his day in the court below, especially since the matter involved **land** which is so valuable; that respondents counsel's refusal to sign for the motion for enlargement of time for the appeal process was done in bad faith; and that appellant's failure to complete his appeal in time was excusable, as he had

stated in the motion for enlargement of time, noting and that it had been very difficult to acquire a copy of his answer from informant's former counsel, Counsellor Robert G. W. Azango, who had been elevated to this Court as an Associate Justice. This fact, he said, prevented him from completing his appeal on time.

Notwithstanding, informant's counsel was not satisfied with the foregoing resistance to appellees' motion to dismiss his appeal, and therefore, on March 16, 1988, filed a two-count bill of information before this Court, contending that appellant/ informant had spent over $80,000.00 to build a three-apartment edifice on the disputed **land**, that in view of the fact that appellant had not had his day in the court below and given the level of development made on the disputed **land**, the case be sent back to the court below to allow him his day in court.

In their returns to the information, counsel for respondents contended that the information was highly improper since information can only be filed in matters of contempt, to have a Justice or Justices recused, or in connection with the execution of a mandate or order of this Court in the court below, rather than to have same serve as a resistance to a motion to dismiss an appeal. The respondents further averred that informant had his day in court but that he had failed to file answer, that informant had filed his approved bill of exceptions on December 7, 1987, but had failed to proceed further in perfecting his appeal to this Court; and that the bill of information should be dismissed to allow the motion to dismiss to be heard and disposed of on time.

From the foregoing entangled legal battles and proceedings, the records and their arguments before us, we are satisfied that only two issues are relevant for our ruling in this case:

1. Whether or not this appeal is legally before this Court and deserves to be heard or allowed; and

2. Whether or not this Court has jurisdiction to hear the bill of information.

It should be pointed out here that the two sides to this conflict had earlier agreed to consolidate the issues in the motion to dismiss and the bill of information in accordance with the law which allows for such consolidation by the Court, either *sua sponte* by the Court or at the request of the party litigants themselves, as in this case. Civil Procedure Law, Rev. Code 1:6.3.

Starting with the first issue before us, we have to decide whether or not informant is properly before this Court for hearing, or as contended by the respondents, whether or not the informant has failed to meet the requirement for appeal and therefore the appeal should be dismissed.

Appeal in this jurisdiction is controlled by statutory provisions which are mandatory and which must be strictly followed at all times. The controlling statute states:

"The following acts shall be necessary for the completion if 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." Civil Procedure Law, Rev. Code 1: 51.4. The statute continues:

"An appeal may be dismissed by the trial court on motion for failure of the appellant to file a bill of exceptions within the time allowed by statute, and by the appellate court after filing of the bill of exceptions for failure of the appellant to appear on the hearing of the appeal, to file an appeal bond, or to serve notice of the completion of the appeal as required by statute." *Ibid.,* 51.16.

This Court, in its past opinions, has reaffirmed and reiterated the need for compliance with the requirements of the statute outlined above, and it has always urged party-litigants to ensure compliance with the said statute as only in this manner can the Supreme Court acquire jurisdiction over both the subject-matter and the parties to the appeal.

In *K Rasamny Bros. v. Brunet,* [1972] LRSC 41; 21 LLR 271 (1972), this Court held that:

"One of the main grounds for dismissal of an appeal is the lack of jurisdiction on the part of the court. Completion of the prerequisites for perfection of an appeal is necessary to give the Supreme Court jurisdiction over the subject matter and the parties in an appeal; and jurisdictional requirements cannot be waived even by the appellee in the absence of statutory authorization. This being so, this Court must of necessity, and if need be, upon its own motion, always consider the question of its jurisdiction primary over any issue brought before it, since it is bound to take notice of the limits of its authority". (Citing 14 AM. JUR, *Courts, §* 168).

Also in the case of*Marh v. Sinoe,* 27 LLR (1978), this Court, relying on the foregoing citation above, held that where the appellant has failed to file an approved appeal bond and has not served and filed a notice of completion of the appeal, the appeal must be dismissed. The Court noted that the two acts neglected by the appellant were required to confer jurisdiction upon it.

In the earlier case of *Karpeh and Nagbe v. Fisher*, [1974] LRSC 28; 23 LLR 91 (1974), this Court held that an appeal will be dismissed on motion when, as in this case, only a bill of exceptions has been filed and no other requirements of the appellate process are complied with by the appellants.

Mr. Justice Robert G. W. Azango, speaking for the Court at that time, concluded in the opinion that "having carefully considered the records 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 appellant."

Again, in *Vamply of Liberia v. Manning,* [1976] LRSC 41; 25 LLR 188 (1976), this Court held that it will not do for parties what they ought to do for themselves, and that failure to timely file

an approved bill of exceptions, to post an appeal bond, or to serve a notice of completion of appeal, are all grounds for dismissal of the appeal.

From the foregoing, we are convinced that the appeal in issue should be dismissed for the inexcusable neglect exhibited by both the appellant and his counsels since the inception of this matter, but especially for their failure to do those things that would have conferred jurisdiction on this Court to handle this appeal. As long as no approved appeal bond has been filed and no notice of completion of appeal executed, we have been denied a say in the matter and over the parties to the attempted appeal. We believe that since December 7, 1987, when the bill of exceptions was approved and filed, appellant had ample time within which to file an approved appeal bond and a notice of completion of appeal.

Next, we proceed to the second and final issue, i.e. whether or not this Court has jurisdiction over the bill of information filed by counsel for appellant in support of his plea for a remand of this case for a hearing in the court below, since, according to appellant, he did not have his day in court and he had expanded vast sums of money, well in excess of $80,000.00, to develop the said disputed **land** with a three-apartment building. The bill of information was filed in support of appellant/informant's contention that the motion to dismiss his appeal should be ignored and the matter remanded. However, in resolving the foregoing issue, that is, whether there was an appeal properly before us, we maintained that there was none since we had no jurisdiction in the matter. Similarly, the bill of information filed before us in connection with the same motion is outside our jurisdiction and therefore cannot be entertained.

What is more interesting about the bill of information is that it was filed in a novel situation, in that ordinarily a bill of information is resorted to only in answer to matters of contempt of this Court, in requests for the recusal of a Justice or Justices of this Court from hearing a particular matter before it, or more popularly, to bring to the attention of this Court irregularities or failure in the execution of an order emanating from this Court to some lower court or to some other lower authority. *Massaquoi-Fahnbulleh v. Urey and Massaquoi*, [1977] LRSC 5; 25 LLR 432 (1977); *Barbour-Tarpeh v. Dennis*, [1977] LRSC 11; 25 LLR 468 (1977); *Raymond International (Liberia) Ltd., v. Dennis*, [1976] LRSC 35; 25 LLR 131 (1976).

Thus, aside from what we have held on the issue concerning the dismissal of appeals, the bill of information herein is still dismissible since it has no concern with a matter cognizable before this Court and does not grow out of a previous act or out of a current one of which it is a part. informant wishes to bring to the attention of this Court at this time by a bill of information should have been done by way of the appeal which he neglected to perfect.

Therefore, in view of the foregoing, the appeal is herewith dismissed, along with the bill of information. The trial court is hereby ordered to resume jurisdiction over this matter and enforce its judgment, with costs against the informant. And it is hereby so ordered.

Appeal dismissed and information denied.

Pennoh v Pennoh [1960] LRSC 14; 13 LRSC 504 (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. In a civil action where a sufficient description is given, a misnomer is immaterial.
2. A general appearance constitutes waiver of right to raise a plea of misnomer in subsequent pleadings. 3. Injunction will issue
only at the instance of a party possessing right or title to the interest to be protected. 4. Pending an action seeking specific
performance of a contract to convey land, an injunction may be granted to preserve the property in status quo until final determination
of the action. 5. An order dissolving or extending a temporary injunction is not a final order for purposes of appeal.

On appeal
from an order denying a motion to dissolve an injunction pending final determination of an action between the same parties, seeking
specific performance of a contract to convey real property (Pennoh v. Pennoh, 13 L.L.R. 48o [196o]), order affirmed. T. Gyibli Collins for appellant. 0. Natty B. Davis for appellee. MR. JUSTICE MITCHELL delivered the opinion
of the Court. William Pennoh sued out an action of injunction in the Circuit Court of the Sixth Judicial Circuit, Montserrado County,
on July 16, 1957, against Bloh Pennoh, defendant, enjoining and prohibiting the said defendant from molesting, disturbing or evicting
him or his tenant in occupancy from his dwelling house during the pendency of an action for specific performance of a contract to
convey land, in which action he was plaintiff and the

aforesaid Bloh Pennoh was defendant. Pleadings
in the suit progressed as far as the rejoinder and rested ; and thereafter defendant below, now appellant, filed a motion to dissolve

the injunction. The court, after hearing the motion, rendered an order on January 30, 1958, extending the injunction pending final determination of the specific performance suit then on appeal before this Court, to which suit the injunction was ancillary. To this order, exceptions were taken and the case has come before us on a regular appeal upon a bill of exceptions containing the following three counts : "1. Because defendant says and contends, that Your Honor erred by dismissing the answer filed in said cause without regard to the fact that plaintiff's reply failed to deny the plea of misnomer as raised in Count `I' of said answer, and that the reply of plaintiff failed to traverse the respective pleas of (a) non-joinder of the party defendant in the summary ejectment suit then sought to be enjoined ; of equity in the bill of complaint; and the (b) th issue of fraud raised in said plea. (c) e "2. And also because defendant says and contends that Your Honor grossly erred by denying the motion to dissolve the preliminary injunction when said motion was merely opposed by a bare denial of the law and fact, without a showing that the plaintiff had equity in said bill, or that his attempted acts to deprive defendant of her bona fide property were not fraudulent. "3. And also because defendant says and contends that Your Honor grossly erred by rendering a final decree in said cause, and perpetuating the said injunction without hearing evidence in said cause, to which said final decree the defendant excepted and prays an appeal to the Honorable Supreme Court of Liberia, at its ensuing March, 1958, term. When this case was called for hearing, both parties were

represented by counsel who ably presented their respective arguments ; and we; having patiently heard them, will now proceed to review the issues raised in the several counts of the bill of exceptions. As to the plea of misnomer raised by the defendant below now appellant, this Court has been placed in a quandary to know how the appellant expected to benefit under such a plea. The records before us reveal that defendantappellant merely filed a general appearance acknowledging the name by which she had been sued, that is to say, "Bloh Pennoh," without any reservations through a special appearance, as the law requires. In his argument before this bar, appellant's counsel cited the case of Kruger v. Johns, 2 L.L.R. 89 (1913) , and merely quoted that portion of this opinion which he felt would drive his point clear without regard to another part of the selfsame opinion, which contradicted his point of argument; and we hereunder quote that other portion : "On inspecting the records in this case, we find that the libellee in the court below was sued and appeared by the name attached to the assignment of errors and that no objections were raised to his so appearing, by the libellee. We must here observe, that in civil actions, if a sufficient description is given, the misnomer is immaterial." Kruger v. Johns, supra, at 2 L.L.R. 90 (1913). Appellant, defendant below, having appeared in the name by which she had been sued, it does seem to us that she waived her legal right to raise the plea in her subsequent pleadings ; moreover, she having been sufficiently described by the plaintiff in

his complaint as the defendant against whom specific performance proceedings had been instituted for the very parcel of land on which plaintiff had erected his dwelling house--which she never denied --we are of the strong opinion that, appellant, defendant below, was sufficiently described according to law, and

that, therefore, the plea of misnomer raised by the defendant below, now appellant, is not well taken and cannot be sustained by this Court. The next point raised is that of non-joinder of the defendant in the summary ejectment suit. Plaintiff in the injunction proceedings was endeavoring to conserve the right to the premises under the oral agreement between himself and the defendant, which agreement the defendant had disavowed by instituting summary ejectment against his tenant, regardless of the suit of specific performance then already filed and pending before the court. So then, there was no legal ground for plaintiff's tenant to have been joined in this suit when it was separate and distinct. This point seemed to have been conceded by the appellant's counsel when arguing before this bar, since, although it was made a point in his brief he made no reference to it in his argument; however, we feel it necessary to pass upon it. The injunction being ancillary to the specific performance suit, and not to the summary ejectment suit, and plaintiff's tenant not holding a unity of interest in the subject matter of specific performance, but rather, holding a mere possible or contingent interest as tenant of the plaintiff now appellee, plaintiff's tenant was not a necessary party. Therefore, he should not have been joined as a party plaintiff. Proceeding further, it would seem that, since the bill of complaint did seek to enjoin the defendant below from molesting or evicting the plaintiff from the enjoyment of the right that he had enjoyed without interruption for quite a long period of years, it is obvious that there was sufficient equity in the complaint in Chancery to have warranted the perpetuation of the suit during the pendency of the main case at law. The issuance and perpetuation of a writ of injunction lie within the sound discretion of the court. The law frowns against an abuse of this discretionary power ; but

when it is exercised according to sound principles of law we will not infringe upon the equitable rights of either of the parties. It goes without saying that, the court below having found sufficient merit in the main suit for specific performance, and having decreed against the defendant, who is the same as the defendant in the injunction proceedings, any effort manifested on her part to evict plaintiff or his tenant before final determination of the cause of action should have been enjoined. Again, there is the settled principle of law that: "Pending a suit in equity or at law, an injunction may be granted to preserve in statu quo the property involved until a final settlement of the right or title."

CYC. 821 Injunctions.

Further recourse to the records in the case shows that the lower court entered an order denying the motion to dissolve, which, in form is tantamount to an imperfect judgment, based upon the issues of law set forth in the aforesaid motion to dissolve the preliminary injunction. Such an order is not considered in law to be a final decree, as appellant avers in Count "3" of her bill of exceptions. Hence there was no necessity for the court below to have gone into the hearing of evidence before rendering its said order denying the motion and perpetuating the injunction pending the final determination of the suit in specific performance--the main suit to which the action of injunction was ancillary. Counts "2" and "3" of the bill of exceptions are therefore dismissed, and the ruling made by the court below is hereby affirmed with costs against the appellant. And it is hereby so ordered.
2M-1-med.

Richards v Mcgill et al [1937] LRSC 24; 6 LLR 81 (1937) (10 December 1937)

MATILDA A. RICHARDS, Appellant, v. EDWIN U. McGILL and M. EVA McGILL-HILTON, Executor and Executrix of the Estate of the late CORINNA A. McGILL, Appellees.
APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued November 29, 30, 1937.
Decided December 10, 1937. 1. 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 potent means of unifying the practice. 2. Every litigant, including the State in criminal cases, is entitled to nothing less than the cold neutrality of an impartial judge. 3. A judge should not wait until he shall have been recused before refusing to sit in a given case if conscious that his connection with a party or previous connection with a cause may affect his impartiality. 4. For, even though the parties may not object to his presiding over the cause, the State cannot endure the potential scandal and reproach which may result therefrom.

In an action of ejectment brought in the Circuit Court of the First Judicial Circuit, judgment was rendered for the defendant. Upon appeal to this Court by the plaintiff in that action, judgment reversed. C. Abayomi Karnga and Anthony Barclay for appellant. P. Gbe Wolo for appellees. MR. JUSTICE DOSSEN delivered the opinion of the Court. This case comes up to this Court from the Circuit Court for the First Judicial Circuit, Montserrado County, Republic of Liberia, upon a bill of exceptions under the statute relating to appeals. The record shows that at the May term of the said court, Law Division,

1934, one Matilda A. Richards, plaintiff, instituted and filed an action of ejectment against

Edwin U.
McGill and M. Eva McGill Hilton, for a piece of property which she complains that she was possessed of. The complaint reads as follows,
to wit: "Matilda A. Richards, plaintiff in the above entitled cause,
complains of Edwin U. McGill and M. Eva McGill Hilton, executor
and executrix of the estate of the late Corinna A. McGill of Monrovia,
defendants, that she the plaintiff was possessed of a certain
parcel of land, **of the following description to wit: two (2) acres of land** block number seventy-two (72) South Beach, and facing
Newport Street in the City of Monrovia owned in fee by J. J. Roberts, former
President of Liberia, who devised said land to his nephew
John H. Roberts, and father of the plaintiff, by the first and tenth clauses
of his last will and testament, copy of which is hereto
annexed and marked exhibit `A,' and that the said John H. Roberts, the father
of the plaintiff in turn devised same to plaintiff
in this suit by the sixth clause of his will, a copy of which is also
herewith annexed together with a copy of the plot of said land
and marked exhibits 'A,' and ; and form part of this complaint. "And that the
said defendants unlawfully detain the said lands, block
number seventy-two (72) from her the plaintiff." Pleadings having been rested
at the August term of the aforesaid court, before His
Honor E. Himie Shannon, presiding by assignment in chambers, the issues of
law were disposed of, and the case ordered transferred
to the trial docket to be heard upon the facts. Accordingly, at the November
term of the aforesaid court, 1936, the resident Judge
sitting in chambers, a jury was duly empanelled, which after hearing evidence
pro et con, returned a verdict in favor of defendants,
upon which the trial judge rendered a final judgment. Plaintiff being
dissatisfied with the several rulings, opinions, decisions
and final judgment of the court be-

low, appealed to this Judicature of last resort for review. At the
call of the case in this Court, whilst the records were being read, it was
observed on the second day that some altercation had arisen
between the late Associate Justice Dixon, one of the witnesses on part of the
defendants, and the presiding judge as follows : "Question:
Please tell the court and jury whether you acted as counsel for the late Mrs.
Corinna McGill in any matter of dispute or law suit between her and Mrs.
Richards
(Matilda) in connection with lot No. 72, City of Monrovia, South Beach.
Objection --Ground : Assuming a fact not proved. Overruled,
to which plaintiff excepts. "Answer: Yes, I remember before Mrs. McGill died
that Mrs. Richards instituted an action of ejectment
against Mrs. McGill, Miss J. E. Johnson and another person whose name I have
forgotten. I was retained by Mrs. McGill and Miss Johnson.

The case was tried by the present Justice Russell, then Circuit Judge, and the action was dismissed on the law issues. The present Judge Brownell was the lawyer for Mrs. Richards. Since he is sitting on this case if he would try it, under the circumstances I don't know what effect his judgment will have in the premises. I don't know anything about the facts of the land and its existence on either side." "Here an altercation ensued between the Judge and the witness bearing on that statement as to his having been counsel for Mrs. Richards and as to what would be the effect of the court's judgment. The court made it clear that he had expressed to Counsellor Karnga many a time that he had been counsel for Mrs. Richards in years previous and he did not want to try the case, but upon his insistence and the impression made upon the court that counsels for defence joined in the application for the assignment the court made the as-

signment. Further, at the call of the case no one of the parties had recused the judge and asked him to disqualify himself; hence the court felt that such an imputation on his impartiality to preside over the case merely on its merits and facts before the jury was a slur on the court which it took exceptions to. The witness not recalling said statement at once but continuing to argue with the court, the court took graver exceptions more so because of his standing in the community and the judiciary and thereupon felt that it would proceed no further with the trial of the case but disband the jury and award a new trial. The witness was thereupon excused from the stand. "Several members of the bar as amici curiae or friends of court expressed themselves on the matter --some endorsing the view of the court and others feeling that that did not affect the trial and that the court could continue the trial until verdict. "The court at this stage said it appreciated the expressions of the members of the bar over this unhappy situation and assured them that those expressions lifted a burden off its heart in no little degree. That rather than arbitrarily subject both parties to costs by disbanding the jury he would leave the record open to both sides to say what they would have to say further in the premises and then the court would rise until 2 :3o so as to advise itself. "Counsellor Wolo for and on behalf of the defendants said defendants through their counsel record that they are willing to have the judge hear the trial upon the facts and merits; and that as to any previous connection of the judge with the case heretofore, defendants waive any objection to his sitting over the subjectmatter of this action. "Plaintiff's counsel says that she concurs in what the defence has put on record and says that His Honour

the Judge now presiding should sit on said case and have it determined in the circuit court." At this stage of the case in the Supreme Court, the Court decided to suspend its further hearing of the records and

to reserve its opinion on the facts thus brought out. (See minutes of this Court of November 3o, 1937.) We desire to reiterate what was said in the opinion of this Court handed down on the 22nd day of January, 1937, in the case Barnes v. Republic, [1937] LRSC 8; 5 L.L.R. 395, 4 New Ann. Ser., involving an offense against the Election Law by destroying a ballot box, the relevant portion of which reads thus : "Trial judges should pay strict attention to the opinions given by this Court from time to time, and endeavor to understand and follow them both in the spirit as well as in the letter. "For, that is one of the most potent means of stabilizing and unifying the practice, and this Court will therefore view with grave concern any willful attempt on the part of a trial judge to ignore or evade the principles we lay down for their guidance from time to time." In the case Ware v. Republic, decided by this Court on the 13th December, 1935, 5 L.L.R. 5o, 3 New Ann. Ser., Mr. Justice Grigsby, speaking for this Court said : " 'Every litigant, including the state in criminal cases, is entitled to nothing less than the cold neutrality of an impartial judge, and therefore if the judge before whom a cause is to be tried is prejudiced or otherwise disqualified, he may be challenged, and if the challenge is sustained the cause may be moved to another court or tried before another judge. . . " Further" 'Where a judge is satisfied that he is legally disqualified to act in a case he should not wait until an objection to him is raised by the parties, but should

refuse to hear the cause by an entry on the docket that he does not sit in the case. This indeed is the usual practice, and the judge's decision in such cases that he is incompetent through interest is not reversible except for manifest error. . . . it I . . . 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 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 for his folly--but the state cannot endure the scandal and reproach which would be visited upon its judiciary in consequence. Although the party consent, he will invariably murmur if he do not gain his cause ; and the very man who induced the judge to act when he should have forborne, will be the first to arraign his decision as biased and unjust. . . " We may here remark parenthetically that this is exactly what has happened in this case, now appealed to us for review. Said opinion continues : " 'We conclude, that the presiding judge being interested, was absolutely incapacitated to take cognizance of, or sit in the case. . The consent of parties could not remove his incapacity, or restore his competency against the prohibitions of the law; which was designed not merely for the protection of the party to the suit, but for the general interests of justice. And, consequently, the judgment rendered by him was nullity, and left the case remaining undisposed of, as completely

as if the judge had not been present at the court. . . " This principle was reiterated by Mr. Justice Russell, speaking for us all in the case Howard, Ketter, and Dim-

merson v. Dennis[1937] LRSC 5; , 5 L.L.R. 375, a suit for specific performance, decided by this Court on January 22, 1937. The records in this case show that the trial judge was of counsel for the defendant before he was elevated to the bench and that being a fact, his attention was called to same by witness on the part of the defendants, who cautioned him of the impropriety of sitting on the case in which he had previously been the counsel for one of the parties. The altercation growing to such an extent as to elicit expressions from several members of the bar, the trial judge should have at once desisted and followed the opinion of this Court handed down and quoted supra, and continued the cause to the next, or some other, term of the court and not have proceeded further in the case. But because of his persistency in the trial and for the foregoing reasons, we cannot but again express surprise that a judge of the intelligence of His Honor Judge Brownell should have persisted and presided over the trial of the case in which, in all essential features, he had been the retained counsel of one of the parties before his elevation to the bench, and, in the face of his patent disqualification to try same, his neglect to recuse himself and thereby observe and follow previous opinions handed down by this Court in three cases of a similar nature.
It is therefore the opinion of this Court that the judgment rendered in this cause should be reversed, and the case remanded to the court of original jurisdiction to be tried by any judge except His Honor Judge Nete-Sie Brownell. Costs to abide final determination of the case. And it is hereby so ordered. Reversed.

Karmeh et al v RL [1981] LRSC 48; 29 LLR 404 (1981) (29 July 1981)

LARMI KARMEH, et. al., Appellants, v. **THE REPUBLIC OF LIBERIA**, Appellee.

JUDGMENT WITHOUT OPINION

Decided: July 29, 1981.

When this case was called for hearing, Counsellor S. Edward Carlor appeared for the appellants, and the Solicitor General Jimmie S. Geizue appeared for the appellee and moved the court to dismiss the appeal for reason that the penal sum was not one-and-one-half times the value of the improvements on the **land** in question. Appellants resisted the motion contending, among other things, that the value of the **land** in question is $1,500.00; that the court below did not

award any amount in its judgment or decree; that the amount contained in the appeal bond is sufficient; and that the law with respect to one and one half times, could not apply. After considering the law controlling and studying the records, it is adjudged that the motion should be and the same in hereby denied for lack of legal merit. And it is hereby so ordered.

NOTE: Mr. Justice M. Kron Yangbe being counsel for one of the parties in the court below prior to his elevation, he did not take part in the hearing and determination of this case; hence did not sign this judgment.

Sirleaf v Sheriff [1982] LRSC 70; 30 LLR 378 (1982) (8 July 1982)

MOIGBE SIRLEAF, Appellant, *v.* **VARMUNYA SHERIFF**, Appellee.

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

Heard: April 22 & 26, 1982. Decided: July 8, 1982.

1. The statutory requirements for an appeal bond are mandatory and not discretional.

2. The description of property in an affidavit of sureties must be such as to make identifying the property an easy exercise, and the best means to achieve this is to state the number of the plot as well as the metes and bounds of the property.
3. Where the property offered as security on the bond has a prior lien and other encumbrances, it is the duty of the appellant to state the amount of such liens and encumbrances against said property in the affidavit.

These appeal proceedings are a result of a final judgement in favor of defendant, now appellee, in an action of ejectment rendered by the People's Tenth Judicial Circuit, Lofa County, to which plaintiff, now appellant, excepted and announced an appeal. Appellee moved the Supreme Court to dismiss the appeal on grounds that the property offered as security is not sufficiently described in the affidavit of sureties for the purpose of identification; that the property has a prior lien on it; and that no taxes had been paid on it. The Supreme Court, holding that the statutory requirements

of an appeal bond are mandatory and not discretional, sustained appellee's contentions, granted the motion, and dismissed the appeal.

M. Fahnbulleh Jones appeared for appellant, while *Clarence E. Harmon* appeared for appellee.

MR. JUSTICE SMITH delivered the opinion of the Court

This ejectment case came on appeal before this Court from the People's Tenth Judicial Circuit Court, Lofa County, appellant being the plaintiff in the Court below and appellee the defendant. The case came up for trial during the May 1981 Term of that court, presided over by His Honor Napoleon B. Thorpe, by assignment. A trial jury was selected, sworn and empanelled to try the issues joined between the plaintiff and the defendant. Following presentation of evidence by the parties and arguments of counsel for the plaintiff and the defendant, the court below instructed the empanelled jury, and they retired to their room of deliberation to consider their verdict. After due deliberation, the empanelled jury on the 1st day of July, 1981, returned a unanimous oral verdict in favor of the defendant to the effect that, he was entitled to his house, to which verdict plaintiff excepted. On the 7th day of July, 1981, the trial court entered final judgment confirming the verdict and adjudging the defendant not liable in the case, and ruled plaintiff to all costs. Plaintiff again noted exceptions, announced an appeal, and has brought this case to this Court of final review on a bill of exceptions.

While this case was still pending before this Court on appeal, appellee filed a motion to dismiss appellant's appeal on the ground of defectiveness of the appeal bond, stating substantially that: (1) the property offered as security is not sufficiently described in the affidavit of sureties for the purpose of identification; (2) that said property had been previously offered as security in an appearance bond in keeping with the notation made by the officer of the revenue service on the certificate of property valuation; and (3) that one of the sureties, Amara Konneh, has paid no taxes on the **land** offered as security. For the benefit of this opinion, we quote hereunder the affidavit of sureties and the certificate of property valuation accompanying the appeal bond:

"AFFIDAVIT OF SURETIES

“Personally appeared before me., a duly qualified Justice of the Peace for Lofa County, Amara Konneh and James Z. Kennedy, sureties for the appellant in the above cause of action and being duly sworn depose and say:

1.1. That they are the sureties to the plaintiff/appellant’s appeal bond whose names appear in said bond in the above entitled cause of action.

1.2 That they are the owners in fee simple of real properties offered as security to the said bond.

1.3 That the real property of Amara Konneh is lot No. ___ and is bounded and described from Baytajal Creek and that of Mr. Richard S. D. Kaymah within the Voinjama District, Lofa County, R.L.

1.4 That surety James Z. Kennedy owns a property which values $6,800 (Six Thousand Eight Hundred Dollars) as hereto attached, bounded and described as follows:

“Commencing from a point thence running 32 degrees 82.5 ft., thence running from a point 40 degrees 132 feet to another point, thence running 32 degrees 82.5 ft. to a point 132 ft. to the place of starting.”

1.1. That there are no liens, unpaid taxes and other encumbrances against any of the real properties offered as security, as will more fully appear from a certificate of the Bureau of revenues hereto attached in favor of Surety James Z. Kennedy to appellant’s appeal bond. . . .”

This affidavit was sworn and subscribed to before Justice of the Peace William K. Sengbe by the sureties on the 30th day of July, 1981. Below is also quoted the certificate of property valuation from the Bureau of Revenues accompanying the appeal bond:

“TO WHOM IT MAY CONCERN

PROPERTY VALUATION CLEARANCE

CERTIFICATE IN FAVOR OF MR. MOIGBE SIRLEAF

This is to certify that the below listed property owner has fully met up with his obligation in the amount of thirty four dollars ($34.00) on Official Flag Receipt No. 1926301 dated August 1981.

Names James Z. Kennedy, lot No. N/N located Voinjama City, value a/paid $6,800 - $34.00. Also said property Valuation fee of Ten Dollars ($10.00) on Official Flag Receipt No. IR/192602, dated August 1, 1981. Hence, he is hereby granted this certificate of clearance. Note: The above mentioned property owner stood an appearance Bond or Mr. Jonah V. Johnson, December 23, 1980.

Counsel for the appellee, in arguing his motion to dismiss, contended that besides surety Amara Konneh's property not having been described at all in the affidavit of sureties, there is no evidence of the payment of taxes thereon; that the description of Surety James Z. Kennedy's property in the affidavit is insufficient to identify said property in order to establish the lien of the bond. Appellee strongly argued that although the description of the piece of property shows that it commences from a point several degrees and feet to the place of starting, but whether the degrees run east or west, north or south, the description does not show. He argued further that although the affidavit of sureties states that there were no liens and encumbrances against any of the real property, yet the certificate from the Bureau of Revenue plainly states on its face that the property owner had already stood as surety to an appearance bond for one Jonah V. Johnson. Hence, said property offered as security in this case is not unencumbered as stated by appellant, it having been previously pledged as security. Appellee therefore contended that there are liens and encumbrances against said property of James Z. Kennedy.

While arguing his side of the motion, counsel for appellant contended that the motion to dismiss the appeal is false and misleading in its entirety, and asked the Court to take judicial notice of the affidavit of sureties attached thereto. Continuing his argument further, the learned counsel for appellant argued that neither of the parties to the case nor the court was a surveyor, and, therefore, the possibility of determining the metes and bounds of the property remained solely with the purview of the surveyor, who as an expert was responsible, in his own words, "to make the necessary description in the deed and not myself nor the court." Counsel for appellant also

contended that the property was bought in the sixties and that the metes and bounds of the property have been described in the deed.

We must note here our full agreement with counsel for appellant that, the court is not a surveyor and that neither the parties nor their counsels, are experts to determine the metes and bounds of the real property offered as security to the appeal bond. Therefore, where the property of the sureties to an appeal bond is not sufficiently described, it would be impossible for the court to identify the same for the purpose of a judicial sale to satisfy the judgment in the event that the appellant is not successful on appeal, and he and his sureties are unable to comply with the judgment of the court. However, the learned counsel has asked us to take judicial notice of the affidavit of sureties, which in our opinion, will lead us to an unerring conclusion in the determination of the issues as to whether or not it meets the requirements of the law.

Recourse to the subject affidavit, quoted herein above, shows that the property of Surety Amara Konneh is not described by its metes and bounds as the law requires. There is also no certificate from the Bureau of Revenues to show that the property referred to in the affidavit of sureties is owned by said surety, and that it is of the assessed value on which taxes have been paid up to date, which seems to support the contention of the appellee.

It should be noted here that although the value of the property of Surety James Z. Kennedy as certified by the Bureau of Revenues is sufficient to cover the value of the appeal bond, in view of the fact that the aforesaid property had been previously offered as security in an appearance bond, said property should have been sufficiently identified in the affidavit to establish the lien of the appeal bond.

We have also observed from a further inspection of the affidavit of sureties, that the description of the property does not so state for the benefit of the Court in case of a breach of the terms and conditions of the appeal bond, the quantity of Surety James Z. Kennedy's real property; that is, whether it is a lot or two or so many acres of **land**. Furthermore, from a careful perusal of the description of Surety James Z. Kennedy's property, we observed that it commences from a point so many degrees and feet until it reaches the place of commencement, but whether it runs east or west, north or south, the description does not so state, thereby making it impossible to identify the property offered in order to clearly establish the lien of the bond. The number of the lot and the number of plot are also not mentioned in the description. Under such conditions, the question that has come to mind is, how can the real property of each of the sureties be located and identified by the court or a surveyor when the metes and bounds are not clearly described.

The filing of an appeal bond is an undertaking designed to obligate and bind the appellant and his sureties to the Republic of Liberia to indemnify the appellee from all costs and injury arising from the appeal taken, if the appellant is unsuccessful, and that the appellant will comply with the judgment of the appellate court or of any other court to which the case is removed. Civil Procedure Law, Rev. Code 1:51.8. Because the appeal bond must be in an amount to be fixed by the court, sufficiently calculated to indemnify the appellee, it is a legal requirement that it be secured by one or more pieces of real property located in the Republic of Liberia, owned by the sureties or one of them, and which shall have an assessed value equal to the total amount specified in the bond, exclusive of all encumbrances; such bond creates a lien on the real property. *Ibid.*, 1: 63.2(2). According to paragraph 3 of the aforesaid section, on page 267 thereof, the bond shall be accompanied by an affidavit of the 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 real property offered, 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 the property offered."

A certificate of a duly authorized official of the Ministry of Finance to the effect 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 thereon stated, shall accompany such bond. These legal requirements are mandatory and not discretionary so that in case of inability of the appellant and his sureties to comply with the judgment of court, the said property offered as security and described in the affidavit of sureties, and only such property, could be exposed to public sale to raise money sufficient to indemnify the appellee and satisfy the judgment of court. This is the purpose of an appeal bond.

As we have already observed, the affidavit of sureties to the appeal bond in this case falls short in its description to sufficiently identify said property by metes and bounds as contemplated by

law. The description of property in an affidavit of sureties accompanying an appeal bond, as contemplated by law, means that the number of the plot and the metes and bounds of the particular lots must be shown in the affidavit. *Lamco J. V. Operating Company v. Verdier*, [1977] LRSC 34; 26 LLR 180 (1977).

Also, in *West Africa Trading Corporation v. Alraine (Liberia) Ltd.*, reported in [1975] LRSC 16; 24 LLR 224 (1975), this Court held that a sufficient description of realty in the affidavit of sureties means that the property must be described in order to make locating it on the ground an easy exercise. The Court suggested the best means to be the number of the plot of the **land** and its description by metes and bounds.

Another point of issue averred in appellee's motion to dis-miss and argued before us is that, there was already a lien against the property of Surety James Z. Kennedy, as evidenced by the certificate of property valuation from the Bureau of Revenues, Ministry of Finance, which shows on its face that the said property had been previously offered as security in an appearance bond for one Jonah V. Johnson. Counsel for appellant in countering this issue in his argument, did not deny that the property had been offered as security in an appearance bond, but strongly contended that depending on the value of the bond, a piece of property could be offered as security for more than one bond, so long the value of such property is enough to cover the amounts involved in all such bonds; and that it was incumbent upon the appellee to have exhausted all means to ascertain the amount of the appearance bond referred to in order to show that the value of the property is not enough to be offered as security for the appeal bond. We cannot bring ourselves to agree with the argument of the counsel for appellant, that it was incumbent upon the appellee to ascertain what was the lien and other encumbrances against the property offered as security under the statute. According to Civil Procedure Law, Rev. Code, 1: 51.8, it is the appellant and not the appellee who is required to give an appeal bond. The Civil Procedure Law also mandatorily requires that the bond be accompanied by affidavit of sureties which must set forth the total amount of liens, unpaid taxes, and other encumbrances against each property offered. *Ibid*, 1: 63.2(3). The argument of counsel for appellant on this point is, therefore, unmeritorious. The amount of the lien against said property as a result of the appearance bond executed and referred to herein above, not having been stated in the affidavit as required by the statute, cited *supra*, the contention of the appellee must be sustained.

In view of all that have been said hereinabove and the legal citations in support of our position, we are of the considered opinion that the motion to dismiss should be, and the same is hereby granted. The appeal is therefore dismissed with costs against the appellant.

The Clerk of this Court is hereby ordered to send a mandate to the lower court commanding the judge presiding therein to resume jurisdiction over the case and enforce the judgment of the court. And it is hereby so ordered.

Motion granted.

MR. JUSTICE MABANDE *dissents.*

Appellant Moigbe Sirleaf instituted an action of ejectment against Appellee Varmuyah Sirleaf for three and one-half acres of **land**, lying and situated in Voinjama, Lofa County. Pleadings were thereafter exchanged and issues joined between the parties. Trial was held and judgment rendered in favour of Appellee Varmuyah Sirleaf. Appellant excepted to the judgment and appealed to this Court. During the pendency of the appeal, appellee filed a motion to dismiss the appeal. The motion alleged defects in the appeal bond and its supporting documents, as well as the insufficiency of the appeal bond. To this motion, appellant filed a resistance alleging that the appeal bond was sufficient and that it was not defective. The issues presented by the motion and the resistance thereto for our determination are: (1) whether an appeal taken from a judgment which awards no money must be supported by a bond? and (2) whether properties located all over the country must be described by metes and bounds in the affidavit of sureties.

Recourse to the bond showed that two sureties filed the bond along with the principal/appellant, but that one of the sureties had previously pledged the same property. The law requires that when a surety has previously filed a bond pledging any property, it is his duty, when pledging the same property to another, to specifically state how much value of the property was previously pledged. One of the appellant's two sureties failed to do so. As it was a violation of the relevant law, it could render the bond defective to that extent. However, the defect of the pledged property of one surety of the sureties does not affect the pledge of the other surety. Indeed, appellee raised no issue of defect in the pledged property of the other surety. He, however, contended that the said property alone was not sufficient to cover the entire amount of the bond. Appellant, for his part, argued that as no amount was awarded by the judgment, it was not necessary and mandatory for him to post a bond.

An appeal bond is a contract between the appellant and the sheriff in which he promises to indemnify the appellee to the extent of the money judgment awarded.
A bond or a contract must be for a legal obligation assumed by a party. The consideration for an

appeal bond is the promise of the appellant to pay to the appellee a sum certain in consideration of appellee foregoing immediate payment. Without any consideration, there can be no contract.

Where a judgment awards no monetary right or benefit to be conferred on the appellee, there can be no immediate settlement for him to forego as a consideration for a bond by the appellant. The law and appeal bonds and our rules of decision do not legalize the making of contracts without any consideration. Where there is no money judgment, there can be no financial liability imposed on the appellant to indemnify the appellee. Hence, a contract to give such an amount is without any foundation in law, as a contract cannot be made for a subject matter that does not exist or is impossible of existence. Thus, one cannot legally be compelled to promise to pay money when there is no monetary obligation. No such contract can be enforced when made. A contract on a subject matter that does not exist is illusory and therefore impossible of performance. The compulsory filing of such a bond is, in my opinion, an extortion and therefore legally unenforceable and invalid. A bond for a nominal amount may, however, suffice in such a case.

The Supreme Court has on several occasions held that real properties located all over the country, when pledged as security, need not be described by metes and bounds. In deciding this issues in the case *Zayzay v. Jallah*, [1976] LRSC 6; 24 LLR 486,488 (1976), the Supreme Court held:

"that however general and indefinite the description may be, if by extrinsic factors it can be made practically certain what property it was intended to cover, it will be deemed sufficient."

Likewise in the case *Richards v. Liberian Bank For Development and Investment*, [1982] LRSC 14; 29 LLR 525 (1982), decided February 5, 1982, the Supreme Court held:

"In the case before us, the real estates are located in two small cities and are described by lot numbers. Deeds generally give four main descriptions of a parcel of **land**. Every deed must contain the names of the grantor and the grantee, the lot number, the name of the place where the specific property is situated, and an expert description of how it can be properly demarcated. In towns, villages and small cities, the names of the grantor and grantee may constitute reasonable description of the **land**. Inclusion of the lot number and its location in addition renders the description more precise."

It is time to remind us that according to our previous decisions, and even four of our opinions delivered today, that mere legal technicalities that do not affect the merits of a case are not favored by the Supreme Court. *Mitchell v. Fawaz*, [1964] LRSC 8; 15 LLR 541 (1964); *Levin v. Juvico Supermarket*, [1974] LRSC 46; 23 LLR 201 (1974).

I disagree that the motion should be granted and therefore dissent.

Karpeh v Fischer [1954] LRSC 34; 12 LLR 167 (1954) (10 December 1954)

JOSIAH KARPEH, Appellant, v. GEORGE FISCHER, Appellee.
APPEAL FROM ORDER UPON SUBMISSION FOR CONTEMPT OF COURT.

Argued November
9, 1954. Decided December 10, 1954. An order holding a party litigant in contempt of court will be dismissed where a review of the circumstances shows that the order was based upon an erroneous construction of the law governing the acts comprising the alleged contempt.

Following a judgment by the court below in favor of the plaintiff in an ejectment action, the defendant applied to this
Court for a writ of prohibition staying enforcement of the judgment. During pendency of the prohibition proceedings, the parties
to the ejectment action stipulated a settlement for division of the property to which title had been at issue. The court below ignored
the settlement, and, on submission by the plaintiff in the ejectment action, held the defendant therein in contempt for violation
of an order enforcing the prior judgment. On appeal to this Court, order dismissed.
K. S. Tamba for appellant. appellee. J. Dossen
Richards for

MR. JUSTICE HARRIS delivered the opinion of the Court.* An action of ejectment was instituted by George T. Fischer
against Sagba Blahmoh, the appellant's mother, to recover possession of **land**, for which appellant holds a title deed. The appellant,
being out of the County at the time did not intervene. Judgment was rendered in Fischer's favor. When the court below attempted to
place Fischer in possession, appellant applied for a writ of pro*Mr. Chief Justice Russell was absent because of illness, and took
no part in this case.

hibition against the judge below, thereby staying the enforcement of judgment until the Supreme Court disposed of the prohibition proceedings and indicated what should be done in the premises. Mr. Justice Davis, then presiding in Chambers, assigned the prohibition proceedings for hearing. Counsel for both petitioner and respondent filed stipulations submitting the question of the boundaries of their adjacent lots to arbitration of a surveyor "to be selected and agreed upon by both contending parties," and "agreed that the losing party in these proceedings will abide by the judgment made and will also pay the entire costs of court." Mr. justice Davis approved the stipulations, and the parties mutually selected and agreed upon Mr. Eric Thomas of the Department of Public Works and Utilities, who was directed by the Justice presiding in Chambers to proceed to the spot and conduct the survey. The aforesaid surveyor reported : "There is 6.8 feet encroachment on Fischer's property. Same was rectified and parties satisfied." Mr. Justice Barclay, who had subsequently come into Chambers, entered. a ruling embodying the report of surveyor Thomas in which he noted : "There are no objections to the award or report of the surveyor," and concluded: "Since it appears from the report of the surveyor that the dispute has been amicably settled, there should be no need for further litigation." Notwithstanding that the parties had accepted the award of surveyor Thomas and that the matter had been amicably settled and a copy of Mr. justice Barclay's ruling forwarded to the court below, the court below ignored the same and ordered a writ of possession issued placing Fischer in possession of the whole lot. The above facts were promptly brought to the notice of the court below, and surveyor Thomas was sent back to indicate the boundary line. When the surveyor did so, it turned out that the line split in half a two room house which appellant Karpeh had built on the land, and in

which were his personal belongings. Said house had only one entrance, and upon the door Fischer placed a lock, notwithstanding only one room fell to him and the other to Karpeh. Karpeh also placed his lock thereon in order to secure his personal belongings therein. At this stage of the case George Fischer, the plaintiff below, made a submission to the lower court against Karpeh, the appellant, for contempt of court. Thereupon appellant was fined the sum of twenty-five dollars and ordered to pay all costs of the proceedings; to which appellant, defendant below, took exceptions and brought the case before this Court for review. It would appear from the records certified to us that the court below in which the action of ejectment was tried never sent a surveyor to locate the land which was in dispute and to run the line of demarcation between the contending parties before verdict and judgment were rendered, but that the Justice in Chambers of the Supreme Court had to do so before a correct judgment could be given in the prohibition proceedings. Moreover although, after the prohibition proceedings were terminated, and a copy of the ruling of the Justice in Chambers was transmitted to the court below, that court ignored the ruling and ordered a writ of possession issued to place Fischer in possession of the entire lot. The report of the surveyor and the ruling of the Justice presiding in Chambers

were brought to the attention of the court below, which also sent the identical surveyor back to the spot; and he submitted a report that the house contained two rooms, one of which was on appellant's land, and that the whole premises did not belong to appellee. Nevertheless, in deciding the contempt case growing out of the act of Josiah Karpeh's placing a lock on the one door of the house, to secure his personal effects therein after Fischer had placed his lock thereon, the court below took none of these facts into consideration; neither was the surveyor permitted to testify. This Court is therefore of the opin-

ion that, had the court below taken into consideration the stipulations filed in the Chambers of the Justice of the Supreme Court, and the award and ruling of the Justice presiding in Chambers and had the court below further permitted the surveyor to take the stand, the appellant could not have been held in contempt and ordered to pay a fine and all costs for placing a lock on the door entrance of a house, half of which is on his land, to secure his personal effects therein, after appellee had placed his lock thereon. This Court is therefore of the opinion that the order of the lower court ought to be dismissed, and it is dismissed with costs against the appellee. And it is hereby so ordered. Dismissed.

Wright et al v Wright [1936] LRSC 27; 5 LLR 288 (1936) (4 December 1936)

JOSEPH J. WRIGHT, E. D. WRIGHT, and A. J. E. JOHNSON, Appellants, v. ALICE L. 'WRIGHT, Widow of the late Z. F. WRIGHT, Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Decided December 4, 1936. 1. If this Court reverses a judgment, and remands a case with instructions, it is the duty of the trial judge who carries out said instructions to give such judgment as the evidence, including the additional fact found, will warrant. 2. For should he merely hear the additional evidence, and send up a certified copy thereof for us to decide the issues, we would be compelled to assume the role of a trial judge in a case in which we had no original jurisdiction, which would be unconstitutional. 3. If, however, the judgment had not been reversed, but the case suspended pending return to an interlocutory order, we would not have lost the appellate jurisdiction which originally had been obtained, under which we could proceed to affirm, reverse or modify the judgment originally given.

This case was earlier

decided by the Circuit Court of the First Judicial Circuit and appealed to this Court, which reversed and remanded with instructions.
The Circuit Court thereupon took additional evidence and transmitted "supplementary records" to this Court. Case again remanded with instructions.
S. David Coleman for appellants. for appellee. Anthony Barclay

MR. CHIEF JUSTICE GRIMES delivered the opinion of

the Court. The above entitled case was one of those reviewed at our last April term. On the 15th day of May, 1936, during said term, the judgment of the court below was reversed, and the case remanded to the trial court with instructions : "(1) To ascertain the date of the alleged marriage of

Z. F. Wright and Alice L. 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. . . ." The mandate, to which a copy of the aforementioned judgment and a copy of the opinion on which it was based, were attached was served upon His Honor E. A. Monger, Circuit Judge presiding by assignment in the First Judicial Circuit. Upon receipt of said mandate with copies of the opinion and judgment as aforesaid attached, His Honor the Judge aforesaid caused the parties to appear, heard the additional oral testimony and written evidence that they offered, and, immediately thereafter, ordered the clerk of his court to transmit a copy of said testimony to us as "supplementary records." It is unfortunate that the trial judge seemed not to have realized that he was acting contrary to law. In the first place, the judgment appealed from had been reversed by this Court. The Court, in its opinion, had explained that for lack of certain testimony the Circuit Judge who first heard the case had not been in a position to properly settle the issues submitted, and it was in order to obtain the supplementary evidence indicated in the opinion that the case had been remanded. It should have been obvious to the trial judge that after hearing the evidence, he should have given a judgment, settling the issue in accordance with what he considered just, in view of the additional evidence obtained. Then, had either of the

parties been dissatisfied, such dissatisfied party would have been in a position to regularly appeal to this Court for a review of the decision. As the case now

stands the judgment given by His Honor Judge Brownell, on the Toth day of September, 1935, has been reversed; no other judgment has been given, and were we to assume jurisdiction
now we would be compelled to give an original judgment instead of reviewing an original judgment, which constitutionally we cannot
do. A very important distinction must be made between this case and that of Young, Arrnlahbah and Mesarmah v. Embree, unreported
officially, 3 Lib. New Ann. Ser. 26 (1935), and Young, Armlahbah and Mesarmah v. Embree, [1936] LRSC 21; 5 L.L.R. 242, 3 Lib. New Ann. Ser. 194 (1936), in which Mr. Justice Russell dissented upon the ground therein alleged that in that case, we had
assumed original jurisdiction. For, first of all, we did not reverse the judgment in that case, but merely issued an interlocutory
order, requiring the trial court to resume jurisdiction pro tanto, do certain things therein enumerated, and report to us. "We,,
therefore, retained the appellate jurisdiction that we had already acquired, by virtue of which we had the power to affirm, reverse
or modify the judgment originally given. See c L.L.R. 242, 246 Lib. New Ann. Ser. 194, T99. Up to the time the report was made as
a result of said interlocutory order, we had no means of knowing whether the trespass alleged had been committed, if at all, upon
the lands of plaintiff in violation of the writ of injunction out of which the contempt proceedings grew or on lands of defendants.
As soon as that one doubtful point had been clarified by the surveyor, we were then in a position to consider the judgment before
us, and decide whether, in our opinion, it was in accordance with correct legal principles or not. Eventually, on the T5th day of
May last, we reversed the judgment. .end the four of us held and, in spite of the dissent of our

colleague,
Mr. justice Russell, still maintain, that in following such procedure we never, at any time, exercised original jurisdiction in that
case. On the other hand, in the case now before us there is now no judgment; that originally given has been, as aforesaid, reversed
; nor, as a consequence, have we before us the decision of any Circuit Judge to review, especially since certain evidence was not
elicited, which, during the first trial, was shown to have been a vital error. We are now of the opinion, therefore, that His Honor
Judge Monger should be ordered to resume jurisdiction, and decide this cause; and after he shall have given a decision, should either
party be dissatisfied, such party may be allowed to bring the case up hither for our review. And by an understanding between us all,
it has been arranged that His Honor the Chief Justice will, as soon as possible, assign His Honor Judge Monger to the duties of the
First Judicial Circuit, and by general and special assignments keep him there until this case shall have been by him determined ;
and it is hereby so ordered. Remanded. MR. JUSTICE DIXON having been of counsel before his elevation to the Bench, and MR. JUSTICE
RUSSELL having given certain rulings while a Circuit Judge, announced their disqualification, and hence took no part in the consideration
or decision of this case.

Wuo v Wardsworth et al [1982] LRSC 41; 30 LLR 106 (1982) (8 July 1982)

NYAKWE WUO, Plaintiff-In-Error, v**. A. BENJAMIN WARDSWORTH**, Assigned Circuit Judge, November Term, A. D. 1978, Eighth Judicial Circuit, Nimba County, and **JOSEPH T. WASHINGTON**, Defendants-In-Error.

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE GRANTING THE PETITION FOR A WRIT OF ERROR.

Heard: March 11, 1982. Decided: July 8, 1982.

1. An attorney may not compromise, abandon or withdraw from his representation of the client's case without the knowledge or consent of that client.
2. The right to withdraw a case once filed is not absolute. It is within the province of the court to determine, considering the general circumstance of the case, whether or not to grant it.
3. A notice of withdrawal of a case filed by an attorney without the consent of the client is illegal and cannot be binding on the client.
4. Speedy trial as required by law means responsible and cautious speed, avoiding deprivation of all protected rights.
5. Speedy trial, when pursued in violation of the rights of any party, is damaging to a fair and just trial as an unusual delay is suppressive of the rights and grievance of a party. Both actions are provocative and incoherent with the concept of justice.
6. In cases involving summary proceedings to recover possession of real property, a defendant must be allowed a ten-day period to prepare and file an answer as well as to put in his appearance.
7. Summary proceedings are any proceedings in which the court determines from the pleadings that there is no real issue of fact for the jury. A court, however, cannot determine that a proceeding is summary in nature, unless it had perused the entire pleadings of the parties.
8. It is the facts in issue as brought to the attention of the court by the litigants that determine whether or not a suit is a summary proceeding and not the parties to the suit.
9. A court cannot proceed with a hearing of a controversy concerning title to real property without a jury and grant default judgment where the defendant has not been given adequate notice and opportunity to appear, plead, and proceed with the trial.

10. A notice of assignment must reasonably allow a party sufficient time to appear at the trial, and where it gives no reasonable time to a party litigant, it constitutes an erosion of justice and a denial of the right to a fair trial.
11. A writing of itself is evidence of nothing, and therefore is not, unless accompanied by proof of some sort, admissible as evidence.
12. The preponderance of evidence may be established by a single witness against a greater number of witnesses who testify to the contrary depending upon the nature of the case.

Growing out of an action of summary ejectment instituted by defendant-in-error, the plaintiff-in error who lived in a distant town from the court was served with a copy of a complaint and a writ of summons demanding his appearance for hearing at 9:00 a.m. the following day. When he failed to appear, the court proceeded with the trial and, upon the lone testimony by co-defend-ant-in-error; the court rendered judgment against him and forthwith issued a writ of possession. Plaintiff-in-error petitioned the Justice in Chambers for a writ of error to stay the execution of the judgment. The Justice in Chambers granted the writ and ordered the trial court to resume jurisdiction and hear the case *de novo*. From this ruling, defendants-in-error appealed to the Full Bench. Subsequently, counsel for Co-defendant-in-error, Joseph T. Washington, filed a notice of withdrawal of the appeal, without first obtaining the consent of his client. Co-defendant-in-error Washington objected to the withdrawal and insisted that the appeal be heard.

The Supreme Court sustained the objections of the co-defendants-in-error, and denied the withdrawal, holding that the withdrawal of the appeal by the counsel without the consent of his client, the co-defendant-in-error, was not binding on him. Thereafter, the Supreme Court heard the appeal, *affirmed* the ruling of the Chambers Justice, and *granted* the writ of error, holding, among other things, that the issuance of the writ of summons demanding that the plaintiff-in-error appear for trial in less than ten days was erroneous, provocative, and incoherent with the concept of justice.

Bona G. Sagbeh appeared for petitioner-in-error. *S. Edward Carlor* appeared for defendants-in-error.

MR JUSTICE MABANDE delivered the opinion of the Court

In the Eight Judicial Circuit Court, Nimba County, Joseph T. Washington instituted an action of summary ejectment against Nyakwe Wuo. He alleged ownership to a parcel of **land** by virtue of a warranty deed, and that the defendant entered, occupied and built dwelling houses on the **land** by virtue of an oral agreement to buy the **land** but he later refused to pay the

purchase price or to lease the premises. On January 4, 1979, a writ of summons with copy of the complaint was served on defendant who lived in a distant town from Sanniquellie, demanding his appearance on the following day, January 5, 1979, for hearing of the case at 9: o'clock a.m. Trial of the case began on January 5th, 1979, when defendant had not yet arrived from Ganta. After the lone testimony of plaintiff, the court awarded him general damages in the amount of Three Thousand ($3,000.00) dollars, and forthwith issued in his favor a writ of possession. Defendant then petitioned the Justice in Chambers for a writ of error to stay the execution of judgment.

Upon hearing the error proceedings, the Chambers Justice ruled granting the writ and ordering the trial court to resume jurisdiction and hear the case *de novo*. From this ruling, defendants-in-error appealed to this court, but before the appeal could be considered, Co-defendant-in-error Washington's lawyer filed a notice of withdrawal of the appeal. Subsequently, co-defendant-in-error, Joseph T. Washington, personally filed an objection to his lawyer's notice of withdrawal alleging that his counsel acted contrary to his knowledge and authority and he insisted that his appeal be heard by the Supreme Court.
We have determined that the objection to the notice of withdrawal as well as the appeal be consolidated as both involve related questions of law and facts. This would entail speedy trial for the protection of the rights of both litigants. *Umarco Maritime et Commerciale Corporation (UMARCO) v. Dennis,* [1976] LRSC 64; 25 LLR 267 (1976).

The questions for consideration by us and important for a determination of this controversy are whether a counsel may withdraw a case without the consent of his client; whether, in a summary ejectment case, a court of record may dispose with a party's right to file an answer; whether the doctrine of speedy trial entitles a court to proceed with any speed; and whether the testimony of a single witness may constitute a preponderance of evidence.

Counsel for plaintiff-in-error opened his argument by contending that a notice of withdrawal filed by a counsel of record for a party constitutes a withdrawal of his case from court. He argued further that an objection to a withdrawal of a case filed by a former counsel is in violation of the rule of law that a party may not be allowed to disclaim his own action to the injury of another. Counsel for defendant-in-error contended that a litigant may properly object to any act done by his counsel contrary to his interest and his advice. He contended also that any action by a counsel contrary to the advice of his client violates his professional oath of ethics and does not bind the client who upon notice immediately acts to the contrary with full information to his adversary and court.

On the engagement of the services of a counsel, he begins the representation of the client in so far as an expert exercise of his legal knowledge enables him. In all other acts in connection with a client's case, he is subject to the constant advice and instructions of his client. During the attorney-client relationship, neither party can do anything damaging to the call of duty. The counsel, in the expert exercise of his duty in handling a case, determines both the law and facts of the case that may support his client's contention. He may also advise him and recommend the need to defend or withdraw from further pursuit of the case. If the client refuses to pay heed to the lawyer's advice, the council may advise his client of his withdrawal from further representation of the client, but an attorney may not compromise, abandon or withdraw from his representation of the client's case without the knowledge or consent of that client. It is, however, unethical and damaging to the morality of the legal profession and the counsel himself to advise his client to pursue a worthless or a groundless suit only to prove that he has done his work for judicial determination.

When a counsel files a notice of withdrawal of a case, it is within the province of the court to determine, considering the general circumstance of the case for which the notice of withdrawal is filed, whether or not to grant it. The right to withdrawal a case once filed is not absolute. The withdrawal notice of the case was filed without the consent and knowledge of the client. It was therefore illegally done and is not binding.

Counsel for plaintiff-in-error argued that the trial court committed reversible error by the issuance of the summons and complaint and having them served on plaintiff-in-error on the 4th day of January 1979, and hearing the case on the next day without waiting for the usual ten days' period allowed by statute for a defendant in a court of record to file his answer or put in an appearance. The counsel further argued that the limitation of the ten day period to file an answer or appear in court to a single day by a court of record, is a violation of the Civil Procedure Law, and therefore, the trial and judgment be set aside for violating plaintiff-in-error's right to due process of law.

In the absence of an express law to the contrary, the Civil Procedure Law in its entirety must govern all proceedings of all cases in all civil matters. Summary ejectment, when filed before a court of record, must be heard speedily but a court is not to adopt an unreasonable and irregular speed that violates the rights of litigants. Speedy trial, as required by law, means responsible and cautious speed avoiding deprivation of all protected rights. Speedy trial, when pursued with violation of the rights of any party, is as damaging to a fair and just trial as an unusual delay is suppressive of the rights and grievances of a party. Both act-ions are provocative and incoherent with the concept of justice. Even in cases involving summary proceedings to recover real property when the plaintiff's complaint and summons are served on the adversary party, he should be allowed a ten-day period to prepare and file his answer as well as to put in his appearance.

Under our law, the service of an answer to a complaint served with a summons on a party, or a reply to an answer, should be made within ten days. This is binding on all courts of record. No court of record has right to limit this period to the detriment of a party. Civil Procedure Law, Rev. Code 1: 9.2.3.
When real property is the subject of any case before a court, the case should deserve the keen attention of the court. All rights of parties interested in a property should always demand the keen attention of the court. Title to **land** or other property determines the ability of a person to post bail in all judicial cases where bail is required of a party who cannot produce money. We are therefore of the opinion that the Chambers Justice correctly ruled that the trial judge proceeded erroneously with the hearing of the case when the party defendant had not been fully accorded all of his rights.

Counsel for plaintiff-in-error argued that the failure of the trial court to comply with the Civil Procedural Law in failing to notify plaintiff-in-error who had not been legally brought to court caused his absence from the trial and deprived him of his day in court.

Counsel for defendants-in-error, however, argued that a no-tice of assignment is not necessary in a summary ejectment case where the complaint and summons are served on the party de-fendant to appear on the following day. He argued also that the summons constituted notice to the party defendant of the charges levied against him and that it was also an assignment of the case. The counsel further argued that although, a party may reside at a different place from the seat of the court, a court is not required to *sua sponte* consider and allow any time to that party as a convenient period to prepare and proceed to court for hearing.

Summary proceeding is any proceeding in which the court determines from the pleadings that there is no real issue of fact for the jury. A court cannot determine that a proceeding is sum-mary in nature unless it had perused the entire pleadings of the parties.

It is not a party to a suit who determines it to be a summary proceeding, but the facts in issue brought to the attention of the court by the litigants.

The purpose of the adequacy of notice for a party in a case before a court of record is to enable him also to file a written pleading. This opportunity was not afforded the plaintiff-in-error. A court of record cannot proceed with the hearing of a controversy concerning title to real property

without a jury or grant a default judgment to recover the real property where a party has not been given adequate opportunity to appear, plead and proceed with the trial. The Civil procedure states the following on the matter: “In an action to recover real property, a hearing is mandatory, and any question of fact shall be tried by a jury.” Civil Procedure Law, Rev. Code 1: 42.2.

The purpose of a notice of assignment is to inform the parties to a case of the pendency of the suit, and of the time and place of hearing. A notice of assignment must, however, reasonably allow a party sufficient time to appear at the trial. This is in consonant with the concept of speedy and fair trial. A notice of assignment that gives no reasonable time to a party to arrive at the trial in order to confront his adversary constitutes an erosion of justice and a denial of the right to a fair trial. The trial court in the instant case denied the party defendant of his right to due process of law. We therefore hold that the procedures adopted by the trial court were all tainted with gross violations of the procedural law and judicial ethics.

Counsel for plaintiff-in-error contended that the uncorroborated testimony of a single witness is insufficient to support a judgment. Counsel for co-defendant-in-error Washington did not disagree with this contention. He is therefore deemed to have conceded *sub silentio*.

The numerical system of proof was originally unknown to the English courts. It was the civil law of continental Europe which held that proof of a single witness to a fact was generally insufficient. It required a certain number of witnesses in certain cases. Legal history, however, reveals that during the reign of Emperor Constantine, the numerical system crept into Roman Law. Through the laws of Emperor Justinian, Roman Law adopted the rule that one witness alone was not sufficient to prove any issue. The ecclesiastical courts incorporated with modification the numerical system of proof.

The English system did not, however, hold that in all cases a single witness was not sufficient. It, however, developed the fundamental rule of numerical system by sustaining it with respect especially to criminal cases on basis of biblical rules. The ecclesiastical sanction sufficed in giving the numerical system a powerful and overbearing momentum. This system with all of its attending controversies was imported into this **land** by religion and our judicial historical past. *Liberian Bank For Development and Investment v. Holder*, [1981] LRSC 30; 29 LLR 310 (1981).

The oral testimony of a lone witness who is a party litigant may be self-serving; hence, corroboration of a witness has become a more pressing issue even in *ex parte* cases or when

judgment by default is prayed for. Even where demonstrative evidence, real evidence or documentary evidence is relied upon to corroborate proof of authenticity of documents, the numerical system has generally been relied upon in Anglo-American courts.

"A writing of itself is evidence of nothing, and therefore is not, unless accompanied by proof of some sort, admissible as evidence." 22 Iowa Law Review, 486 (1939).In *Wallace v. Wallace,* 66 ALR 587 (1979), Justice Matthew relying on the case *McQuay v. McQuay*, 81 Mont.311, held that "the preponderance of evidence may be established by a single witness against a greater number of witnesses who testify to the contrary." We hold this view, but in certain cases the rule of the numerical system as generally applied in Anglo-American courts may be applicable.

We also hold that as the allegations of the complainant indicated a series of transactions involving the construction of dwelling houses, and the establishment of businesses on his **land** by the plaintiff-in-error, the testimony of the lone witness to all of those facts was insufficient evidence to prove his allegations. The testimony of the lone witness also grossly lacked any evidence to have persuaded any reasonable judge to have awarded judgment in the amount of three thousand dollars ($3,000.00). A judgment which is not supported by the facts or the law of the case is unenforceable.

We are therefore of the opinion that as plaintiff-in-error was deprived of his right to a fair and impartial trial, the judgment should be and is hereby reversed; the ruling of the Chambers Justice is hereby affirmed with modification that the parties re-plead. Costs are ruled against defendants-in-error.
The Clerk of this Court is hereby ordered to send a mandate to the judge presiding in the trial court to resume jurisdiction and proceed with the case according to this opinion. And it is so ordered.
Petition granted.

Yah River v United [1975] LRSC 4; 24 LLR 57 (1975) (3 March 1975)

THE YAH RIVER LOGGING CORPORATION, Plaintiff in error, v. UNITED LOGGING CORPORATION, et al., Defendants in error.
APPEAL FROM RULING
OF JUSTICE IN CHAMBERS.

Argued February 24, 1975. Decided March 3, 1975. 1. Errors and omissions by officers of a court should not

prejudice the rights of parties. 2. An application based upon facts in a court of record should be in writing and supported by affidavits.

The plaintiff in error was a corporate concessionaire authorized by the Government to harvest timber. It had, in turn, entered into an agreement with a logging company to manage operations. Thereafter, the president of the concession entered into an agreement with another logging company to manage operations, thereby breaching the prior contract. The plaintiff in error brought an action for an injunction against all parties adverse to its claimed rights. The judge in the circuit court ruled against the plaintiff in the absence of counsel. The plaintiff thereupon petitioned the Justice in chambers for a writ of error, alleging the foregoing as its basis for a writ of error. The petition was denied and the Justice ordered an injunction issued in favor of the second logging corporation. An appeal therefrom was taken by plaintiff in error to the full bench. The Supreme Court considered the facts and the evidence proferted. It found no basis for denial of the injunction sought by the concession and ordered an injunction perpetuated, to restrain any other logging company from interfering with the Government approved agreement entered into between the concession and the initial logging company. The Court, incidentally, discounted the bills of inf or57

ation alleging violation by plaintiff in error's managing logging company of the Justice's injunctive ruling by continuing operations after issuance of the Justice's said ruling; the Court emphasized the lack of any ground for issuance of the injunction. The ruling of the Justice was reversed and the injunction sought by plaintiff in error was granted.

Toye C. Barnard and Moses Yangbe for plaintiff in error. Joseph Findley and Stephen Dunbar for defen-

dants in error. MR. CHIEF JUSTICE PIERRE delivered the opinion of the Court. In this case we are to consider an appeal in error proceedings taken from the ruling in chambers of Mr. Justice Horace, and two bills of information growing out of orders given by the Justice in chambers in respect to proceedings in error, heard and determined by him. All of these grow out of an action of injunction brought by the Yah River Logging Corporation against Samuel T. Voker, president of Yah River Logging Corporation and the United Logging Corporation. Because both bills of information allege violation of orders given in these cases, we have decided to begin at the beginning and review the whole matter. According to the complaint, an injunction was sought to restrain and enjoin various acts. " (1) Enjoin the defendant from entering into any agreement of management under the concession agreement between the Government of Liberia and the Yah River Logging Corporation which was duly assigned to the National Industrial Forest Corporation.

"(2) Restrain co-defendant R. F. D. Smallwood from acting as an officer of the Yah River Logging Corporation in view of the fact that his appointment

was illegal and contrary to the bylaws of the Yah River Logging Corporation. "(3)
Enjoined defendant Samuel T. Voker from acting in the name and on behalf of the Yah River Logging Corporation with third parties
until such time when a three-member Board of Directors had been elected by the shareholders of the Yah River Logging Corporation,
in keeping with the corporation laws of Liberia." It might be mentioned here that the Yah River Logging Corporation acting through
its president, S. T. Voker, entered into an agreement on July 29, 1973, with the National Industrial Forest Corporation, acting through
its president and general manager for the Andre Sahy Corporation, to manage the former's 51,000 acres of forest land, lying and being in Nimba County.
The agreement was approved by James T. Philips, Jr., Minister of Agriculture, on behalf of the Government of Liberia. But prior to
the signing of this management agreement, the Government had, on November 21, 1972, granted a permit to the Yah River Logging Corporation,
through the Bureau of Forest Conservation of the Ministry of Agriculture, for the corporation to conduct a forest survey; on May
31, 1973, the Government had also entered into a concession agreement with the Yah River Logging Corporation, which formed a part
of the management agreement referred to earlier. On November 4, 1974, the Government and the Yah River Logging Corporation signed
an addendum to the concession agreement entered into on May 3 r, 1973. Because of the importance of this document, we will quote
three of its relevant paragraphs. "Whereas on the 3 rst of May, 1973, a timber concession agreement was executed by and between the
Government of Liberia and the Yah River Logging Corporation, to harvest, process, transport, market and to conduct other related
timbering operations within

a concession area totalling fifty-one thousand (51,000) acres of forest land
which is located between the Ganta Saclepia Motor Road and LAMCO railroad north of Lofa Logging Company's area, Nimba County ; and
"Whereas, the Concession now wishes to extend its area of operation over an additional sixty-three thousand seven hundred and fifty
(63,750) acres, hereinafter referred to as Concession Area No. 2, located along the St. John River, Nimba County, thus bringing the
total forest land of the concessionaire to one hundred fourteen thousand seven hundred and fifty (11 4,750) , acres ; and "Whereas,
the Government has agreed to grant to the concessionaire the additional sixty-three thousand seven hundred fifty (63,750) acres of
forest land in accordance with the terms and conditions set forth in the timber concession agreement of May 3r,
1 973, · ·" This
addendum was signed by James T. Philips, Jr., Minister of Agriculture, and Stephen A. Tolbert, Minister of Finance on behalf of the

Government, and Samuel T. Voker, president of the Yah River Logging Corporation. According to the addendum the Yah River Logging Corporation's two parcels of timber land were to be merged into one, containing one hundred and fourteen thousand seven hundred and fifty (11 4,750) acres. All documents necessary to validate the timber concession were processed and approved by the government, including a performance bond with an attached "clean letter of credit" for $so,000 in favor of the Government. Hence, the Yah River Logging Corporation's concession, with its management in charge of the National Industrial Forest Corporation, had, by these documents, been approved by the Government. It was at this stage that the management company, National Industrial Forest Corporation, filed suit to enjoin

the defendants, Samuel T. Voker, President of Yah River Logging Corporation, R. F. D. Smallwood and United Logging Corporation, from doing the things enumerated earlier in this opinion. This suit was filed on November 22, 1974, in the Civil Law Court in Monrovia, Judge Tilman Dunbar presiding. Four days after the complaint was filed, the defendants filed an answer and simultaneously also filed a motion to vacate the injunction. The next day, November 27, 1974, the case was called for hearing of the issues of law. The following day, November z8, 1974, the case was resumed and the injunction vacated in the manner described later in this opinion. We would here like to comment on the judge's order issued for the commencement of the suit, because this document was to play an important part in the handling of the case as will be seen later. In the first paragraph the clerk of the court was instructed to "issue forthwith a preliminary writ of injunction against the defendants," and in the second paragraph he was instructed to "insert a clause in the writ commanding the defendants to appear . . . to show cause why the writ . . . should not be issued." Two conflicting orders which could not consistently stand together. However, the clerk issued the writ and omitted to insert the clause for the defendants to show cause. As will be seen later it was because of this omission that the judge vacated the injunction in disregard of the maxim that errors and omissions of officers of a court should not prejudice the rights of parties. According to the record of the trial court proferted and forwarded with the documents in these proceedings, on Wednesday, November 27, 1974, Judge Tilman punbar, presiding in the Sixth Judicial Circuit Court, spoke for the record. "The Court: The injunction case brought by Yah River Logging Corporation against S. T. Voker and R. F. D. Smallwood in an injunction matter, is as-

signed for hearing on tomorrow morning at 9 o'clock, and inasmuch as counsel for plaintiff is present and in court there will be no necessity for further assignment.

And since Counsellor Smallwood is also in court there will be no necessity to send out an assignment to him. Assignment in this case will only be sent to counsel for defendant or the party himself." The record does not show what followed after the above recited ruling of the judge, but the very next lines of the same paragraph recited are interesting: "The Court : Injunction matter is turned down and will be heard by our successor in office during the next term of court. Matter suspended." Thus, by the record, the judge nullified the assignments which had been made in the same paragraph, immediately preceding this matter quoted, continuing the case for the December 1974 Term of Court. It is not usual for a judge to make such conflicting rulings in a case, at one and the same time and on the same day ; however, that is the record. Parties on both sides were, by this latter part of the judge's ruling, notified that the hearing of their case would not take place till the following term of the court. But quite strangely, the next day, Thursday, November 28, 1974, the following record appears. "In re the case : Andre Sahyoun versus Samuel T. Voker et al., preliminary injunction, respecting the announcement made by Counsellor Smallwood requesting assignment of this case for Tuesday of next week, counsel for defendant is requesting the court to rescind its ruling and assign the hearing of this matter for this afternoon at 3 o'clock. "The court : On yesterday the court turned down this case to be heard by the judge presiding at a subsequent term of court, but upon application made to us this morning by counsel for defendant, the court will give favorable consideration to said application, and hereby rescinds its ruling of yesterday's date,

63 which is being done during term time, and assigns this matter for hearing at three P.M. this afternoon. Counsel for both sides are directed to be notified by assignment. And it is hereby so ordered." We would like to comment at this stage that there is no showing in these minutes proferted with the record, that any opportunity was given for resistance by the plaintiff to the application for recision of the ruling of the previous day continuing the case for the next term of court. This was very necessary in view of the previous positions taken by the court the day before. Not only should the plaintiff have had notice of the application by the defendant for the judge to rescind his ruling continuing the case, but an opportunity should also have been afforded for him to resist the application to rescind. We shall say more about this later. The record for November 28, 1974, shows that, in keeping with the judge's ruling rescinding his previous ruling, assignments were sent out for the afternoon hearing of the case. The bailiff, Henry Mitchell, who is supposed to have served the precepts, made returns to the effect that at his "attempt to serve the notice of assignment on plaintiff's counsel . . . both Counsellors Yangbe and Barnard refused to sign the assignment." Based upon these returns the judge heard argument from defendant's counsel, and between three o'clock in the afternoon and closing time that day, vacated the injunction proceedings; because the plaintiff's counsel were absent, no appeal was taken. Just at this point we would like to observe two things : ( ) it seems unlikely that counsel for a plaintiff would refuse assignment of his case which he filed, when

notice of its hearing was given to him ; in fact, it is highly improbable that any lawyer for a plaintiff would do this. But let us give the bailiff the benefit of the doubt as to the returns made by the ministerial officer, since this is in keeping with precedence, with procedure, and with our practice; (2) we would like to observe that, if it is true that

counsel for the plaintiff refused the court's order to appear for the hearing of their case, it was a contemptuous act, and should have been disciplined. And it was not within the discretion of the judge to have waived proper discipline, because this disobedience of the court's order assailed and affronted not only the authority of Judge Dunbar's court, but the dignity of the Judiciary as well. Therefore, the judge should have compelled the appearance of counsel, and investigated the matter, and punished those at fault if the returns were found to be true. In International Trust Co. of Liberia v. W eah, i5 LLR 568, 575 (1964) this Court made pertinent observations. "Every disobedience of a court's order constitutes contempt ; and it is as much the duty of the inferior courts to demand and compel obedience of their orders as a first step to upholding the dignity of the judiciary and the authority of the courts of Liberia, as it is the responsibility of the Supreme Court to see that said dignity and authority are preserved." Of course, the certified record shows that plaintiff's counsel deny ever having been served with any notice of assignment for November 28, when their case was heard and dismissed ; all the more reason why the judge should have instituted an investigation of the returns made by the Bailiff. Coming back to the application of the defendant's counsel requesting the judge to rescind his ruling to continue the case till the next term of court, we are of the opinion that any application under the prevailing circumstances made in a court of record should be in writing, if what it asks for requires notice to the adverse party to either defend against the application or defend an interest which might not necessarily be adverse. In Reeves v. Sherman, [1974] LRSC 49; 23 LLR 227 (1974), this Court held that an application based upon facts in a court of record should be in writing supported by affidavit, in keeping with Rule 8 of the Circuit Court Rules. In this case the record does not show the grounds upon which the application to rescind was

made ; but we have to assume that some factual reason must have been given to have warranted the judge going diametrically against the ruling he had made only the day before, to continue the case till the next term of court. Why the sudden change in his decision to hear the case; and'why in the absence of the plaintiff's counsel? Because the plaintiff and

his lawyers were absent when the court vacated the injunction, they petitioned the Justice in chambers for a writ-of-error. The Justice denied issuance of the peremptory writ, whereupon the plaintiff in error appealed to the bench en banco. The minutes of the hearing show that upon application of the defendant in error's counsel to be permitted to file a bond to enable the United Logging Corporation to harvest timber in the forest involved during the pendency of the appeal, the Justice made a ruling: "The application of the defendants in error is granted, that is to say, that the appeal is granted subject to Rule XIII, Part 3 of the Supreme Court Rules ; and the bond in the amount of $10,000 to indemnify the plaintiff-in-error against any loss sustained as a result of this action, without prejudice to any action of damages brought for any loss sustained." In view of the Government's grant of the two parcels of forest land to the Yah River Logging Corporation, for management by the National Industrial Forest Corporation, as shown by the several documents referred to earlier in this opinion, this was an unusual ruling. Among the documents made profert in the record before us, is one marked exhibit "B" addressed to Alexander Peal, Regional Forester in Nimba County. Because of the importance this letter has on the decision we have rendered in determining this case, we have quoted the letter verbatim. "Dear Mr. Peal : "By directive of the Minister of Agriculture you are hereby instructed to lift the suspension of all opera-

tions of National Industrial Forestry Corporation (NIFCO) in the concession area i and 2 of Yah River Logging Corporation. "You are hereby further informed or reminded that NIFCO is the only corporation holding valid management agreement, dated 23 July 1973, to manage the concession areas of Yah River Logging Corporation. Until the expiration of this agreement, or unless NIFCO enters a management agreement with another company or corporation to manage a part or all of the concession areas of Yah River Logging, of which you will be informed, no other company or corporation should be allowed to enter and operate said areas. "With kind regards, "Very truly yours [Sgd] J. MELVIN THORNES." It is clear that the Government has, by several documents, some mentioned in this opinion and others which we have not mentioned, approved the management of the Yah River Logging Concession by the National Industrial Forest Corporation. Nowhere in any of the Government's approval documents has any mention been made of any grant of management to, or approval of, an agreement in favor of the United Logging Corporation. Nor has this corporation, one of the parties to these proceedings, made profert of any document which gives them any right to management of the Yah River Concession. During argument we inquired as to the documents which might have entitled United Logging to manage either or both of the areas concerned, and it was admitted it had not made profert of any such documents. Moreover, could the courts grant permission, or order the United Logging Corporation to operate in the Yah River Logging Corporation's concession areas, in face of the Government's refusal to grant such permission? It is

not the duty of the courts to grant concessions; this is a function of the Executive branch of Government through the Ministry of Agriculture ; that Ministry had already
granted the concession to be managed by the National Industrial Forest Corporation. Therefore, it was error for the Justice in chambers
to have ordered the defendants in error to file a bond and thereby permit it to operate in the concession area. Furthermore, there
was nothing in either of two cases, the injunction suit in the court below, or the error proceedings growing out of it, which forbade
operation of the concession by either party. As far as is shown by the record in the two cases, NI.FC0 had never ceased its operation
nor been ordered by any court to stop operating; nor had there been any such question raised in either the injunction suit or the
error proceedings for the United Logging Corporation to be permitted to operate in the forest area involved. The order given by the
Justice in chambers for United Logging to operate, made no provision for it to file a performance bond, which is one of the prerequisites
to operating a forest concession. Why would this corporation be allowed to perform without filing the bond, when every other company
had been required to do so? During argument it came out that there had been only one performance bond filed, and that was the bond
filed by NIFCO. Was it expected that United Logging, a rival of NIFCO, was to use the same bond for its operations? In a memorandum
marked exhibit "D" attached to the returns of the respondents in the information proceedings which we shall address ourselves to
later, John T. Wood of the Concession Secretariat made the following report to the Minister of Finance, when United Logging applied
for permission to operate in part of the concession : "If the management agreement between Yah River and United Logging Corporation
is approved by the
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Government, it would mean two managing companies for Yah River. It will also mean
a duplication of the incentives such as duty free privilege. "It could also mean a split of the concession obligations between two
management companies. In case one management company defaulted and the penalty is imposed on the concessionaire, the other management
company could suffer." Based on these grounds the Government refused to permit United Logging to have anything to do with the Yah
River Logging Corporation's concession. How then could the court order them to operate? We must reverse the order given by the Justice
in chambers, because the Government cannot violate the contract it had approved. We come now to consider the two bills of information
filed in these proceedings. Both allege violation by NIFCO of the order given by the Justice in chambers for United Logging to operate
the No. 2 area of the Yah River concession. We have shown earlier that the two areas of the concession had been merged into one.
We have also shown that United Logging had no authority to operate in either of the two areas of the concession, since the Government

had refused it permission. But more than this, there is no showing that the order of the Justice in chambers had prohibited NIFCO from continuing its management operation, according to Government grant. Hence, there is no violation of any order forbidding NIFCO from operating in keeping with its management agreement approved by the Government. The two bills of information are, therefore, dismissed as unmeritorious. We are of the opinion, in view of the circumstances stated herein, that there were proper grounds for the peremptory writ of error to have been issued. We are also of the opinion that the writ of injunction should not have been vacated, because the errors of the clerk in carrying out the instructions of the judge should not have prejudiced the rights of the plaintiff. To have allowed the

President of the Yah River Logging Corporation to give the management of a portion of the concession to a rival company would certainly have adversely affected the interests of the National Industrial Forest Corporation. Hence, seeking relief was justified, and as we have said earlier, the injunction should not have been vacated for this reason. Not only is this in accord with the position taken by the Ministry of Agriculture in respect to the United Logging Corporation, but we feel that .this is simply right. Therefore, until the expiration of the management agreement entered into between the Yah River Logging Corporation and the National Industrial Forest Corporation, the injunction is perpetuated, to restrain any other management company from interfering with the agreement approved by the Government. Costs against the defendants in error.
Reversed; injunction granted.

Lib. Trading Co v Cole [1962] LRSC 10; 15 LLR 61 (1962) (1 June 1962)

LIBERIAN TRADING CORPORATION, Ltd., a Swiss Firm Doing Business in Liberia, by its Manager, H. TRAVENA, Appellant, v. SAMUEL B. COLE, Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued April 5, 1962. Decided June 1, 1962. Where a lessee of land is named as defendant in an ejectment action, the titleholding lessor must be joined as codefendant.

On appeal from a judgment awarding damages in an ejectment action, on a finding that the trial court had erroneously denied motions to join necessary parties, the judgment was reversed without prejudice.
Lawrence A. Morgan for appellants. nis for appellee. Joseph

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MR. JUSTICE PIERRE delivered the opinion of the Court. The record in this case shows that the late S. D. Coleman entered into lease agreement in 1952, and again in 1953, with the Liberian Trading Corporation, Ltd., and leased to it a parcel of land which it now occupies as lessee of the aforesaid S. D. Coleman who died two years after signing the second of the two agreements. In a complaint filed in 196o, the appellee herein, as plaintiff in the court below, brought this action of ejectment seeking to evict the firm from the property held under leasehold from Mr. Coleman, and claimed that part of the said property encroached upon two lots which Mr. Coleman was alleged to have purchased from one Christiana Burke. The complaint also alleges that the
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appellants, well knowing this fact, withheld this part of the property unlawfully and illegally, the quantity of property involved being a half lot. He therefore prayed that judgment should be rendered placing him in possession and awarding him damages for the alleged unlawful detention. Appellant, appearing through its manager, H. Travena, filed an answer wherein appellant denied holding the plaintiff's property unlawfully, and claimed that the property had been leased to the firm by the late S. D. Coleman for a period of time which had not yet expired. Appellant also alleged that plaintiff had deliberately waited until the death of the lessor to bring his action for the purpose of harassment; that he knew of the lease agreement but took no steps until after Mr. Coleman's death; and that Mr. Coleman's heirs or executors should have been joined as defendants, in order to give them opportunity to defend the title of the estate. With the answer, appellant made profert the two lease agreements under which it had occupied the property leased by Mr. Coleman before his death; and this is significant, in the light of the position taken by plaintiff that the defendants should have given the plaintiff notice by naming the persons who should have been joined, either as heirs of the late Mr. Coleman, or as executors of his estate; and that, since the answer had failed to do this, it had deprived plaintiff of information needed to move the court to join the proper parties. What effect this position was to have on the case will be seen later in this opinion. Because both the notice of appearance and answer of defendant were shown to have been filed out of statutory time, the judge dismissed the defendant's pleadings, and placed the defendant on a bare denial of the facts in the complaint. But just prior to this ruling on the law issues, and after plaintiff had filed his reply, defendant filed a motion praying the court to join the heirs of the late S. D.

Coleman as defendants. For the benefit of this opinion, we quote the three counts which this motion contains, and which read as follows : "And now comes the Liberian Trading Corporation, Ltd., Monrovia, represented by H. Travena, Manager, and most respectfully prays this court as follows to wit: "r. That an action of ejectment was brought against defendant by the above-named plaintiff, seeking to eject him from certain premises which defendant held by lease agreement between defendant and the late S. David Coleman. "2. That his present landlords, the heirs of the late S. David Coleman, were not joined as defendants by the plaintiff, so as to enable the said heirs to defend defendant's title as vested in him by the said S. David Coleman. "3. That defendant verily fears that, unless the heirs of the said late S. David Coleman are joined as defendants in said action of ejectment to show the source of his right, defendant will suffer great injury. "Wherefore defendant prays this court to order the heirs, representatives, etc., of the late S. David Coleman joined as defendants in the said action of ejectment, and grant unto defendant such further relief as unto Your Honor may seem just." The court, in passing upon the issues of law, did not pass on this motion, but left it for the trial judge to decide. Before the case came on for trial, the heirs of the late Mr. Coleman prayed the court to allow the estate to intervene; and we quote the motion which they filed : "And now comes the estate of the late S. David Coleman, represented by S. Othello Coleman and Genevieve Garnett, by -and through her husband, J. Newton Garnett, heirs of the late S. David Coleman,

intervenors, and most respectfully moves this court to permit said estate to intervene in said cause, and herewith prays as follows, to wit: I. That defendant is in possession of subject property under a lease agreement entered into between the said defendant and the late S. David Coleman, the bona fide owner of said property. Therefore, intervenors submit that the estate of the late S. David Coleman should have been made a defendant, since the heirs of the late S. David Coleman have interest in and to said property, which interest would be adversely affected by the decree of court in this matter. That intervenors, being the bona fide owners of 2. said property, pray that they be joined as defendants so that they may have an opportunity to defend their title thereto. "Wherefore, intervenors pray that this court will make them party defendants, and cause them to be furnished a copy of each pleading in this suit and the record made thus far, so that intervenors may study the same and adequately defend their title, thereby avoiding a multiplicity of suits." It is strange that, although the plaintiff had, in his reply, demanded to be notified as to the rightful persons connected with the estate of the late S. David Coleman, who should have been joined as defendants, yet he opposed both of these motions, which not only gave him the required notice, but also afforded him an opportunity to make good an omission in his complaint called to his attention in the defendant's answer. Both the motion to intervene and the motion for joinder of defendants were denied by the judge, and the

plaintiff's case went before a jury with the defendant restricted to a bare denial. The jury returned a verdict for the plaintiff,
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and awarded him $8,000 damages. It is this judgment which is now before us on appeal. Several issues
are raised in the pleadings ; but we will only pass upon the legality of the ruling denying the motions hereinabove mentioned. No
valid judgment which affected the rights of a party can be rendered unless such party is under the jurisdiction of the court rendering
the judgment. It is clear that any judgment rendered in this case would affect rights of the heirs of the late S. David Coleman.
Therefore, we find ourselves in complete agreement with the position taken in the motion for joinder of defendants, as well as that
contained in the motion filed by the intervenors. How could we render any judgment to put the plaintiffappellee in possession of
the one-half lot he now claims, for which the heirs of the late S. David Coleman might hold a title deed, without affecting their
property rights? On the other hand, how could we render a judgment against the plaintiff-appellee's claim to the one-half lot without,
in effect, deciding this action of ejectment in favor of the heirs of the late S. David Coleman? It is not hard to see, then, that any judgment herein would affect the heirs
of the late Mr. Coleman, who are not parties in issue, but who should have been joined. It is, therefore, our opinion that the pleadings
filed in the court below should be vacated without prejudice to the parties' rights to refile; and the plaintiff-appellee should
be allowed to re-enter his action, if he so elects, in which case the heirs of the late S. David Coleman would be joined as party
defendants, and would thereby be brought under the jurisdiction of the court. The judgment rendered and appealed from, being in error,
is hereby reversed. Reversed.

Williams et al v Clarke [1913] LRSC 13; 2 LLR 130 (1913) (13 June 1913)

E. W. WILLIAMS et al., Petitioners in Certiorari, v. **R. J. CLARKE**, Judge of the Monthly and Probate Court, Montserrado County, and **MANSON WYNN**, Administrator of the Estate of the late H. R. Phelps, deceased, Respondents.

ARGUED JUNE 6, 1913. DECIDED JUNE 13, 1913.

Dossen, C. J., McCants-Stewart and Johnson, JJ.

1. The writ of certiorari is for the purpose of correcting errors committed by a subordinate court or other body while a matter is pending, when such errors materially prejudice or injure the rights of a party.

2. *Semble:* Where there is an administrator, he should administer every part of the estate.

3. *Semble:* When personal liberty is involved, courts should act with great care and deliberation.

Mr. Justice McCants-Stewart delivered the opinion of the court:

Administration—Rulings on Trial. This matter comes before us on a writ of certiorari, and the record shows the following facts : At the November, 1912 term of the Monthly and Probate Court of Montserrado County, John H. Phelps, co-administrator with E. W. Williams, one of the petitioners in certiorari, of the estate of H. R. Phelps, deceased, submitted to said court a report in which he made several grave charges against said E. W. Williams in connection with the administration of said estate, alleging, among other things, that, although large sums of money had been realized from said estate, his co-administrator had assumed exclusive management and had not paid a dollar to any creditor of the estate. He then asked to be allowed to withdraw as administrator. Upon the reading and filing of this report said E. W. Williams submitted to said court his resignation as administrator; but the court refused to accept the same and ordered an investigation of the management of said estate.

At said term, counsel for certain creditors appeared and prayed that certain coffee-bearing lands, alleged to have been the property of the said H. R. Phelps at his death, be placed upon the inventory of the estate. The court proceeded to hear this application as well as to investigate other matters relating to the administration of the estate, and decided among other things, that this coffee-bearing **land** and the sum of seven hundred dollars, being the value of certain goods in the store of the said H. R. Phelps at the time of his death, and also certain books of accounts, should be placed upon the inventory, and that said E. W. Williams should be held liable upon his bond until discharged.

The court then appointed J. W. Parker and J. H. Davis administrators of said estate, but they prayed to be excused from serving on the ground of legal disability. Whereupon the court appointed Manson Wynn as administrator with direction to make and report an inventory of said

estate, and directed said E. W. Williams to deliver to said Manson Wynn all books, papers and accounts, etc., in his possession belonging to said estate.

At the March term, 1913, Leah A. Williams, one of the petitioners in these proceedings, presented a petition to the Probate Court praying that certain property, namely the aforesaid coffee-bearing lands and certain articles of personal property be stricken from the inventory of said estate. Upon the hearing of the petition E. W. Williams, one of the petitioners in these proceedings, being the husband of said Leah A. Williams, appeared for her. On the second day of said term the hearing of said petition began and continued throughout the fourth day, and was then suspended until the following day. On the fifth day the court announced that the Circuit Court would need the court room that day, and that the further hearing of said petition would be continued to the April term. The court then appointed one Mrs. J. E. Coleman to pick the coffee growing on the real estate in dispute, and ordered her to turn it over to the court with her bill of expenses.

On the opening of the April term it was represented to the court by counsel for Manson Wynn, administrator, that said E. W. Williams had failed to deliver to said administrator the books of accounts, etc., belonging to the estate. Said E. W. Williams being present, was asked by the court why he had not complied with its order. Whereupon said E. W. Williams replied that if he had told the court that he had any books, etc., he had "lied." The court thereupon summarily ordered the sheriff to take said E. W. Williams into custody and to put him in prison for disobeying the order of the court, to which order said E. W. Williams excepted and prayed an appeal to the Supreme Court. At this stage of the proceedings petitioners applied to this court for relief under writ of certiorari.

Upon these facts petitioners in certiorari pray:

1. That this court strike the aforesaid real estate from the inventory, or order the Probate Court to do so, contending that the said court has deprived them of their property by appointing said Mrs. Coleman to pick the coffee on said real estate.

2. To render him such relief as to this court may seem just and equitable from the order of imprisonment made against him by the probate court.

Now, the writ of certiorari is invoked for the purpose of correcting errors committed by a subordinate court or other body while a matter is pending, when such errors materially prejudice or injure the rights of a party. This court cannot invade the limits of the jurisdiction of any court below and do what the law enjoins that such court should do, until at least such court has acted, and has done so erroneously.

The Probate Court is within its jurisdiction in seeking to determine what shall constitute a correct inventory of an estate before it, and in the case at bar the court is now hearing a question relating to the inventory ; and as no error is complained of, and as no decision has been made, or judgment entered in the matter, there is nothing to be reviewed by this court at least, at this stage of the proceedings. This court cannot, at least at this point, either strike said disputed item from the inventory, or order the court below to do so.

The petitioners do not raise any issue as to the appointment of said Mrs. Coleman to .pick the coffee from the lands in dispute. They simply complain in a general way contending on the argument that they would have the same complaint, if the administrator Manson Wynn, had been ordered to pick said coffee. While we do not find from the record why the court appointed a stranger to administer upon property on the inventory in the face of the fact that there is an administrator under bond, we do not find any error in the mere fact that the coffee was ordered picked, as the **land** upon which it grows is upon the inventory as part of the estate of said H. R. Phelps, and the petition to strike said **land** from said inventory seems to be having a reasonably prompt hearing. But, it seems, that where there is an administrator he should administer every part of the estate.

This court finds no determinable issue at bar with reference to the order of imprisonment of said E. W. Williams. No errors are alleged in connection therewith, and petitioner is at liberty without bond or condition of any kind. The matter must be disposed of as a mere incident of the proceedings. True, the order of the court directing the sheriff to imprison said E. W. Williams may have been hastily given. It may have been a better proceeding, if an order had been made directing said E. W. Williams to show cause why he should not be attached for contempt in failing to comply with the order to deliver the said books of accounts to the administrator, Manson Wynn. The Probate Court would then have made a record showing that it was demanding obedience to an order which could not or should not be complied with. Where the liberty of the citizen is involved courts should act with great care and deliberation, as haste in this respect weakens its influence and injures it in the respect of the public. We do not, however, criticise the Probate Court in this instance, as the reply to its inquiry, which was made by the said E. W. Williams, namely, that he "lied" if he told the court he had any books of account belonging to the estate of said H. R. Phelps, must have jarred the nerves of the court, as it was highly unbecoming a practitioner at the bar.

Now, we say with deep regret that the record before this court by which record we are bound, shows that this writ of certiorari was obtained by false representations on the part of said E. W. Williams. The petitioner alleges, among other things, that the Probate Court had refused to "strike the property in dispute from the inventory," when the record shows that the application by said Leah A. Williams to strike said property from the record was being heard by the Probate Court; that one half of the April term of said court was devoted to this hearing, and was interrupted by the meeting of the Circuit Court, causing the matter to be continued. The aforesaid representation against such a record was fraud upon this court and could result in serious consequences to said E. W. Williams. While the process of this court will issue to correct any material error, and certainly to prevent any injustice to any party before the subordinate courts, yet such processes must be applied for upon a truthful statement of the facts. If any member of this bar should deliberately mislead this court, especially in any paper he may file here, he would lay himself liable to suspension or disbarment; and if any party before this court should commit such an offense, he would be liable to answer for contempt.

We are of the opinion that the writ of certiorari should be vacated and set aside, with costs against petitioners and it is so ordered.

E. W. Williams, in person.

Arthur Barclay, and *C. B. Dunbar*, for respondents in *certiorari.*

Cassell v Campbell [1975] LRSC 19; 24 LLR 239 (1975) (27 June 1975)

AUGUSTA MARIA CASSELL, Appellant, v. C. WELLINGTON CAMPBELL, deceased, substituted by his widow, EMMA L. CAMPBELL, Sole Executrix, Appellee.
APPEAL FROM THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued June 4, 1975 Decided June 27, 1975.
A pleading may once be amended at any stage of the proceedings before the case is tried. 2. The party filing the last pleading is entitled to move the court first on any legal defect in his adversary's pleading. 3. No party may assign as error the giving or the failure to give instructions unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter

to which he objects and the grounds of his objection. 4. Whether a conveyance, assignment, or other instrument transferring an estate is a security for money or a mortgage must be determined from the original intention of the parties, whether this intention appears from the same, or any other, instrument. 5. In an ejectment action the plaintiff has the burden of proving his title. 6. A deed cannot be varied by oral testimony. 7. The statute of frauds provides that all deeds, agreements, or contracts relating to the sale, transfer, or exchange of real property shall be in writing. 8. Where a party not under legal disability stands by and allows property, which he claims, to be conveyed, titles perfected, and adverse possession taken without objecting at the proper time, he is afterword estopped from raising his claims or disturbing the peaceful possession of the occupant. 9. A wife may be estopped from subsequently asserting dower interest when she joins with her husband in a valid conveyance of **land**. 1.

In 1946, appellant's husband came into possession of the property at issue, which was conveyed by appellant and his wife to a purchaser, who, in turn, conveyed to appellee. Appellant, who survived her husband, brought an action of ejectment against appellee in 1971, to recover the property conveyed, alleging she was entitled to dower therein, resting her argument on the contention that the conveyance, in 1946, was security for a loan and consequently the instrument amounted only to a mortgage, leaving her right of dower intact. After trial, a 439

verdict was returned against the appellant, who excepted and appealed from the judgment. The Supreme Court ruled that in the face of the claim raised by appellant, it was necessary to measure all surrounding facts and circumstances to determine the intent of the parties in the 1946 conveyance by appellant and her husband. It was clear, the Court maintained, that the parties intended to convey the property and not mortgage it. The judgment was affirmed.

T. Gyibli Collins for appellant. shine for appellee.

Philip J. L. Brum-

MR. JUSTICE HENRIES delivered the opinion of the

Court. According to the record, the appellant's husband, James D. Cassell, Sr., came into possession of Lot No. 13 situated on Benson Street, Crown Hill, Monrovia, by virtue of an administrator's deed, after the death of his father, Dr. Nathaniel H. B. Cassell, who died intestate. On September 3, 1946, appellant and her husband executed a deed for this property to William V. S. Tubman, Sr., who, with his wife, Antoinette, deeded the property to C. Wellington Campbell, on May 31, 1962. Appellant's husband died in 1968 ; William V. S. Tubman died in office as President of Liberia in 1971 ; and appellant

brought this action of ejectment against C. Wellington Campbell on December 8, 1971, to recover the said Lot No. 13, alleging that her late husband was possessed of, and she was entitled to her dower in, this parcel of land which was being unlawfully detained from her. C. Wellington Campbell died in 1972, and was substituted by his widow, the executrix, and A. B. Cummings, the executor.
The action was tried in the Civil Law Court for the Sixth Judicial Circuit, Monrovia ; a judg-

ment was rendered in favor of the appellee. Appellant excepted and appealed to this Court. The appellant filed a five-count bill of exceptions which, in our opinion, raised three issues, and which, in essence, are : ( ) whether the transfer deed executed by appellant and her late husband constituted an absolute transfer or a mortgage ; (z) was it error for the trial judge to charge the jury that "whenever there exists a written instrument for the re-transfer of property given to secure payment of a loan, it is a mortgage"; in the absence of which it is not a mortgage?, and (3) did the trial judge err when she denied appellant's motion to dismiss, which was filed after appellee had withdrawn her answer and filed an amended answer to which no responsive pleading was filed? We shall traverse these issues in reverse order.
With respect to the last issue, the record shows that the appellee filed an answer on December 17, 1971 ; appellant filed her reply on December 28, 1971 ; appellee withdrew her answer on April 20, 1972; the appellant did not file an amended reply, but filed a motion to dismiss the amended answer. In argument before this Court, the appellant contended that the appellee could not withdraw and file an amended answer five months after the pleadings had rested ; that appellee did not give appellant notice of the filing of the amended answer which merely inserted "new matter" in the form of the transfer deed executed to appellee's husband. Therefore, the trial judge should have granted the motion to dismiss. The relevant portion of the statute on amended pleadings is contained in our Civil Procedure Law. "I. Amendment to pleading permitted. At any time before trial any party may, insofar as it does not unreasonably delay trial, once amend any pleading made by him by :

"(a) Withdrawing it and any subsequent pleading 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. "2. Pleading in response to amended pleading. There shall be an answer or reply to an amended pleading if an answer or reply is required to the pleading being amended. Service of such an answer or reply shall be made within the time remaining for response to the original pleading or within ten days after service of the amended pleading, whichever period may be

the longer, unless the court otherwise orders." Rev. Code 1:9.1o. We interpret this section as permitting amendment to a pleading once at any stage of the proceedings before the case is tried. Indeed, this has been the procedure in our courts for a number of years. See Harmon v. Woodin & CO., Ltd., 2 LLR 334, 336 (1919) ; United States Trading Co. v. King, 11. LLR 579 (1961). We must also note that the appellant has neither alleged nor shown that an unreasonable delay was caused by, or that prejudice resulted from, the amended answer. As to appellant's contention that the appellee did not follow the procedure in the case of newly discovered evidence, as set forth in section 9.11 of the Civil Procedure Law, when she amended her answer and filed the transfer deed from the Tubmans to C. Wellington Campbell, we do not see the relevance of the section on newly discovered evidence. The deed was pleaded in, but not filed with, the answer because it could not be found ; when the answer was withdrawn, the deed was filed with the amended answer. The deed having been pleaded in the answer, it cannot be regarded as newly discovered evidence merely because of its being repleaded in, and filed with, the amended answer.

As to the filing of a motion to dismiss the defendant's amended answer upon alleged defects therein, we must state that under our practice the party filing the last pleading is entitled to move the court first on any legal defect in his adversary's pleading. A party will not be permitted to move the court on any legal defect in the pleading of his adversary to which the attention of the court had not been previously called by some regular pleading. See Horace v. Harris, [1947] LRSC 14; 9 LLR 372 (1947) ; and Gould v. Gould, 1 LLR 389 (1903). Therefore, for these reasons the trial judge did not err in denying the motion to dismiss the amended answer. The second issue deals with the trial judge's charge to the jury, specifically that portion of the charge which states that "whenever there exists a written instrument for the re-transfer of property given to secure payment of a loan, it is a mortgage, in the absence of which it is not a mortgage." We observe from the record that the appellant excepted to the charge without specifying the matter to which she objected, contrary to our Civil Procedure Law, Rev. Code :22.9, which provides that "No party may assign as error the giving or the failure to give an instruction unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection." Furthermore, we do not find this particular portion of the charge to be erroneous, as will be seen later from our traversal of the last issue. In order to properly traverse the issue of whether the deed executed by appellant and her late husband constituted a mortgage or an absolute transfer, it might be necessary to recount the following facts : appellant's husband came into possession of Lot No. 13 upon the death of his father ; appellant and her husband executed a deed to William V. S. Tubman conveying the parcel of land ; sixteen years later William V. S. Tubman and his wife executed a deed for the said lot to C. Wellington Campbell,

husband of the appellee ; nine years after appellant and her husband had executed a deed in favor of Mr. Tubman, appellant brought this action claiming her right to dower in Lot No. 13, and contending that the deed executed by her and her husband was a mortgage. This Court, ever since Saunders v. Gant, [1930] LRSC 2; 3 LLR 152 (193o), has consistently held that whether a conveyance, assignment or other instrument transferring an estate is a security for money, or a mortgage, must be determined from the original intention of the parties, whether this intention appears from the same, or any other, instrument; and a deed absolute in form will be regarded merely as a mortgage if at the time of the conveyance the parties entered into a separate agreement that the deed was designed to operate as a mortgage. Recourse to the deed from appellant and her husband to William V. S. Tubman, shows that the granting clause states clearly that appellant and her husband "do hereby give, grant, bargain, sell and convey unto the said William V. S. Tubman, his heirs and assigns," Lot No. 13. Equally clear is the habendum clause which states : "To have and to hold the above granted premises to the said William V. S. Tubman, his heirs and assigns to his and their use and behoof forever." The clause is followed by an express convenant "to warrant and defend the same." The deed does not show that the conveyance was made to secure the payment of a debt; and there was no separate agreement entered into between the parties to this effect. To assist us in determining the nature of the transaction between appellant and her late husband, the late William V. S. Tubman, we quote two letters that were proferted by the appellee with her amended answer. The first letter is from appellant's husband to C. Wellington Campbell, appellee's husband. "Bushrod Island. "16th April 1958 "My dear 'C. Wellington',

"What my wife and I talked with you last Saturday at my house during the time we were playing Scrabble concerning our ardent desire to repurchase from you the lot on Benson Street (Crown Hill) which we sold to President Tubman, you indicated that we would hear from you after giving the matter consideration. "We confirmed the proposal made to you to survey the lot situated in Oldest Congotown in addition to payment of $6o.00. "As I explained to you this is the only piece of realty from my late father of sacred and sainted memory which has descended to me situated in Monrovia, I should not have sold it, but circumstances beyond my control impelled my doing so. I am sure you will agree with me that there is cogent reasons why I should do everything in my power to recover the same property. "I am the first to recognize the fact that President Tubman came to my rescue in the nick of time, failing which, I do not know what my plight would have been at the time. But he has relinquished his right to you in the property, you would certainly be doing great favor, for which I shall be eternally indebted to you. Please give this matter favorable

consideration. "Where are we playing this weekend? Is it Clark's or Edwin Cooper? "Personal regards, "Friendly, [Sgd.] JAMES D. CASSELL, SR." The second letter is from appellee's husband to James D. Cassell, Sr., appellant's husband. "Carey & Lunch Streets, Monrovia, Liberia. "April 19, 1958 "Dear 'Jim', "After careful consideration of your approach to me to repurchase the lot given to me as gift for my

graduation from College by President Tubman, as I explained to you and Gus, it is most embarrassing to give the matter favourable consideration. "In the first place, this is a gift from my Godfather upon my completion of College. For me to part with this property without his knowledge and consent would seem lack of appreciation. "Next, even though he placed me in possession of the property in 1949 physically and I am exercising authority over it, I have not been given a deed and hence cannot convey the property by deed. "If you explain your position to President Tubman and he calls me in and requests that I cooperate, I would be in a position to make a decision. "Because of the above explanation, I cannot do anything in this matter. I trust you understand my position. "We shall be playing at Clark's on Saturday. "Regards to Gus and you. "Friendly, [Sgd] C. WELLINGTON CAMPBELL." Taking the letters one at a time, we observe that the letter from appellant's husband was written twelve years after he and his wife had, to use his word, "sold" the property to William V. S. Tubman, and four years before Mr. Tubman and his wife had conveyed the property to appellee's husband. Moreover, the letter was not written to Mr. Tubman, his grantee, but to appellee's husband, who at that time had not legally come into possession of Lot No. 13. Even more important is the fact that even though appellant's husband did express a desire to repurchase the property, he gave as his reason for wanting to repurchase, the fact that "this is the only piece of realty from my late father of sacred and sainted memory, which has decended to me situated in Monrovia. I should not have sold [emphasis supplied] it, but circumstances beyond my control impelled my doing so."

The second letter was from appellee's husband, written three days after the first letter and it points out correctly that, even though he was exercising authority over the property, he could not convey the property to appellant's husband because he had no deed for it. He, therefore, suggested that the question of repurchasing the property be discussed with President Tubman. Here again, after a careful perusal of these letters, the only documentary evidence which throws some light on the deed, we have been unable to discover any intent among the parties to create a mortgage. In the absence of sufficient evidence to indicate such intent, we must hold that the conveyance was a sale. See Brown v. Settro, [1944] LRSC 41; 8 LLR 284 (1 944) Bryant v. Harmon, [1956] LRSC 18; 12 LLR 330 (1956) ; Carew v.

Jessenah, 13 LLR 168 (1958). Even though the appellant offered written evidence of an intent to create a mortgage, she, together with her two witnesses,
Albert Nebo and Joseph Brent, testified that

appellant's husband told them that the property was mortgaged or being held as security
for a debt. Assuming this to be true, such evidence is hearsay and, hence, inadmissible. But even if it were admissible, it is settled
that parol evidence cannot ordinarily be received to vary or contradict the terms of a written contract. Rev. Code :25.9; Butchers'
Association of Monrovia v. Turay, 13 LLR 365 (1959). In an ejectment action, the plaintiff has the burden of proving his testimony. Neal v. Kandakai, [1966] LRSC 72; 17 LLR 590 (1966) . Appellant's counsel argued that the mortgage was created by a verbal arrangement, but can a verbal agreement be permitted
to defeat the title created by deed? We hold that it cannot, for the statute of frauds provides that all deeds, agreements, or contracts
relating to the sale, transfer, mortgage, exchange or otherwise of real property shall be in writing; and the Property Law contained
in the 1956 Code 29:2, provides that such documents or agreements shall be registered and probated within four

months from execution. As the late Judge Edward Summerville correctly observed, it is impossible to probate and register
spoken words. Therefore, even if there were a verbal agreement between appellant's husband and President Tubman, no oral contract
relating to realty can be permitted to set aside title conveyed by a duly probated and registered deed. See Massaquoi v. Republic, [1943] LRSC 3; 8 LLR 112 (1943). We have already pointed out that the appellant and her late husband signed the deed which conveyed Lot No. 13 to President
Tubman without any indication that the deed was security for a loan. We have observed further that neither appellant nor her husband
objected to the probation of their deed to President Tubman or to the deed from President Tubman to Mr. Campbell, even though they
knew, as evidenced by the letters quoted above, that Mr. Campbell did expect a future interest in the property. If they had objected
timely to the probation of either deed, such objection might have led to a clarification of the nature of the transaction since,
indeed, Messrs. Cassell and Campbell and President Tubman were alive. Their failure to object to the instrument being probated strengthens
appellee's contention that the transaction was a sale. Dennis v. Holder, II LLR 14 (1 95 1). Moreover the plea of estoppel, as
raised by appellee, is a good plea, and will prevent a party from denying his own acts, if well-founded. Over a hundred years ago,
this Court in Blunt v. Barbour, I LLR 58 (1872), said that where a party not under legal disability stands by and allows property
which he claims to be conveyed, title perfected, and adverse possession taken, without objecting at the proper time, he is afterward

estopped from raising his claims or disturbing the peaceful possession of the occupant. See also Reeves v. Hyder, 1 LLR 271 (1895) ; McAuley v. Madison, i LLR 287 (1896) ; Johnson v. Beysolow,ii LLR 365 (1954)

LIBERIAN LAW REPORTS

249

We also discovered
from the record of the trial that as administratrix of her late husband's estate, appellant and her son, James, as administrator,
made no reference whatsoever to Lot No. 13 being a part of the intestate estate. In fact, in count 3 of their petition to close the
estate, they stated : "that the intestate left a dwelling house in the City of Monrovia and fifty acres of land in the settlement
of Paynesville which are left to all of the heirs of the said James D. Cassell and which are presently under the guardianship of
the widow for her natural life according to the dying testimony of the intestate." The fact that Lot No. 13 is not mentioned as part
of the intestate estate leads to the conclusion that appellant, being a signatory to the deed, knew that her husband had parted with
title to the property during his lifetime and, therefore, did not die seized of it. Moreover, it is difficult to understand how appellant
expected to successfully claim that she is entitled to dower in Lot No. 13, when she, by executing the deed with her husband, had
relinquished her right to dower. According to 17 AM. JUR., Dower, § 107, "a wife may be estopped from subsequently asserting dower
interest where she joins with her husband in a valid conveyance of land." See also Cole v. Dixon, [1938] LRSC 16; 6 LLR 301 (1938). See also 25 AM. JUR. 2d, Dower and Curtesy, §§ 1 1 5, 133. Finally, we must conclude that in view of the facts and circumstances
attending the transaction involving Lot No. 13, the evidence adduced at the trial, and the law cited herein, the transaction was
in the nature of a sale and not a mortgage, and that the appellant, having joined in the conveyance, and having failed to prove the
essential allegations of her complaint, is not entitled to dower interest in the said parcel of land. Therefore, the judgment of
the lower court is affirmed, with costs against the appellant. And it is hereby so ordered.
Affirmed.

Kolleh et al v Gray et al [1954] LRSC 24; 12 LLR 123 (1954) (10 December 1954)

CASES ADJUDGED
IN THE

SUPREME COURT OF THE REPUBLIC OF LIBERIA
AT

OCTOBER TERM, 1954·

GEWRON KOLLEH, alias MONEY SWEET WEARNEH,
alias TWO CENTS, SUAH GAWELAY, and KONEH, for Themselves and for the
Inhabitants of the Town of Gewron, all Heads of Families, and
ROSS WILSON, General Manager, Firestone Plantations Company, Appellants, v.
SANGAY GRAY, SCHEAFA GRAY, SCHEAFA MORRIS, BORKAI GRAY,
and OSCAR GRAY, Appellees.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO
COUNTY.

Argued October 2, 1954.
Decided December 10, 1954. Where the evidence establishes that the terms of a
writ of injunction issued by the court below were violated,
a judgment of contempt of court for such violation will be sustained.

On appeal from judgment of contempt of court for violation
of terms of an injunction, judgment affirmed. William Ross for appellants.
Nete Sie Brownell for appellees.

MR. JUSTICE HARRIS delivered
the opinion of the
Court.*
Mr. Chief Justice Russell was absent because of illness, and took no part in
this case.

An action of ejectment was instituted by the petitioners, now appellees,
against the respondents, now appellants, in
the Circuit Court of the Sixth Judicial Circuit, Montserrado County, for the
recovery of a rubber plantation comprising three hundred
acres of farm land situated in the settlement of Johnsonville.
Petitioners also filed an action of injunction seeking to restrain
and enjoin the respondents from entering upon said land or tapping any
rubber pending the determination of the ejectment suit. It
appears that, after the service of the writ of injunction upon the
respondents, now appellants, they continued to tap the rubber
in violation of the writ of injunction, whereupon the petitioners filed an
information with the court below praying issuance of a
writ of arrest against the respondents so that they might be brought before
the court to show cause why they should not be held in
contempt of court and fined for violating the writ of injunction. The writ of
arrest was accordingly issued and served. Respondents-appellants
appeared and moved the court to deny the information, which was denied and
the case taken upon its merits. Witnesses for both parties
testified. The court proceeded to render a decree to the effect that the
respondents-appellants were in contempt, and fined them
twenty-five dollars. To this the respondents-appellants excepted and brought
the matter before this Court for review and final adjudication
upon a bill of exceptions containing seven counts. Count "1" of the bill of
exceptions reads in part as follows: "That he who pleads
equity must do equity; that although petitioners have been served with an
injunction on March 29, 1949, yet said petitioners have
constantly disobeyed said injunction, and up to December 14, 1951,
petitioners have violated said injunction; that Your Honor did

not sustain the plea entered by defendants, to which defendants excepted."

The issue involved is : Did the respondents-appellants tap rubber on lands upon which they were enjoined not to tap? This Court is of the opinion that the foregoing plea tends to justify or avoid without first confessing; and that the trial Judge did not err when he overruled the said plea. Count "3" of the bill of exceptions reads as follows : "And also because, when witness Spencer Gray was under cross-examination, defendant put this question to him : 'Is it true that the Sangay Gray folks were also tapping rubber up and including December 14, 1950' Plaintiff's counsel objected to said question, and Your Honor sustained said objection ; to which defendants objected." The said Sangay Gray and his people not being on trial for the disobedience of any writ of injunction relating to the tapping of rubber, this Court is of the opinion that the question was irrelevant, and that the Judge correctly sustained the objections of the plaintiffs thereto. Count "3" of the bill of exceptions is therefore not sustained. Count "4" of the said bill reads as follows: "And also because when witness Scheafa Gray was under cross-examination, defendants questioned him: `Are you the Scheafa Gray who challenged the court and in the presence of the sheriff said that you would not obey an injunction of the court and for that reason you were arrested and brought down to Monrovia?' Counsel for plaintiffs objected to said question, and said objections were sustained by Your Honor, to which defendants excepted." This Court is of the opinion that the question was irrelevant, since the said Scheafa Gray was not on trial for contempt or violation of an injunction ; hence the trial Judge rightly overruled the said objections. Count "q_" of the bill of exceptions is therefore not sustained. Count "7" of the bill of exceptions reads as follows : "And also because Your Honor did give a decree

ordering the defendants to pay a fine of twenty-five dollars and all costs of court, to which defendants excepted." Before we can rule on Count "7" of the bill of exceptions we shall have to have recourse to the evidence adduced at the trial. 'Witness Spencer Gray whilst on the stand in behalf of the petitioners-appellees, testified, inter alia, as follows: "That he (Spencer Gray) had informed his counsel, Counsellor Brownell, that the respondents were still tapping rubber. That his counsel asked him if the sheriff had not served a writ on the respondents on December 12, 1951, which writ Mr. Kolleh said he did not care to obey, since his counsel, Counsellor Ross, had told him to tap. That, on the Friday after service of the writ of injunction, the respondents tapped the rubber; that the sheriff returned to Johnsonville and met the respondents tapping the rubber, after service of the injunction; and that, at this time, the sheriff arrested the other respondents." On cross-examination the witness was asked

the following question: "Q. I suggest to you that the respondents did not tap rubber after the service of the writ of injunction.
"A. They did tap." Another witness, Scheaf a Gray, testified : "Momolu Gray, my uncle, owned three hundred acres of land in Johnsonville.
This court served an injunction on the respondents to stop tapping the rubber, but they disobeyed and continued to tap. . . . I saw
Gewron Kolleh, tapping the rubber after the service of the injunction."
Gewron Kolleh, the only witness for the appellants, testified
as follows: "Q. Since you received this injuction did you tap any more rubber? "A. No.

"Q. Do you
have witnesses to prove that you did not tap? "A. Yes, since I saw the paper I never tapped again, and I have witnesses to prove
it." Notwithstanding Gewron Kolleh's testimony that he had witnesses to prove that he did not tap any rubber after the service of
the writ of injunction, the appellants rested their case for the court's decision without calling a single such witness. The evidence
offered by appellees at the trial conclusively proved that the appellants did tap rubber after the service of the writ of injunction
upon them, thereby disobeying the said writ. Count "7" of the bill of exceptions is therefore overruled and the decree of the court
below affirmed with costs against appellants. And it is hereby so ordered.
Affirm ed.

Reeves v Hyder [1895] LRSC 3; 1 LLR 271 (1895) (1 January 1895)

C. B. REEVES, Appellant, vs. **MARK HYDER**, Appellee.

[January Term, A. D. 1895.]

Appeal from the Court of Quarter Sessions and Common Pleas, Grand Bassa County.

Ejectment.

1. Ejectment supports the idea of adverse possession in the defendant. The questions involved in such trials are of a mixed nature, which under the statutes must be tried by a jury under the direction of the court. It is not 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 so to do.

2. In 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.

3. Under the statute the probation of a deed makes it legal evidence; where there are objections to same they should be made at the time the instrument is offered for probation, where the party has knowledge of the transaction. In trials of suits of ejectment it is not error in the court to instruct the jury that a party has offered no legal evidence in the shape of deed to the property in dispute; it is also not error for the court to instruct the jury that the plaintiff must recover upon the strength of his own title and not upon the weakness of the defendant's. (Oliver vs. Bigham, 1870, Harris vs. Locket, 1875.)

This appeal was taken from the proceedings, rulings, and final judgment of the Court of Common Pleas and Quarter Sessions, Grand Bassa County, at its June term for the year 1894, and is, brought before this court upon a bill of exceptions, for review.

Before passing upon the material points presented for this court's consideration, it is due to the learned counsels conducting both the prosecution and the defense in this case, for us to acknowledge the great skill and legal ability displayed by them in urging the cause of their respective clients. This case is without a parallel in the history of our courts, and presents features the most complicated; but as in every question of human action there is involved a principle of both right and wrong, we have spared no pains to search out the legal rights surrounding this case, which has enabled us to come to such conclusions as are drawn from sound principles of the law.

Nothing tends greater to disturb tranquility, to hinder industry and improvement in communities, than the insecurity of property, personal or real, to prevent which courts of justice are established. This is an action of ejectment, the method employed by a plaintiff to recover the possession of his lands wrongfully withheld from him by a defendant. Ejectment is therefore a possessory action and 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. (Lib. Stat. Book t, page 47, sec. 3.) It is therefore among the peculiar trials wherein the court may not only assist, but may direct the jury in coming to the conclusion warranted by law and facts in the case. Hence it is not error in the court to refuse to admit or instruct the jury on any matter which, in its opinion, does not tend to establish the truth and justice of the case. For this reason the jury and the court have a right, in ejectment, to weigh probabilities and solve doubts as to matters of fact;

and if in their minds the preponderance of proof, or rational influence as to any fact on which the title depends, is on the side of the plaintiff or defendant, they ought to find accordingly.

To recover in ejectment the plaintiff must prove in himself a legal title. To this point, however, the court says the term "title" as is here meant, may be briefly stated to be the means whereby the owner of the lands has the just possession of his property; and we further remark that title to real estate is acquired by two methods, namely, by descent, and by purchase. Purchase in a limited sense is applied only to such acquisitions of lands as are obtained by way of bargain and sale, for money or some other valuable consideration. Therefore in ejectment the plaintiff has a right to show a vested legal title, no matter how, if fairly acquired, or through whom it may have been delivered, and if no adverse right or possession be shown, such plaintiff may recover without showing possession or the right of possession, or any entry or the right of entry. This and similar situations authorize the exceptions to the general rule and doctrine frequently announced by this court and which the court reaffirms.

In ejectment the plaintiff recovers upon the strength of his own title and not on the weakness of that of his adversary. This support, however weak, that a defendant sets up title either legal or equitable, in the absence of both, in contemplation of law, debars the trespasser. None, therefore, can fail to see that the application of the above doctrine, without the exception pointed out, would defeat the very intention of the action of ejectment, whose primary use is to try the titles of the litigant parties in dispute.

In reviewing the transcript of the record showing the proceedings of the court in the trial below, we find that the estate of one John Parker, deceased, intestate, was by the Probate Court of Grand Bassa County, ordered to be sold by the administrator of the said estate, acting under authority granted by that court, and that a sale took place by public auction and that at the said auction Mark Hyder, the said plaintiff below, bought that part of said estate as is known to be lot number 17, in the township of Hartford in the County of Grand Bassa. The record further shows that he, the said plaintiff below, paid the purchase money for said **land**, but did not obtain a deed for the same from said administrator, and that the said administrator died (if previously to closing the said estate as required by law, the record fails to show) ; that during the year 1893, the said Mark Hyder made petition before the Monthly and Probate Court of Grand Bassa, S. S. Herring, judge presiding, to appoint administrators of the estate of the said John Parker, which was granted. P. M. Scott and

John Watson were appointed, who completed the title of the plaintiff below to lot number 17, in Hartford, as aforementioned, by granting him a deed; that said deed was probated and registered according to law.

This court is of the opinion that the time a deed is offered for probation is the proper time to set up legal or equitable objections to it, by any party who may be affected by its probation; since by statute the probation makes it legal evidence before courts of law, all such objections being referable 'to the Court of Quarter Sessions for determination. The evidence in this case fails to show that any objections were offered at the time of the probation of this deed by the defendant below, or any one representing him; hence its probation was not opposed.

It is proper for us to notice next, the evidence furnished in the record of the Monthly and Probate Court of Grand Bassa County in the trial of this case. It appears that one Dr. Smith, being present at the time of the probation of this deed of the said Mark Hyder, stated to the court, as his objection, that he through mistake sold this tract of **land** number 17, to the defendant below. This was, as is obvious to all, not an objection to the deed, unless it applied to the one he gave to the defendant below through mistake. The jurisdiction of the Probate Court to appoint the acting *administrators under surrounding circumstances, not having been put in issue, is not before this court, as it was not before the court below.

The third exception taken is because during the trial the plaintiff below offered as evidence a copy of the record of the Monthly and Probate Court containing matters and statements made in his absence. Had this point of exception contained an averment or statement that the plaintiff below omitted or refused to cite or give notice to the appellant to be present at the time when such statements were recorded in the court referred to, it would have been error in' the court below to have admitted such evidence; but no such facts being found in the record, this court is of opinion that irregularities do not appear such as to amount to an error.

The fourth exception presented to this court for its consideration is, because the court below instructed the jury to the effect that the appellant in this case had no evidence in the shape of a deed of title. This court, after careful examination of the entire record and proceedings in this case, fails to see wherein the appellant offered either oral or written testimony to prove the right of possession or the right of entry, or any lawful or equitable title to lot number 17, in the township of Hartford in the County of Grand Bassa. Hence, considering that the trial was by a jury with the assistance and direction of the court, it was not error f or the court to instruct the jury that the appellant had offered or had no evidence in the shape of title for the **land** in dispute. As to the point that the court instructed the jury to the effect that they should not notice the weakness of the appellant's title, but the strength of the appellee's, we remark that this is not error, but is in support of the repeated rulings of this court. See decision in cases of Oliver vs. Bigham, and Harris vs. Locket, namely, that the plaintiff in ejectment must recover upon the strength of his own legal title and not on the weakness of that of his adversary.

The fifth exception embodies the other exceptions taken at the trial below, which is, because the court refused to grant a new trial when prayed for after verdict. As to this point the court says, the granting or refusal of a new trial is a matter in the sound discretion of the court, according to the exigency of each particular case, upon principles of sound justice and equity, and this discretion is not generally reviewable on error, when the court is satisfied that the verdict is not contrary to the law, the evidence and its legal instructions. Otherwise it should grant a new trial.

Considering this case from every reasonable standpoint, this court fails to see sufficient cause to disturb the judgment of the court below, and therefore adjudges that the judgment of the court below ought to be and the same is hereby affirmed, and that appellant pay all costs in this action.

Boye v Nelson [1978] LRSC 33; 27 LLR 174 (1978) (30 June 1978)

MOKOH BOYE, Petitioner, v. T. EDWARD NELSON, Sheriff, Montserrado County, et al., Respondents.

APPEAL FROM RULING OF JUSTICE IN CHAMBERS GRANTING

ISSUANCE OF WRIT OF PROHIBITION.

Argued May 29, 1978. Decided June 30, 1978.

1. No one can be concluded by a judgment rendered in a suit to which he was not a party, and a party cannot be bound by a judgment without being allowed a day in court.
2. A writ of prohibition may be directed to the court or to the parties to a cause pending therein, or to both conjointly, although the majority opinion is that the only necessary respondent is the tribunal whose proceedings are sought to be restrained, and a sheriff seeking to enforce a judgment of such a tribunal may be named as respondent in lieu of the tribunal itself.
3. Prohibition is a proper remedy not only to prohibit the doing of an unlawful act by a lower court but also for undoing what has already been unlawfully done under authority of the court.
4. A person having knowledge of an action which may affect his rights but to which he is not a party is not required to intervene in order to protect his rights.

5. A person claiming a right to possession of premises involved in an action of ejectment to which he is not a party is not concluded by a judgment against the defendant in that action on the theory that as grantee he was in privity with the defendant.
6. Although prohibition will not be granted as a matter of right when another complete and adequate remedy is available, the grant or refusal rests within the sound discretion of the court according to the facts and circumstances of the particular case.

In enforcing a judgment against the defendant in an action of ejectment, the sheriff attempted to evict from the **land** which had been the subject of dispute a person who claimed to be the grantee of the defendant by reason of a purchase some years previously. She had not been made a party to the ejectment suit, and filed an application for a writ of prohibition before the Justice in chambers against the sheriff enforcing the judgment to restrain further action against her until a hearing could be held to determine her rights.

The Justice in chambers granted the writ and petitioner appealed to the Supreme Court. It was held that the writ was properly issued to protect the rights of one who had never had an opportunity for a hearing in court. Ruling against the contention of respondents that the judge of the lower court was the proper respondent in a prohibition proceeding, the Supreme Court held the suit properly brought against the sheriff. The *ruling* of the Justice in chambers was *affirmed.*

J. Dossen Richards for petitioner. *James G. Bull* for respondents.

MR. JUSTICE BARNES delivered the opinion of the Court.
In *Tubman v. Murdoch*, [1934] LRSC 26; 4 LLR 179 (1934), this Court held that it is a rule of universal application that the rights of no one shall be concluded by a judgment rendered in a suit to which he is not a party, and that a party cannot be bound by a judgment without being allowed a day in court. He must be cited or have made himself a party in order to authorize a personal judgment against him.
In *Johns v. Witherspoon*, [1946] LRSC 3; 9 LLR 152, 154 (1946), this Court in denying relator's petition for leave to intervene to show rightful title to property in dispute said:

"We do not see that the legal title to said property and the right of petitioner to bring an action to recover possession of his alleged property which is presently the subject of litigation between William A. Johns and William N. Witherspoon, will be in any way affected by any judgment we may render in favor of either of the present contending parties since petitioner was not made a party to the action, was not summoned and placed within the jurisdiction of the court below, and did not have his day in court, and is not represented in said case."
As recently as in its October 1977 Term in *Eitner v. Sawyer*, [1977] LRSC 47; 26 LLR 247, where respondent sought to enforce a judgment against petitioner who was never made a party to the suit, this Court consistently maintained its holding in *Tubman v. Murdoch, supra,* that a judgment concludes only parties to the suit.
According to the record certified to this Court, James
W. Sims instituted an action of ejectment against R. Henri Gibson. The case was ruled to trial but before judgment was rendered, the defendant withdrew his defense. Thereafter on February 7, 1977, His Honor J.
N. Lewis rendered judgment against defendant Gibson.

The application for a writ of prohibition was filed before the Justice in chambers by Mokoh Boye, the purchaser of the **land** from R. Henri Gibson which was the subject of the suit in ejectment. In the petition for the writ, she alleges that she had made the purchase in 1967 and that she built a house upon it and lived in it for several years and therefore has a vested right and title to the **land**. It is further alleged that she was not made a party to the action against Gibson, her grantor, and thereby given notice and an opportunity to protect her property rights and interest in the property; that even though she is not a party and had no knowledge of the case, yet the sheriff is attempting to evict her from the premises; that although the judgment is against Gibson, the sheriff is attempting to execute and enforce such judgment against her when she has not had her day in court, thereby seeking to deprive her of her property without due process, of law. Petitioner finally alleges that she has no adequate remedy at law and could not have proceeded by a regular appeal because she was not a party to the action and had no knowledge of the proceeding. She therefore prays that the alternative writ of prohibition against the respondents herein be issued prohibiting and restraining them and any persons acting under them from proceeding further in this case until a
hearing has been held and to show cause why the writ should not be made absolute.
The Justice in chambers granted the petition, and from that ruling, respondents have appealed to the bench *en banc* for final determination.

The respondents in their return complain as follows:

1. Because respondents say that petitioner seeks a writ of prohibition to be directed to respondents T. Edward Nelson, sheriff of Montserrado County, and James W. Sims who was plaintiff in the parent suit instead of against the judge of the trial court whose orders the sheriff has executed. The law requires that writs of prohibition be directed to the judge of the inferior court whose proceedings are sought to be restrained. For such error the writ should be denied.

" 2. And also because respondents say that the writ prayed for should be denied because prohibition will not lie to prohibit acts already committed. Respondents submit that in the instant case, respondent James W. Sims had already been placed in possession of the subject property by the sheriff and had made his return to said writ of possession long before the filing by petitioner of her petition before Your Honor. Respondents request Your Honor to take judicial cognizance of the records in the instant case before Your Honor.

"3. Respondents submit further that the writ prayed for should be denied because petitioner had knowledge of the ejectment suit filed against her grantor, R. Henri Gibson, but failed to intervene in said ejectment suit. Not only had petitioner been informed by Plaintiff Sims that the property she was developing was plaintiff's but she was also aware that ejectment had been filed against her grantor. A writ of prohibition will not lie as in this instant case, where respondent failed to intervene in the parent or main suit knowing that said suit had been instituted.

"

"4. Respondents say further that petitioner has an adequate remedy at law for damages for fraud against her grantor, R. Henri Gibson, who sold her property to which he had no valid title. Prohibition will not lie since respondent may obtain proper redress at law against her grantor."

The pertinent portion of the ruling of the Justice in chambers on count 1 of respondents' return said: "A procedural issue is raised by the respondents to the effect that the writ of prohibition was directed against the sheriff and co-respondent James W. Sims who was plaintiff in the parent case instead of the trial judge. In *Dweh v. Findley*, [1964] LRSC 23; 15 LLR 638 (1964), this Court held that a writ of prohibition is principally directed against the court or tribunal rather than the parties to the parent case, but cited *Republic v. Harmon, s* LLR 300 (1936), as authority for the view that a writ of prohibition may be directed to the court or to the parties to a cause pending therein, or both conjointly, although the majority opinion is that the only necessary respondent is the tribunal whose proceedings are sought to be restrained. From this, it is our view that this Court has not directed that a prohibition shall not issue against a party to the parent case or to the judge and the party conjointly but that it should be principally directed against the tribunal as the necessary respondent. In the instant case, the prohibition was directed against the party to the parent suit and the sheriff who was enforcing the judgment of this tribunal out of whose proceedings the petition for prohibition arose." "It is commonly said that the writ is not one of right, but one of sound judicial discretion, to be granted or refused according to the facts and circumstances of the particular case." 63 AM. JUR. 2d, *Prohibition, § 7 (1972).* This Court would not be faithful to the cause of
justice to ignore the facts and circumstances surrounding this particular case, and therefore agrees with the ruling of the Justice in chambers on this count of respondents' return.
In passing upon the second count of respondents' return, the Justice in chambers relied on *Mensah v. Tecquah,* [1954] LRSC 29; 12 LLR 147 (1954), which held that prohibition will lie where the lower court exceeded or abused its jurisdiction or attempted to proceed by a rule different from those which ought to be observed at all times. In such case, the writ not only prohibits the doing of an unlawful act but goes to the extent of undoing what has already been done. In the instant case, the petitioner was never brought under the jurisdiction of the court and never had her day in court, yet the sheriff is attempting to enforce a judgment against her. Nothing could be more anomalous. We liken this anomaly to a person who is indebted to another and is informed on the streets by the ministerial officer that a case has been adjudged against him making him liable for the payment of a debt and that the execution of the judgment is being enforced. A judicial infamy that would be. Count 2 of respondents' return is hereby overruled.

In his ruling on count 3 of the return the Justice in chambers cited sections 5.61 and 5.62 of the Civil Procedure Law, Rev. Code, Title I. These provisions of law deal with the two divisions of intervention, intervention as of right and permissive intervention. Respondents contend in count 3 of the return that since petitioner had knowledge of the ejectment suit against Defendant Gibson, her grantor, she should have intervened. The petitioner in her application alleges to the contrary that she had no knowledge of the case. Be that as it may, because petitioner did not intervene, could a judgment be enforced against her when she was never brought under the jurisdiction of the court? We think
,
not. Why was she not joined as a party in the ejectment
case? The records show that she purchased **land** from defendant Gibson in 1967, as was mentioned elsewhere in this opinion, on which **land** she built a house and lived in it for several years. It is our opinion that no judgment could be enforced against her without due process of law. In his argument before this Court, counsel for respondents relied strongly on the common law rule on ejectment that "after recovery of a judgment in favor of the plaintiff in an

action of ejectment the defendant and all those in privity with him may be dispossessed under the writ of possession issued thereon, and that all persons acquiring possession from and under the defendant during the pendency of the action, whether as vendees, lessees, or otherwise, are privies within the meaning of the rule." 25 Am. JUR. 2d, *Ejectment, § 135* (1966). Respondents further contended that petitioner being privy with her grantor from whom she purchased the **land** makes her a party to the action. We cannot uphold such an argument. "No person in possession of the premises claiming title thereto prior to, or at the time of, the commencement of the action can be dispossessed unless he was made a party to the suit so as to be bound by the judgment." 25 AM. JUR. 2d, *Ejectment, § 135*

(1966). Count 3 of the return is hereby overruled.
Counsel for respondents contended in count 4 of their return that since petitioner had adequate remedy for damages for fraud against her grantor, R. Henri Gibson, who sold her property to which he had no valid title, prohibition will not lie.
Although generally, prohibition is not demandable as a matter of right when another complete and adequate remedy is available, under certain circumstances the grant or refusal rests within the sound discretion of the court to which application is made. *Kilpatrick v. Oostafrikaansche, [1949] LRSC 3; 10* LLR 84 (1949). It is our considered opinion that petitioner not being a party to the ejectment suit could not be bound by the judgment thereof, and the
only proper course to have pursued under the circumstances was to prevent the tribunal under whose jurisdiction she had never been brought from enforcing a judgment against her. Count 4 of the return is hereby overruled.
In view of the foregoing citation of law and the facts and circumstances herein before stated, this Court *en banc is* in full agreement with the ruling made by the Justice in chambers, and therefore affirms said ruling granting the peremptory writ of prohibition against respondents. Costs of these proceedings are adjudged against respondents. And it is hereby so ordered.

Ruling affirmed.

Beavans v Jurs [1928] LRSC 8; 3 LLR 28 (1928) (3 February 1928)

JOHN BEAVANS, Agent for ELDER DEMPSTER & CO., LTD., Plaintiff-in-Error, v. H. JURS, Agent for LAFRANS & CO., Defendant-in-Error.
WRIT OF ERROR TO THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, GRAND BASSA COUNTY.

Decided February 3, 1928. 1. A lease held
by aliens in treaty stipulations with the Government of Liberia extends to a mere chattel right ; they cannot hold **land** in fee. 2.
It is not unconstitutional, however, for a tenant having possessory title to bring an action of ejectment.

On writ of error from
this Court, judgment below that an alien tenant may not bring an action of ejectment,

reversed. C. B. Reeves for plaintiff-in-error.
D. B. Worrell for

defendant-in-error. MR. Court.
JUSTICE KARNGA

delivered the opinion of the

This is a case brought before this
Court on a writ of error to the Circuit Court of the Second Judicial Circuit
for Grand Bassa County by the plaintiff-in-error on
the ground that it is unconstitutional for a tenant who is a foreigner to
bring an action of ejectment to recover possession of his
leasehold. The case of Bingham v. Oliver, L.L.R. 47, decided in the January
term, 1870, was cited in support of their contention.
It is admitted that an alien cannot hold land in this Republic in fee ;
he may lease property from the Government or a citizen of
Liberia, and such a lease extends to mere chattel right. However, a tenant
having possessory title has the right to bring an action
of ejectment, although an alien, and when such action is brought it is not

unconstitutional. To uphold
a contrary view would be to place a check upon the economic development of
the country. Large amounts of capital are being invested
by aliens in the Republic; the interest of the investor must be safeguarded
and his investment secured. It is therefore the opinion
of this Court that the judgment of the court below be reversed and the case
remanded for a trial upon its merits; costs to be paid
upon final determination of the case. And the Clerk of this Court shall
notify the court below to the effect of this judgment; and
it is so ordered. Reversed.

Overbeck Ltd v Davis [1930] LRSC 11; 3 LLR 210 (1930) (1 May 1930)

G. F. OVERBECK, LTD., by JOSEPH CORSSEN, Agent, Appellant, v. PRY DAVIS, JOHN
DAVIS, JOHNATHAN L. SHARPER, JEREMIAH D. SCOTT, REGINALD
HORACE, and JOHN W. SCOTLAND, Appellees.
APPEAL FROM THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT, MARYLAND
COUNTY.

[Undated.]
1. Trespass is a term derived from the Latin word, transgressio, and may be
defined as follows : (a) Any transgression or offense
against the law. (b) Any misfeasance or act of one man whereby another is
injuriously treated or damnified. (c) The action brought
for injury done to person or property with violence. This action, when
brought for an unwarrantable entry upon land of the plaintiff,

was called trespass quare clausum fregit. (d) Trespass on the case. This is a form of action for some unlawful act, negligence or omission whereby damage has resulted to the plaintiff. 2. The statute passed by the National Legislature in the early fifties, section 4 of article 8, page 107, in the Old Blue Book, which authorizes the Collector of Customs to search and seize "goods, wares or merchandise in the jurisdiction of this Republic, on which the tariff duties have not been paid ; or in other words, smuggling into the Republic, any goods, or articles chargeable with duties" is not embraced within the prohibition of section 9, article 1 of the Constitution ; and therefore seizure of such goods without a warrant is not in violation of the Constitution of the Republic. 3. The entry upon premises made by officers of the Revenue for the search and seizure of articles or merchandise smuggled into the Republic chargeable with duties is not an injury ; and when upon execution of their lawful duties, the said Revenue Officers shall not be subject to an action of damages for trespass. 4. If a man abuses an authority given him by the law, he becomes a trespasser ab initio; but where he abuses an authority given him by the party, he shall not be a trespasser ab initio. 5. A person who places upon his own close the goods of another thereby gives to the owner of them an implied license to enter for the purpose of recaption.

Appellant, plaintiff in the court below, brought an action of trespass before a justice of the peace for Maryland County. Judgment was entered for defendants and plaintiff appealed to the Circuit Court of the Fourth Judicial Circuit, Maryland County, where judgment was

211 again entered for defendants. On appeal to this Court, affirmed. H. L. Harmon for appellant. The Solicitor General

for appellees.
MR. JUSTICE KARNGA delivered the opinion of the Court. The above 'action of trespass was brought by Joseph Corssen, agent for G. F. Overbeck, Ltd., a German firm doing business in the County of Maryland, against Pry Davis, John Davis, and others, before Thomas A. Howard, Justice of the Peace for Maryland County, to recover damages in the sum of fifty dollars. It appears that on the first day of May, 1928, the case was called up for hearing and after the witnesses had deposed, judgment was entered for the defendants. The plaintiff being dissatisfied with the said judgment prosecuted an appeal before the Circuit Court of the Fourth Judicial Circuit, Maryland County; in that Court judgment was also entered for the defendants. The said plaintiff being further dissatisfied with the judgment rendered against him by the Circuit Court has brought his case before this Court for review. The following is the bill of exceptions submitted by the appellant: "G. F. Overbeck Limited, by Joseph Corssen, Agent, Appellant in the above entitled cause, being dissatisfied with the several rulings, opinions, and Final Judgment rendered by your Honour in the above entitled cause, as hereinafter mentioned, which said rulings, opinions and Final Judgment culminated in the dismissal of the cause above, begs most respectfully to tender to your Honour this Bill of Exceptions to your said Rulings, Opinions and Final Judgment for the reasons following, to wit: "1. Because your Honour sustained the objection to

the question put to Witness John Tee by the Appellant as follows : 'Do you know if Mr. G. F. Overbeck Limited by Mr. Joseph Corssen his Agent went through any expenses to have this fibre re-picked and re-dried? which question, if allowed, would have thrown a flood of light on the subject matter before the Court. To this Ruling the Appellant did then and there duly except. "2. And also because your Honour over-ruled the objection raised by Appellant to the question put by the Appellee's Counsel which question was led in words following to wit : 'After being satisfied as you have said that the Appellees in this cause were not Officers of Customs, as they have represented, is it not a fact that you wilfully omitted to make an alarm asking them to vacate the premises of G. F. Overbeck Limited?' To which ruling, the Appellant did then and there duly except. "3. And also because your Honour did over-rule the further objection raised by Appellant to the question put by the Appellees' Counsel as led in words following to wit : Did I understand you to say that the Appellees in this Action entered upon the premises of G. F. Overbeck Limited, lawfully to search for wrecked goods from the Steamer "Bonny" that was presumed to have been concealed in the Ware-House where was stored wet and dried fibre or elsewhere in the premises?' To which ruling the Appellant did then and there duly except. l(4. And also because your Honour did sustain the objection of the Appellees to the question put to Witness by Appellant's Counsel, 'As to whether or not the Appellees whom the Witness met on the premises of G. F. Overbeck Limited were in Customs Uniform?' To which ruling the Appellant did then and there duly except. "s. And also because your Honour did rule that 'As

to the question of Appellees not having uniform, that they the said Appellees were not required to appear uniform?' Altho the Appellant contended, same was required of them by Customs Regulations so as to designate them to the Public. To which ruling, the Appellant did then and there duly except. "6. And also because your Honour did rule that `a Warrant of search in this Case, was not legally required' before the premises of the Appellant was searched, altho both the National constitution of Liberia as well as the Common laws of all civilized nations declare that, 'No place shall be searched, nor person seized on a criminal charge or suspicion, unless upon warrant lawfully issued, upon probable cause supported by oath or solemn affirmation, specially designating the place or person and the object of the search.' To this ruling, the Appellant did then and there duly except. "7. And also because on the thirtieth day of May A.D. 1928 your Honour did finally rule and render Final Judgment against the Appellant by affirming the Judgment of the lower (Justice of the Peace) Court dismiss said Action and rule the Appellant to all costs ; to

which said Final Judgment, the Appellant did then and there duly except, and now tenders this Bill of Exceptions to your Honour for your official signature, and prays and appeal to the Honourable Supreme Court of the Republic of Liberia, at its November Term, Anno Domini, Nineteen Hundred twenty eight (A.D. 1928) in its Appellate Jurisdiction." In considering the above exceptions, we are of the opinion that the judge of the court below committed no error in sustaining the appellees' objection to appellant's question contained in count one of the bill. Witness John Tee who was on the stand testifying was the watchman of the firm of G. F. Overbeck, Ltd. Nowhere in the record

has it been shown that the said witness was also the chief clerk or bookkeeper of the said firm; either of which positions would have enabled him to know from his personal knowledge whether or not the said Company had incurred any expenses in having the fibre in question repicked and re-dried. It is a general principle of law that the best evidence which the case admits of must always be produced ; that is, no evidence is sufficient which supposes the existence of better evidence. Witness John Tee being only a watchman, his testimony would not be the best evidence which the case admits of. With reference to count two, it was stated by the said Witness John Tee that, "The first time the Customs people came from the wrecked steamer Bonny. When the Customs people got through taking the things out of the boat they said to me good-bye; Sanauel Elliott then gave me the key and went back home. About fifteen minutes afterward I heard some people knocking at the gate. I asked who was that. They said in reply, The Customs.' Then I asked if the Customs had come back again; when I opened the door I saw several people. Some of them passed through the gate and some passed around the house. They asked me where were the things that the boatboys had taken away. I said in reply, 'I am not a boatboy; I am a watchman ;' after which they went into the warehouse in search of the goods and mixed up the dry and the wet fibre. Then I went and called Samuel B. Elliott, and told him that the Customs officers had come back." The counsel for the appellees then had the right to cross examine the said witness upon his evidence in chief as to all matters touching the cause or likely to discredit himself. The judge in the court below, therefore, in overruling appellant's objection did not err. With reference to count three, it would appear that the question therein contained, to wit: "Did I understand

you to say that the appellees in this action entered upon the premises of G. F. Overbeck, Ltd., lawfully to search for wrecked goods from the Steamer Bonny that was presumed to have been concealed in the warehouse where was stored wet and dried fibre or elsewhere in the premises" involved the whole issue.

The appellant brought his case on the 24th day of April, 1928, in the Justice of the Peace Court in the City of Harper for trespass alleged to have been committed on the thirteenth day of April, 1928, by the appellees. The term trespass is derived from the Latin word transgressio and may be defined as follows: I. Any transgression or offense against the law. 2. Any misfeasance or act of one man whereby another is injuriously treated or damnified. 3. The action brought for injury done to person or property with violence. This action, when brought for an unwarrantable entry upon land of the plaintiff, was called trespass quare clausum fregit. 4. Trespass on the case. This is a form of action for some unlawful act, negligence or omission whereby damage has resulted to the plaintiff.

This was a judicial question to be determined by the court--whether or not appellees had unwarrantedly entered upon the premises of the appellant. In the circumstances it is beyond the scope and intelligence of an ordinary witness to determine. Therefore the court below in overruling the said objection of the appellant to appellees' question committed no error. The questions contained in counts four and five are irrelevant to the issue. This action grew out of goods obtained from the steamship Bonny which had been wrecked in the Bay near Cape Palmas, on the 23rd of March, 1928. In order to secure the wrecked goods the Superviser of Customs sent a radiogram to the Collector of Customs of the Port of Harper to place Customs Officers at the scene of the wreck at the government's ex-

pense. In keeping with said instructions the Collector ordered the senior Wharfinger to place Customs Officers near the wreck to prevent smuggling. The Wharfinger not having sufficient officers at the time, detained the appellees to assist the officers of the Customs. On the evening of the r3th of April, 1928, the boats of G. F. Overbeck, Ltd., came in from the wrecked ship and refused to call at the Customs wharf in keeping with law. Appellees were therefore instructed by the said Wharfinger to have the said boats returned to the Customs wharf. The headmen for boats of the said firm having refused to return to the Customs wharf, the appellees then seized the smuggled goods, which they had landed on the appellant's premises and reported the same to the senior Wharfinger. On the following morning, that is to say, on the r4th of April of the same year, Joseph Corssen, agent for the firm of Overbeck, Ltd., informed the Collector that some Customs Officers had entered his yard and searched his warehouses for goods from the wrecked ship Bonny. The Collector replied that he had acted in keeping with the instruction received by radiogram from the Superviser of Customs to place Customs Officers at the scene of the wreck to prevent smuggling. Thereupon the said agent said he had come ready to pay his duty for the goods which his boats had brought from the ship. (See the testimony of the Collector of Customs for the Port of Harper.) From the outward manifest of goods on board the shiplIonny (Captain, A Woolwright), it does not appear that any of the goods was consigned to the firm of G. F. Overbeck, Ltd., at Cape Palmas. On the other hand the manifest showed that the goods and wares which were to be landed at Cape

Palmas were consigned only to the following trading houses, viz.: The Cavalla River Company Ltd., The United States Trading Company Limited, Woodin and Company Ltd., The Firestone Company, and S. L. Nicols and Company. The Act to Regulate Proceedings in Cases of Wrecks

passed the legislature in 185o, sections one and four of article I, in the Old Blue Book (pages 147, 148), provides: ti t. That whenever boats, goods or property of any kind, having been wrecked or lost, is found, it shall be the duty of the finder, to deliver the same into the custody of the Collector or his Deputy, who shall give notice by public advertisement thereof, for ten days, in the neighborhood of those supposed to be concerned : after which time unless application be sooner made on the part of the owner or owners of the said property, the Collector shall proceed to sell the same to the highest bidder, and after deducting his commission with the salvage hereinafter specified, shall pay over the balance into the Treasury of this Republic. But should an owner appear to claim the said property, he shall be required to pay salvage of one fourth the value of the articles so found to be paid or secured to the finder. "4. That should any person finding or picking up any wrecked or drifted property, fail, or refuse to submit to the proceedings above prescribed, his claims as finder, or any other person for him, shall be abrogated --and he shall further be liable to be proceeded against as in cases of felony, and upon conviction, shall suffer the same penalties as for any other Act of larceny according to the magnitude of the offence." The statute further provides "That any goods or articles chargeable with duties, and upon which duties have not been paid, which may be smuggled into the Republic, shall be seized by the Collector and sold for the benefit of the Government." Customs Code 32, § 77. The record in this case clearly shows that the firm of G. F. Overbeck, Ltd., had no goods consigned to it by

the steamship Bonny. It must therefore be presumed that the goods which were landed by its boats at the wharf were either picked up on the sea by the boatboys or were stolen from the wreck; and the refusal of the boats of the said firm to stop at the Customs wharf in keeping with the Customs regulations is an evidence of their intention to violate the Revenue Laws. Since the appellant had violated the Revenue Laws of the Republic, it is no defense that the petty officers of the Customs who were detailed to go on its premises wore no Customs uniform. The regulation which authorizes the wearing of customs uniform by Customs officials, does not apply to petty officers. The appellees therefore not wearing Customs uniform committed no damage to the appellant's property; and if at all he considered it a damage to his intelligence, it is not an injury for which damage would

lie. That no action lies for what is damnum sine injuria is a well settled principle of law. We now come to the sixth count of the bill of exceptions which contains the most important matter for our consideration. The appellant contends that a search warrant should have been issued by a judicial authority to enable the appellees to enter upon his premises to search for the articles of merchandise which were landed at the said appellant's wharf by his boats. We will now proceed to investigate appellant's contention, whether or not it was absolutely necessary for a search warrant to issue before Revenue officers could enter upon the premises of merchants, or any other party who had surreptitiously landed goods without the knowledge or consent of the Collector of Customs. Sec. 9, Art. 1, of the Constitution reads thus : "No place shall be searched, nor person seized, on a criminal charge or suspicion, unless upon warrant lawfully issued, upon probable cause supported by oath, or solemn affirmation, specially designating the place or person, and the object of the search." It seems to be clear to every legal mind, that there is a marked difference be-

tween a search for and seizure of a man's private property for the purpose of obtaining information, or of using it as evidence against him; and a search for and seizure of stolen or forfeited goods, or goods liable to duties and concealed to avoid the payment of same. In the first case the government is not entitled to possession; whilst in the other, the government is entitled to the possession of the property. The seizure of stolen goods is authorized by the common law, and the search and seizure of goods forfeited for a violation of the Revenue Laws, or concealed to avoid payment of duties thereof, has been authorized by our own Revenue Acts from the commencement of the Republic. The first statute passed by the National Legislature to regulate navigation, commerce and revenue provided for the search for and seizure of such goods and the prosecution of vessels contravening the Revenue Laws. Old Blue Book tot, §§ 13, 14. As these Acts were passed by the first National Legislature of the Republic which declared the adoption of the Constitution, it is clear that the members of that body did not regard a search and seizure of stolen or forfeited goods, or goods liable to duties and smuggled to avoid payment thereof, as unlawful; and it is not embraced within the prohibition of the Constitution. So, also, the laws which provide for the search and seizure of articles and things which it is unlawful for a person to have in his possession for the purpose of issue or disposition, such as counterfeit coin, implements of gambling, etc., are not within this category. This view is also held by the United States Supreme Court. 2 Hare's American Constitutional Law 834-36, note t. The legal maxim, acta exteriora indicant interiora secreta (acts indicate the intention), may be applied to this case. On this principle, it was decided in a well known case, that if a man abuse an authority given him by the law, he becomes a trespasser ab initio; but that where he abuses an authority given him by the party, he shall not

be a trespasser ab initio. With respect to
the second proposition laid down in the Six Carpenters' Case, 8 Rep. 29o;
viz., that the abuse of authority or license given by the party will not make
a person a trespasser ab initio, it should be observed,
that such a license to do an act which per se would be a trespass, is in some
cases implied by law. Thus, all the old authorities
say that where a party places upon his own close the goods of another, he, by
so doing, gives to the owner of them an implied license
to enter for the purpose of recaption. If a man takes my goods and carries
them into his own land, I may justify my entry into the
said land to take my goods again, for i they came there by his own act.
Lastly, it was resolved in the principal case, that a mere
non-feasance will not make a man a trespasser ab initio. Broom's Legal
Maxims, pp. 248-252. We are therefore of the opinion, after
careful consideration of this case, that the Republic of Liberia being
entitled to the possession of the goods which had been smuggled
in the warehouse of the appellant from the wreck, the search and seizure of
the same by the Revenue Officers were warranted by law.
The judgment of the Circuit Court of the Fourth Judicial Circuit is hereby
affirmed. Cost against appellant.
ilffirmed.

Wrogbe v Joe [1971] LRSC 8; 20 LLR 206 (1971) (21 January 1971)

WEAH WROGBE, Appellant, v. ESTHER TEAH JOE, Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT, SINOE COUNTY.

Argued December 15, 1970. Decided January 21, 1971. 1. When a trial has been
regularly conducted, and the evidence presented sufficiently
supports the finding, the Supreme Court will not disturb the judgment of the
lower court.

Appellant brought an action for cancellation
of a deed to respondent from the deceased brother of petitioner, claiming
that the signature thereon was a forgery. In her testimony
she said that respondent was the wife of the deceased. The lower court ruled
in favor of the respondent, and an appeal was taken
from the judgment of the court. In its opinion the Supreme Court sifted the
evidence and weighed the testimony presented, and considered
the ruling of the trial court more than sufficiently supported by the
evidence. Judgment affirmed.
Clarence 0. Tuning for appellant.
and Nelson Broderick for appellee.
CHIEF JUSTICE WILSON

J. Dominic Bing

delivered the opinion of the

Court. Weah Wrogbe, sister
and only surviving heir of William B. Geegby, of Greenville, Sinoe County,
sued Esther Teah Joe, complaining, in substance, that
she is legally entitled to his estate. The petition alleges further that the
respondent-appellee fraudulently and in a clandestine
and deceitful manner executed to herself a warranty deed, although it bore
the signature of William Geegby, for lot No. i8o, situated
in Greenville, Sinoe County, the lot
being a portion of the intestate estate. On the face of it,
206

LIBERIAN LAW REPORTS

207

the deed was witnessed by three persons, who put their signatures thereon and
the deed was probated, as a clerk's certificate acknowledges.
In support of her claim, petitioner offered documentary proof in the form of
a "letter of authorization" marked exhibit "A." : "Greenville,
Sinoe. "MISS MARY KIE MONEH "7 March 1956. "Greenville, "Sinoe County. "Upon
the receipt of this letter you are hereby authorized
to remain in the dwelling but built by one Barbar, a Moslem and/or Mohammedan
resident, in Greenville, Sinoe County, Liberia. Said
being mine, you are fully empowered to possess the room you inhabit until
otherwise ordered by me, the undersigned, said lot being
the premises of the undersigned, being upon the authentic records of the City
number 180. For so doing this shall constitute your
sufficient legal warrant. "Certified true copy of the original. "[Sgd.] S. W.
SLEWERN "Filed in my office this 6th day of May, 1965.
(Sealed) [Sgd.] JAMES CLARKE,
"

Clerk of Court, Sinoe County

"Certified, true and correct copy of the original in office. "[Sgd.]
DAVID P. JEBBOE,
Clerk of Court, Sinoe County, R.L."

[250 Revenue Stamp affixed on the original.] Petitioner claims, therefore,
that the signature on the deed is a forgery and seeks its cancellation by
these proceedings. The respondent appeared and answered
and denied that the signature on her warranty deed was forged, but rather
that it was legally executed to her by William B. Geegby.

208

LIBERIAN LAW REPORTS

The law issues having been disposed of, Judge Jeremiah Z. Reeves, presiding
over the May Term, 197o,
of the Third Judicial Circuit Court, Sinoe County, called the case to trial.
Having heard evidence on both sides, he entered a final
decree declaring the deed to be valid and refused its cancellation. The main
issue in this case on appeal is whether or not the signature
appearing on the deed sought to be cancelled is the genuine signature of
William B. Geegby. We shall now take a look at the evidence

presented to determine whether or not the evidence supports the decree. We would first of all like to here mention, in passing, that a very novel situation was created at the trial in that the appellee was subpoenaed by appellant as a witness, and because appellee's counsel felt that she should be available to witness the testimony of other witnesses, and thus assist her counsel, the request was made to the court that she be made the first witness for the petitioner. This request was granted and Esther Joe took the stand. She testified of her acquaintance with William B. Geegby and Weah Wrogbe. The record reveals that she had been served with a subpoena duces tecum, to produce the original deed sought to be cancelled by the proceedings. The deed was produced and she was discharged. The next witness was Weah Wrogbe, the petitionerappellant, who testified to the facts. "The late William B. Geegby and I are sister and brother. My brother died and after we, the family, asked for his property from the respondent, Esther Teah Joe, she informed us that our brother had no property. We reported this to former Judge Daniel Draper and Hon. Harry Kangar, to ask the respondent about our brother's property. When we went into the family investigation at the home of Hon. Darga, in the presence of my daughter, Elizabeth Slewern, and her husband, S. W. Slewern, the respondent still insisted that W. B. Geegby left no property.

I then asked Judge Draper and Mr. Kangar to find out from the respondent if she had reported the death of her husband to the government. We then further said that since the respondent insisted that her late husband, Mr. Geegby, left no property, we, the family will make the report as to his death to the government. We further said that since the respondent said that he has no property, we will institute proceedings against her, when we will understand as to whether he died leaving property or not. After we had instituted the proceedings against the respondent in court, and she was brought into court, she still said that W. B. Geegby died without leaving any property. The court then asked her about the deeds he had. She still confirmed that he had died without leaving any property. Thereafter she brought five deeds, and among these deeds one of the deeds was not pleasing to the family. We, the family, then brought this matter to court to find out if really it is the genuine deed of William Geegby. And this is what I know." On cross-examination the witness testified that because of her inability to read or write she relied upon S. W. Slewern to establish that the deed sought to be cancelled was a forgery. Further testifying on cross-examination, she stated that Mr. Geegby was alive when the deed was executed and probated. She denied that respondent did not live on the premises or that the premises were improved during the life time of Mr. Geegby. She admitted however that the premises were at the time of the trial improved by a concrete structure, in which the respondent lived. Another witness for petitioner was S. W. Slewern. "The late W. B. Geegby was my uncle-in-law. Prior to his death on December 6, 1959, he visited Sinoe. He then took me with him together with one of their family, named Settro Nah, now in Freetown ; in the usual way we visited all the property that he has. We

came from over the brook down to Bay Street, and
ended on Mississippi Street, when we took the deeds of his property and
handed them to Esther Teah Joe for safe keeping. He then
said on account of this property, maybe when I die, Samuel will be in court
to talk a lot; which prophecy has now come to be fulfilled.
When Geegby died, my wife and I went to the funeral, we returned after the
funeral. Of course, Esther Teah Joe went before us. After
our return, Uncle Geegby being a Christian, we applied to the Methodist
Church in Kru Town to have a eulogy for him, at which time,
the family invited Esther Teah Joe to join us, but she refused to go to the
eulogy. After the eulogy, the family, together with myself,
appealed to Kangar, where Esther Teah Joe was invited in order to discuss
about the property which Uncle Geegby left. At this meeting
there was no better understanding, and the meeting dissolved. We then
appealed to Mr. Draper, who was then Esther's lawyer, and brought
up this same question about the property and Esther refused. And after that
the family then appeared in court, where the property matter was taken up ;
it
was at this time that a deed was brought calling for no. 18o, which bore the
signature of my Uncle, William B. Geegby. The family
through their lawyer, and for the identification of the signature, objected
to the deed inasmuch as Geegby did not sell a lot to
Esther Teah Joe for the amount of $ioo.00. Since then, this matter has been
pending over eight consecutive years, until now taken
up. And this is what I know." The first witness to take the stand for
respondent was Esther Joe herself : "We are sworn to speak
the truth. In the year 1954, in the month of July, which is evident to
everybody that the late Geegby was not here, I went home to
Sanquin, and I returned from Sanquin, there was a

house built on this piece of land now in question.
I asked who had constructed this house? I was informed that the house was
built by one Barbar. And I asked him who gave him permission
to build. He said that the late Professor Davies gave it to him. And I said
to him, let us go to Professor Davies, because the spot
on which you built this house is not his. And while we were going, Mary Kai
Muneh followed. The late Professor Davies told them that
the place on which the house was built was not his. And so Mary Muneh said
that she would beg me, being her father's wife, for me
not to remove the building, and with that Professor Davies suggested that we
go home, I had intended to remove Barbar from the place,
but being that Mary is a cousin to Mr. Geegby is why I declined. In the year
1956, Geegby returned from Monrovia. In the year 1955,
the late Geegby was not in Sinoe. One morning the said Mary Muneh came to our
home during the presence of Geegby, and said that her
husband, Mr. Barbar, had put her outside. I followed Mary and asked Barbar
why did he put Mary outside, is this place for you? He

said that he is the man, and because his wife had a Fanti man, is why he evicted her from the house. Continuing, he said that even the child that she had is for a Fanti man, and this has caused me to put her outside, according to the late Barbar; I then told him, the late Barbar, that he should go out. Barbar then left and went to teacher Davies, the late, who suggested a room be given him in the house from a humanitarian standpoint of view. This was the time a room was given to Mary. The subject of the letter of authorization referred to. From that time, she had been receiving rents from the room, because she had left this particular house. When this land question came about, I heard that the family of the late Geegby made her a witness for the land in dispute. After I had been in-

formed that she is one of the witnesses for relatives of W. B. Geegby in this land question, I decided to evict them from the place. And so when the matter travelled to the Kru Governor's Court, I told him that I had nothing to say about this. The matter then still travelled to the office of the Relieving Commissioner, Mr. Charles H. N. Davies, when she hired the late Henry B. C. Monger for her lawyer. When I was called upon by the Commissioner, I told him not to get vex, for I had something to say in relation to the **land in question. I heard that the land** palaver is in court, and she is one of the witnesses, and so I would be glad if she could vacate the place to avoid further confusion, because she is fighting me, I should not be her witness. The next day, the Commissioner told her to vacate the premises upon my request. And really the next day, she took all of her things and left. And from that time I have never seen her until the house was broken down. And this is what I know." The cross-examination attempted without success to disprove the signature of Geegby to the deed. The witness testified that she was present at the signing and witnessing of the deed in question. The next witness for respondent was the clerk of the probate division of the court, who produced the inventory of the estate of Geegby. The relevant portion of that report which lists the real property of Geegby has been extracted : Lot #168 with building value Lot #177 value Lot #498 value Lot #483 value too cement blocks 250 ea. 2 perches of rocks $z ea.
.00 500.00 250.00 500.00 $2,250.00
$1,000

25.00 4.00
Total $2,279.00

Another witness for the respondent was T. G. Jlateh who testified to his acquaintance with the petitioner, and in substance, said that all he knew of the matter was that Geegby called him, along with John Woleh and Elijah McCaulay. Because of the relevancy of this testimony we deem it expedient for the benefit of this opinion to quote it. "All what I know about this matter, in the year 1951, Geegby called three of us, I, T. G. Jlateh, John Woleh and Elijah McCaulay; we went upstairs; when we got there, he brought a deed before us, and told us that this deed is for Esther Joe, so I want you all to sign as attesting witnesses. Thereby I signed and after this the other two signed. He, William B. Geegby also signed ; at this time Esther was on the spot. He took this deed, gave it to Esther Joe, respondent. This is all what I know." Hezekiah D. Monger, respondent's witness, testified that when he was commissioner in Butan District, Geegby used to correspond with him and that he was, therefore, acquainted with the former's signature ; that as to McCaulay they were personal friends and corresponded regularly. He stated that the signature of the decedent and that of McCaulay, appearing on the deed in question, were their genuine signatures. On cross-examination he reiterated and confirmed his statement in chief, despite rigorous questioning. The final witness for the respondent was J. D. Sanyenneh, who testified to his acquaintance with the petitioner, the respondent and the decedent, as follows : "In the year 1951 I was teaching at Plahn. I came down to Geegby and after our conversation was over, and I was about to return to my station, he said, Sanyenneh, I wanted to see you because I sold a lot to Esther Joe. Then I asked him, teacher, you mean that you sold a lot to Esther? He said, yes. Then I said to him, that it is fine, but Esther never told me this thing. And while I was coming down stairs, I.

met her and informed her that she did a great piece of work. She asked me what piece of work that she did. Then I said to her that Geegby said that you bought a lot from him. And this is what he told me upstairs. And so I am going upstairs for him to show me the deed because from here to Plahn is about 8 to 9 hours to reach to my station. He showed me the deed, that is the decedent. And so I thanked him very much for what he had done. I then turned to Esther to say, that I will convey the news to our older people to thank you for the work done. And after I read the deed I saw Mr. T. G. Jlateh, John Woleh and the late E. A. L. McCaulay's names and the name of Geegby, of sacred memory, on the deed. And after three weeks I went to Plahn and thereafter returned to Greenville. One day I met the late McCaulay and asked him that if he is one of the witnesses to the deed that the late Geegby sold to Esther Teah Joe. He answered me, yes. And this is what I know." As the witness preceding, he stood up well under cross-examination.

The foregoing constitutes the evidence in these proceedings. A review thereof disclosed that only one witness for petitioner claimed
the signature on the deed was not that of Geegby, whereas a preponderance of the testimony for respondent established that the signatures
of the decedent and the attesting witnesses appearing on the deed are genuine signatures. In the record of the trial no objections
appear to the inventory presented to the court by the curator. This inventory shown herein, indicates that lot No. 18o, the subject
of these proceedings, was not listed. The absence of an objection to its exclusion, especially since counsel for petitioner was also counsel for the estate,
leaves us no alternative but to conclude that the transfer was genuine and recognized as such by the heirs. More than this, the evidence
reveals that the deed in question was registered

and probated during the lifetime of the grantor without
objections. We must, therefore, again conclude that the transfer was lawful. The record in these proceedings reveals no irregularities
in the trial and the evidence presented, in our opinion, supports the decree of the court below. In view of the foregoing, we must
adhere to the dictum of this Court, to the effect that where the trial is regularly conducted and the evidence presented sufficiently
supports the findings, the judgment of the court below will not be disturbed. The judgment of the trial court is, therefore, affirmed,
with costs against the petitioner-appellant. Affirmed.

Wilson et al v Wilson et al [1994] LRSC 8; 37 LLR 420 (1994) (18 February 1994)

A. DASH WILSON, **JR.**, **GEORGE T. WILSON**, **MARGARET T. WILSON**, **et al.**, children of the late A. DASH WILSON, SR., Appellants, v. **FRANCES C. WILSON**, Widow of the late A. DASH WILSON, SR., and **EMMA SALOME IVY**, Substituted by R. ALEXANDER BREWER, Appellees.

APPEAL FROM THE CIRCUIT COURT FOR THE FOURTH JUDICIAL CIRCUIT, MARYLAND COUNTY.

Heard: December 1& 8, 1993. Decided: February 18, 1994.

1. A fraudulent conveyance generally may be defined as transaction by means of which the owner of real property makes such conveyance which operates to the prejudice of the legal or equitable rights of other persons.

2. Whenever the strict enforcement of a rule of procedure tends to hamper or prevent the supreme purpose of the fair administration of justice, the rule should be abandoned.

3. Although it is a legal requirement that deed conveying realty must be registered and probated within four months from the date of execution and delivery to the grantee, in the absence of such probation and registration, the conveyance is not *ipso facto* void, but may be so where a third party, who for valuable consideration, received a deed executed in his favor for the same property and from the same grantor and registers his title within the four months required by statute, and the prior grantee failed to register his title within the four month period.

4. Whenever fraud is alleged, the facts and circumstances constituting the fraud must be stated with particularity and proven by the production of every species of evidence which is required to be produced at the trial; and the burden of proof rests entirely on the party who alleges the fraud.

5. Rules of court are for the purpose of aiding the speedy and orderly determination of causes.

Appellants, petitioners in the trial court, filed a petition for the cancellation of two warranty deeds for 750 acres of fully developed rubber farm **land** located in Maryland County, which was owned by their late father. One of the deeds was executed by their father and their stepmother, Frances C. Wilson, coappellee in these proceedings, transferring said farm **land** to co-Appellee Emma Salome Ivy; and the other executed by coappellee Emma Salome Ivy, transferring the same property back to co-appellee Frances C. Wilson.

The appellants alleged that fraud was perpetuated in the execution of the deeds, as said deeds were registered and probated without the three-day publication notice required by the probate court. In response to the petition, the appellees denied committing fraud in coming into possession of the deeds, and averred that during the lifetime of the appellants' father, he conveyed the farm to his wife, co-appellee Frances C. Wilson, and that such mode of transfer was adopted because, at the time, the Liberian law did not provide for a direct transfer of property from the husband to wife. Appellees also contended that the deceased had every right to transfer such property without reference to his children, and that petitioners failed to state in their petition upon whom and by whom the fraud was committed. Judgment was rendered in the trial court against appellants and they appealed to the Supreme Court for review.

The Supreme Court held that what constitutes fraud must be particularly proven and established by production of evidence. The Court observed that the appellants had failed to produce any evidence to show that fraud was perpetuated in the transfer of the deeds. The Court also noted that appellants had failed to show that their father was not the owner of the property at the time of the transfer. As regards the time required for the registration and probation of deed, the Court held that in the absence of such probation and registration, the conveyance is not *ipso facto* void, but may become void under the statute if a third party who had, for valuable consideration, received a deed executed in his favor for the same property and from the same grantor, registers and probates his title within the four-month period and the other party failed to act within four months of the date of his grant. The Court further held that the three-day publication rule for probating a title deed for real property is merely intended to prevent fraud, and that failure to comply with such a rule cannot invalidate one's title to said property. The Court also held that the mode of transfer adopted by appellants' father was in accordance with the law existing at the time.

M Kron Yangbe for appellants. *Joseph P.H. Findley* in association with *Stephen B. Dunbar, Jr.* for appellees.

Mr. CHIEF JUSTICE BULL delivered the opinion of the Court.

This is a matter in which nine children of the late A. Dash Wilson, Sr. namely, A. Dash Wilson, Jr., George T. Wilson, Margaret T. Wilson, Antoinette D. Wilson, Sarah E. Wilson-Acquaye, Adeline H. Wilson-Hedd Williams, Catherine C. Wilson-Woods, Julia A. Wilson-Berlin, Martha V. Wilson, filed a bill in equity before the Fourth Judicial Circuit Court, Maryland County, seeking the cancellation of two warranty deeds for 750 acres of fully developed rubber farm **land** located in Maryland County, which was owned by the late A. Dash Wilson, Sr., the father of petitioners. One of the deeds was executed by A. Dash Wilson, Sr. and his wife, Frances C. Wilson, transferring the said farm **land** to one Emma Salome Ivy, and the other deed was executed by Emma Salome Ivy transferring the same property back to Frances C. Wilson, the wife of the late A. Dash Wilson, Sr., now his widow. The proceedings in equity names as respondents Frances C. Wilson, widow of the late A. Dash Wilson, Sr., and Emma Salome Ivy of Harper City, Maryland County.

Petitioners alleged in their petition that after the demise of their father, and before his estate was opened, the curator for Maryland County applied for sequestration of the proceeds from the 750 acres rubber farm believed to be the estate of the late A. Dash Wilson, Sr. The court ordered the

proceeds sequestered. It was then that respondent Frances C. Wilson presented a deed executed to her for said farm by Emma Salome Ivy to show that the 750 acres of rubber farm was now owned by her in fee simple absolute.

Petitioners alleged further that they also discovered a deed which had been conveyed by A: Dash Wilson, Sr. and his wife, Frances C. Wilson, to Emma Salome Ivy for the same rubber farm **land** for a consideration of $1,000.00. Both deeds, the one from Emma Salome Ivy and the one from A. Dash Wilson, Sr. and Frances C. Wilson, according to petitioners, were executed on the 13 th day of January 1970, probated the following day, January 14, 1970, and ordered registered immediately; and that the probation and registration of these deeds were done without the three-day publication notice provided for under the probate court rule. These acts, petitioners concluded were a series of fraudulent transactions and chicanery perpetrated by the respondents herein.

In their answer to the petition, the respondents denied coming into possession of said property through any fraudulent means. They averred that during the lifetime of the late A. Dash Wilson, Sr., he conveyed the rubber farm to his wife, Frances C. Wilson, through Emma Salome Ivy. The deceased chose this mode of conveyance because at the time of the transaction, Liberian law did not permit a husband to directly transfer property to his spouse. Instead, such transfer had to be made through a third party. Further, respondents averred that the deceased had every right to divest himself of such property which he owned without reference to his children. Therefore, respondents concluded that the averments contained in petitioners' complaint do not constitute fraud neither did petitioners show in their complaint by whom, and upon whom the alleged fraud was committed.

The simple question which this matter presents is whether or not the deeds which were allegedly executed by the late A. Dash Wilson, Sr. and his wife Frances C. Wilson in favour of Emma Salome. Ivy, and the one executed by Emma Salome Ivy in favour of Frances C. Wilson for the same property were fraudulent or fraudulently executed?

Two other questions emerged from the above questions: (1) whether it was the late A. Dash Wilson, Sr. himself who executed the warranty deeds for the subject property to Emma Salome Ivy? And (2) was the transfer by Emma Salome Ivy to Frances C. Wilson so made with the knowledge and consent of the late A. Dash Wilson, Sr.? The answers to these questions will unfold as we proceed to review the records before us.

From the evidence adduced at the trial, petitioners attempted to show fraud by the fact that the execution of the deed by the late A. Dash Wilson, Sr. and his wife Frances C. Wilson to Emma Salome Ivy, and the deed executed by Emma Salome Ivy in favor of Frances C. Wilson were done simultaneously, that is to say, on the same day and date; that the probation and registration of both deeds were done on the following day, and done without complying with the three-day publication as pro-vided for by the probate court rules; that the consideration stated in each of the deeds in the sum of $1,000.00 is considerably inadequate for a high yielding rubber farm which produces a monthly income in excess of $1,000.00; that Mrs. Frances C. Wilson did not inform the Firestone Plantations Rubber Company of her title to the subject property until the court ordered sequestration of the proceeds from the rubber farm; and lastly, that the petitioners had no knowledge that their late father A. Dash Wilson, Sr. had transferred said property to his wife.

These are the acts which petitioners considered to be fraudulent. We have not been able to gather from the records in this case any averment or testimony to the effect that the deeds were not in fact executed by the persons whose signatures appeared on these deeds. Neither is there any evidence that the late A. Dash Wilson, Sr. was not the owner of the subject property at the time these transfers were made.

A fraudulent conveyance generally may be defined as a transaction by means of which the owner of real property makes such conveyance which operates to the prejudice of the legal or equitable rights of other persons. 37 AM. JUR 2d., *Fraudulent Conveyance, §* 1, page 691.

There is no denial that the property in question was the property of the late A. Dash Wilson, Sr. at the time of the transfer. Also, the method chosen by the late A. Dash Wilson, Sr. to vest title of said property in his wife, Frances C. Wilson, was in accordance with the law at the time which mandated such conveyance of real property by a husband to his wife must be made through a third party, otherwise the same would be considered void. *Wolo* v. *Wolo[1944] LRSC 31;* , 8 LLR 453 (1944).

The fact that the late A. Dash Wilson, Sr. and Frances C. Wilson were husband and wife does not warrant a conclusion that the transaction of relinquishing his property to his wife was fraudulent in the absence of any act or circumstances which could support an inference of fraud or bad faith. Petitioners have shown no fact or circumstances which could support an inference of fraud. The property which was transferred to Frances C. Wilson by A. Dash Wilson, Sr. was owned by him and he had every right to dispose of the subject property during his lifetime to any person whomsoever. In point of fact, we may infer from the facts of this case that the late A. Dash Wilson, Sr. intended to make a gift to his wife, Frances C. Wilson.

Regarding the probation and registration of the documents, the well known legal requirements is that a deed conveying realty should be probated and registered within a period of four months from the date of execution and delivery to the grantee. Even in the absence of such probation a conveyance is not *ipso facto* void, but may become void under the statute where a third party who has for valuable consideration, received a deed executed in his favor for the same property and from the same grantor probates and registers his title within the four-month period prescribed by the statute, and the prior grantee had failed to register his title within said four months period. This statute is sometimes referred to as the "race" statute. The first grantee to register his title within the prescribed period prevails.

We agree with the interpretation of the Probate Court Rule regarding the three-day publication of deeds prior to probation and registration made by the late Judge John A. Dennis, who passed upon the issues of law in this matter. Judge Dennis correctly observed that the three-day publication rule before probating a title deed for real property is merely intended to prevent fraud, and that failure to comply with such rule cannot invalidate one's title to said property. Rules of court are for the purpose of aiding the speedy and orderly determination of causes. However, courts must always bear in mind that the supreme objective of judicial proceedings is the proper equitable administration of justice. Therefore, whenever the strict enforcement of a rule of procedure would tend to hamper or prevent this supreme purpose of the fair administration of justice, the rule should be abandoned.

It is interesting to note that during the trial of this case in the court below, respondents Frances C. Wilson and Emma Salome Ivy waived production of evidence on the grounds that the petitioners had failed to make *a prima facie* case of fraud against them. It is also interesting that even though petitioners gave notice that at the trial of this matter, they would apply to the court to compel the respondents to produce the two deeds in question, no such application was made to the court during said trial for the production of these deeds. We are led to believe that petitioners, perhaps being aware that none of their allegations of fraud referred to the genuineness of the signatures of these deeds, but were restricted to only those acts which they alleged to be fraudulent and which were not denied by the respondents, saw no purpose which the production of the deeds could serve.

Notwithstanding the above, the law specifically defines what constitutes fraud, which must be particularly alleged by the petitioners, and the burden to prove such allegation rests entirely with the petitioners. None of the allegations made in the petitioners' complaint and testified to at the trial fits the legal definition of fraud in respect of the execution of deeds.

Under the law, all facts, circumstances, and conditions which make up the fraud must be stated with particularity and proven by the production of every species of evidence which is required to be produced at the trial. Civil Procedure Law, Rev. Code 1: 9.5(2); *Multinational Gas and Petrochemical Company v. Crystal Steamship Corporation*, [1978] LRSC 36; 27 LLR 198 (1978); *Monrovia Construction Corporation v. Wazami*, [1974] LRSC 26; 23. LLR 58 (1974).

The acts, which petitioners have alleged in their petition and testified to at the trial as the acts committed by the respondents, did not constitute fraud under the law. This being so, we agree with the trial judge that no fraud was committed in the execution of these two deeds. We hold that the two deeds, the one executed by the late A. Dash Wilson, Sr. and his wife to Emma Salome Ivy, and the one executed by Emma Salome Ivy to Frances C. Wilson, are genuine instruments. We also are in full agreement with the trial judge that from all of the facts and circumstances surrounding the execution of the two deeds, there is no doubt that the late A. Dash Wilson, SR. merely intended to make a gift to his wife Frances C. Wilson because of his love and affection for her, and that no inference of fraud or bad faith can be gathered from any of these transactions.

Wherefore, and in view of the facts and circumstances narrated above and the laws cited and relied on in this opinion, as well as for the foregoing reasons, the judgment of the Fourth Judicial Circuit Court, Maryland County, is affirmed. Costs of these proceedings are assessed against appellants. The Clerk of this Court is hereby ordered to send a mandate to the trial court to resume jurisdiction over the case and give effect to this opinion. And it is hereby so ordered.

Judgment affirmed.

Mitchell v Nelson et al [1983] LRSC 76; 31 LLR 270 (1983) (7 July 1983)

SAMUEL D. MITCHELL, Appellant, v. **P. EDWARD NELSON, II**, Sheriff Montserrado County, **EDWIN GABBIDON** et al., Appellees.

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

Heard: May 3. 1983. Decided: July 7, 1983.

1. A bill of information can be brought before a succeeding judge, provided it is brought by a party to the main suit pending before the court and that it is not intended to reverse the judgment of the trial judge which had judicially settled the issues of contention and put the case to rest.

2. The court at every stage of a proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

3. A bill of information is not a possessory action, and cannot be used to put a party in possession of real property.

4. A trial judge lacks jurisdiction to review the decisions of a judge of concurrent jurisdiction.

Seven years after the lower court had handed down its ruling in an ejectment suit in which the informant was ejected from the premises which he occupied, the informant filed a bill of information alleging that he was not a party to the suit out of which the ej ectment judgment was enforced and therefore should not have been affected by it. The lower court refused jurisdiction, holding that it could not review the judgment of a concurrent judge. The court accordingly granted the motion to dismiss filed against the review of the case. The Supreme Court affirmed the decision of the lower court, and upheld the principle relied upon by the trial court in determining that it was without authority to review the judgment of a predecessor judge who held concurrent jurisdiction.

Johnnie N. Lewis appeared for the appellant. John T Teewia appeared for the appellees.

MR. JUSTICE KOROMA delivered the opinion of the Court.

In 1966, an action of ejectment was instituted by James H. Deshield, Jr., and Henrietta Williams Bangori, said to be the legal surviving heirs of Edmund Chavers against one Old Man Tom and others for lot number 36, located at Lakpazi Town. The informant/appellant was no party to said suit. Seven years after the institution of this action, His Honor John A. Dennis presiding over the September 1973 Term of the Civil Law Court heard the case and entered a final judgment confirming a jury's verdict in favor of the defendants. A writ of possession was issued in favor of the defendants who were, by averments in the complaint, already in possession of and occupying the subject matter of the ejectment suit. During the service of the writ of possession, Samuel D. Mitchell, who was no party to the ejectment suit nor in privy to any of the parties and who is alleged to have been physically occupying a portion of **land** that fell within the domain of the writ of possession, was evicted by the sheriff of Montserrado County in 1973. During seven years following the service of this writ of possession, ousting and evicting informant/appellant from a parcel of **land** he is said to have been physically occupying at the time, he lived in complacency, equanimity, calm and serenity until 1980. On October 13, of that year, informant/appellant filed an eight-count bill of information complaining of the sheriff and Edwin J. Gabbidon of illegally, arbitrarily and unlawfully entering his premises "under the authority of the court's final judgment and writ of possession" and ousting him from his premises and praying the court to order the issuance of a writ of summons on the respondents to appear and "justify the service of the writ of possession in the case James H Deshield, Jr., versus Oldman Tom, et. al."

To this information, the respondents filed their returns and simultaneously moved the court to dismiss the information on the following grounds: (1) Information being an ancillary suit, can only be maintained where there is a main suit filed with it or pending before the forum in which the information is filed. The ejectment suit out of which the information had grown, respondents said, had been adjudicated seven years ago in 1973 and was no longer pending before the court in which the information was filed; (2) that the informant, Samuel D. Mitchell, was not a party to the ejectment suit which was decided in favour of Co-respondent Edwin J. Gabbidon and others in 1973. Hence, information will not lie; and (3) That the respondent judge before whom the information was filed, held concurrent jurisdiction with the trial judge of the ejectment suit out of which the bill of information had germinated and which action having been finally determined without any party availing himself of an appellate review, could not be resurrected after the demise of seven years.

In a four-count resistance to this motion, the informant admitted that information is a special proceeding which grows out of a main suit, but maintained that there is no law controlling which makes it mandatory that a main suit be pending and that it is sufficient to show, as in the case at point, that a suit was pending and that the ministerial officer of the court in enforcing an order of the court proceeded in a manner contrary to law; that since respondents alleged that information would not lie, they were under duty to suggest a better writ; informant argued further in his resistance to the motion that it was not necessary that informant should have been a party to the main and original suit; that it is sufficient to show that the sheriff in the execution of an order of court proceeded in a manner which affected the rights of the party, not a party to the original suit. The informant finally argued and submitted that the information was not intended to undo the acts of His Honour John A. Dennis, who presided over the trial of the ejectment suit, rather the information was intended to bring to the attention of the court the illegal and oppressive manner in which the sheriff proceeded to execute the orders of Judge John A. Dennis. Consequently, the issue of concurrent jurisdiction and the prohibition attended thereto did not arise in this case.

The motion and resistance having been eloquently argued, His Honour Frank W. Smith overruled the resistance and granted the motion dismissing the information with costs against the informant. It is from this ruling that the informant has appealed to this Court en banc for review and final determination.

In his brief filed before this Court, the informant/appellant argued that the trial judge committed error and misinterpreted the office of a bill of information when he questioned the undue delay of seven years that had attended the filing of the information. He also argued that the trial judge misinterpreted the office of a bill of information when he questioned the lack of explanation in the bill of information as to why the informant did not file the bill of information for the attention of the assigned judge who ordered the writ of possession issued, since it is claimed to have been unlawfully and illegally executed by the sheriff. The informant construed this question to mean that Judge Smith was saying that the bill of information must have been brought to the attention of the trial judge only and by him alone entertained.

Recourse to the ruling of the trial judge revealed that it is the informant who has misinterpreted the ruling of Judge Smith instead of Judge Smith misinterpreting the office of the bill of information. The informant having averred in his bill of information that he and his family were

legally and physically in possession of and occupying a parcel of **land** when the sheriff, in the execution of the court's judgment and while serving the writ of possession, illegally and unlawfully and by force, ousted and evicted them from said premises, judicial prudence and legal reasoning would demand ascertaining why a person so adversely and grossly affected did not react immediately in seeking a redress; and if such a person has condescended to wait until after seven years before seeking a redress by a bill of information, and in which there is no explanation as to any disability, it becomes the province of the dispenser of justice to know why the lack of such explanation. This, in our opinion, can in no way be construed that a bill of information must be brought to the attention of the trial judge only and by him alone entertained. A bill of information may be brought and entertained by any judge other than the trial judge, provided, however, that it is brought by a party to the main suit pending before the court and that it is not intended to reverse the judgment of the trial judge which had judicially settled the issues of contention and put the case to rest. A judgment of a court of concurrent jurisdiction directly on the

Points or matters in issue and without fraud or collusion "is conclusive of the rights of the parties or their privies in all other actions or seems to the same or any other judicial tribunal of concurrent jurisdiction." 15 R.C.L., § 429, ch. 18, Res Judicata, pp. 950 - 951. If this doctrine holds for parties and their privies, can information by a nonparty to a suit judicially decided, resurrect an action at rest? Our answer is emphatically no. Count one of the bill of exceptions along with count one of the brief are therefore overruled.

In count two of the bill of exceptions and count two of the brief, the informant/appellant maintained that the trial judge erred while passing upon the issues of law when he remarked: "It is also not shown why or whether the informant, during the pendency of the ejectment suit, filed a motion to intervene since his interest in the **land** was apparent." Informant strongly contended that the trial judge can not properly pass upon issues of law not raised in the pleadings, and therefore he committed error. While we hold that this was error on the part of the trial judge to have injected intervention into his ruling when this issue was not raised in the motion, we have failed to see what injury this statement did to the substantial rights and interest of the informant. Further, the informant seemed to vindicate the need for the judge to have made this statement when in the very count two of the bill of exceptions and brief he stated unequivocally that he had had no notice and knowledge of the pendency of the ejectment suit between Deshield and Oldman Tom et al., hence, voluntarily answering the question why he did not intervene. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties. Civil Procedure Law, Rev. Code 1:1.5. Count two of the bill of exceptions and brief respectively are overruled.

In count three of the bill of exceptions and count three of the brief, the informant created a state of confusion in his argument, in that, it appeared that he was attacking Judge John A. Dennis for ordering the issuance of a writ of possession in favour of the defendants when it is said that they were physically in possession of and occupying the **land**. On the other hand, when Judge Smith, in passing upon the motion to dismiss the information, questioned the judicial prudence in issuing the writ of possession in favour of the defendants under the circumstances stated above, the informant labeled this exercise as "making findings of fact" and further that the court was passing upon the issues of law and not of fact; hence, it committed error. The fact as to the

issuance of the writ of possession in favour of the defendants was raised by the informant in count four of his bill of exceptions. The mention made of this fact by the trial judge constituted no error in the opinion of this Court. Count three of the bill of exceptions and count three of the informants brief are therefore not sustained.

In counts four and five of the bill of exceptions and brief, the informant/appellant argued that the trial judge misapplied and misinterpreted sections 2.4 and 2.19 as they relate to equitable relief and the statute of limitations respectively. In this connection, the informant/appellant argued that while the court or trial judge had applied the equitable doctrine of section 2.4 of the Civil Procedure Law, Rev. Code 1, to deny the information, he, the informant, had not come before the court in equity, but rather, that he was before the court in law. That being in law, the statute of limitations had not run against him since the information had grown out of an ejectment case for which the law allows twenty years for the tolling of the statute. This argument brings us to the all important issue as to the capacity of the informant.

We do hold that a bill of information is not necessarily a proceeding in equity by which equitable relief is sought. Generally, to determine whether an informant is seeking relief in equity or law, the court must predicate such determination upon the nature of the case from which the information has grown, the circumstances surrounding the case, the substance of the information and the relief sought by the informant's prayer. In the instant case, the informant in his prayer, is appealing to the untarnished hands of equity to restore him to the status quo of what he claims to be his property while he seemed to be legally contending in his information that no valid judgment had been rendered against him in the ejectment suit because of the lack of jurisdiction over his person and, hence, said judgment should not be binding upon him. We hold that our colleague committed no error when he construed the prayer of the informant as relief sought is in equity and therefore the application of Civil Procedure Law, Rev. Code 1:2.4. in denying the information.

The informant argued before this Bench with particularity that he was not a party to the ejectment suit in which James H. Deshield, Jr., and others were plaintiffs and Oldman Tom and others were defendants. Consequently, no valid judgment could be rendered against him by the trial court that had no jurisdiction over his person. Further, that any such judgment when rendered, could have no binding effect on him where he had neither been cited to appear nor afforded an opportunity to be heard. In support of this argument, he has cited the Court to the case Nimley, et al. v. Yancy at al[1982] LRSC 72; , 30 LLR 403 (1982).

Recourse to that opinion revealed that Mr. Justice Morris speaking for this Court, relied upon the cases Gbae, et al., v. Geeby and Schilling & Company v. Tirait & Dennis, and dismissed the information on the ground of jurisdiction. The principles of law pronounced in the two cases hereinabove cited are (1) "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." Gbae v. Geeby, [1960] LRSC 50; 14 LLR 147 (1960); and (2) "no valid judgment can be rendered against a person over whom the court had no jurisdiction. Schilling & Company v. Tirait & Dennis, [1965] LRSC 3; 16 LLR 164 (1965). Unlike the case in point, the two cases were brought under the jurisdiction of the Supreme Court by a writ of error to review the judgments of the lower courts. Hence, the said two cases are not analogous to the information now before this Bench. Consequently, this

law, relied upon by the informant and which has been cited in support of this argument is not applicable to this information proceeding.

While the informant strenuously argued that not being a party he should not be bound by the judgment in the ejectment suit, yet, he is not inclined to accept the principle of law that information is an ancillary suit and is only maintained where there is a main suit filed or pending before the forum where the information is filed, and that the informant must be a party to the main suit. His argument attempts to isolate the conduct of the sheriff in the service of the writ of possession from the main suit of ejectment. In other words, when the informant was attacked in both the returns and the motion to dismiss the information on the grounds that he the informant was not legally clothed to file the information, he not having been a party to the suit of ejectment out of which the information had grown nor could information be maintained when the main suit had been adjudicated more than seven years prior to the filing of the information, he conceded the argument in so far as the judgment should not have affected nor be binding on him as a nonparty to the suit of ejectment. He, however, argues that the information was filed for the sole purpose of having the sheriff to appeal and justify the service of the writ of possession on the informant wherein he was forcibly evicted from his premises, and concluded by praying that the trial court will grant him a relief by having him placed in "status quo ante". If this request or prayer had been granted by the trial court, the final judgment in the ejectment suit would have been reversed and informant placed in possession of a piece of property for which he had shown no title vested in himself.

The informant argued further in count five of the bill of exceptions and brief that the trial judge misapplied and misinterpreted section 2.19 of the Civil Procedure Law as it related to the statute of limitations in actions brought against public officers for liability incurred by them in performing an act in their official capacity or by omission of an official duty. The informant contended that the information was not a civil suit against the sheriff for liability incurred by him, as no damages had been prayed for and none would be awarded were the information entertained and the relief granted.

We hold that the trial judge did not misapply nor misinterpret the statute hereinabove cited. In his complaint, the informant averred that the sheriff for Montserrado County connived with Co-respondent Edwin J. Gabbidon and with force and arms, physically removed and ousted him and his family from his premises which he was then legally and physically in possession of. The gravity of this averment suggests that there was an official misconduct on the part of the sheriff which was actionable and, hence, the bill of information. We are of the considered opinion that the informant decided to file this bill of information because he could find relief in no other action. In that, neither damages nor error would lie because the statute had tolled against the informant and ejectment suit could not be maintained because the informant had shown no title in himself. Hence, the only avenue left open to the informant was that of a bill of information since there is no statutory limitation expressly laid down against its filings. Although information is not a possessory action, yet the informant prayed the trial court to have him placed in status quo ante or to repossess the property and dispossess those who had gained possession to the property through the judgment of a court of competent jurisdiction. This method used by the informant was indeed a clandestine employment of the arm of the law to strangulate and defeat transparent justice. Hence, the application of the relevant statute by the trial court to foil and

defeat this attempt. Counts four and five of the bill of exceptions and brief are therefore overruled.

One of the grounds upon which the trial judge sustained the motion and dismissed the information was that of the lack of jurisdiction to reopen the action of ejectment, especially where the informant was requiring a repossession of the property. Judge Smith held concurrent jurisdiction with His Honour John A. Dennis who had adjudicated and judicially decided the ownership of the property between the parties to the suit wherein no appeal was taken nor a remedial process sought. Wherein then was Judge Smith's legal and judicial authority to have the case reopened under the cloak of information to put a nonparty to the ejectment suit in possession of the property. To do this, Judge Smith would have had to dispossess the party who had been put in possession by the sheriff, thereby reversing the judgment of Judge Dennis and disturbing the doctrine of res judicata placed on the case by said judgment. Therefore, we concur with the trial judge in sustaining the motion and dismissing the information on the ground of concurrent jurisdiction.

In view of the facts and circumstances herein above elaborated, it is our holding that the ruling of the trial judge in the lower

Court dismissing the information should be and same is hereby confirmed and affirmed with cost against the informant. And it is hereby so ordered.

Judgment affirmed.

Nimley et al v Kaba et al [1960] LRSC 43; 14 LLR 82 (1960) (6 May 1960)

NANCY NIMLEY, MONA NIMLEY and BLATEH NIMLEY, Infant Children of N. S. NIMLEY, by their Next Best Friend, JAMES BESTMAN, Appellants,
v. KARMO KABA and HORATIO N. S. NIMLEY, Appellees.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued April 11, 1960. Decided May 6, 1960. 1. A husband is always liable for the support of his minor children, whether they live
with him or with their mother. 2. An infant or minor child must sue through one of the parents, a representative, or a next best
friend, or by a guardian ad litem. 3. Both parents are guardians of minor children, priority in this respect being given to the father
under normal conditions. This priority does not destroy a mother's right in respect to custody of a minor child, or her control over
the child's property or interest where the father's conduct deviates from what his fatherly responsibilities demand of him. In such
case the law will accord priority to the rights of the mother over those of the father. 4. The law will not sustain a father's unconditional

superiority of rights over a mother's in respect to a minor child or its property where his irresponsibility, wastefulness, or other detrimental tendencies dangerously threaten or affect the child, or its best interests. Such a father is unworthy and clearly unsuited for proper care of minor children or their property. 5. In all instances where the parent's conduct in handling a minor's property or interest might savor of detrimental or unbecoming behavior, the State protects the interest of the minor or infant against the wiles of an unscrupulous parent. 6. In order for a father to qualify for undisputed legal custody of his minor children, or control over and management of their property, he must first assume and exhibit his fatherly obligations and responsibilities of care, support, education; he must provide for the children's shelter, clothing and proper moral and spiritual upbringing; otherwise he is not entitled to any consideration, either as to the children's custody, or to control over their property. 7. No parent, whether father or mother, has any legal right to dispose of a minor's real property, except upon an order of a probate court; and then only after showing proper reasons, which must always have as primary consideration the child's best interest and welfare; and such reasons must have been given in a written petition upon notice to the children, and their parents or guardian.

On appeal from a decree on a bill of equity for cancellation of a warranty deed, the Supreme Court 'reversed the

decree denying cancellation, and ordered the court below to resume jurisdiction and to cancel the deed. Richard A. Diggs and Wheaton S. Thompson for appellants. Joseph S. Dennis and William A. Cisco for

appellees. MR. JUSTICE PIERRE delivered the opinion of the Court.* Included in the records certified to us from the office of the clerk of the Circuit Court of the Sixth Judicial Circuit is a deed transferring title of one-eighth of an acre of land on Camp Johnson Road in Monrovia, to Nancy, Mona and Blateh Nimley as grantees, executed by their father, Horatio N. S. Nimley, in consideration of $3oo paid to him by them. This deed for a portion of Lot Number 23 was executed on September 29, 1955. It was probated and registered in Volume 68G, page 309 of the authentic records of Montserrado County. Also in the records is another deed, purported to have been executed for the sale of the aforesaid piece of property by Nancy, Mona and Blateh Nimley through their father, Horatio N. S. Nimley, from whom they had previously purchased the property. This second deed sought to transfer title of the aforesaid portion of Lot Number 23 to Karmo Kaba, the appellee herein. This deed is signed by Horatio N. S. Nimley in his capacity as natural guardian of his minor children, Nancy, Mona and Blateh ; the purchase price written in the deed is $4,850, supposed to have been paid by Kaba to Horatio Nimley. It was executed on July 15, 1957, and is registered in Volume 67B, pages 998-999 of the said records. It would appear that there must have been some misunderstanding respecting this latter transaction wherein it is made to

appear that the minor children, Nancy,
* Mr. Justice Harris was absent because of illness and took no part in this case.

Mona and Blateh, intended to part with title of their property to Kaba as the deed indicated ; or else their father
must have acted without reference to them or their mother, Mary Nimley, with whom they now live and have lived since the separation
and eventual divorce of their father and mother. On August 30, 1957, that is to say just 49 days after they are supposed to have
sold their property to Kaba through their father, their mother, by and through her first cousin and their next best friend, James
Bestman, prepared and filed a complaint petitioning and praying cancellation of the deed to Kaba. Her petition reads, word for word,
as follows : "1. That on September 29, 1955, the said plaintiffs purchased from defendant Horatio Nimley, who happens to be their
father, one-eighth of an acre of land situated at Halfway Farm, Monrovia, being a part of Lot Number 23, for $300, as will more fully
appear from a copy of warranty deed hereto annexed, marked Exhibit 'A,' and made a part of this complaint. "2. And the said plaintiffs
further complain that, taking undue advantage of the fact that defendant Nimley is also plaintiffs' father, without any valid reason
whatever, and without seeking the permission of court for the purpose as by law and good conscience should have been done, said defendant
Nimley did clandestinely, without the knowledge and consent of plaintiffs, or of their mother who had materially contributed towards
the purchase of said property, undertook to sell and dispose of said parcel of land to defendant, Karmo Kaba, by executing a deed
purported to have been made and executed by the plaintiffs herein, contrary to the plain rules of honesty and good conscience, thereby
intending to leave plaintiffs destitute. "3. And the said plaintiffs further complain that the warranty deed issued in their names
and purporting to be their act is grossly fraudulent, as will

more fully appear from a copy of said deed
from Horatio N. S. Nimley (purportedly acting for plaintiffs), to Karmo Kaba hereto annexed and marked Exhibit '13' and made a part
of this complaint. "WHEREFORE plaintiffs most humbly pray Your Honor, sitting in Chancery, to decree the cancellation of said fraudulent
deed in favor of Karmo Kaba, and to grant unto plaintiffs such other and further relief in the premises as unto Your Honor, the facts,
circumstances, and the law in good conscience may seem to warrant." Karmo Kaba, grantee, and Horatio N. S. Nimley, grantor, as defendants,
appeared and filed an answer, wherein they contended, in substance: I. That the petition filed by Mary Nimley for her minor children
was without legal foundation, since she, the said mother of the children and everyone else, lacked representative capacity to act

on behalf of the children as long as their father, Horatio Nimley, whom the law regards as their only natural guardian, were alive.
2. That the complaint is false and misleading when it alleges that Mary Nimley contributed to the purchase of the property; they referred for reliance to the deed wherein she is nowhere shown as a grantor.
3. That the children were legally estopped from repudiating any act of Horatio Nimley, their father, who was their only natural guardian; and that the sale of the property by him was an honest transaction undertaken on their behalf and for their benefit in the exercise of his discretion and authority. 4. That it was not true that Mary Nimley, the children's mother, had no knowledge of the transaction of the sale of the property to Kaba; but her said knowledge was immaterial to its conclusion. 5. That no fraud is perpetrated, where a natural

guardian performs acts in the best interest of his minor children, even to selling their property for their welfare. Although the pleadings progressed as far as the rejoinder, no new issues upon which an equitable determination of the matter might turn were raised besides those appearing in the complaint and answer. In the reply which the plaintiffs filed, they denied that Mary Nimley had ever had any knowledge of the transaction between Nimley and Kaba to dispose of her minor children's property. She contended that there is no statute in Liberia to prevent her from taking steps to protect and conserve her minor children's rights and interests against a reckless father who fraudulently attempts to barter away their property without due process of law. She contended that, before real property of a minor could be sold by a parent, whether for the interest of the child or not, a bond should be filed and an order given by a court of competent jurisdiction, and that the parent must have satisfactorily established that his reason for seeking disposition of the property was for the welfare and best interest of the minor child. It might be of interest if we mention here a point argued by the appellants' counsel during the hearing before this bar. Both in the defendants' answer as well as in their brief argued here, Nimley persistently contended that his reason for selling his children's property to Kaba was in order that the proceeds of the sale might benefit the children ; so we inquired of the children's counsel if they had received any portion of the $4,850 received by their father as purchase price for their land. We were informed that not only was no part of the money given to the children, or for their benefit, but effort was made by their father to conceal the transaction from them and their mother. We were also informed that, besides this fact, Mr. Nimley had contributed nothing towards his children's support or care during all of the time they were in

their mother's custody. We therefore inquired of counsel for the father, Mr. Horatio Nimley, if in keeping with averments contained

in his answer, any portion of the purchase money had been given for the children's support, education, or benefit; and we were informed by his counsel, that this phase of the matter was not before us, and that we should only consider whether or not a father, as natural guardian of his minor children, has any legal right to dispose of their property without any order of court. We are therefore left to assume that the plaintiffs' claim of not having received any support from their father, and of not having been given any portion of the purchase price of their land, is true. We therefore wonder just how sincere Mr. Nimley could have been in his assertion, that his act was motivated by interest in his minor children's welfare. "The husband remains liable for the support of his minor children where he and his wife voluntarily separate, and he consents to the children living with the mother, or where the wife leaves him for good cause. . . ." 29 CYC. 1607 Parent and Child. But as this point is not in issue, we will make no further comment on it. From the several points raised and resisted in this case there seem to be two main issues in controversy: 1. Is the father the only parent recognized by law as being clothed with authority to represent or protect the rights of minor children ; and does fatherhood destroy or nullify the right of a mother, or other interested person, to bring suit to protect the rights of minor children, even against the father? 2. Has a parent, father or mother, the legal right to dispose of minor children's property without an order of court?

In considering the first of these issues, appellees' counsel relied upon the position taken by this Court in Benedict v. McGill, 1 L.L.R. 26 (1864), wherein it is held that,

unless there is some disability on his part to prevent him from taking proper care of them, a father is unquestionably the only legal representative of his minor children. As much as we endeavored to ascertain from counsel the application of this principle, enunciated in a habeas corpus proceeding wherein a father's children had been taken against his will and placed with guardians, to the present case wherein the father claims that, as natural guardian of his minor children, his acts are legally beyond question by the children's mother in matters affecting their interest and welfare, the learned counsel retreated behind a series of evasive answers without clarifying the point. Our statutes provide for the protection of the rights and interests of infants and incompetent persons. "An infant or incompetent person must sue or be sued through a representative. . . . "If an infant or incompetent person does not have a duly appointed representative, he may sue by his next best friend or by a guardian ad litem." 1956 Code, tit. 6, § 112. Note, this provision does not forbid suits brought by anyone in the children's interest against either parent; hence it does not seem to be a violation of the statutes for one parent to complain against what might be regarded as acts detrimental to the children's best interest, perpetrated by the other. On this point we find ourselves in agreement with the position of the mother. The modern trend in most countries today is towards equalizing responsibility for minor children between both parents, of course giving priority to the father under normal conditions. According to many authorities of the common

law, both parents are guardians of their minor children. But the absence of specific provision in our statutes to take care of every issue which might arise out of the relationship of parent and child is no reason to assume that a mother has no rights in respect to custody of, or interest in her minor

children so long as their father lives. This was the contention strenuously urged by appellees' counsel; but legal authorities hold to the contrary. "At common law the primary right to the custody of the child is in the father, such right necessarily springing from his duty to provide for the children's protection, maintenance, and education ; and in case the parents are living apart and there is a dispute as to the custody, the right of the father ordinarily is superior to that of the mother. However, by statute in some jurisdictions, the parents are joint guardians of their children and their rights of custody as against each other are equal, and such statutes have been held applicable not only where the parents are living together, but also where they are living apart. Not only under these statutes, but also according to the trend of modern judicial decisions, the strict common-law rule has been relaxed, and when the parents separate and cannot agree as to the custody of the child, the court may exercise its discretion and award custody according to the exigencies of the particular case, with special regard to that disposition which will serve the best interests and welfare of the child, and taking into consideration the character, conduct, and fitness of the parents. Pursuant to this rule the mother will be given preference over the father where her custody appears most beneficial to the child, as where the child is very young or sickly and so requires a mother's care." 46 C. J. 1225-28 Parent and Child § io. "By the common law, parental rights, like most rights pertaining to the family, were vested in the father alone. During his life the mother, at least under ordinary circumstances, had no parental rights recognized by law. She was entitled, it was said, `only to reverence and respect.' The modern tendency, however, is toward the equalization of the rights of the father and mother. This is evidenced by the

adoption of statutes in many jurisdictions making the father and mother joint guardians over their children, or expressly providing that the father and mother shall have the joint and equal right to the custody, control and services of the child." 39 Am. JUR. 595 Parent and Child § 8. "The modern tendency to equalize the rights of the two parents as to their children has led to the enactment in a number of jurisdictions of statutes by which the father and mother are declared to be joint guardians of their children, with equal rights of custody and control." 39 Am. JUR. 596 Parent and Child § 9. Our statutes are silent as to specific procedure to be adopted in instances where a parent's conduct might

be adverse or so detrimental to an infant's interests as to make it the subject of court review. Our statutes are also silent on the question of whether the superiority of a father's rights over minor children and their property extends to acts on his part which detrimentally affect the children's welfare. We must consequently look to the common law for guidance in the determination of such matters. It is inconceivable that any law in this enlightened age would arbitrarily and unreasonably insist upon a father's unconditional superiority of rights over a mother's with respect to minor children and the protection of their property. For instance, where it can be shown that a wasteful father's avaricious inclinations dangerously threaten or affect the safety of his minor children's property, it is inconceivable that the laws of any civilized country or people would arbitrarily command that such a father, though admittedly unworthy and clearly unsuited for the proper care of his children or their property, be continued in his supervisory control over them or their interests solely because he is their father. No law has given any father such unlimited supreme authority over his minor children's property; at least, not in civilized democratic states. On the contrary, a father's legitimate and un-

questioned right to control over, and management of his minor children's property is conditioned upon several things, principal among which is his obligatory duty to preserve and protect his minor children and their rights and property. There are many authorities in support of this point, and we will quote a few of them for the benefit of this opinion. But it should be remembered that, far greater than a father's rights to management of and control over his children's property, is the superior right of the State over the minor's property in respect to a parent's management of it. In every instance where the parent's conduct in the handling of a minor's interest might savor of disinterested, detrimental or unbecoming behavior, the State protects the interest of the minor or infant against the wiles of an unscrupulous parent. "It must always be remembered that in any dispute with respect to the rights of parenthood, the first principle is the welfare of the child. Any right the parent may have is not an absolute one, but is subject to the superior right of the state, as parens patriae, to intervene and protect the child against abuse of the parental privilege, and generally to provide, by appropriate legislation, for the proper performance, through agencies other than the parent if necessary, of the duties of parenthood." 39 AM. JUR. 594 Parent and Child § 6. Upon the above-quoted authorities we are of the considered opinion, that in order for a father to qualify for undisputed custody of his minor children, or control over and management of their property during their minority, he must first assume and exhibit his fatherly obligations and responsibilities of care, support, education; he must provide as is his moral duty, for their shelter, clothing, and proper moral and spiritual upbringing. And unless a father can qualify in these, or most of these respects, before a court of competent jurisdiction, he has no right as to his children which could be respected; least of all a

superior right over that of a mother who gives them support without his aid. Under such circumstances he is not entitled to any consideration, either as to their custody or to control over their property. We come now to consider the second point in issue. Has a parent, father or mother, the legal right to dispose of minor children's property without an order of court? The probate courts of our country are always clothed with legal authority, and indeed are never relieved of the mandatory duty, not only of appointing and removing guardians for children, but also of supervising them and all of their affairs. 1956 Code, tit. 18, § 53o. The execution of this statutory duty is only necessary in respect to minors, where the normal advantages of parent and child are not enjoyed by the child, as, for instance, where the parents are dead, or where, because of financial embarrassment, proper care cannot be given by the parents, or where for other reasons it would not be to the child's best interest if the State, through the probate court, did not intervene and ensure the child's proper care and protection. But be this as it may, it is nevertheless true that the probate court has inherent jurisdiction over all minors, whether they be destitute or of able or worthy parents. Parents capable and willing to perform their moral duties to their children, and to honorably assume legal responsibility for the support, care and general welfare of their offsprings, only assist the State when they meet these obligations ; they thereby prevent the institution of measures to compel performance of their duty. But no decent parent brings his children into the world and then, by acts of negligence or deliberate intention, leaves them as charges on the public. We hold that no parent has a legal right to dispose of his minor children's real property, with or without the children's consent, except upon an order of the probate court; and only after proper reasons, which must always have primary consideration for the children's best interest and

welfare and must have been given by written application, with notice to the children and both parents or guardians. It is in order to protect minor children and their property, personal or real, from irresponsible, avaricious and sometimes dishonest parents, that the law has provided that courts order the disposition or sale of a minor's property. "A parent, whether as natural guardian or otherwise, has no title to the property of his minor child, nor any custody or control over it. It is the theory of the law that if an infant is the owner of property, a guardian should be appointed to manage such property, and the extent of the father's right in this respect is to be preferred in the selection of the guardian. Under the civil law and codes based thereon, the father has the administration of his child's estate until its majority or emancipation, and is entitled to the usufruct thereof. However, even in such a jurisdiction, he cannot sell

his child's property without the order of a judge. By statutes in other jurisdictions, the father and mother are equally charged, as joint natural guardians, with the care and management of their children's estates. "A parent has no authority to sell, pledge, or transfer his child's property, or to make contracts with respect to it. Where he does undertake to handle the property, he may be required to give a bond, and subsequently to render an accounting to the child." 39 Am. JuR. 628 Parent and Child § 33. "As a general rule any property acquired by the child in any way except by its own labor or services belongs to the child and not to the parent, and the parental relation gives the parent no right to receive, use, or dispose of such property. And even property purchased with the earnings of the child belongs to him as against a parent where the parent has relinquished the right to the child's earnings. In some states, however, the parent has a usufructuary interest in the child's

property, and is entitled to administer it during his minority; although even where such rule exists the parent is accountable to the child for the property, and cannot convey such property without an order of court." 29 CYC. 1654.-56 Parent and Child. "A father as guardian by nature has no right to the real or personal estate of his child ; that right, whenever he has it, must be as a guardian in socage, or by some statutory provision." BOUVIER, LAW DICTIONARY Guardian and Ward (Rawle's 3rd Rev. 1914). Although there are other authorities in support of this principle, we do not think it is necessary to quote any others in reliance. In view of all we have said herein, and of the law we have cited and quoted, we find ourselves unable to uphold the ruling of the judge dismissing the plaintiffs' case in the court below. We are of the opinion that there was sufficient merit in the petition, and that the grounds set forth therein, praying cancellation of defendant Kaba's deed, are sound in law and well taken. The ruling from which this appeal was taken is therefore reversed. The clerk of this Court is ordered to send a mandate to the judge resident in the Sixth Judicial Circuit, or any other nearest assigned to preside therein, commanding him to resume jurisdiction of this matter and decree cancellation of the warranty deed executed to Karmo Kaba by Horatio N. S. Nimley, as natural guardian for Nancy, Mona and Blateh Nimley. Costs of these proceedings are ruled against the appellees. And it is so ordered. Reversed.

Cooper v Cooper-scott [1951] LRSC 11; 11 LLR 7 (1951) (11 May 1951)

CHARLES E. COOPER, Appellant, v. FLORENCE COOPER-SCOTT, Appellee.

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

Argued March 22, 1951. Decided May 11, 1951. 1. In an action of ejectment, the mere showing of heritable blood does not sufficiently establish title. 2. In an action of ejectment, title must be proved by the successful party. 3. It is incumbent upon counsellors at law to make use of Rule IV of the Revised Rules of the Supreme Court to correct errors in the circuit courts.

Plaintiff-appellee instituted an action of ejectment against defendant-appellant, and judgment was entered for her on the jury's verdict. On appeal, judgment reversed and remanded.

R. F. D. Smallwood and H. Lafayette Harmon for appellant. T. Gyibli Collins for appellee.

MR. JUSTICE REEVES delivered the opinion of the

Court. The history of the case, as the certified records transmitted from the court below to this Court disclose, is as follows : Florence Cooper-Scott, legatee under the will of the late James B. R. McGill, Jr., maternal grandson of E. J. Roye, by and through her husband, Hugh R. D. Scott, plaintiff, instituted an action of ejectment against Charles E. Cooper, defendant, in the Circuit Court of the Sixth Judicial Circuit, Montserrado County, for the recovery of a tract of land bounded and described as follows: "COMMENCING at the southwest angle of adjacent lot number 324, entitled 'P' of J. H. Roberts' Estate and running North 52 degrees West 35 feet or 53 links ; thence North 38 degrees East 132 feet or 200 links

more or less (i.e.) to the water edge; thence South 52 degrees East 35 feet or 53 links; thence South 38 degrees West 132 feet or zoo links more or less (i.e.) to the water edge, to the place of commencement and contains 6895 square feet of land and no more, as per deed of lease above referred to." She alleged that the title of said tract of land had come to her under the fourth clause of the will of James B. R. McGill, Jr., a copy of which will was annexed as exhibit "A," and that the defendant, without any just cause whatsoever, detained said tract of land from her. Defendant Cooper, in his answer after raising several demurrers, pleaded the statute of limitations and a general denial, alleging, in conclusion, the holding of a long line of unbroken and successive bona fide and genuine title deeds to the property in question. Pleadings were filed by the parties up to the surrejoinder. On June 9, 1949, Resident Judge King, having previously heard the arguments on the pleadings, rendered a lengthy ruling in which he ruled out defendant's answer, and concluded : "The case is therefore ruled to trial on the issue as to whether or not the late J. B. R. McGill, Jr., possessed heritable blood from the Roye family. Upon the finding and establishing of this fact, judgment must be in favor of

plaintiff. And it is so ordered. Cost to abide final determination." The trial, which commenced on June 22, 1949, before Resident Judge Richards (who, by appointment, succeeded Judge King) was very embarrassing to said judge and the parties litigant because of the concluding portion of a ruling of the former judge on the pleadings. The statute defining an action of ejectment declares: "Ejectment is an action to recover possession of real or immovable property, wrongfully withheld by the defendant from the plaintiff." 1841 Digest, pt. II, tit. II, ch. I, sec. 13 ; 2 Hub. 1526.

The former judge committed error in confining and restricting the trial to the issue of whether the late J. B. R. McGill, Jr., possessed heritable blood from the Roye family, Proof of heritable blood could not constitute proof of title to as required in an action of ejectment. For a clearer understanding of the embarrassing situation created by such an error, we quote the following ruling of the trial judge, on the first day of the trial, when the following question was propounded to plaintiff's first witness during the direct examination. "Have you been served with a writ of summons, which we call a writ of duces tecum, to produce certain documents in support of the property in question; and, if so, will you please produce them?" Objection: "The question of title is not an issue in this case, hence, it is without the scope of the court's ruling." Court's Ruling: "It is fundamental in ejectment proceedings that title to real property is an indispensable issue but the court finds itself circumscribed by the ruling of former Judge King, sending the case to trial on the sole issue of whether J. B. R. McGill, Jr., possessed heritable blood from the Roye family. To go into issues involving title would be to go beyond the ruling of former Judge King, which we are not competent to do under the law. In view of this the 'objection is sustained." On June 26, 195o, the sixth day's session, plaintiff offered into evidence documents including a photograph of the tombstone of the natural mother of J. B. McGill, Jr., as further proof of heritable blood in said heir; the will of J. B. McGill, Jr.; and the executor's deed conveying his heritable interest, title, and right of possession in lot number 325, or lot number "P," as documentary proof. Defendant objected to the introduction of such documents on grounds of irrelevancy to the issue ruled to trial by former Judge King.

In ruling on defendant's objection, Resident Judge Richards noted that the court was aware of the fundamental principle that title is an indispensable element in ejectment. But Resident Judge Richards found himself obliged to follow the ruling of former Judge King that the case be tried on the single issue of whether J. B. R. McGill, Jr., possessed heritable blood from the Roye family. Nor did he stop there, but,

continuing, said : "Upon the finding and establishing this fact under the direction of the court, judgment must be in favor of plaintiff."
Thus, although both plaintiff and defendant filed documents showing claim to title to said piece of realty, yet, former Judge King's ruling did not take these documents into consideration. Resident Judge Richards remarked, however, that, although he could not agree with such a ruling in an ejectment case, he had no alternative but to be governed thereby. At this point, defendant declined to proceed further because Resident Judge Richards was governed by the rulings of former Judge King in not permitting the question of title to form a part of the issue in this case. But he asked the court to charge the jury that, in a case of ejectment, title must be proved; and that the question of blood relationship is not title, and cannot give title to property independent of real title by deed. Thereupon defendant's counsel rested. The court instructed the petty jury as requested and it retired for deliberation. When the court resumed business, said petty jury handed in the following verdict : "We the petty jury, after hearing the evidence, unanimously agree that the plaintiff is entitled to the property in question." What a waste of precious time; what a futile expenditure of energy! Defendant's counsel excepted to said verdict, and gave notice that he would, in due time, file a motion for new

trial.
Accordingly, on June z8, defendant filed said motion for new trial on the following counts : 1. The case at bar, being an action in ejectment, should depend upon title to real property and not upon heritable blood, which, alone, is not evidence of title to real property. No evidence of title was placed before the jury. Although copies of defendant's title deeds were filed with the answer and formed a part thereof, they could not be introduced before the jury, because of the ruling of former Judge King. The verdict of the jury was therefore contrary to the evidence. 2. Said verdict is manifestly against the instruction of the court upon the law controlling the case, in that the court instructed the jury, inter alia, that, in a case of ejectment, some title must be proved to enable the plaintiff to recover. Since no evidence of title was produced or laid before the jury, the verdict was contrary to the instructions, and should be set aside. Plaintiff filed a resistance to said motion, but we do not find it necessary to make any comment thereon at this time.
On July 10, 1949, Resident Judge Richards issued the following ruling: "The court concedes the points raised in defendant's motion for new trial; yet, in the face of the ruling of former Judge King, the court does not see what benefit could be derived by granting a new trial. The motion is therefore denied and final judgment rendered."
Defendant appealed to this Court, filing a bill of exceptions containing fifteen counts. The first count, in our opinion, suffices to defeat the verdict and judgment. It reads as follows : "1. Because, on June 9, 1949, former Judge King ruled on the issues of law, in said case, dismissing the answer of the defendant in which the question of title was raised and supported by title deeds

and other exhibits, as well as other pleadings
of the defendant, and sent the case to trial on a single issue : 'Whether J. B. R. McGill, Jr., possessed heritable blood from the
Roye family.'" The first question that presents itself is that of responsibility for this abortive trial, waste of precious time,
and expended useless energy. Concededly, former Judge King made an erroneous ruling. But should he be held absolutely responsible?
In the opinion of this Court, former Judge King was not alone responsible. As for the trial judge, we are compelled to acquit him
of any responsibility, since he was bound to uphold the ruling of his predecessor. Perusing the records transmitted to us, we find
that five counsellors of this Court were connected with the action when former Judge King made the erroneous ruling; and, although
thirteen days elapsed before Resident Judge Richardrcommenced the trial, no steps were taken to have said error, which affected the
interests of both the plaintiff and the defendant, corrected. As ministers at this bar, the counsellors were derelict in attending
to their clients' interests, and are therefore responsible for much embarrassment and waste of time and energy. Said counsellors
were conversant with Rule IV of the Revised Rules of this Court, a L.L.R. 663 (1915) , and know that, had it been resorted to, and
taken advantage of, relief could have been had, error corrected, and a correct trial conducted. It was to prevent such embarrassing
situations that this Court made such a rule. It is a reflection on the legal profession when counsellors, in dereliction of their
duties, permit a trial judge and themselves to be confronted with such an erroneous ruling, thereby causing the trial to be abortive
and futile. This is a progressive age ; the Court therefore insists that the standard of the legal profession be kept abreast with
the progress and developments of the new Liberia. In view of the embarrassing situation encountered dur-

ing the trial, we have no hesitancy in reversing the ruling of former Judge King and the judgment of the court below. We remand
the case with orders that the Circuit Court of the Sixth Judicial Circuit, Montserrado County, resume jurisdiction de novo, commencing
with the hearing and deciding of the legal issues, each party paying his own costs and one half of the jury's costs. Reversed.

Gibson et al v Jones [1929] LRSC 3; 3 LLR 78 (1929) (25 January 1929)

MARION A. GIBSON, formerly MARION A. PAYNE, P. C. PARKER for his wife MATILDA M. PARKER, formerly MATILDA M. PAYNE, and R. S. MONTGOMERY for his wife MARY A. MONTGOMERY, formerly MARY A. PAYNE, heirs of the late JAMES S. PAYNE, Appellants, v. SAMUEL M. JONES,. Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT, SINOE COUNTY.

Submitted January 8, 1929. Decided January 25, 1929.
1. A Judge of a Circuit Court does not have the duty of disposing of questions of law raised in the pleadings except upon application to the court by one of the parties. 2. In ejectment the plaintiff must show a legal title to the property in dispute to recover it ; the weakness of the defendant's title will not of itself enable him to recover. 3. Where the statute of limitations is pleaded by the defendant as a bar against plaintiff's right to recover in an action of ejectment, courts will reckon the time of limitation to begin from the uninterrupted possession of the privies under whom he claims, and not from the time the defendant acquired possession of the property.

In an action of ejectment, judgment was given for defendant, now appellee, in the Circuit Court of the Third Judicial Circuit. On appeal to this Court, judgment affirmed. N. H. Sie Brownell for appellants. R. E. Dixon for

appellee. MR. Court. JUSTICE

KARNGA delivered the opinion of the

This is a case brought up before this Court upon a bill of exceptions from the Circuit Court of the Third Judicial Circuit, Sinoe County. The exceptions taken by the

plaintiffs in the court below and submitted to this Court for review and final judgment, are as follows: i. Because Your Honour did not first dispose of the issues of law raised in the pleadings before the case was submitted to the Jury. "2. And also because the Court sustained the objection of the Defendant now Appellee and rejected Plaintiffs' now Appellants' Deed when offered to prove their validity of title and allegation laid in their complaint that they are the rightful owners of the property now in dispute and said deed was offered to prove their title. The copy filed with the complaint required by law is only to set forth the description so as to give the Defendant notice what the Plaintiffs intend to prove. (See copy filed and original deed offered as written evidence to prove title. They bear on their face the same boundaries and description.) "3. And also because at the trial of said case the Plaintiffs now Appellants offered in their favour the said deed of their Father J. S. Payne duly signed, sealed and delivered by J. J. Roberts with his official title showing that the property was theirs by descent but the court refused to admit said written evidence although it was never proven

at the trial by evidence that the said J. S. Payne or any of the heirs from his body ever sold or transferred the said Western half of lot Number nine in Greenville, Sinoe County now in dispute. The Statute of Liberia declares that deeds and other writing shall be evidence against all parties to them and shall also be evidence of all title of rights transferable by them against all mankind.
"4. And also because the Court overruled Plaintiffs' now Appellants' objections to the Court admitting Defendant's now Appellee's written evidence marked `C.,D.,E., and F.' which do not bear any of the boundaries of the half lot number nine in Green"

ville, Sinoe County as is set forth in Plaintiffs' complaint. (See written evidence admitted by the court.) "5. And also because the ruling and Final Judgment of Your Honour in this case Plaintiffs now Appellants feel that justice has not been done them submit their Bill of Executions to Your Honour Jerry J. Witherspoon for signature that they may have same reviewed by the Honourable Supreme Court as aforesaid." With reference to count one in the bill of exceptions this Court is of the opinion that the judge in the court below committed no error in not disposing of the issues of law raised in the pleadings before the case was submitted to the jury. It is not the duty of an assigned or even a resident Jude of a Circuit Court to citsnose of questions of law raised in the pleadings by parties litigant except upon applicatios, made to the court by either party to tne case. in section 5 of the acts of the Legislature approved December 7, 1911, it is provided that: "Each Circuit Court shall be considered always open and the Judges thereof shall hold ,a session at any time within any term for the disposition of any matter or other business, which may be disposed of without a Jury. Whenever such matter is brought to issue under the laws relating to pleading and practice, and either parties should desire an immediate hearing, or whenever any party has a right to have a matter disposed of under an 'ex-parte' application, the Clerk of the Court shall notify the Judge assigned to such Court for the term, and the Judge shall forthwith hear and determine the matter. . . ." L. 1911-12, 4, § 5. Nowhere in the record is shown that before the case was submitted to the jury, plaintiffs made any application in keeping with the above cited act. With reference to counts 2 and 3, the judge of the court below in refusing to admit the deeds of the plaintiffs as written evidence in the case did not err. It was brought

out in evidence that there are three lots in the City of Greenville bearing the number nine. The deed which was offered by the plaintiffs as a species of written evidence to sustain their claim does not show that lot number nine which is occupied by the defendant is that particular lot number nine which

is claimed by the plaintiffs in this suit. It is a well settled principle in law that: "Every complaint must contain a distinct and intelligible statement in writing, of a sufficient cause of action within the scope of the form of action chosen, otherwise the action may be dismissed." Old Blue Book, Legal Principles and Rules, ch. 4, § 3. In reviewing this case, we may here observe that nowhere in the records is shown where plaintiffs offered to prove by preponderance of evidence that they are the legal heirs of James S. Payne, the original owner of the property, the subject of this suit. This fact was necessary to have been established by the plantiffs in the court below. As to the fourth count in plaintiffs' bill of exceptions, it is the opinion of this Court that the judge of the court below in overruling plaintiffs' objection, and admitting the written evidence of the defendant to prove his claim to lot number nine situate on Mississippi Avenue in the City of Greenville, did not err. It is clear to the mind, of the Court that lot number nine on Mississippi Avenue, in the City of Greenville, Sinoe County, which is now occupied by the defendant was never possessed by the ancestors of the plaintiffs. Witness Henry C. Birch, in behalf of the defendant, upon oath stated, to wit: Ques : "Mr. Witness, do you know of any of the Paynes owning lot number nine in Greenville?" Ans: "If the lot commences on Johnson Street and running back to J. C. Minor's corner is Number nine then it is Berverly Payne's lot, and if the lot of which

Mr. J. C. Mitchell is now on is Number nine then it belongs to Payne also. The place where Mr. J. C. Minor's house is now, a fine building on it in which old man Peal and his two children Allen and Julia lived during the whole while I was living there, I never saw Berverly Payne nor any of his boys (for he had many) coming or worrying at that place. On asking one day who were the rightful owners of the place, I was told the owner lived on the Kru Coast. This information was given me about the year 1856. After that time I know of one Martha Spellman to live there for years and since then one Delphi Leggins, but I have never known that particular spot to be owned by the Paynes. James Payne has never lived here in Sinoe. I know him at one time to come down for the purpose of receiving over the estate of Berverly Payne ; but have not known him personally to own property in Sinoe. He had a son by the name of David Payne who lived here until he wiped up everything of Berverly Payne's that was left by James Payne. I never heard of James Payne owning any property in Sinoe, until hearing the reading of this deed in court today which I could never believe even if I was on my way to heaven." According to the statement of Witness C. 0. Tuning, it appears that lot number nine situate on Mississippi Avenue in the City of Greenville was possessed adversely by one Harriet F. Numbar, who, about the year 189o, sold the same to one Solomon Spellman. Mr. Spellman built a house on the said lot and occupied it for several years ; after his death the said property descended to his cousin Solomon Brooklin, who in turn sold it to Samuel M. Jones, the defendant in this suit. From the evidence submitted by both parties in this action, it is clear to this

Court that: 1. There is no evidence to show that lot number nine lying and situate on Mississippi Avenue is the property of the plaintiffs;

2. That there is no evidence to show that for the past thirty-eight years, beginning from 189o, the time which H. F. Numbar is alleged to have sold the said property to Solomon Spellman, the plaintiffs have exercised any right of ownership over the said lot number nine the subject of this suit; 3. That according to the evidence of Witness Tuning a house was built by the said Solomon Spellman on the premises, which was an overt act of adverse possession; 4. That during the whole period of thirty-eight years, Solomon Spellman and Solomon Brooklin, the privies of Samuel M. Jones, possessed the said property without any interruption by the said plaintiffs. In view of the facts herein stated the plaintiffs in the court below are by statute of limitations barred from setting up any legal claims to the said premises. It is a sound principle of law that if a piece of land in dispute is claimed by A by virtue of an ancient but antiquated deed which dates as far back as too year and occupied by B through purchase from C, who held the property in possession uninterruptedly more than thirty years previous to the purchase by B, in an action where the question of limitation is raised by the defendant against the plaintiffs, the limitation shall always begin from the time. C, the privy of B, came into possession of the property, and not from the time B, the defendant, came into possession thereof. So also where E, who possessed a piece of property uninterruptedly for 18 years and then sold the same to C, in an action of ejectment 'brought by D after three years from date of purchase by C. Where the statute of limitations is invoked by the defendant, courts will also reckon the time from E's uninterrupted possession and'not from the occupancy by C,` although D may have possessed the property by deed for over fifty years. In an action of ejectment, mere paper title to land without proof of occupancy is insufficient to dispossess an industrious and productive occupant.

In the case Page v. Harland and King, i L.L.R. 463, an action of ejectment brought for review before the Supreme Court at its January term, 1906, it was held : "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: ( ) 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 tb 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 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 [sic] 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 [sic], 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., Disseizin2) 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 of 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." i L.L.R. 463,467. This Court is of the opinion that the appellee, Samuel M. Jones, claiming under his privies, by force of the doctrine of law governing this case, has acquired and does

hold a seizin in fee in and to said estate, which is as valid, absolute and conclusive as a grant from the sovereign ruler of this State. The judgment of the court below be therefore affirmed and appellants ruled to pay all cost in this action, and it is so ordered. The clerk of this Court will notify the court below as to the effect of this judgment.
Affirmed.

Hill v Tetteh [1925] LRSC 3; 2 LLR 492 (1925) (6 January 1925)

SOLOMON HILL, Appellant, v. **JACOB C. TETTEH**, Appellee.

Heard December 10, 1924. Decided January 6, 1925.

Johnson, C. J., Witherspoon and Bey-Solow, JJ.

1. Any demurrer or plea a party may desire to raise in a case should be plead in the answer.

2. It is therefore error to raise any such plea by a motion when the case is called for trial.

Judgment reversed; case remanded.

Mr. Chief Justice Johnson delivered the opinion of the court:

Ejectment. This was an action of ejectment brought in the Circuit Court of the first judicial circuit, Montserrado County, by Solomon Hill, plaintiff in the court below, against Jacob C. Tetteh, defendant in said action, to eject said defendant from a piece of **land** owned by said plaintiff.

The facts in the case are substantially as follows: the appellant is owner of the western part of the northern half of lot number 302, in Monrovia, Republic of Liberia. He leased same to one Serra Guimerra a Spanish merchant for a period of twenty (20) years from January 1, 1920, at the yearly rent of six hundred dollars ($600.00) with option of renewal for another term of equal duration with the right to sub-lease if he so desired.

On the 25th of June, the said Serra Guimerra sub-let to appellee a piece of the western part of said **land** for ten (10) years at a rental of ten pounds sterling (X10. -), and finding out that he could not carry out the terms of his contract with appellant, relinquished his rights and cancelled his lease; Hill the said appellant consenting to the understanding that C. Woermann should have same. Appellant now seeks to eject appellee from said premises, and the case of ejectment having been dismissed by the judge of the court below; appellant has brought the case, by bill of exceptions, to this court for review.

From the bill of exceptions filed in the case, and judgment of the court below, it appears that said court dismissed the case on a motion of appellee. To this appellant excepted on the ground that the motion contained questions of law and fact which should have been raised in the pleadings, and that the court below committed an error in entertaining said motion.

This exception in our opinion is well taken; this court has repeatedly ruled that the defendant, if he is intend to take advantage of defects in plaintiff's case, is bound by rules of pleadings to point them out in his answer (see Attia v. Payne, I Lib. L. R. 205) and this ruling is in keeping with the legal forms and principles in the statute of Liberia, which provides as follows : "The fundamental principles upon which all complaints, answers, or replies shall be constructed, shall be that of giving notice to the other party of all new facts which it is intended to prove whether they are consistent with the 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." (See Lib. Stat., ch. V, p. 45, sec. 8.)

The judge of the court below therefore erred in sustaining the motion and dismissing the case. The case should therefore be remanded to the court below with instructions to the judge of said court to hear and determine said case; costs to abide results of said determination.

Johnson v Johnson [1978] LRSC 63; 27 LLR 351 (1978) (15 December 1978)

CHARLIE JOHNSON, et al., Petitioners, v. GLADYS JOHNSON, Former Probate Commissioner, Montserrado County, et al., Respondents.

APPEAL FROM RULING OF JUSTICE IN CHAMBERS

DENYING ISSUANCE OF WRIT OF MANDAMUS.

Argued November 9, 1978. Decided December 15, 1978.

1. The court will not grant mandamus where appeal offers an adequate remedy to the aggrieved party.
2. Mandamus will not, as a general rule, issue to review an exercise of judicial discretion, even though the court may have erred in its conclusion.
3. It is irregular for a Commissioner of Probate to probate a document which is subject to a caveat filed in the court.

This was a petition for a writ of mandamus to compel the respondent, Probate Commissioner of Montserrado County, to admit to probate certain warranty deeds that had been offered by petitioners. Probate was refused because a caveat had been issued against the **land** in question. An appeal to the Supreme Court was announced, but not perfected. Petitioners then applied for mandamus to the Justice in chambers, who denied the writ. This was an appeal from that ruling.

The Supreme Court held that mandamus will not issue where an appeal is an available remedy, or to review an exercise of judicial discretion, and that in this case, in any event, the refusal of the Commissioner to admit the deeds to probate was well justified. The *ruling* of the Justice in chambers denying the writ was *affirmed.*

*D. W. **B.** Morris* for respondents. *John A. Dennis* for petitioners.

MR. JUSTICE BARNES delivered the opinion of the Court.

The certified record in this case reveals that at the August 1978 Term of the Monthly and Probate Court, Montserrado County, presided over by Her Honor Gladys K. Johnson, petitioners offered for probate several warranty deeds in their favor from co-petitioner Charlie Johnson to the other co-petitioners and from co-respondent Geneva Johnson-Duff to Charlie Johnson for realty located in Montserrado County.

The Probate Judge refused to have the proffered warranty deeds admitted to probate because the **land** in question had been covered by caveat. Objections to the probate of these warranty deeds had been filed since 1975 and 1976. Resistance to objections to probate of the warranty deeds is a matter of record of the Monthly and Probate Court, Montserrado County.

It would appear from the certified record in this case that counsel on both sides, after having been informed of the caveat and several objections to admitting the deeds in question to probate, requested the court to look into the matter, and then to consolidate all the pleadings and dispose of them once and for all.

Accordingly, the court took into consideration all the objections made to admitting to probate the deeds offered by petitioners' counsel and entered a final ruling refusing to admit the deeds to probate. From this ruling petitioners noted their exceptions and announced an appeal to the Supreme Court.

A three-count bill of exceptions was tendered by petitioners. The Judge of the Monthly and Probate Court made observations on all of the counts of the bill of exceptions. No other jurisdictional steps to perfecting the appeal were taken by petitioners. More will be said about this later in this opinion.

Subsequently, the petitioners applied to the Justice in chambers for the issuance of the alternative writ of mandamus to compel the Probate Judge to forthwith admit the deeds to probate and order them registered, based upon the provisions of the law.

The recital of the petition for mandamus may be succinctly stated as follows: that after the expiration of the three days' notice of the existence of a caveat given by the caveators and the expiration of the ten days in which to file objections, the Probate Judge should have admitted the deeds offered by petitioners' counsel to probate and ordered them registered; and that her refusal to so do constituted an abuse of judicial discretion. In their return, respondents stated in essence that the deeds offered by petitioners for probate involved the same co-petitioner Charlie Johnson who had been arrested and indicted on charges of forgery; in addition, cancellation proceedings had been instituted for the deeds in question and also objections had been filed to the probate of eight warranty deeds involving the same parties.

The Justice in chambers heard arguments on both sides and denied the writ and ruled the petitioners to costs. We view this case as presenting strange and peculiar issues, for both counsel agreed for the Probate Judge to consolidate the pleadings and give a ruling on all objections filed against the probate of petitioners' deeds. As we stated earlier when the ruling was entered, petitioners noted exceptions and announced the taking of an appeal. A bill of exceptions was presented and approved by the judge, who noted her observations. No further jurisdictional steps were taken.

In *Bryant v. The African Produce Company, U.S.A.,* 7 LLR **22!** (undated), this court held that the statutes on appeal prescribed the steps to be taken in effecting an appeal and each step is jurisdictional. Hence, should a party desire to come to this Court by any of the remedial writs, the burden of proof is upon such party to show that his failure to take a regular appeal was not due to his own laches. It is the opinion of this Court that petitioners should have pursued their appeal from the ruling of the Probate Judge and should not have substituted for it proceedings in

mandamus. *King v. Randall*, 10 LLR, 225 (1949).
Petitioners argued in count 5 of their petition that the refusal of the Probate Judge to admit for probate the deeds in question, constituted an abuse of judicial discretion. It is our opinion that mandamus will not, as a general rule, issue to review an exercise of judicial discretion, and that is of course so, although the court may have erred in its conclusion. Mandamus is not like a writ of error or appeal nor may it take their place where they offer an adequate remedy to the aggrieved party. *King v. Randall, supra; Harmon v. Horace,* [1948] LRSC 6; 10 LLR 29

(1948).
In this case one of co-petitioners has been arrested and indicted for an alleged forgery of certain instruments allegedly bearing on the deed offered for probate. In addition, there are other extenuating circumstances standing in the way causing the Probate Judge to refuse to admit the deeds in question for probate, such as the objections filed against probate of deeds, relating to **land** mentioned in the plaintiffs' objections. It was the holding of this Court in *Caranda v. Fiske*, 13 LLR 154 (1958); that it is irregular for the Commissioner of Probate to: (1) probate a document of title to **land** in an area where all of the property involved is under dispute in an appeal pending before the Supreme Court; (2) probate a document while a caveat imposing a stay remained filed in court.
We hold that it would be irregular, unlawful, and unjust to compel the Probate Judge under such circumstances to probate the warranty deeds offered by petitioners' counsel. The ruling of the Justice in chambers is therefore affirmed with costs against petitioners. And it is hereby so ordered.

***Ruling** affirmed.*

Kaba et al v Township of Gardnersville et al [1999] LRSC 22; 39 LLR 549 (1999) (3 June 1999)

HONOURABLE MORRIS KABA, Deputy Minister, Ministry Internal Affairs, and **ELIZABETH McCROMSY**, Appellants, v. **TOWNSHIP OF GARDNERSVILLE**, represented by and thru SAMUEL PROWD, Chairman, Common Counsel of Gardnersville, and **C. TORBOR WON**, Speaker, and **MARTHA G. NAGBE**, Appellees.

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE GRANTING THE PETITION FOR THE ISSUANCE OF A WRIT OF PROHIBITION.

Heard: May 5, 1999. Decided: June 3, 1999.

1. An administrative agency has only such powers as have been conferred upon it by law and must act within the granted authority for an authorized purpose.

2. The principal purpose of prohibition is to prevent an inferior court or other tribunal from assuming jurisdiction with which it is not legally vested, in cases where wrong, damages and injustice are likely to follow from the action.

3. The fundamental office of the writ of prohibition is to prevent a usurpation of jurisdiction.

4. A writ of prohibition will be directed to an agency or officer that is usurping jurisdiction only if the agency or official is attempting to exercise a power or function that is not invested by the law.

Petitioner, the Township of Gardnersville, sought a writ of prohibition to restrain respondents, Hon. Morris Kaba, Deputy Minister of Internal Affairs, from removing from office Madam Martha G. Nagbe as superintendent of the Gardnersville Market, and replacing her with Madam Elizabeth McCromsy, and from interfering with the affairs of the market. The Chambers Justice granted the prohibition, reasoning that a private market is not subject to the supervision of the Ministry of Internal Affairs. Respondents excepted to the ruling and appealed to the Court *en bane* for final determination.

The Supreme Court held that public markets built by the Government of Liberia are subject to the supervision and control of the Liberian Marketing Association and the Ministry of Internal Affairs, and that private markets built by citizens and residents of local authorities through self-help initiatives, are subject to the supervision, control, authority and management of such local authorities. The Gardnersville self-help market, therefore, has an exclusive jurisdiction over its market, and to have election for its own corps of officers. Accordingly, the Supreme Court *affirmed* the ruling of the Chambers Justice, thereby nullifying the appointment of officials of the Gardnersville Market by the Ministry of Internal Affairs.

Francis S. Korkpor, Sr. of Tiala Law Associates, Inc. appeared for petitioners. *Joseph Blidi* appeared for respondents.

MR. JUSTICE SACKOR delivered the opinion of the Court.

This case is before us on appeal from the Ruling of Mr. Justice Yancy, then presiding in Chambers of the October Term A. D. 1996 of this Court, granting the writ of prohibition filed by the Township of Gardnersville against Hon, Morris Kaba, former Deputy Minister of Internal Affairs and Elizabeth McCromsy.

We will now briefly state the facts in this case which prompted the Township of Gardnersville to seek the aid of prohibition from this Court to restrain and prohibit the Ministry of Internal Affairs from exercising control, power and authority over the Gardnersville Community Market in an attempt to subject the aforesaid market to the control of the Liberian Marketing Association.

The records in this case reveal that the Gardnersville Community Market came into being in 1995, and was built through self-help initiatives after acquiring two acres of **land** from the Government of Liberia. The records show that this market was exclusively managed and controlled by the people of the Township of Gardnersville through a Committee of Common Council On Marketing. On the 19th day of July 1982, the Government of Liberia by and through the Acting Director of Deeds and Registration, Doris S. Nimely, wrote the Superintendent for Montserrado County that the then Head of State and Chairman of the People's Redemption Council permitted her (Nimely) to survey two (2) acres of public **land** free from all encumbrances and not a part of the tribal reserve for the construction of Gardnersville Market. The two (2) acres of **land** were surveyed and the citizens of the Township of Gardnersville, on a self-help initiative, constructed thereon the subject market.

The Liberian Marketing Association (LMA) was created by an Act of Legislature as a legal entity, which Act was approved on April 8, 1976 and published in hand bill by the Ministry of Foreign Affairs on July 3, 1979. The Act establishes the principal office of the association in Monrovia, Montserrado County, and authorizes this association to establish branches and offices throughout Liberia as are necessary to achieve the purposes of said organization efficiently. The purposes, aims, and objectives of the LMA includes, but is not limited to, the taking of title to property, real and personal, by gift, purchase, devise, or bequest, for purposes appropriate to its creation, and to hold, manage, lease, mortgage, sell, and convey the same for the benefit of the association; and to own property up to the value of $25,000.00, etc.

On the 13thday of July, A. D. 1984, the then Head of State and Chairman of the People's Redemption Council, CIC Samuel K. Doe, approved the recommendations of the Ministry of Internal Affairs with respect to the outstanding dispute between the Liberian Marketing Association and the Gardnersville Township Marketing Authority, counts "B" and "C" of which this Court deems expedient for the benefit of this opinion. In counts "B" and "C" thereof, the Head of State said among other things that markets which have been actually built by local

authorities through self-help efforts to strengthen the masses, be left with the local authorities to control, and that the funds generated therefrom, be used to augment government efforts for the proper maintenance of such facilities for the construction of additional markets as well as to carry on other development programs in their respective localities.

In 1991, the authorities of the Gardnersville Township Market filed a complaint to the Interim Government of National Unity(IGNU) through the former Vice President of Liberia, Dr. Peter Naigow, alleging, inter alia, the ownership of the Gardnersville Market and that the Liberian Marketing Association has appointed corps of officers of said market without reference to the authorities of the Township Market. This complaint was forwarded to the Ministry of Internal Affairs for investigation. A three (3) member board of investigation under the chairmanship of co-respondent Morris Kaba, was constituted to probe into the said complaint. The Board conducted its investigation of the complaint on the 20th day of August, A. D. 1991. The Board, on page 3 of the investigative records, said that the **land** on which the subject market building is erected, is a genuine property of the Township of Gardnersville, and such, cannot be tampered with by a private organization such as the Liberian Marketing Association. The board observed that the appointment of officers of the Gardnersville Township Market by the Liberian Marketing Association without the consent of the township authority was *ultra vires.* The board recommend to IGNU, among other things, that the officers so appointed by the Liberian Marketing Association for the petitioner, be removed; the authority of the Township of Gardnersville be placed in possession of their property; and given the chance to supervise the election of a new corps of officers. See count 3, Page 4 of recommendations to government.

On the 16th Day of September, A. D. 1991, C. Roberto Dole, then Acting Coordinator, Ministry of Internal Affairs, wrote the Chairman of the Gardnersville Marketing Association, informing him of the removal from office, of the officers of LMA and of the turning of over the subject market to its authority with immediate effect and to supervise the election of a new corps of officers. The Board also notified the President of LMA on September 16, 1991 of its decision.

It is revealed by the records in this case that the Ministry of Justice on September 18, 1993, wrote the Interim Government of Liberia, expressing its opinion regarding the status of the Gardnersville Market. The Ministry recommended to Government in its memorandum, that the Government of Liberia does not own the Gardnersville Market and cannot give same to the LMA or any other entity without a just compensation and due process of law. The Ministry also recommend that LMA is a legal entity entitled to own property, and a business entity operating its own market for the benefit of its own members.

The records in this case show that on February 4, 1994, the Interim Legislative Assembly, thru its Chief Clerk, D. Lincoln Bloh, II., wrote the Commissioner of Gardnersville Township informing him of the Assembly's adoption of its Committee's recommendation that LMA should be guided by the decisions of the Ministries of Internal Affairs and Justice and that the Gardnersville Marketeers should have exclusive jurisdiction over their market without the control of the LMA. On the 23rd day of August, A. D. 1995, the then Acting Minister of Internal Affairs, Hon. Morris Kaba, ordered the reinstatement of Mrs. Elizabeth McCromsy as Superintendent for Gardnersville Township Market, thereby removing one Martha G. Nagbe as Superintendent of said market.

The Township of Gardnersville filed an eight count petition on November 16, 1994, praying for the issuance of a writ of prohibition to restrain and enjoin the Ministry of Internal Affairs from removing from office Madam Martha G. Nagbe as Superintendent of the Gardnersville Market. The respondents filed an eleven-count returns on the 5th day of December, A. D. 1995. Mr. Yancy granted the prohibition on the 9thday of January, A. D. 1996, on grounds that a private market house is not subject to the supervision of the Ministry of Internal Affairs, but has oversight responsibility over the activities of the political and local government activities pursuant to the Executive Law, Rev. Code 12: 25.2(a) (b). The respondent Ministry excepted to this ruling and appealed to this Court for final review and determination.

In Count 4 of their petition, petitioners contend that the Ministry of Internal Affairs does not have any control, power and authority over the Gardnersville Community Market as to empower its Deputy Minister, Hon. Morris Kaba, to forcibly remove from office Madam Martha G. Nagbe as Superintendent and replace her with Madam Elizabeth McCromsy, in an attempt to subject the market to the control of LMA. Petitioners contend in count 5 of the petition that Madam McCromsy and her corps of officers instituted their own ticketing system and collected money from the tables without legal authority, and unilaterally operated the market without an accountability to the people of Gardnersville Township.

It is argued by petitioners that the Government of Liberia does not own the Gardnersville Market, and as such, the Ministry of Internal Affairs cannot exercise control, power and authority over the said market. Petitioners strongly maintain that the Gardnersville Community Market is a separate and distinct entity from LMA, and that its status had been determined in *many fora* to the effect that it was not subject to the control of the Ministry of Internal Affairs and the Liberian Marketing Association (LMA), but should be allowed to be operated by the people of the Township. Petitioners pray this Court to confirm the ruling of Mr. Justice Yancy.

The respondents contend that it did not dispute the self-help effort by the Township of Gardnersville to buy two acres of **land** and construct the market thereon, and that the Gardnersville Market is separate and distinct from the Liberian Marketing Association. The co-respondent Ministry however, contends that the Gardnersville Market is under its control, direction, and supervision, in that, the Ministry of Internal Affairs has supervision over political sub-divisions such as the Township of Gardnersville under the Executive Law. *Ibid* 25.1(a). The respondent Ministry also argues before this Court that its decision to re-instate Elizabeth McCromsy is sound in law and within the scope of its authority pursuant to the Executive Law. *Ibid* 25.2(a). The respondent Ministry prays the Honourable Court to reverse the ruling of Mr. Justice Yancy and to dismiss the petitioners' petition.

The cardinal issues for the determination of this case are:

1. Whether or not the Gardnersville Market is a Government Market subject to the control of the Liberian Marketing Association and the Ministry of Internal Affairs.

2. Whether or not the prohibition will lie under the given facts and circumstances in this case.

We shall discuss these issues in the order and manner in which they are raised. As to the issue of whether or not the Gardnersville Market is a government market subject to the control of LMA and the Ministry of Internal Affairs, this Courts says that the answer to this question is in the negative. The records in this case clearly shows that the Gardnersville Market came into existence in 1975, and had exclusive control over its own activities. A year later, the Liberian Marketing Association was created by an Act of the Legislature which was published in 1979. The Act empowers LMA, as a legal entity, to acquire, hold, and own its own property, but it in no way or manner incorporated the Gardnersville Market into the LMA. Thus, the LMA and the Gardnersville Market are distinct and separate legal entities as conceded by the respondent Ministry.

The records in this case also reveal that the citizens of the Township of Gardnersville built the aforesaid market through self-help initiatives which fact the respondent Ministry also conceded. We observed that the then Head of State, and Chairman of the Peoples Redemption Council, CIC Samuel K. Doe, approved the recommendation of the respondent in 1984 specifically stating that markets actually built by local authorities by self-help efforts to strengthen the market masses should be left with the local authority to control, and that funds generaied therefrom be used for the construction of additional markets and for other development program. This Court holds that

the construction of the Gardnersville Market by the people of the Township of Gardnersville through self-help projects shows that it is not a government market even though President Samuel K. Doe personally contributed toward the construction of the market. Hence, it is a private market built by the initiative of the people of Gardnersville Township which is not subject to the control of the Ministry of Internal Affairs in keeping with its own recommendations approved by the Head of State in 1984.

In 1991, the board of investigation under the chairmanship of co-respondent Morris Kaba recommended to the Interim Government ofNational Unity that the authority of Gardnersville should be placed in possession of the subject market and be given the chance to supervise the election of a new corps of officers. The Ministry of Internal Affairs, through the then Acting Coordinator, C. Roberto Dole, wrote the Gardnersville Market on September 16, 1991 informing its authority that the market was turned over to it with the right to supervise its own election for a new corps of Officers. The Ministry of Justice also decided the status of the Gardnersville Market in 1993 as a private market which is not subject to the control of the Government of Liberia without a just compensation or due process of law. The Legislative Assembly of the Interim Government of National Unity in 1994 confirmed the decisions of the Ministries of Internal Affairs and Justice that the Gardnersville Marketeers should have exclusive jurisdiction over their market without the control of LMA, and urged the authority of the Gardnersville Market to affiliate and associate with the Liberian Marketing Association, if it so desired. We are therefore taken aback for the then Deputy Minister of Internal Affairs, Morris Kaba, to order the reinstatement of Madam Elizabeth McCromsy in 1995 as Superintendent of the Gardnersville Market against the will of the authority of Gardnersville Market when he had earlier advocated in his recommendations in 1991, that the authority of the Gardnersville Market should supervise the elections of the Officers of said market. In this regard, the Ministry of Internal Affairs acted without any authority to order the reinstatement of Madam Elizabeth McCromsy thereby removing Madam Martha G. Nagbe duly selected by the authority of Gardnersville Market as Superintendent thereof.

This Court holds that the public markets built by the Government of Liberia are subject to the supervision and control of the Liberian Marketing Association and the Ministry of Internal Affairs, and that private markets built by citizens and residents of local authorities through self-help initiatives are subject to the supervision, control, authority and management of such local authorities. The Gardnersville Self-help Market, therefore, has an exclusive jurisdiction over its market, to have election for its own corps of officers, and that funds generated therefrom should be used for the construction of additional markets as well as other development programs for the Township of Gardnersville.

A recourse to the relevant statutory provision cited by respondent Ministry of Internal Affairs shows that the duties of the Minister as contained in the Executive Law relate to the supervision

and control of the activities of the political subdivisions of the central government and the management of tribal affairs and all matters arising out of tribal relationships. *Ibid.*, 25.2 (a) (b). It does not include a private market building built through self-help efforts by citizens and residents of a locality for its own social and economic development. It is held that "an administrative agency has only such power as have been conferred upon it by law and must act within the granted authority for an authorized purpose." 1 AM. JUR. 2d, *Administrative Law, §* 188.

As to the issue of whether or not prohibition will lie, this Court answers this question in the affirmative. The Ministry of Internal Affairs had declared the status of the Gardnersville Market as a private market with the exclusive right to have elections for its own corps of officers since 1984 as stated earlier in this opinion. The Ministry of Justice has also declared that the Government of Liberia does not own the Gardnersville Market, and cannot exercise control over it without a just compensation and in accordance with due process of law. The records in this case are devoid of any evidence that the Government of Liberia ever acquired the Gardnersville Market with a just compensation so as to subject same to the control and supervision of the Ministry of Internal Affairs. Thus, the law does not confer any authority on the Ministry or the LMA to control the Gardnersville Market. The removal of Madam Martha G. Nagbe from office as Superintendent for the market and the appointment of Madam Elizabeth McCromsy by the Ministry of Internal Affairs, is not within the scope of its authority.

It is held that "the principal purpose of prohibition is to prevent an inferior court or other tribunal from assuming jurisdiction with which it is not legally vested, in cases where wrong, damage and injustice are likely to follow from the action..." 22 Ruling Case Law, *Prohibition, §* 3. Prohibition is the proper remedy to prevent the usurpation of jurisdiction, and is therefore directed to an agency or an officer thereof from exercising a power or function not legally vested by statute. It is further held that "the fundamental office of the writ of prohibition is to prevent usurpation of jurisdiction... A writ of prohibition will be directed to an agency or officer that is usurping jurisdiction only if the agency or official is attempting to exercise a power or function that is not invested by the law.." 63 AM. JUR. 2d, *Prohibition, §* 37.

The Ministry of Internal Affairs indeed assumed jurisdiction which is not legally vested in it by law for which prohibition will lie, and that prohibition will undo what has already been unlawfully done. *Parker v. Worrell*, 2 LLR 525(1925); *Fazzah v. National Economy Committee*, [1943] LRSC 2; 8 LLR 85 (1943); *Thomas v. Ministry offustice[1977] LRSC 28; ,* 26 LLR 129 (1977); *Nelson v. Boye*, [1978] LRSC 33; 27 LLR 174 (1978).

The Act creating the Liberian Marketing Association empowers the association to acquire, hold, and own property among other things. The LMA is therefore free to negotiate with the Gardnersville Township Market Authority to affiliate with the Association. It is also the legal obligation of the LMA to acquire, hold, and own the subject market in keeping with the Legislative enactment establishing the association through negotiation. We encourage the Township of Gardnersville market to also freely affiliate with the Liberian Marketing Association.

Wherefore, and in view of the foregoing, it is the considered opinion of this Court that the ruling of Mr. Justice Yancy should be, and the same is hereby affirmed. The appointment of officials of the Gardnersville Market by the Ministry of Internal Affairs is hereby nullified, and the people of the Township of Gardnersville are authorized to elect their own corps of Officers of the market and the funds therefrom should be used for the development of the Township of Gardnersville. The Clerk of this Court is hereby ordered to send a mandate prohibiting, restraining and enjoining the Ministry of Internal Affairs and the Liberian Marketing Association from exercising supervision and control over the Gardnersville Market. Costs disallowed. And it is hereby so ordered.

Petition granted

WAT Corp. v Alrine [1976] LRSC 23; 25 LLR 3 (1976) (23 April 1976)

CASES ADJUDGED
IN THE

SUPREME COURT OF THE REPUBLIC OF LIBERIA
AT THE

MARCH TERM, 1976

WEST AFRICAN TRADING CORPORATION, Appellant,
v. ALRINE (LIBERIA) , LTD., Appellee.
MOTION FOR REARGUMENT.

Argued March 9, 1976. Decided April 23, 1976. 1. Legislative intent must be gathered from the meaning of the words used in a statute. 2. A description of the real property pledged in an appeal bond must be set forth in the affidavit of the sureties and is a mandated requirement; failure to do so makes the appeal subject to dismissal on the ground of a defective appeal bond. 3. Setting forth a description of real property pledged in a document accompanying the appeal bond, such as the certificate from the Bureau of Revenues, does not cure the defect caused by the failure to describe the

property in the affidavit of the sureties. 4. A case will not be dismissed by the Court on a mere technicality. 5. Reargument will only be granted when it is shown that a prior decision overlooked a salient point of law or fact raised at the prior hearing.

The appeal herein was dismissed because of a defective appeal bond. The appellant brought a motion for reargument, contending that the failure to describe the real property pledged in the sureties affidavit was properly supplemented by the description set forth in the certificate from the Bureau of Revenues which accompanied the bond. It was claimed that the Court in dismissing the ap3

peal had overlooked the certificate, therefore laying the basis for reargument. The Court held that the need for describing the real property pledged in the affidavit of the sureties was mandated by statute and such failure cannot be eradicated by setting forth a description in an accompanying document. The motion for reargument was denied.
Momo F. Jones for appellant. Moses K. Yangbe for appellee. Toye

C.

Barnard

and

MR. Court.

JUSTICE AZANGO

delivered the opinion of the

On September 25, 1974, appellee moved this Court to dismiss the appeal in the above-entitled cause of action. The motion was opposed. This motion was heard during the March 1975 Term of this Court and the appeal dismissed on the grounds stated in the opinion. On May 7, 1975, appellant filed the motion for reargument now before us. The principal contention is that the issue of the description of the realty pledged as security for the appeal bond should not have been adjudged by the Court as it was by dismissal of the appeal because of a defective appeal bond. It is claimed that the certificate from the Bureau of Internal Revenues was overlooked by the Court in considering the sufficiency of the description of the real property pledged. Because of this argument, it is, therefore, necessary to revert to our opinion earlier rendered in this case for the Court by Chief Justice Pierre. "We shall now consider count three of the motion to dismiss. In this count the appellee has stated that the affidavit of the sureties, attached to the bond, does not contain a sufficient description of the property pledged to establish the lien of the bond, in accord with statu-

tory requirements.
. . . Our Civil Procedure Law contains the applicable section.
" 'Legally Qualified Sureties. "`3. Affidavit of sureties. The bond shall be ac-

companied by an affidavit of the 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 assessed value of each property offered.' Rev. Code 1 :63.2. "An inspection of the bond shows that there is an affidavit sworn to March 25, 1974, filed with it, and for the purpose of this opinion we shall quote from it: " 'Personally appeared before me, a duly qualified Justice of the Peace, Emmanuel Lue and Henry Temah, at my office in the City of Monrovia, Montserrado County,
who being duly sworn, depose and say: C r. That they are the sureties whose names appear on the plaintiff/appellant's bond to which this affidavit of sureties is attached. "2. That they are freeholders and householders within 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,o2o..
"4. That the foregoing statements are true and correct to the best of their knowledge.' "Does this affidavit contain a description of the sureties' property 'sufficiently identified to establish

the lien of the bond' as the statute requires?
We interpret this part of section 63.2 (b) to mean offering the property as security in order that the appellee be protected against loss as a result of costs of injury sustained by the appeal. BLACK'S LAW DICTIONARY has defined description relating to real property to mean 'that part of a conveyance, advertisement of sale, etc., which identifies the land or premises intended to be affected.'
In giving effect to the text of this statute, we must consider that description of land merely means designating the particular space occupied, or to be occupied so as to enable anyone to find it, should this become necessary. Hence, in deeds which convey real property we have description by metes and bounds, to sufficiently and correctly identify the particular plot of land. "With this as a background it is our opinion that description as used in this section means that land offered as security for appeal bonds must be described in the affidavit of the sureties sufficiently well to identify the particular piece of property intended to be encumbered by the bond. It is not sufficient to say that a surety owns an acre on a particular street; that property must be described in a manner

to make finding it on the ground an easy exercise. We hold that this is best accomplished by stating the number of the plot and the metes and bounds. In such circumstance there would be no difficulty in designating the land with certainty. The description of property intended to be used as security in appeals must be of such certainty and definiteness that locating the property would not be difficult; nor would satisfying any obligation by virtue of the security which the property offers be denied to the appellee. "Unless the affidavit of the sureties describes the property offered in the foregoing manner, it cannot be said to have conformed to the requirements of the

law, because the property would not have been 'sufficiently identified to establish the lien of the bond.' A lien being a charge, or security, or encumbrance upon property of one person, to secure some debt or obligation to another, there should be such certainty as to the particular property intended, as to leave no doubt in any one's mind. "The requirements of the law with respect to the affidavit of sureties which accompanies appeal bonds are mandatory, and must be met literally. We have no authority to hold otherwise. The Court's power to construe and interpret statutes does not go beyond giving effect to the words in the text of the particular statute ; legislative intent must be gathered from the meaning of the words used. The lawmakers must be said to have intended only what they wrote and nothing more or less ; hence, the Court has no alternative but to insist upon strict compliance with the law as it was passed." [1975] LRSC 16; 24. LLR 224, 227-229 (1975). Commenting further on the issue raised in count 1 of the motion for reargument regarding the alleged inadvertent omission on the part of this Court to pass on the issue of law as stated before, we must declare here that there were only three main issues raised in the petitioner's resistance to the motion to dismiss the appeal. They were : (1) the institution of the action to recover $147,499, which was not supported by the verdict of the jury, but was upheld by the trial judge, and her later fixation of the bond at $5,000; (2) that count 3 of the motion was based on a mere technicality, because the sureties whose names appear on the bond were the same sureties that subscribed to the affidavit of the sureties; (3) that the motion was made for the purpose of delaying the hearing of the case on its merits; and that the motion did not state any of the statutory grounds for a dismissal of causes before this Court. There was no reference in the resistance to a certificate

of the Bureau of Revenues showing the number of the lot. Nevertheless, the March 1975 Term opinion did refer to and comment on what the statute requires in relation to what constitutes sureties and what should be set forth in an affidavit of the sureties. Hence, not only do we further

hold that the argument of petitioner is unacceptable, but we again state that the statute requires that the surety bond shall be accompanied by an affidavit of the sureties containing a description of the property sufficiently identified to establish the lien of the bond. It is this document, the affidavit of the sureties, that must contain a description of the realty and that is to accompany or be attached to the appeal bond, and not a Bureau of Revenues certificate. Let us now look at the section of our Civil Procedure Law that relates to the Bureau of Revenues certificate. "The bond shall also be accompanied by a certificate of a duly authorized official of the Department of the Treasury [now Minister 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 a certificate shall not be a prerequisite to approval by the judge." Rev. Code 1:63.2 (4) This provision of our law has two functions only : ( ) the certificate procured from the Ministry of Finance certifies that whoever subscribes to an affidavit of sureties does in actual fact own the property he has described in the affidavit; (2) that it has an assessed value. Nowhere does it require that the certificate from the Bureau of Revenues must carry the description of the property set forth in the affidavit of the sureties. If it is done, it becomes surplusage. The description of the property must appear in the affidavit of the sureties. We feel that these provisions complement one another in order to insure the security of the appellee. We are of the opinion that the facts and circumstances

apparent in cases cited are not analogous to the present case. This does not mean we have altered our view not to dismiss cases before us on a mere technicality. In point of fact, we still do maintain that we shall refuse to dismiss causes before this Court on technical grounds. Certainly, one could not consider the application of a statutory provision, as was done in this case, to be a mere technicality. It must be borne in mind that we are bound by the statutes applicable to a case, as well as by precedent. The statutory provisions relating to legally qualified sureties on appeal bonds are mandatory, and are not left to the discretion of the Court or a party. A failure to comply with such requirements will justify dismissal of an appeal upon motion properly made. In count 3 of the motion for reargument, movent has contended that this Court grant reargument because all along appeal bonds have not contained a description of the property in the sureties' affidavit, which has only stated that the sureties whose names appear on the bonds are the sureties, and that the assessed value of their properties appear in the certificate of the Bureau of Revenues. Commenting on this issue, we must reiterate that a rehearing will not be granted unless it is shown either that some question decisive of the cause duly submitted by counsel has been overlooked or that the Court based the prior decision on a wrong principle of law. A case for action must be shown; that is, it must appear that the judgment was erroneous. The Court must be satisfied that owing to a mistake of law or misunderstanding of facts, its decision has done an

injury in the particular case, or that the case is one where the principle involved is important and serious doubt exists as to the correctness of the decision. In count 4 of the petition, it is also contended that "this Court grant the reargurnent on the original motion and resistance, because it has overlooked in its ruling the
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certificate of the Bureau of Revenues showing the description of the property." Appellant further contends that the affidavit and certificate form part of the bond, since they are attached thereto and referred to in the bond. Addressing ourselves to this issue, we must express our disagreement with the contention of petitioner's counsel. The issue as to the effect of the certificate of the Bureau of Revenues cannot for the first time be considered in this opinion, since it was not raised earlier in the resistance. A rehearing may be granted for the purpose of considering new matter, set forth in the original proceeding which may materially affect the merits of the main controversy. It must be shown that it was raised before and not considered in the original opinion. Counsel has continually contended that the needed description of the property is set forth in the certificate if not in the affidavit. This contention, again, cannot be upheld. If the description of the property in the affidavit of the sureties was insufficient, the affidavit is defective for such failure. Perhaps there is a lack of a plain understanding of the issues involved in this case; it is necessary that we reemphasize our views here
: ( ) A rehearing will ordinarily be refused where the questions presented by the petition were fully argued and considered by the court in the former hearing. (2) A party asking for a rehearing will not be permitted to set up a new ground different from one raised in the original hearing. (3) A rehearing may be granted for a clear mistake of law in the decision, or where it appears that the appellate court was mistaken as to the facts. (4) A rehearing of a motion is not a matter of right; it is a question addressed to the sound discretion of the court. If in the opinion of the majority of the Justices, the opinion rendered has been reached after considering all the important points presented in the record, reargument will not be allowed. We have held that courts do not decide substantive

issues upon immaterial technicalities. However, dismissal of an appeal on the ground of noncompliance with statutes is not a technicality. Decision interpreting the Constitution or acts of the Legislature should be followed, in the absence of cogent reasons to the contrary. And it has been said that the court of last resort of a state will not overrule one of its prior decisions in construction of a statute where the Legislature has held several sessions since such decision without modifying

or amending the statute. And a wellsettled rule of practice will not be set aside where it would probably cause great inconvenience and confusion in the practice, and where it can easily be changed by the Legislature if there is any necessity therefor. Under the circumstances, we have been unable to discover any reasons that would justify granting reargument. The motion for reargument is, therefore, denied. Costs are ruled against petitioner. And it is so ordered. Motion denied.

Gbassage v Holt [1975] LRSC 23; 24 LLR 293 (1975) (26 June 1975)

SATURDAY GBASSAGE, Appellant, v. WALTER HOLT, Appellee.
APPEAL FROM THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued May 26, 1975. Decided June 26, 1975. 1. A court is bound to take judicial notice of its own record. 2. Ejectment proceedings involve mixed questions of law and fact and are always to be tried by a jury under the direction of the court. 3. It is error for a court to dismiss a defendant's answer and thereafter receive in evidence a document which had been annexed to the answer.

In an action in ejectment, the defendant alleged in his answer not only ownership but that the plaintiff's deed was forged. Nevertheless, the judge dismissed the answer. Thereafter, judgment was rendered against defendant who appealed therefrom. The Supreme Court held primarily that it was error to have dismissed the answer in a suit in ejectment since ejectment involves mixed questions of law and fact. The judgment was reversed and the case remanded for a new trial.
M. M. Perry for appellant. Stephen Dunbar for

appellee. MR.
CHIEF the Court.
JUSTICE

PIERRE delivered the opinion of

The plaintiff, the appellant herein, brought this action of ejectment in the Sixth Judicial Circuit, claiming that defendant was in illegal possession of and unlawfully occupying one lot out of a five-acre block of land owned by him in Oldest Congo Town, Montserrado County. He annexed to his complaint a title deed for the five acres he claimed. An acre of land in Montserrado County
293

294

LIBERIAN LAW REPORTS

contains four town lots ; hence, the five acres

in question was made up of twenty lots, one of which the plaintiff claimed defendant was occupying illegally. Except to allege that the one lot in question is "situated in the South [sic] portion of said premises," there is no other indication of how to correctly locate among the zo lots this parcel of property in dispute. The defendant appeared and filed an answer of only two counts. . . . because Saturday Gbassage says that she is occupying one town lot of land situated and lying in the area known as Oldest Congo Town, being part of Block 5, which has come to her by lawful purchase from Elizabeth Padmore Yancy, Christine B. Philips, Elizabeth Brown Doxxen and Lawrence S. W. Philips as will more fully appear from an inspection of the hereto attached warranty deed marked exhibit `A' to form part of this answer. "2. And also because defendant says that the purported warranty deed attached to plaintiff's complaint is a forgery; in that the alleged signers thereof did never execute the same as falsely alleged thereon. Defendant submits that it is a fact that because of the forged instrument, Christine Brown, Elizabeth Brown and Lawrence Philips, representing themselves and the other heirs of the late C. A. Brown have instituted cancellation proceedings in the Civil Law Court for the cancellation of the forged deed on which the plaintiff relies as exhibit 'A' in his complaint." The plaintiff filed a reply, also containing two counts, which called attention to his deed being older by seventeen years than that of the defendant; and, further, that since the two deeds were from the same grantors, the older should take precedence. He also denied that any cancellation proceedings had been filed against his title deed. Elizabeth Brown, one of the grantors of the defendant's deed, filed a motion and was granted permission to inter-

vene; she joined the defendant in questioning the plaintiff's right to sue. Thus matters stood when the case came on for hearing before Judge Tilman Dunbar, in the September 1974 Term. On September 3, 1974., the judge passed on the pleadings, and in spite of the factual basis of the pleadings on both sides, the judge dismissed the defendant's answer. For the benefit of this opinion we will quote a relevant portion of the judge's ruling. "Further, the reply in challenging the justness or truthfulness of the allegation in the answer, to the effect that cancellation proceedings had been instituted in the Civil Law Court to cancel the title deed of the plaintiff . . . it was incumbent upon the defendant to either invite the court to take judicial notice of its own record in the cancellation proceeding case, or the defendant should have made profert of a certificate from the clerk of court showing that cancellation proceedings had been instituted in his office. "Under the law plaintiff was entitled to be notified of allegations laid in the pleadings of all grounds of defense upon which defendant relied in defense of this action. The law confirms this position when it states that it is an elementary principle of our practice and is found in our statute, that the fundamental principle of all pleading is giving notice of what a party intends to prove at the trial. Shaheen v. C.F./1.0., 13 LLR 278, 290 (1958). In keeping with this provision of the law count two of the answer is not sustained and the entire answer is therefore

dismissed for want of legal merit, defendant being ruled to a bare denial of the facts stated in plaintiff's complaint and the reply."
In Shaheen v. C.F.11.0., cited by the judge, the defendant testified at the trial and in argument before the Supreme Court that certain written instructions of the company forbade the agent to accept money for deposit

except from their employees or from customers who desired to have them purchase goods abroad. These written instructions were not pleaded, although the company relied upon them both at the trial and before the Supreme Court. In this case an entirely different situation ekists, because the answer in very definite and in certain terms states that "Christine Brown, Elizabeth Brown and Lawrence Philips, representing themselves and the other heirs of the late C. A. Brown have instituted cancellation proceedings in the Civil Law Court for the cancellation of the forged deed on which the plaintiff relies." It is our opinion that this alleged fact having been pleaded, the court was bound to take judicial notice of its own record. What further invitation did the resident judge of the circuit need to take judicial notice of its own record? The Supreme Court said in Phelps v. Williams [1928] LRSC 14; 3 LLR 54, 57 (1928), that "every court is bound to take judicial cognizance of its own records ; and no evidence of a fact of which the court will take such notice need be given by the party alleging its existence." The judge could not claim, therefore, that he had no invitation to take notice of a pleading in a case filed in his court in the Sixth Judicial Circuit. This Court has over the years taken the position that in ejectment, such as this case is, only the jury decides the issues joined. In Karnga v. Williams, ro LLR 10, 1I--r2 (1948), Mr. Justice Shannon, speaking for the Court said that "ejectment proceedings involve mixed questions of law and fact and hence under our statutes are always to be tried by a jury under the direction of the court." To the same effect: Pratt v. Phillips, [1949] LRSC 13; 10 LLR 147 (1949) ; Pratt v. Phillips ro LLR 325 (1950). Therefore, it was gross error for the judge to have dismissed the defendant's answer which contained issues of fact, and

thereby deprive the jury of an opportunity to pass upon those facts. Moreover, it was also gross error for the judge to have dismissed the answer of the defendant and at the same time receive in evidence and mark defendant's title deed which had been annexed to and formed a part of the said answer. How could the judge consistently dismiss the pleading and retain in the case a part of the same pleading? How was the jury to determine the relevance of the defendant's deed, when the pleading which had introduced it was withheld from the jury? In Walker v. Morris, is LLR 4 24, 429 (1 96 3), which the judge relied on in admitting the deed after dismissing the answer, the Supreme Court took the view that exhibits to pleadings

were part of the said pleadings. " '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 sometimes made obligatory on the pleader in such a case to annex a copy of the instrument to the pleading.' 21 R.C.L., 475, Pleading, § 39." The judge therefore, erred when he dismissed the defendant's answer in ejectment; and he erred again when he received and marked the deed, which was part of the answer, after dismissing the answer. In view of the foregoing, we have no alternative but to reverse the judgment and remand the case to the trial court for the issues of law to be properly passed upon and for trial by jury thereafter, costs to abide final determination. And it is so ordered. Reversed and remanded.

Thomson v Faraj [1976] LRSC 26; 25 LLR 34 (1976) (23 April 1976)

JOE THOMPSON, Appellant, v. ANIS ABI FARAJ, Appellee.
APPEAL FROM THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued March 23, 1976. Decided April 23, 1976.
1.

A trial court is required to decide all issues of law raised by the pleadings before dealing with the facts.

The appellant instituted an action in specific performance to compel defendant to deliver to him a bill of sale acknowledging the receipt in full of the purchase price for a factory and its land bought by appellant. After postponements the case came on for hearing, and in the absence of counsel for plaintiff the action was dismissed. Thereafter the trial judge ruled on the issues of law presented only by defendant and rendered judgment for defendant. An appeal was taken therefrom. The Court held that it is incumbent to rule on all issues of law raised in the pleadings. The judgment was reversed and the case remanded.
Robert
C. Tubman for appellant. ham for appellee. Samuel E. H. Pel-

MR. JUSTICE the Court.

WARDSWORTH

delivered the opinion of

Plaintiff brought an action for specific performance to compel the execution and delivery to him of a bill of sale evidencing the sale and transfer to him by defendant of a factory and land, for which he contends he had paid the purchase price. At the postponed hearing

the complaint was dismissed for failure of counsel to appear. Thereafter it appears that the court ruled on the issues of law

presented only by defendant's pleading. The court ruled for defendant, and an appeal was taken from the final decree. Plaintiff contends that the sale was in accordance with an oral understanding with the defendant, and that he has fully satisfied his side of the agreement by making full payment for the properties, but that defendant has refused to sign a bill of sale prepared by plaintiff reflecting such payment. This constitutes the basis of the suit in equity for specific performance instituted by plaintiff. There is authority on specific performance of oral contracts in the sale of realty: "Where the contract is one which is required by the statute of frauds to be in writing, and is wholly executory, equity will not[,] against the objection to the oral character of the contract[,] decree its specific performance[,] unless the circumstances are such that the defendant's refusal to execute the contract would itself amount to the practice of fraud on the plaintiff, as is often the case when there have been acts of part performance by one party to an oral contract in reliance upon and referable to that contract. An action for specific performance is within the operation forbidding any civil action to be maintained upon stipulated agreements unless in writing. Under the equitable doctrine of part performance, however, recognized in most jurisdictions, a court of equity will, in order to prevent the use of the statute of frauds as an instrument or shield of fraud, decree the specific performance of an oral contract at the instance of the party thereto who in reliance upon that contract and pursuant thereto has partly performed it, notwithstanding it is of the class of contracts required by the statute of frauds to be in writing, provided the alleged oral contract is one which if in writing would be enforceable in equity. 49 AM. JUR., Specific Performance, § zi (1 943). The trial judge dismissed the action instituted by plain-

tiff and the complaint upon which rests the entire suit. This is unusual in that, where the complaint is dismissed, there is no issue of law left for the trial judge to rule upon. Despite this fact, the trial judge passed upon issues of law raised in defendant's answer, but failed to pass upon the issues embraced in plaintiff's reply. This we consider highly improper, for it is axiomatic that the trial court shall rule upon all issues of law presented by the pleadings, before the facts of the case are considered. We hereby adjudge that the decree of the lower court be and the same is hereby reversed and the case remanded, in order that the issues of law involved be fully considered and passed upon. Should grounds appear therefor, the court shall rule the case to trial on its merits, thereby

affording plaintiff an opportunity to present all the evidence that he has in support of his complaint. Costs to abide final determination.
And it is hereby so ordered. Reversed and remanded.

Banks et al v Hayes [1949] LRSC 5; 10 LLR 98 (1949) (6 January 1949)

PHILIP A. Z. BANKS for himself, for his Wife, AMY BANKS, and for his minor children, WILLIAM BANKS and STELLA BANKS, Appellant, v.
M. LULU HAYES, Appellee.
APPEAL FROM RULING CANCELLING WARRANTY DEED.

Argued November 16, 1948. Decided January 6, 1949. Equitable relief, affirmative or defensive, will be granted when the ignorance or misapprehension of a party concerning the legal effect of a transaction in which he engages, or concerning his own legal rights which are to be affected, is induced, procured, aided, or accompanied by inequitable conduct of the other parties.

On appeal to this Court from a ruling cancelling a warranty deed and permitting the grantor to execute a corrected deed, Judgment affirmed and modified to require appellee to execute a corrected deed.

T. Gyibli Collins
for appellant. for appellee.
MR. JUSTICE REEVES

Richard A. Henries

delivered the opinion of the

Court. Appellee M. Lulu Hayes, plaintiff in the lower court, filed a bill in equity for the cancellation of a warranty deed which she had granted voluntarily to her niece Amy Banks and to her grandniece and grandnephew Stella Banks and William Banks with the understanding that it was for the eastern half of lot number z68, a lot devised to her by her late brother H. B. Hayes of Monrovia. However, appellee was subsequently apprised of the fact that said deed, which she had instructed Philip A. Z. Banks, the husband of her said niece Amy Banks, to prepare, and which when presented was signed by her without scrutiny because of the confidence she reposed in the

said Philip A. Z. Banks, contained as boundaries a description of the whole lot, thereby fraudulently making the niece Amy Banks

and the grandniece and grandnephew Stella and William Banks owners of the whole lot, contrary to her voluntary gift, and depriving her of the western half of the lot on which appellee had built a small house and there resided. Pleadings were conducted as far as the rejoinder. During the trial of said case, the court questioned counsel for defendant, now appellant: "Q. What quantity of land [did] Mrs. Hayes, petitioner, intend to convey to your client? A half or a whole lot? "A. Half of a lot, eastern half of lot No. z68. "Q. Looking at the title deed filed executed to you by Mrs. Hayes, petitioner, we find that although it refers to the eastern half of lot No. 268, yet still it goes on to say that the quantity of land transferred was one acre and since there are four lots to each acre of land in Monrovia, does it appear to you there is a contradiction in said deed since it is not certain whether one-half lot is intended to be conveyed or one acre? "A. It does not appear to me to be contradictory because of this additional clause in the description, to wit: 'meaning hereby to convey to the said Amy, William and Stella Banks the Eastern half of lot No. (268) Two hundred sixty-eight being the Eastern half of lot No. 268 Two hundred sixty eight and containing one quarter (%) acre of land and no more.' Without the prior explanatory clause, the description would be contradictory, but with this clear designation of the eastern half it is clearly obvious that the intention of the party was to convey the eastern half only and the surplusage does not make it contradictory.

"Q. Suppose at some future date this deed becomes the subject in a law suit and the question arose whether or not one-half of a lot or an acre was intended? If the parties to same be all dead, would not the court be justified in ruling in favour of those parties claiming under the grantee since it is a fundamental principle of law that deed must always be construed as against the grantor? "A. My previous answer clearly shows that the description was intended for the eastern half, but owing to the surplusage thereunder contained de fendants hold that if any action is necessary to eliminate or make clear that surplusage 'and concontaining one quarter ('4) acre of land,' a clear case of reformation would accrue to plaintiff and to [sic] cancellation, for obvious reasons, because the issue of fraud raised has been sufficiently traversed by defendants. "Q. At the time this deed was executed and before this case was filed, was your client's attention drawn to the fact that although the deed called for half lot, yet still it also shows that one acre was conveyed? "A. I instructed my client when I was first retained that she should discourage litigation and that although it was clear from the title deed in question that it was intended for the eastern half only and not the whole that we should insert the boundaries of the eastern half and offer same to plaintiff before filing any answer. This was done, that is, a deed was prepared with the boundaries of the eastern half of said lot, and delivered to plaintiff. Subsequently we got to know that plaintiff denied doing equity by refusal to sign said deed in order that the reformation sought might be conceded. We acted upon the principle of

the maxim, 'he who seeks equity must also do

equity.' By this refusal of plaintiff we came to know that she was [not] after correction of the deed, but wanted to deprive defendants of the entire premises without any legal grounds therefor."
The court then made the following ruling : "COURT IN RULING SAYS That since the Defendant admits that the Plaintiff intended to convey to his client only the Eastern half of the lot Number 268 and since title deed proceeds further to show that one fourth (%) of an acre was intended to be conveyed, it is apparent that a doubt arises whether one half of the lot, the whole lot being equivalent to one (%) of an acre, was conveyed. This being the case, the court is of the opinion that there remains nothing to be done but to cancel the deed and permit Mrs. Hayes to execute a deed for the Eastern half and if she refuses and defendant feels that he has a legal and equitable right, he must proceed in an action of specific performance to compel her so to do. The court takes this position because Equity not only discourages a multiplicity of suits, but delights to do justice in whole and not by halves. And it is so ordered. To which Defendant excepted and announced an appeal to the Honourable Supreme Court to the October Term A.D. 1948. Costs against Defendant. Case suspended. Amount of bond $ioo.00." The following authority is pertinent: "Whatever be the effect of a mistake pure and simple, there is no doubt that equitable relief, affirmative or defensive, will be granted when the ignorance or misapprehension of a party concerning the legal effect of a transaction in which he engages, or concerning his own legal rights which are to be affected, is induced, procured, aided, or accompanied by inequitable conduct of the other parties. It is not necessary that such inequitable conduct should be intentionally misleading, much less that it should be actual fraud ;
:-

it is enough that the misconception of the law was the result of, or even aided or accompanied by, incorrect or misleading statements, or acts of the other party. When the mistake of law is pure and simple, the balance held by justice hangs even; but when the error is accompanied by any inequitable conduct of the other party, it inclines in favor of the one who is mistaken.
The scope and limitations of this doctrine may be summed up in the proposition that a misapprehension of the law by one party, of which the others are aware at the time of entering into the transaction, but which they do not rectify, is a sufficient ground for equitable relief. A court of equity will not permit one party to take advantage and enjoy the benefits of an ignorance or mistake

of law by the other, which he knew of and did not correct. While equity interposes under such circumstances, it follows a fortiori that when the mistake of law by one party is induced, aided, or accompanied by conduct of the other more positively inequitable, and containing elements of wrongful intent, such as misrepresentation, imposition, concealment, undue influence, breach of confidence reposed, mental weakness, or surprise, a court of equity will lend its aid and relief from the consequences of the error. The decisions illustrating this general rule are numerous, and it will be found that many of the cases in which relief has been granted contained, either openly or implicitly, some elements of such inequitable conduct." 2 Pomeroy, Equity Jurisprudence § 847, at 1727 (4th ed. 1918). It is therefore the considered opinion of this Court that . such part of the ruling of the judge of the lower court that is in harmony with the principles of equity be affirmed with an amendment to read as follows: That since the appellant admits that the plaintiff, now appellee, intended to convey only the eastern half of lot number 268 and since title deed proceeds further to show

that one-fourth of an acre was conveyed, it is apparent that a doubt arises whether one-half of the lot or the whole lot, which is equivalent to one-fourth of an acre, was conveyed. This being the case, the Court is of the opinion that there remains to be done nothing but to cancel the deed and to have Mrs. Hayes, appellee, have said lot surveyed and to execute with the least possible delay the deed as intended for the eastern half of said lot number 268 to her niece Amy Banks and to her grandniece and grandnephew Stella Banks and William Banks, on which her resident building does not stand; costs are adjudged against appellants; and it is hereby so ordered.
Affirmed as modified.

Johnson v Cassell [1883] LRSC 1; 1 LLR 161 (1883) (1 January 1883)

R. R. JOHNSON, Appellant, vs. **THOS. H. CASSELL**, Appellee.

[January Term, A. D. 1883.]

Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.

A writ of injunction does not lie in cases where the title to real estate is an issue involved. Courts of law, and not equity, have jurisdiction over cases involving title to real property, according to the Statutes of Liberia.

This case is an appeal from the decree of the judge of the Court of Common Pleas and Quarter Sessions, Montserrado County.

An action of injunction is one in which plaintiff seeks to compel the defendant to permit matters to remain in the present state, or requiring some specific act to be done. This action must be commenced by a. writ of injunction, to obtain which, the plaintiff must show in his complaint, verified by his own oath, and by such other evidence as the court or judge may think proper to receive, that he has a good cause for applying for such a writ; whereupon, if the court or judge in the exercise of sound discretion, should discover that the right of the plaintiff is sufficient to warrant its interposition, the writ may be issued, but otherwise it ought not to be granted.

This court regards it an indispensable duty to state just here, in emphatic terms, that in no case where the issue involves questions respecting the validity of title to real estate, which ought to be settled in a court at common law, should a writ of injunction be granted for the purpose of deciding upon the validity of such title. In this case, this Supreme Court will only consider the rights of the parties under the circumstances surrounding the case, without interfering with the validity of the title right of either party. It is, however, evident from the oral testimony in this case and from the admissions of the contending parties that the coffee trees, which defendant in the court below was sought to be enjoined to abstain from picking the coffee off, are on the same lot of **land** claimed by appellant and appellee.

We refrain from any expression as to the validity of the title rights of the parties in this case, to said lot of **land**. But it is our duty to say, whether the appellant has a good and bona fide right and title for said lot of **land** ; or, on the other hand, whether Jordan Hardy's title under which the appellee (defendant below) sets up his defence, is a good and bona fide one or not, it is not a subject material to the issue in this case. Because the transfer from James Butler to R. R. Johnson, for lot number ninety-one in the settlement of Brewerville, so described in plaintiff's complaint, gives the appellant an apparent right to said lot; also does the Jordan Hardy's deed from the Republic of Liberia, give whomsoever claims under said deed a like apparent right to the said lot of **land**. This fact the oral testimony in the case plainly shows.

It is not injudicious for this court at this juncture to observe, that whatever may have been the right of the appellee, under Jordan Hardy's deed, to pick the coffee off the trees on said lot, that right obviously followed the foreclosure of Hardy's mortgage. It is therefore proof presumptive, that the appellee in picking the coffee acted on a right assumed, and not from any right apparent, derived from Jordan Hardy to the lot now in dispute.

Therefore, the judgment of the court below is hereby reversed, and this court adjudges that the appellee be and is hereby forever enjoined to abstain from picking coffee off the coffee trees upon said lot of **land** now in dispute, under any pretext of rights derived from Jordan Hardy's deed as administrator of said estate. The appellee is ruled to pay all costs incurred in this action.

Ashkar v Johnson et al [1985] LRSC 18; 33 LLR 74 (1985) (20 June 1985)

FOUAD ASHKAR, Informant/Appellant, *v.* **The Sheriff of Montserrado County, SAMUEL JOHNSON and all the BAILIFFS** of said County, Respondents/Appellees.

INFORMATION PROCEEDINGS.

Heard: March 21, 1985. Decided: June 20, 1985.

1. Under the statute law of Liberia, the sheriff has the authority only to execute and deliver to an execution purchaser proof of publication, service and posting of the notice of sale, and the deed which conveys the right, title and interest sold, which proof may be recorded in the office of the registrar of deeds of the county where the property is located. Rev. Code 1 :44.43.
2. Under our case law, every sheriff to whom a writ of execution or sale has been directed, shall have the authority and the duty to put the purchaser or purchasers of any property, movable or fixed, sold by virtue of such writ, in possession of such property only if the sheriff, the execution debtor, or the person against whom the writ was issued, is in possession of said property; otherwise the purchaser can obtain possession of the property only by other legal means available to him.
3. The sheriff has the authority and the duty to execute all instruments of writing or other evidence of title necessary and proper for the security of the purchaser.

4. The purchaser of real property at an execution sale cannot by means of a writ of possession be put in possession of the property which is in the possession of a third party.
5. Generally, the sale of real property under judicial proceedings will not ordinarily affect any right, title, or interest in the premises that may be held by any person who was not in some manner a party to the proceedings in which the sale was had.
6. Where a lessee acquires his interest after the attachment of the lien of a judgment, or after the lien or execution under which the property was sold, the interest of the execution purchaser becomes superior to that of the lessee.
7. A purchaser who acquires property after execution of a lease takes the property subject to the lease, although he had no actual knowledge of the leasehold.
8. A purchaser of property at a judicial sale takes over the rights of the former owner and becomes entitled to the rents and profits of the property that accrue subsequently, and the lessee thereby becomes the tenant of the purchaser as of the date the purchaser receives the Sheriff's Deed.
9. An execution purchaser may, if he can do so without a breach of the peace, enter upon the purchased property without the consent of the former owner free from liability as a trespasser.
10. An execution purchaser may enter an action to quiet title or an action of ejectment against the former owner or other persons in wrongful possession of the property.
11. Ejectment will however not lie to evict a lessee from possession of property held under a leasehold right subsequently sold or transferred to a lessee by the lessor.
12. The law cannot allow one to benefit by his own fraud or evil, but such benefit may not be withheld from a third party who did not participate in the fraud and had no knowledge of it.

Fouad Ashkar, the appellant, brought a bill of information in the Civil Law Court for the Sixth Judicial Circuit, Montser-rado County, in response to an attempt by the sheriff of Montserrado County to evict him from premises sold to a purchaser under an execution sale. The informant was lessee of a judgment/execution debtor under a lease executed subsequent to the judgment but prior to the sale of the property. The judgment debtor had concealed the property from execution after judgment was rendered against him. The property, dis-covered by the judgment plaintiff, was exposed to public auction and sold after the judgment debtor had failed to appear in response to the service of a writ of execution. The informant was not cited to appear at the execution hearing. Following the sale, the sheriff sought to remove the informant from the premises, thus necessitating the filing of the information.
After a hearing, the trial court denied the information. From this denial, appellant appealed the case to the Supreme Court.
The Supreme Court reversed the judgment of the trial court, holding that under the statute the sheriff's authority and the duty extended only to executing and delivering to the purchaser proof of publication, to serving and posting notice of the sale, and to issuing a deed conveying the right, title and interest sold. The Court opined further that the sheriff had the authority to put the purchaser in possession of the sold property only where the sheriff himself or the execution debtor was in possession of the property, and not where the property was in the possession of a third party. Where the property was in the possession of such third party, the Court said, the purchaser must resort to other legal means to acquire possession.

The Court also held that where there exist a leasehold prior to the execution and sale, the execution and sale are subject to the leasehold. As such, the Court observed, the lessee becomes the tenant of the new owner, and the new owner acquires the right to the benefits, rents and profits accruing to the property. He cannot, however, eject the lessee by virtue of such new ownership. Moreover, the Court said, while it is true that one who commits a fraud or does an evil cannot be permitted to benefit such fraud or evil, the principle did not apply to an innocent third party who did not participate in or had knowledge of the fraud or evil. The Court therefore concluded that the lessee could only be ejected if he participated with the execution debtor in concealing the property from the trial court. The informant, it said was entitled therefore to the continued use and enjoyment of the property as provided for by the lease. The *judgment* of the trial court was therefore *reversed* and the information granted.

E. Winfred Smallwood and *David A. B. Jallah* appeared for the informant/appellant. *J. Laveli Supuwood* appeared for the respondents/appellees.

MR. CHIEF JUSTICE GBALAZEH delivered the opinion of the Court.

Fouad Ashkar brought this bill of information in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, contending that he is the lessee of a piece of real property which was the subject of a judicial sale, and that a writ of possession was subsequently issued to the highest bidder, one Mr. Nelson Diegbgha, who together with the Sheriff of Montserrado County, sought to oust or evict him from the sold premises.

According to the records certified to this Court, the genesis of this case is rooted in an action of ejectment brought in the Civil Law Court for the Sixth Judicial Circuit by M. M. Perry in 1956 against Igal Ammons, both of them being from Montserrado County. The action was decided in 1965 in favor of Mr. Perry and the judgment was partly satisfied as to the subject of the ejectment, but the money judgment for damages in the sum of $15,000.00 (Fifteen Thousand Dollars) remained unsettled. The reason alleged for the partial satisfaction of the judgment was that the defendant, Igal Ammons, was found to have no means to settle the payment of the amount. However, in 1983 Mr. M. M. Perry unraveled the existence of a piece of property belonging to said Igal Ammons, located on Randall Street and described as follows:

"Commencing at the Southwestern corner of the adjacent **land** owned by Mr. Aaron Cooper and running thence south 70 degree East 114 ft.; parallel with Randall Street then South 10 it; thence 70 degree West 121 ft.; and containing ½ acre of **land**".
On the basis of this discovery, Mr. Perry filed a bill of in-formation in the Civil Law Court, appraising the court of his discovery. A writ of summons was subsequently issued against Mr. Igal Ammons to appear in court and to verify the informa-tion filed by Mr. Perry. Said writ of summons and the returns are quoted below:

"REPUBLIC OF LIBERIA) IN THE PEOPLES CIVIL LAW COURT FOR

MONTSERRADO COUNTY) THE SIXTH JUDICIAL CIRCUIT, MONT-

SERRADO) COUNTY, SITTING IN ITS DECEMBER TERM, A. D. 1982.

BEFORE HIS HONOUR: J. HENRIC PEARSON, ASSIGNED JUDGE"

McDonald M. Perry, of the City of)

Monrovia, Liberia.....PLAINTIFF)

Versus) ACTION OF

Igal Ammons, also of the City of) EJECTMENT

Monrovia, Liberia.....DEFENDANT)

WRIT OF SUMMONS

REPUBLIC OF LIBERIA, TO P. EDWARD NELSON, II, Esquire,

Sheriff for Montserrado County, G R E E T I N G S:

YOU ARE HEREBY COMMANDED TO SUMMONS Igal Ammons, defendant in the above entitled cause to appear before the People's Civil Law Court for the Sixth Judicial Circuit Montserrado County, sitting in its December Term, A. D. 1982, on the 22nd day of February, A. D. 1983, at the hour of 2 o'clock in the afternoon to show cause why the properties just discovered by plaintiff should not be expose for public sale to satisfy the judgment.

YOU ARE further commanded to make your official Returns endorsed on the back of this writ of summons on or before the said 22nd day of February 1983, as to the manner of service of this writ of summons.
AND HAVE WITH YOU THERE THIS WRIT OF SUMMONS

Given from under my signature with the seal of this Honourable Court, this 15th day of February, A. D. 1983.

Signed:
Robert B. Anthony
"Clerk, People's Civil Law Court
Montserrado County

$4.00 Rev. Stamp on Original"

"SHERIFF'S RETURNS

On the 21st day off February, A. D. 1983, I, George Sherman a bailiff of the First Judicial Circuit Court "A" Montserrado County, Republic of Liberia, served the within said writ of summons on the within said named Igal Ammons. But he refused to received a copy of the within writ of summons, stating that the case is over. I now make this as my official returns to the office of the clerk, Peoples Civil Law Court, Montserrado County, Republic of Liberia.

Dated this 21st day of February A. D. 1983.

Signed: Sammy M. Johnson

Acting Sheriff, Montserrado County

Bailiff First Judicial Circuit Court "A"

Montserrado County, R. L.

21 /2183 GEORGE. S. SHERMAN"
The returns to the summons issued against Mr. Ammons reveal that he refused to attend because, he said, the matter between him and Perry had been concluded.

Thereafter, the court, being satisfied that the property in question was in fact that of Mr. Igal Ammons, as was reported by Mr. Perry, ordered that the writ of execution which was issued since 1980, be served on Mr. Ammons. The writ of execution is quoted here verbatim:
“REPUBLIC OF LIBERIA) IN THE CIVIL LAW COURT FOR THE

MONTSERRADO COUNTY) SIXTH JUDICIAL CIRCUIT, MONTSERRA-
DO COUNTY, SITTING IN ITS MARCH
TERM, A. D. 1980.
BEFORE HIS HONOUR: E. S. KOROMA,. ASSIGNED CIR. JUDGE

WRIT OF EXECUTION

REPUBLIC OF LIBERIA, TO P. EDWARD NELSON, II, Esquire

SHERIFF FOR MONTSERRADO COUNTY, G R E E T I N G S:

YOU ARE HEREBY COMMANDED TO seize and expose for sale the lands, goods, and chattels of Igal Ammons, the above named defendant and if the sum realized therefrom be not sufficient then his real property, until you shall have raised the sum of FIFTEEN THOUSAND DOLLARS ($15 000.00), with interest thereon at the rate of six (6) percent per annum, from the 25th day of August, A. D. 1964 until payment shall have been made; and in addition thereto, and if you cannot find any **land**, goods, and chattels of the said Defendant, you are hereby commanded to arrest his body and have him committed to the Central Prison where he was but absconded there-from, unless he will pay you the said sum of money, or show you property to seize and sell for the same.

AND UPON receiving from the said sale, or other-wise, said sum of money, you are further commanded to pay over to McDonald M. Perry, the above named plain-tiff, the sum necessary to satisfy the judgment therein; and reserve unto yourself the said cost and expenses, and you will make known to this court at the next Term thereof to be held on the third Monday in June, A. D. 1980, your doings and proceedings under this writ."
The aforesaid writ was executed and the property which was the subject of the information was offered and sold at a public auction to the highest bidder, Mr. Nelson Diegbgha for the sum of $20,000.00 (TWENTY THOUSAND DOLLARS). Having been informed by the sheriff of said sale and the issuance of a sheriff's deed to the buyer, the court ordered a writ of possession issued and placed in the hands of said sheriff for service on the occupier of the subject of the execution and sale.

The occupier of said premises happened to be Mr. Fouad Ashkar of the City of Monrovia who is the informant in the present bill of information. The informant, Fouad Ashkar, had gotten on the premises by virtue of a lease agreement with Mr. Igal Ammons, concluded in 1974, and extending to the year 2004. In consequence thereof, he had erected a concrete building thereon for business purpose. The informant was never cited as a party to the summons issued against Mr. Ammons; he was not informed of the execution sale; and he was not cited to appear during the course of the transaction. For those reasons, he refused to yield to the writ of possession which sought to eject him. He had therefore filed this bill of information contending that an action of ejectment was the proper remedy against him and not a writ of possession. More-over, informant contended that the sale of said property merely gave it a new owner and left his leasehold interest unaffected.
The respondents on the other hand, in resisting the information, maintained that Igal Ammons, having hidden the property from judicial execution earlier in 1965, his act amounted to a fraud, and he and his lessee should not thereby be allowed to benefit from their misdeeds. Consequently, they said, an action of ejectment was unnecessary to oust or evict the lessee, and that a writ of possession should suffice to allow the sheriff to put the purchaser of the property in possession.
The information was heard and denied. It is from this denial that informant has appealed to this Court of final resort.
From the facts and circumstances of this case, the main issues before us for adjudication are the following:

1. Whether or not the sheriff at an execution sale of real property has an obligation to put the buyer in physical possession of the property?
2. What are the rights of an execution purchaser as against the rights of a lessee in actual possession by virtue of a prior lease agreement concluded by the original owner, the then lessor, and how can said purchaser acquire possession from third party?
3. Whether or not fraud committed by a prior owner of a realty can affect the interest of a lessee who had entered the premises without notice of said fraud?

The first issue for our deliberation is whether or not the sheriff, at an execution sale of real property, has an obligation to put the buyer in physical possession of the property. Our statute does not indicate whether the sheriff at an execution sale has an obligation to put the buyer in actual physical possession of realty sold at such sale.

However, it does indicate that within ten days after the sale, the sheriff shall execute and deliver to the purchaser proof of publication., service and posting of the notice of sale, and a deed which shall convey the right, title, and interest sold. The statute also states that such proof, as enumerated, may be filed and recorded in the office of the registrar of deeds of the county where the property is located. Civil Procedure Law, Rev. Code 1 :44.43. Sale of Real Property, *(4) Conveyance; Proof of Notice*. From what the statute says, it appears that the sheriff is merely supposed to deliver the buyer's deed and other such documents that pass title in the property to the buyer.

Notwithstanding the statute, however, our case law autho-rity in this jurisdiction provides that every sheriff to whom a writ of execution or sale has been directed, shall have autho-rity, 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 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. See *Bracewell and Caranda v. Coleman et al.[1938] LRSC 3; ,* 6 LLR 176, 183 (1938). The *Bracewell* case stresses that there is only an obligation to put purchaser in possession where the sheriff himself or the person against whom the writ was issued is in possession of the property. Otherwise, according to the statute, the sheriff is merely obligated to the buyer for his deed and other documents affirming the conveyance of title to the property.

At common law, it is ordinarily the duty of the execution officer to deliver goods bought at an execution sale to the purchaser.

In the case of a sale of a portion of a mass of personal property, the sale is not regarded as complete before there has been a separation and delivery of the portion sold. However, it is not necessary that the officer formally hand over the property to the purchaser.

An execution officer is ordinarily held not to be under obligation to deliver possession of realty purchased at the execution sale to the execution purchaser, who is left to acquire possession as he can. Under this rule, the execution officer may not turn the person in possession out of possession by force without judicial proceedings to secure possession. 30 AM JUR 2d., *Execution*, § 479.

From the foregoing, the sheriff at an execution sale is not obliged to put the purchaser of realty into possession, except where the sheriff himself, or the execution debtor is in posses-sion; otherwise, the execution purchaser with a sheriff's deed can obtain possession of premises purchased by resort to other legal means available to him. That means that the purchaser of realty at an execution sale cannot be put in possession of the property which is in the possession of a third party by means of a writ of possession as was sought to be achieved by the sheriff in this case.

Our statute is silent on the rights of the purchaser of realty at an execution sale *vis-a-vis* the lessee of the former owner in possession who had not been made a party; and in general, nothing is said as to how such a buyer can wrest possession of said property from a third party.

Generally, however, it is firmly established that a sale of real estate under judicial proceedings ordinarily will not affect any right, title, or interest in the premises that may be held by any person who is not in some manner a party to the proceed-ings in which the sale is had. 47 AM JUR 2d., *Judgments,* § 267. Intestate of persons not joined as parties, p. 510.

In certain cases, the interest of an execution purchaser is superior to that of a lessee of the execution debtor. This is true where the lessee acquired his interest after the attachment of the lien of the judgment, or, after the levy of execution, under which the property was sold. In such case, the execution purchaser may disaffirm the lease by giving the tenant notice to quit; and upon notification, at least the lessee becomes a tenant at will of the execution purchaser. If the purchaser chooses to disaffirm the lease, he may not claim anything under the terms thereof. On the other hand, in the absence of circumstances calling for the application of a statutory provision to the contrary, the execution purchaser takes subject to a lease given by the judgment debtor before the judgment lien accrued, where such tenancy has not expired. In such case, the tenant becomes a tenant of the execution purchaser for the term and under the conditions of the lease. The execution purchaser is substituted for the lessor, and the tenant becomes his tenant, whose possession is his possession. Since an attornment is equivalent to a novation, an actual attornment by the tenant to the purchaser creates the relation of landlord and tenant between them, regardless of whether the lien of the judgment under which the execution sale was held was prior or subsequent to the lease. 30 AM JUR 2d, *Execution,* § 451, at 707-708. It has also been held in this jurisdiction that the purchaser takes subject to the lease, although he has no actual knowledge thereof. *Watson v. Oost Afrikaansche Compagnie*, 13 LLR 94 (1957). Furthermore, as a general rule, a purchaser of property at a judicial sale becomes entitled to the rents and profits of the property that accrue subsequently. 47 AM JUR 2d., *Judgments,* § 237, at 489.

From the foregoing, the appellant in this case became a tenant of the appellee as of the day the latter received a sheriff's deed for the premises bought. The judgment which was sought to be satisfied by the execution sales was rendered in 1965, and the lease by which appellant holds possession of the **land** in question was concluded in 1974, nine years after the mentioned judgment. That judgment did not impose a lien on any particu-lar property of Igal Ammons, but by the writ of execution, it sought to secure property belonging to Mr. Ammons as the subject of an execution sale to satisfy the monetary judgment of $15,000.00 (FIFTEEN THOUSAND DOLLARS) owing Mr. Perry. But from 1965 to 1983, about eighteen years, nothing is heard about property belonging to Mr. Ammons until in 1983 when the present property occupied by appellant was identified by Mr. Perry as belonging to Mr. Ammons. Mr. Ammons was summoned to the proceedings to ascertain his title to the property but he never appeared. The appellant, lessee of Mr. Ammons, was not cited to appear, and could not be present to show his interest. The said property, however, had a judgment lien properly attaching to it only in 1983 when the sheriff was mandated to expose it to an execution sale which means that the lien is later than the lease of appellant which came in 1974. That means also that after purchasing said property, the execution purchaser took over the rights of the former owner, so that appellant now becomes his lessee as though he was Mr. Ammons who actually signed a lease agree-ment with appellant in 1974. Appellant then became the new tenant of the new landlord, and the former is as responsible to the latter for the rents under the lease as he used to be to Mr. Ammons.
Next, we will consider the means open to an execution purchaser to obtain possession of realty bought at an execution sale. Our statute merely provides that ten days from the sale, the sheriff shall execute and deliver to the purchaser proof of publication, service, and posting of the notice of sale, and a deed which shall convey the right, title, and interest sold. Civil Procedure Law, Rev. Code 1 :44.4 (4), *Conveyance: Proof of Notice.*
But, according to the case of *Bracewell v. Coleman, supra,* the sheriff at an execution sale can

only put the buyer in actual physical possession of realty sold if he, the sheriff, or the exe-cution debtor, was in possession.

An execution purchaser of real estate may, if he can do so without a breach of the peace, enter upon the purchased realty without the consent of the former owner free from liability as a trespasser. 30 AM JUR 2d., *Execution,* § 480, Purchaser's to seize and enter into possession, at p. 723. He can also institute an action to quiet title or an action of ejectment against the former owner or other persons in wrongful possession of the property. 30 AM JUR 2d., *Execution,* § 481, at 723. However, according to the tradition in this jurisdiction, ejectment will not lie to evict a lessee from possession held under a leasehold right to property subsequently sold to the plaintiff by the lessor. *Watson v. Oost Afrikaansche Compagnie*, *supra*; *Ajavon v. Bull*, 14 LLR 178 (1960).

Appellees contend that Mr. Ammons had committed a fraud by secretly withholding this property from execution since the judgment in 1965, and that therefore he should not be allowed to benefit by his own misdeed. This contention of appellees shall form the basis of our next deliberation: Whether or not fraud committed by the previous owner of the subject matter of an execution sale can work against the interest of his lessee in possession who had entered the lease agreement with-out notice of the fraud? While it is true that the law cannot allow one to benefit by his own evil, yet, whatever fraud was committed by Mr. Ammons in hiding his property from the law has not been attributed to appellant in this case. There is no showing in the records that appellant in any way knew of the hiding of said property from execution when he entered into the lease agreement with Mr. Ammons, nor is there any show-ing that appellant in any way condoned, aided or abetted said fraud. Relying on the good representations made by Mr. Ammons, said appellant had entered into the lease agreement with him for a period of twenty years which is still in force until the year 2004.

The appellant therefore had gone ahead and erected a building on the premises, which he now uses for business purpose. In fact, to permit appellant to enjoy his leasehold interest does not in any way benefit Mr. Ammons since we held earlier that appellee now becomes the new lessee of the execution purchaser, paying rent to the latter and not to Mr. Ammons, his former landlord. Indeed the circumstances of the present case are such that it will be grossly inequitable to deny appellant the benefit of said lease simply because Mr. Ammons had allegedly deceived the judicial authorities.

WHEREFORE, and in view of all that we have said herein, it is the holding of this Court that the judgment of the court below be reversed. The information is granted to the effect that the informant/appellant remains on and enjoys his leasehold rights as he continues to pay the rent to the execution purchaser as it falls due under the lease agreement up to and including the date of the expiration of said lease agreement. And it is so ordered.

Judgment reversed; information granted.

Fayad v Dennis [1999] LRSC 26; 39 LLR 587 (1999) (2 July 1999)

M. A. FAYAD, Appellant, v. **MAX M. DENNIS**, Administrator of the Intestate of the LATE GRAY D. ALLISON, Appellee.

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

Heard: May 5, 1999. Decided: July 2, 1999.

1. Where the lessee is in possession, the purchaser takes subject to the lease, although he has no actual knowledge thereof.

2. If the purchaser bought with knowledge of an agreement between the landlord and tenant to sell the property to the tenant, the tenant may enforce the contract against such purchaser.

3. Generally, the rights and liabilities existing between the grantee and the lessee are the same as those existing between the grantor and lessee, after the lessee is given notice of transfer of the property.

4. If the lease is voidable, certain acts of the grantee, such as acceptance of rent, may preclude him from thereafter attacking it.

5. If the lease is voidable at its inception, and the lessee has paid rents and made improvements, a subsequent purchaser of the **land**, with knowledge of the facts, cannot avoid the lease.

6. The Constitution of Liberia has made it plain that not even the Legislature, which is the law-making body of the Republic, has the right to enact any law impairing the obligation of contract.

7. When fraud is alleged, a jury must pass upon the evidence in support of the allegation, and further fraud must be stated with particularity and proven by the production of every species of evidence which is required to be produced at the trial.

8. All documentary evidence which is material to the issue of facts raised in the pleadings and which is identified, received, marked and reconfirmed by court should be presented to the jury.

9. An issue of fact is to be determined solely by the jury on the greater weight and sufficiency of the evidence, and such preponderance of evidence may be established by a single witness who may testify against a greater number of witnesses to the contrary.

Mr. M.A. Fayad, appellant in these proceedings, entered into two separate and distinct lease agreements with Charles D. Sherman, for two dwelling houses respectively for a period of nineteen (19) years. While the aforesaid lease agreement were in force, the said Charles D. Sherman sold the subject leased property to a third party, Gray D. Allison, and accordingly informed appellant on September 22, 1986 of the transfer of the title of the premises to the new owner. When the Liberian civil crisis broke out, the lessee, appellant herein, had to leave the country for security reasons. When he returned after the cessation of the crisis, he discovered, much to his dismay, that appellee Max Dennis had obtained letters of administration from the monthly and probate court as administrator of the intestate estate of the late Gray D. Allison, and had occupied the premises covered by both lease agreements. After all efforts on the part of appellant to repossess his leased property had failed. He instituted an action of ejectment against defendant in the Civil Law Court of the Sixth Judicial Circuit, Montserrado County. From the final judgment affirming the verdict of not liable by the trial jury, Plaintiff noted his exceptions and announced an appeal tom the Supreme Court *en banc.*

The Supreme Court , upon review of the records, found that the lease agreement between the late Charles D. Sherman and the appellant was still in full force and effect when the property was sold to the late Gray D. Allison, and therefore, the terms and conditions of this agreement were binding on the purchaser. The Court held that the sale of the property to the late Gray D. Allison did not void the terms and conditions in the lease agreement between Charles D. Sherman, the seller, and M. A. Fayad, the lessee, and that they were binding on both the late purchaser and the appellant. Moreover, the court held that the attempt by the appellee to divest the appellant of his lease between him and the late Charles D. Sherman and the one between him and the late Gray D. Allison is legally untenable. Accordingly, the Court *reversed* the judgment of the trial court and remanded the case for a new trial.

J D. Gordon of the J. D. Gordon Law Offices appeared for appellant. *Cyril Jones* of the Jones and Jones Law Firm appeared for appellee.

MR. JUSTICE MORRIS delivered the opinion of the Court.

The certified records transmitted to this Court reveal that this action of ejectment grows out of a transaction of lease between the late Charles D. Sherman and M. A. Fayad, the appellant in this case. The late Charles D. Sherman owned two concrete buildings located in Mamba Point, City of Monrovia, Montserrado County, Republic of Liberia, which two houses he leased to the appellant, M. A. Fayad. The first lease agreement for the first property is for nineteen (19) years certain, commencing from the 1" day of September A. D. 1983, up to and including the 31St day of August A. D. 2002; and the second lease agreement contained the full life of also 19 .years certain, commencing from the first day of October A. D. 1984, up to and including the 31St day of October A. D. 2002. Both lessor and lessee maintained a pleasant landlord-tenant relationship during the existence or continuance of the leases.

While the leases were still in full force and effect, and each party performing his obligations thereunder, the lessor sold the leased premises to a third party, the late Gray D. Allison, and served a notice on appellant to inform him of the sale of the property to Mr. Gray D. Allison. The notice of sale requested appellant to deal with the late Gray D. Allison. This notice of the sale to the appellant is hereunder quoted verbatim.

"September 22, 1986"
Mr. M. A. Fayad
Odet Dry Cleaning Plant
Benson Street
Monrovia, Liberia

Dear Mr. Fayad:
This is to inform you that the two buildings at Mamba Point leased by you under agreement dated September 1, 1983 and October 31, 1984 respectively, have been sold and turned over to Honourable Gray D. Allison as rightful owner as of September 15, 1986.

Therefore, effective as of today's date, all matters pertaining to the premises should be directed to him. We wish to thank you for the cooperation received from you during our business relation.

Kindest personal regards,
Sincerely yours,
Charles Dunbar Sherman
cc: Honourable Gray D. Allison

When the late Gray D. Allison acquired the property, one of the houses contained only one room and in order to realize and receive benefits comparable to the amount appellant spent in acquiring the leasehold right with the late Gray D. Allison, he embarked upon adding two other rooms to this house for which he spent $70,000.00 for material and workmanship. So as to protect his interest and right to the property for which he spent over Seventy Thousand Dollars to add additional rooms, appellant approached the late Gray D. Allison, who was now the new owner and requested him that they both enter into a separate or a new agreement for the said property to which the late Gray D. Allison consented and a new agreement was entered into between appellant and the late Gray D. Allison.

In 1989, when the Liberian civil crisis broke out, the lessee, appellant herein, had to leave the country for security reasons. Following the cessation of the crisis, appellant returned to Liberia, and to his dismay only to discover that appellee Max Dennis had obtained letters of administration from the monthly and probate court as administrator of the intestate estate of the late Gray D. Allison. Appellant discovered later that appellee had occupied the premises covered by both lease agreements, that is, the one between appellant and the late Gray D. Allison on one hand, and the other between him and Charles D. Sherman. The appellant served a notice on appellee to inform him that he is a leasehold owner and is entitled to the possession of the said property and requested appellee to vacate the premises and turn same over to him, the appellant, but appellee refused to deal with appellant in any manner concerning the subject property.

After all efforts on the part of appellant to repossess his leased property amicably had failed, appellant instituted an action of ejectment against appellee in the Civil Law Court for the Sixth Judicial Circuit, sitting in its December Term A. D. 1994. The defendant/appellee appeared and answered plaintiff/ appellant's complaint, pursuant to the writ of summons to which plaintiff/appellant filed a reply. Pleadings having rested on both sides, the case was ruled to trial on the 18thday of September 1997.

The certified records before this Court reveal that at the close of the plaintiff's side of the case, the counsel for the defendant, moved the court for judgment during trial. The motion was resisted, argued and granted by the Court. To which ruling, plaintiff's counsel noted exceptions and subsequently filed a motion for new trial. The motion was resisted by the defendant, and was denied by the court after arguments *pro et con.* An exception was noted by the plaintiffs counsel.

On the 3rdday of November A. D. 1997, His Honour Timothy Z. Swope, Assigned Circuit Judge presiding, Sixth Judicial Circuit, Montserrado County, R. L., ruled confirming the *viva voce* verdict of the trial jury that the defendant is not liable. It is from this final judgment that appellant has announced an appeal to this Honourable Court *en banc.*

A thorough review of the certified records transmitted to this Honourable Court reveals that appellant has specifically contended that he entered into two (2) separate lease agreements with Charles D. Sherman for two dwelling houses, each for a period of nineteen (19) years certain, situated, located and lying at Mamba Point, Montserrado County, R. L. That while the said lease between he and the late Charles D. Sherman was in force, the said Charles D. Sherman sold the subject leased property to Gray D. Allison and informed him accordingly of the transfer of title to the new owner. The appellant also alleged that after he had been advised that Gray D. Allison had possessed title to the property under review, he then entered into a new lease agreement with Gray D. Allison, the new owner. Appellant further observed that in spite of his leasehold possessory rights to the properties, the appellee herein, without any color of right and/or legal justification, entered and occupied the premises.

In response to the aforesaid averments of the appellant, the appellee has contended, amongst other things, that the lease agreements between the appellant and Gray D. Allison and the deed from Charles D. Sherman attached to the plaintiff s pleadings were fraudulent documents because at all times, since Gray D. Allison married his mother, Angeline Watta Allison, all of the properties acquired involving either of them, were done in the names of both of them as husband and wife. It was therefore impossible for Gray D. Allison to have acquired a property in his own name in 1985 and then executed a lease agreement singularly, that is, without Angeline Watta Allison, with plaintiff/appellant. The appellee contended further that the certified copies of the deeds and the lease agreements, annexed to the plaintiff's pleading filed, were all instruments machinated and fabricated by the appellant through false representation, tricks and artifices at the Bureau of Archives and the Ministry of Foreign Affairs. Appellee observed and contended and give notice that at the trial he will request this Honourable Court for the issuance of a writ of *subpoena duces tecum* to be served on the Ministry of Foreign Affairs and the authorities of the National Archives to produce the relevant records and also to testify to these facts. Appellee also contended that the alleged letters between the late Charles D. Sherman and the appellant, attached to plaintiff's pleadings, were all instruments engineered and designed by the appellant to justify his unmeritorious cause or ejectment action against appellee.

Predicated upon those contentions and averments of the parties, as summarized from the certified records before us, briefs filed and arguments had before this Honourable Court, we hereby

consider and deem the hereunder stated issues as salient and germane for the determination of this case:

1. Whether or not a lessee can be evicted from a leased property subsequently purchased by a third party from the lessor.

2. Whether or not the trial judge committed reversible error when he excluded the plaintiff's lease agreement and other documents from being admitted into evidence which were identified, testified to, received, marked and reconfirmed by court; and

3. Whether or not the plaintiff established his possessory rights of the subject property by preponderance of evidence during the trial.

Traversing the first issue, which is whether or not a lessee can be evicted from possession of a leased property subsequently purchased by a third party from the lessor, we observe from the certified records before the Court the following: that the appellant and Charles D. Sherman entered into two separate and distinct lease agreements for two dwelling houses respectively for a period of nineteen (19) years certain, situated, lying and located at Mamba Point, Montserrado County, R. L; that while the lease agreement between the Lessor, Charles D. Sherman, and the appellant was in force, the said Charles D. Sherman sold the subject leased property to a third party, Gray D. Allison, and accordingly informed appellant on September 22, 1986 of the transfer of the title of the premises to the new owner; that the appellee in these proceedings without any regards to the appellant's leasehold possessory rights to the premises, entered therein and occupied same against the terms and conditions of the unexpired lease agreement in favor of the appellant.

We also observe from the records before us that there are two valid lease agreements, each between the late Charles D. Sherman and the appellant. The lease agreement between the late Charles D. Sherman and the appellant was still in full force and effect when the property was sold to the late Gray D. Allison, and therefore, the terms and conditions of this agreement was binding on the purchaser. For reliance, see *Watson v. OAC,* 13 LLR 94, 99,100 (1957), which is quoted hereunder as follows to wit:

"Where the lessee is in possession, the purchaser takes subject to the lease, although he has no actual knowledge thereof. If the purchaser bought with knowledge of an agreement between the landlord and tenant to sell the property to the tenant, the tenant may enforce the contract against such purchaser. Generally, the rights and liabilities existing between the grantee and the lessee are the same as those existing between the grantor and lessee, after the lessee is given notice of transfer of the property. Covenants running with the **land** bind both grantee and lessee as against each other. If the lease is voidable, certain acts of the grantee, such as acceptance of rent, may preclude him from thereafter attacking it. So if the lease is voidable at its inception, and the lessee has paid rents and made improvements, a subsequent purchaser of the **land**, with knowledge of the facts, cannot avoid the lease. The grantee may terminate the tenancy in accordance with the terms of the lease, subject to conditions in the contract under which he purchased the **land**. After the termination or surrender of the lease, the grantee has the same rights as the grantor would have had, and holds the premises free from encumbrances of the lease."

It is holding of this Court that the sale of the property to the late Gray D. Allison did not void the terms and conditions in the lease agreement between Charles D. Sherman the seller, and M. A. Fayad, the Lessee and were binding on both the late purchaser and the appellant. Moreover, the attempt by the appellee to divest the appellant of his lease between him and the late Charles D. Sherman and the one between him and the late Gray D. Allison is legally untenable.

Mr. Justice Mitchell, speaking for the Court in the case: *Ajavon v. Bull et al.*, 14 LLR 86 (1960), said among other things, that:

"the Constitution of Liberia made it plain that not even the Legislature, which is the law making body of the Republic, has the right to enact any law impairing the obligation of contract." For reliance, see LIB. CONST., Art. 25 (1986).

It is the further holding of this Court that the act binding one of a reasonable mind, which when legally consummated, has a binding force and effect on the contracting parties. The appellee is therefore compelled to honour and perform the unexpired conditions and terms of the agreement between the appellant and the late Gray D. Allison, whom he represents or claims to succeed on the theory of intestate succession.

The Court will now traverse the second and third issues which are: whether or not the trial judge committed reversible error when he excluded the plaintiffs lease agreement from being admitted

into evidence which was testified to, received and marked by court; and whether or not plaintiff established his possessory rights of the subject property by preponderance of evidence during the trial. Recourse to the certified records transmitted to this Court reveal that plaintiff/appellant, in his complaint, has basically contended on one hand that he had entered into (2) separate lease agreements with Charles D. Sherman for two dwelling houses respectively for a period of 19 years certain. On the other hand, the defendant/appellee had contended in his answer, amongst other things, that the lease agreements between the appellant and Charles D. Sherman and the deed from Charles D. Sherman to Gray D. Allison attached to the plaintiffs complaint, were fraudulent documents, and that the certified copies of the deeds and lease agreements annexed to the plaintiffs pleadings filed were all instruments machinated and fabricated by the appellant through false representation, trick and artifices at the Bureau of Archives and the Ministry of Foreign Affairs. The defendant/appellee even gave notice in his answer that at the trial he will request the trial court for the issuance of a writ of *subpoena duce tecum* to be served on the Ministry of Foreign Affairs and the authorities of the National Archives to produce the relevant records and also to testify to these facts.

In the mind of this Court's, the issue of fraud had squarely been raised by the defendant/appellee's answer, not only against the plaintiffs pleadings filed but most seriously against the Ministry of Foreign Affairs and the authorities of the National Archives for the alleged fabrication of certified documents in plaintiff/appellant's favor in these proceedings now under review. This Court had held that "when fraud is alleged, a jury must pass upon the evidence in support of the allegation and further that fraud must be stated with particularity and proven by the production of every species of evidence which is required to be produced at the trial." For Reliance, See *Beysolow v. Coleman* , [1946] LRSC 4; 9 LLR 156 (1946); Civil Procedure Law, Rev. Code 1:9.5.2; *Multinational Gas Petrochemical Company v. Crystal Steamship Corporation S. A..*, [1978] LRSC 36; 27 LLR 198 (1978); *Monrovia Construction Corporation v. Uazami*, 23 LLR 57 (1974).

The records before us reveal that after the close of the evidence presented by the plaintiff now appellant, the defendant, now appellee, filed a motion for judgment during trial, stating among other things that appellant, failed to establish his title by preponderance of evidence and that witnesses presented by the plaintiff/appellant did not corroborate each other. Therefore, he prayed that the Court should deny and dismiss plaintiff's complaint.

This Court had held "that all documentary evidence which is material to the issue of facts raised in the pleadings and which is identified, received, marked and reconfirmed by Court should be presented to the jury." For reliance, see *Walker v. Morris*, [1963] LRSC 42; 15 LLR 424 (1963). Also on the issue of the principle or preponderance of evidence, this Court has held in *Hutchin v. Republic*, 5LLR 63, 72 (1935) that: "As to this evidence of Mr. McClain being uncorroborated as contended by the appellant, this Court says that it goes without saying that evidence in Courts are

not only judged by the number of testifying witnesses but the quality, as well as the evidence adduced at proof."

Although the case immediately cited above is a criminal case, the principles of law are the same and can be invoked in this case, especially so, when the appellee in his motion for judgment during trial contended that the plaintiff's two witnesses were insufficient because they lack preponderance. In other words, according to appellee, the appellant should have produced more than two witnesses which should have been the deciding factor. We are in disagreement with this theory relied upon by the appellee especially when appellant produced two witnesses. This Honourable Court has held that the preponderance of evidence may be established by a single witness who may testify against a greater number of witness to the contrary. Mr. Justice Horace, speaking for the Court in the case *Liberia Oil Refinery Company v. Mahmoud*, [1972] LRSC 24; 21 LLR 201, 213, 214 (1972), held that:

"An issue of fact is to be determined solely by the jury on the greater weight and sufficiency of the evidence, and such preponderance of evidence may be established by a single witness who may testify against a greater number of witnesses to the contrary."

Therefore, it is the holding of this Honourable Court that the trial court judge committed reversible error when he sustained the motion for judgment during trial and overruled the resistance of the plaintiff/appellant; that the said ruling was in direct and straight contravention to the laws herein above quoted, and the legislative intent of the Civil Procedure Law, Rev. Code 1:26.2, because it deprived the jury, which is authorized to give effect to such documents, especially in the case of ejectment, of scrutinizing and considering the documents testified to, received, marked, reconfirmed by Court and admitted into evidence.

Wherefore, and in view of the foregoing laws, facts and circumstances in this case, it is the considered opinion of this Honourable Court that the appeal is and same is hereby granted, the ruling of the trial court should be and same is hereby reversed and this case is hereby remanded for a new trial.

The Clerk of this Court is hereby ordered to send a mandate to the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, R. L., ordering the judge presiding therein to resume jurisdiction over this case and proceed to hear same consistent with this opinion. Costs are to abide final determination of the case. And it is hereby so ordered.

Judgment reversed; case remanded.

Brown v Settro [1944] LRSC 41; 8 LLR 284 (1944) (4 May 1944)

SAWEA BROWN, Appellant, v. D. T. SETTRO, Appellee.
APPEAL FROM DENIAL OF PETITION FOR EQUITY OF REDEMPTION.

Argued April 20, 1944.
Decided May 4, 1944. 1. Wherever a conveyance, assignment, or other instrument transferring an estate is originally intended between the parties as a security for money, or for any other incumbrance, whether this intention appears on the same instrument or on any other, it is always held in equity as a mortgage and therefore is redeemable upon the performance of the conditions thereof. 2. There is a difference between a mortage and a sale with a right of repurchase.

On appeal from ruling of court in equity denying equity of redemption, judgment reversed.
H. Lafayette Harmon for appellant. C. Abayomi Cassell for appellee.

MR. CHIEF JUSTICE GRIMES delivered the opinion of the Court.* Many years ago, Counsellor F. E. R. Johnson, prior to his elevation to the Bench of this Court, arguing a cause before this tribunal, began with the astounding observation that, "One could easily bow down and worship this case without violating the second commandment; for it resembles nothing in the heavens above, on the earth beneath, nor in the waters under the earth." One can hardly have reviewed the records certified to this Court in this case without a strong temptation to reiterate the above-quoted expression. In the first place the parties, having exhausted every pleading known in the law of pleadings and after having reached the sur-rebutter which is the very last pleading

· His Honor Mr. Justice Barclay, having been consulted before his elevation to the Bench of this Court, recused himself in this case.

we have even seen or heard of in any book on that science, filed one which, having no legal name, was christened "No Name Pleading No. 1." It may be remarked in passing that hardly ever in equity pleadings does one find a series of pleadings going beyond the reply. And it is undoubtedly true that in equity, as in law, when one ventures beyond the rejoinder up to even the sur-rejoinder a pleader often finds himself in quicksand, as he is very apt to commit a demurrable error such as duplicity, a plea in confession and avoidance which does not give color or,

worse still, the incurable blunder of a departure which, both in law and in equity, is so grave an error as to be punished by awarding forthwith an imperfect judgment against the party who has thus wrongly and unscientifically drawn the plea, no matter how meritorious in other respects said plea might be. The second anomaly is that the trial judge gave a final decree upon the complaint and upon the answer dismissing the case, to which decree appellant excepted and prayed an appeal to this Court. But appellant, instead of prosecuting said appeal, withdrew it and filed a reply, and both parties then recommenced pleading from the reply onwards through the entire series up to the surrebutter, and then to the unheard of pleading entitled, as aforesaid, "No Name Pleading No. 1." There are other anomalies in the procedure in this cause, but we have not been able to divine how, with all the trump cards in the hands of appellee, appellant so outmaneuvered appellee in the subsequent handling of the cause that appellant succeeded in having all the demurrers ignored and the case submitted to the trial judge on three points only. Appellant could not but have realized that had demurrers been heard and disposed of first, as the law requires, his position would have been precarious but, outgeneraling his adversary and arranging, as it were, to have the demurrers brushed aside, he seems to have felt his position more secure. He next allowed

appellee to obtain a judgment which was apparently adverse to appellant, but this again was another smart piece of generalship, as it enabled him, the said appellant, as the losing party to file a bill of exceptions and to bring up to this Court for review the only two, out of many, issues raised which appellant felt were advantageous to himself, and which, according to law, confines this Court to the review of those two issues only. The issues thus before us, as disclosed by the bill of exceptions, are as follows : T. Because on the said 15th day of June, A. D., 1942, His Honour the trial Judge aforesaid, amended or made a Ruling dismissing the proceedings in said case, and to which ruling the Petitionerappellant then and there duly excepted. 2. And also because the trial Judge in said Ruling deprives the Petitioner-appellant of his legal and equitable right to Equity of Redemption, contrary to the law governing Mortgages of Property for security of the payment of a Debt; and to which ruling the Petitioner-appellant then and there duly excepted." Coming then to the facts, the first thing that grips our attention is a most striking analogy between the case at bar and that of Saunders v. Gant, [1930] LRSC 2; 3 L.L.R. 152, heard and decided at our November term, 1930. The facts in the latter case are briefly as follows : Irene A. Gant, appellee, desired to make a trip to the United States of America and, with that object in view, borrowed from Jane Saunders, appellant, £140.0.0 or $672.00 to be repaid within one calendar year. Appellee gave as collateral security for said loan a warranty deed, conveying to the appellant the appellee's fee simple title to lot Number 15o situated in Monrovia. The parties simultaneously executed an indenture by the terms of which the said Jane Saunders covenanted, upon repayment of the loan plus interest within the period agreed to, viz.:

"

one year, to reconvey in fee said premises to the grantor, the said Irene A. Gant. In the case at
bar, according to the sworn pleadings in the records certified to us, Sawea Brown, appellant, was urgently in need of eighty pounds
sterling which D. T. Settro, appellee, agreed to lend him on condition that: (I) The loan be repaid within four calendar months,
viz.: on or before May 4, 1941, with a flat rate, albeit usurious, of interest of twelve pounds, making a total of ninety-two pounds;
and that (2) In consideration thereof appellant execute a deed poll conveying in fee to appellee appellant's farm land on Bushrod
Island, which is five acres, with a house thereon, which land and house appellant himself valued at $ioo8.00 and which valuation
appellee contested ; and as further security a half lot in Monrovia, the value of which is not given in the record. Simultaneously,
as in the case of Saunders v. Gant, supra, the two parties executed an indenture by which Settro, the appellee, covenanted to reconvey
the premises in fee to appellant in the event that within the said period of four months, the life of the loan, appellant should
have repaid to appellee the loan of eighty pounds plus the interest of twelve pounds totalling ninety-two pounds sterling. Up to
this point the analogy in the two cases seems to be complete. In the case of Saunders v. Gant, supra, Irene A. Gant, during the life
of the agreement between her and Jane Saunders, never repaid one cent; but long before her default, through sundry friends in Liberia,
begged for an extension of time because of her absence in America, offering an increased amount of interest and other considerations
if Jane Saunders would consent to a reformation of the terms of the indenture. But Jane Saunders refused every approach made by sundry
persons as aforesaid in behalf of her debtor to modify and reform the contract, preferring to ignore the terms of the indenture and
to confine herself to holding tenaciously to the terms

of the deed poll which, as she believed, created
in her an indefeasible estate in fee in said premises. The negotiations for the reformation of the indenture were drawn out until
the date for the repayment of the loan had passed, when Jane Saunders, appellant, without bringing a suit to bar the appellee's equity
of redemption, immediately took over the premises by virtue of her deed poll and performed acts of dominion over said premises as
though the right of equity of redemption inhering in the borrower by virtue of the indenture executed concurrently with the deed
poll had been barred in a suit of foreclosure by the decree of a court of competent jurisdiction. The appellee, Irene Gant, immediately
after her return from the United States after a stay of four years, tendered to Jane Saunders, the appellant, a sum of money in acquittance
of her debt and demanded a reconveyance of her premises. Appellant refused to accept the money and refused to execute the reconveyance.

Hence arose the suit by Irene Gant to enforce her equity of redemption. The case at bar is not altogether parallel with the case just mentioned. Sawea Brown, the present appellant, paid over to Settro, the present appellee, during the life of the loan, and the appellee received and acknowledged receipt of the following installments on his debt, viz.: (1) On March 25, eight pounds; (2) On May 3, five pounds; and (3) On May 2o, sixty pounds. We note the last enumerated item was paid after the expiration of the four months, but appellee appears to have accepted this amount also. However, afterwards, when on May 31 appellant tendered to appellee his balance of nineteen pounds, appellee refused to accept same, claiming that the time for reconveyance of the property had passed. Like Jane Saunders in the former case appellee took over the premises and exercised such dominion over them as though he were the absolute owner, without having first taken the precaution of having appellee's right to equity

of redemption barred by a decree of foreclosure in a court of equity. We have given the history of these two cases in, as it were, parallel columns, showing the similarities and dissimilarities in the facts of the two cases as we proceeded, because in the final analysis, as the actual citations of law, infra, will show, the principle of equity jurisprudence involved in the two cases is the same. His Honor Chief Justice Johnson, delivering, as aforesaid, the opinion of the Court in the case of Saunders v. Gant in 193o cited as an authority for the Court's decision the following from Justice Story's admirable treatise on equity : " 'As to what constitutes a mortgage, there is no difficulty whatever in courts of equity, although there may be technical embarrassments in courts of law. The particular form or words of the conveyance are unimportant; and it may be laid down as a general rule, subject to few exceptions, that wherever a conveyance, assignment, or other instrument, transferring an estate, is originally intended between the parties as a security for money, or for any other incumbrance, whether this intention appear from the same instrument or from any other, it is always considered in equity as a mortgage, and consequently is redeemable upon the performance of the conditions or stipulations thereof.' " Id. [1930] LRSC 2; 3 L.L.R. 152, 156-57 (1930), quoting

2 Story, Equity Jurisprudence § 1018, at 197 (8th ed. 1861). The learned Chief Justice added that : "In England and in most of the states of America some time is allowed after foreclosure to allow a party to exercise the right of equity of redemption. While the maxim 'once a mortgage always a mortgage' has been modified in modern practice, still the mortgagor is allowed from three months to a year to exercise the right of equity of redemption. We are of the opinion

that

when the mortgage deed contains a power to the mortgagee to sell on default, the mortgagor must be allowed six months to exercise the right of redemption; otherwise the time should be extended to one year." Id. at 158-59. We have very carefully examined the opinion of the late Chief Justice, as aforesaid, and have studied the law he cited from Story's Equity Jurisprudence and from other authorities. We have been compelled as a result of said examination to find ourselves almost wholly in accord with the conclusions reached by the late Chief Justice at that time, which conclusions he so ably expounded. We have, therefore, decided that in endorsing his opinion we should implement same by a few authorities of more recent date culled from Ruling Case Law, a digest of cases adjudicated by the Supreme Court of the United States of America as well as by the supreme courts of sundry states of the Union. "Since it is only on principles of equity that a deed absolute on its face may be declared to be a mortgage, it is held by the weight of authority that the equitable rules as to laches and stale demands are applicable to a suit to secure such relief, this doctrine being based on the maxim that equity aids the vigilant, not the slothful, and on the consideration that evidence produced a considerable lapse of time after the execution of a deed cannot generally be complete and reliable enough to justify the court in acting. There is, of course, no fixed rule by which to determine when laches will constitute a defense, but each case, when it arises, must be determined according to its own particular circumstances. In a few jurisdictions it is ruled that no lapse of time short of that prescribed by the statute of limitations to cut off the right of redemption will bar the right of the grantor in a deed, absolute in form but given as a mortgage, to have the

true nature of the instrument declared and to redeem therefrom, the equitable doctrine of laches having no application in the eyes of these authorities. However, the statute limiting the time to redeem from mortgages generally is, of course, applicable to the right to have an absolute deed declared a mortgage and redeem therefrom. It has been held that a grantor in possession may defend his possession as against the grantee on the ground that the deed was given for security, though the debt was barred, but only on condition that he acknowledged the debt. "Since an instrument, irrespective of its form, is a mortgage if intended as security, it follows that a deed with a provision for a reconveyance or a defeasance of the estate on the performance of certain conditions, whether the provision is made in the deed itself or in an accompanying instrument, is a mortgage if intended to secure the performance of the conditions stipulated, even though it is in form a conditional sale or conveyance of some other character. In this connection it is important to note that the deed and the provision for reconveyance do not of themselves constitute a mortgage although the rule is sometimes loosely so stated. On the contrary, it is absolutely essential that at the inception of the transaction the deed be intended to operate by way of security. Since the whole doctrine of treating a conditional sale as a

mortgage is the creature of equity, it will not be applied when the parties have unreasonably slept on their rights, and its application would lead to injustice, not equity. "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 redemp-

tion 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. "Except in the rare instance in which the word 'securing' bears a meaning different from that ordinarily attached to it, where a conveyance with a stipulation for reconveyance includes a statement that the property is being conveyed for the purpose of securing a debt, the transaction must obviously be construed a mortgage. It is such even at law. In some cases, however, while it is not expressly stated that the conveyance is for the purpose of security, expressions are used which indicate that after the execution of the instrument or instruments, the relationship of debtor and creditor subsists between the grantor and grantee. Thus, words may be used which expressly state that the transaction is one of lending and borrowing; which impose on the transferor an enforceable obligation to repurchase the property; or which expressly provide that the property is to be conveyed on the transferor's satisfying a certain debt then owed by him to the transferee or thereafter to be contracted, or on the transferor's discharging a promissory note or

other written obligation given for the payment of money to the transferee. "Very frequently no expressions are used in either the deed proper or the stipulation for reconveyance which indicate either that the transaction was intended to operate as a mortgage or that the relationship of debtor and creditor existed between the parties after the conveyance. In cases of this character there is a conflict of authority as to what presumption should be indulged. According to one view, the transaction is presumed as a matter of law to be a mortgage. Under this doctrine it is obvious that parol evidence regarding the intention of the parties becomes wholly incompetent. If offered for the purpose of proving

that the transaction was a mortgage, it is supererogatory. If offered for the purpose of proving that the transaction was a conditional sale, it is inadmissible, as tending to vary the terms of a written contract. Elsewhere, however, the transaction is presumed as a matter of fact to be a mortgage, evidence being admissible to rebut that presumption. . . ." 19 Id. Mortgages §§ 3o, 34-37, at 262-63, 265-68 (1917) . And, finally, we find the following further clarification of the point, viz.: , "Regardless of the view that they may entertain as to the presumptive character of a deed with a stipulation for reconveyance, or as to the standard of proof necessary to establish the instrument or instruments to constitute a mortgage, the authorities are agreed that where the evidence leaves the state of the transaction in doubt, a court will hold a deed with a provision for reconveyance to be a mortgage rather than a conditional sale. This rule is based on the consideration that, generally speaking, the purposes of justice will

be more effectually subserved if the transaction is declared to be a mortgage than if it is held to be a conditional sale, for as lenders of money are less under the pressure of circumstances which control the perfect and free exercise of the judgment than borrowers, the effort is frequently made by them to avail themselves of the advantage of their superiority, in order to obtain inequitable advantages." Id. § 39, at 269.
"As has been heretofore stated, under the common law theory, a mortgage was treated as a conveyance of a conditional estate. The title passed to the mortgagee, reverting to the mortgagor in case of the due performance by him of his obligation, but on breach of condition becoming absolute in the mortgagee and indefeasible by any subsequent performance of the obligation. But courts of equity at an early day, looking beyond the terms of the instrument to the real character of the transaction, as one of security and not of purchase, interfered and gave to the mortgagor a right to redeem the property from the forfeiture following the breach, upon discharge of the obligation secured within a reasonable period. This right of redemption after forfeiture, generally known as an equity of redemption, is the real and beneficial estate in the land. It may be sold and conveyed in any of the ordinary modes of transfer, subject only to the lien of the mortgage, and, broadly speaking, is subject to all the incidents of real property. . . . The mortgagee has no estate in the land, and is simply a creditor holding a lien upon the mortgaged premises as security for his debt, which he must enforce by a foreclosure and sale. Where these views have been adopted, therefore, the term equity of redemption, when used to describe the estate of the mortgagor or his right after default to discharge the mortgage, is strictly speaking a misnomer. The mortgagor remains the legal owner of the land ; and until foreclosure, he has a legal

right, corresponding
to his legal right at common law to redeem before default, to discharge the mortgage." Id. § 297, at 501--o2. We are not now in a
position to express an opinion with respect to the allegation in appellant's petition that appellee forcibly entered the premises
and carried away certain property of his. We are unable to do this largely because appellee's affidavit denies that allegation and
no evidence beyond the affidavits and answering affidavits of the parties has been submitted in the record now before us. It follows,
therefore, that the judgment of the court below should be reversed, that the case should be remanded to the trial court with instructions
to grant unto appellant his right of equity of redemption; that upon repayment or upon a further tender by appellant to appellee
of the nineteen pounds sterling or the ascertained balance due upon the transaction up to the time of the first tender, appellee
shall reconvey to appellant the premises hereinbefore mentioned ; and that appellee shall pay all costs of the suit; and it is so
ordered.
Reversed.

Wolo v Wolo [1944] LRSC 31; 8 LLR 453 (1944) (15 December 1944)

JUAH WEEKS-WOLO, Appellant, v. MARY ELIZABETH WOLO, Executrix of the Will of the Late P. GBE WOLO, Appellee.
APPEAL FROM CIRCUIT
COURT OF THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued November 20-23, 27, 1944. Decided December 15, 1944. 1. No single Justice of the Supreme Court can legally issue any restraining writ to adversely affect any decision of the Court en bane. 2. According
to the laws of Liberia following the principles established by the common law, one spouse cannot contract immediately with the other
because of the unity of person in the marital relation and hence, as a general rule, unless the conveyance is made through a third
party the deed is null and void ab

In a prior proceeding brought to obtain alimony from her husband, whose privy in representation
the present appellee is, appellant was barred in the lower court by a legislative divorce granted her husband. On appeal to this
Court, judgment was reversed and the divorce declared null and void. Wolo v. Wolo, 5 L.L.R. 422 (1937). Appellant then brought this petition for cancellation of deeds for land she had given her husband. On appeal from decision
for appellee, judgment reversed.
Charles B. Reeves mon and A. B. Ricks

for appellant. for appellee.

H. Lafayette Har-

MR. CHIEF
JUSTICE GRIMES

delivered the opinion of

the Court. P. Gbe Wolo, whose privy in representation the present appellee is, had the
rare good fortune of completing his scholastic training in Harvard University in Massachusetts in the United States of America. On
his return to Liberia, to the great surprise of all his

friends, well-wishers, and particularly of the
educated and cultured people of the country, he espoused and married Juah Weeks, now Juah Weeks-Wolo, an unlettered woman of no social
status. Everyone wondered why a man who had been trained in one of the best universities of the world, and with such brilliant prospects
before him, should have consciously and deliberately entered into a union so patently disparaging to him. Any suggestion that the
marriage was based upon both spouses being of the Kru tribe was indignantly denied, and persons maintaining that view were advised
to search deeper into the facts if they desired to know what really led to this most extraordinary marriage. Some clue as to the
motive which induced Mr. Wolo to take the above-mentioned step appears in the second paragraph of the brief of appellant filed here
at this term in this case. It avers that : "The petitioner, Juah Weeks Wolo, is a native of the Kroo tribe; that, although unlettered
she was a woman possessed of a great deal of thrift in her early days, and thereby acquired considerable means together with real
property." Said brief thereafter suggests that said Wolo had his eyes fixed upon controlling, if not acquiring, most, if not all,
of her property, specifically her real estate. Quoting again from the said brief, the marriage contracted was solemnized on February
io, 1925, the couple for some time lived and cohabited together as husband and wife in great happiness, and it was some time thereafter
before the events hereinafter to be recorded occurred. Before proceeding further it is useful to observe that no witnesses were brought
to the stand during the trial of this cause in the trial court, but that inasmuch as the case was tried in equity the pleadings were
all verified ; and as the rules in equity prescribe and recognize such mutual pleadings so sworn to as evidence in equity, and

as they have always been so regarded in this jurisdiction, we shall now proceed to deal with the points

therein submitted under oath as evidence in this case. Zogai and Gijey v. Gemayel Bros., [1938] LRSC 10; 6 L.L.R. 238, 241 (1938) According to the general principles of equity jurisprudence above adverted to and the specific endorsement thereof given
in the case cited, we shall now proceed to cull the facts of this case from the verified pleadings certified to this Court from the
court below, as this case in one or more forms has been before us more than once before. The happy state of peace and concord in
which the two Wolos had lived as mentioned above was interrupted when in 1932, according to the records on file here in the case
of alimony between them decided by this Court on February 12, 1937, appellant accused her husband of having cohabited with and impregnated
three girls she was rearing, whereupon Wolo with the three girls left the home and established a separate abode for himself and the
three girls. Wolo v. Wolo, 5 L.L.R. 422. Appellant, however, continued to entertain the hope that her husband in course of time would repent and return to their home and
his marital relations with her when, to her great surprise and without any notice whatever to her, the Legislature granted him a
"legislative" divorce on February 14, 1936. Appellant thereupon promptly applied to the judicial branch of Government for relief
and, by unanimous decision of this Court, the divorce was declared null and void. We call your attention to the decision of this
Court in said case, supra, and to the pleadings in this case, particularly counts eight (c) and thirteen of the answer, counts one
and two of the reply, and count nine of the rejoinder. Juah Weeks-Wolo, the present appellant, then at last became convinced that
all hope of a resumption of the marital relationship existing between herself and her husband was gone, that his affections for her
were completely alienated, and that the four tracts of land which she had

conveyed to him for good consideration,
namely that of love and esteem, should no longer be his as the consideration on which the grant was made no longer existed. Consequently
she demanded that her property be returned to her. Her letter demanding the return of her property and his answer are now, for the
purpose of clarity, reproduced verbatim as follows :
"8th May 1 937.

"MR. P. G. WOLO, MONROVIA. "SIR: "We are directed by our client,
Mrs. Juah WeeksWolo, to say to you that she desires a re-transfer of all her real estate which you, sometime ago, persuaded her through
fair promises and assurances, that said requirement was being made by you as a means of securing her interest only, to execute transfer
deeds to you for said property, which was owing to her physical condition at the time and her affections for you as a wife yielded
to. "We are further instructed to say that Mrs. Wolo, our client, feels that your only objective was to dispossess her at the time
of her said property, as she observed that from the time she yielded to your persuasions, promises and assurances and executed the
relevant deeds you no longer manifested interest in her as a husband, and the estrangement culminated into your finally seeking a

severance of the marital relations between yourselves. However, we are desirous of refraining from making comment on this point and feel confident that there will be no hesitance on your part in settling this matter between our said client, amicably, by re-transferring to her, all of said property which she is through us, demanding. "We will appreciate a prompt response on your part to this request and thereby obviate any unpleasantness

which may likely result from a refusal to comply therewith. "With best wishes, "Yours faithfully, [Sgd.] C. B. REEVES S. DAVID COLEMAN

Counsellors-at-law."
This is his reply: "MONROVIA, June 5,1937.
"GENTLEMEN :

"Answering your letter of the 8th ultimo, on behalf of your client Mrs. Juah Weeks Wolo, so called, I am directed by Counsellor P. G. Wolo, to say to you, for your client, that whenever he feels the time arises for him to say anything in the premises he will do so, but at present, he sees no reason. "Yours respectfully, [Sgd.] A. KAMANDA. "Postscript. "Your letter under review, supposed to have been written on the 8th of May, 1937, only reached us this morn-

ing, June 5, at 9:3o a.m." After this effort on the part of Mrs. Wolo had proved abortive she filed this action of cancellation in the Circuit Court of the First Judicial Circuit. The first point raised by Wolo in the cancellation proceedings was that because of the legislative divorce granted him, which has been adverted to elsewhere in this opinion, appellant had no further right to be styled Juah WeeksWolo, but should be styled Juah Weeks. His Honor Judge Summerville did not sustain the application of Mr. Wolo, whereupon he applied to His Honor Mr. Justice Tubman, then the Justice presiding in our Chambers, for a writ of prohibition. After a hearing duly had on November 8, 1o, and 14, Mr. Justice Tubman thereafter on December II, 1939 handed down an exhaustive opinion

denying the said application and laying emphasis upon

the point that the decision of the Supreme Court annulling the legislative divorce remained unrecalled by this Court en
bane, and that as a single Justice presiding in Chambers he could not issue a restraining writ to adversely affect said decision.
The name Juah Weeks-Wolo, therefore, continued to be the appellation by which she was to be called. The cancellation suit then proceeding,
Mrs. Wolo alleged in essence that the deeds granted by her to her husband were not based upon any valid consideration, such as that
of two hundred dollars therein rehearsed, but rather upon the good consideration of love and affection ; and that when said consideration ceased to exist the deeds should have no validity. Moreover appellant contended that they were obtained by fraud under the pretence
that Wolo intended the marriage to continue for the life of the spouses. Wolo answered in effect that she was precluded by the rehearsals
in the deed and estopped from contending that no monetary consideration was paid. Several issues grew out of the one above stated
in the allegation of the petitioner and the denial of the respondent.
However, inasmuch as that is the main point to be decided,
we have herein ignored all the others, and will address our attention to that one submission which appears necessary to settle this
controversy. According to the laws of Liberia following the principles established by the common law, one spouse cannot contract
immediately with the other because of the unity of person in the marital relation. Hence, as a general rule unless the conveyance
is made through a third party, the deed is null and void ab initio. 3o Corpus Juris, Husband and Wife §§ 263-64, at 686 (1923) .
The following observation by Lord Coke appears in Lehr v. Beaver 8 Watts & Sergeant's (Pa.) 102, 42 Am. Dec. 271 (844) , and is quoted with approval in Ruling Case Law: "This opinion is clear; for by no conveyance, at the common law, a man could,
during coverture, either in possession, reversion or remainder, limit an estate to

his wife." 13 Id.
Husband and Wife § 422, at 1375 (1916). True as is this principle generally, it is even more fully adhered to in the grant of land
from a wife to a husband, because the husband as head of the family and the dominant partner in the marriage has liabilities that
do not fall upon the wife, and this fact has given him greater powers of coercion. Hence under conveyances by a wife to her husband
generally, we find the following in Ruling Case
Law:

"At common law a deed by a wife to her husband was void at law to the same extent as a deed by a husband to his wife ; irrespective of the disabilities of a married woman to contract the unity of person rendered
the deed void at law. A wife could, however, convey her real estate to her husband through the intervention of a third person or

trustee; and courts of equity have given effect, when free from any imputation of fraud and when based on a good consideration, to conveyances by a wife of her separate property directly to her husband. If, however, the conveyance is without consideration it will not be sustained in equity, and, in many jurisdictions the courts have refused to give effect to conveyances by a wife directly to her husband, though made for a valuable consideration. It has been held in a recent case that a deed by a wife to his [sic] husband was utterly void ; this was held true where a husband conveyed directly to the wife, which under the doctrine prevailing in the state carried only the equitable, and she attempted to reconvey directly to the husband; her deed was held not to convey her equitable title. Where the instrument conveying real estate for the benefit of a married woman contains a general power to convey or appoint, it is well established in equity that she may bestow the estate on her husband by appointment or otherwise in pursuance of the power, but because of the confidence

 arising out of the marriage relation the courts jealously scrutinize transactions whereby a husband secures for himself the property of his wife." 13 R.C.L. Husband and Wife § 426, at 1378-79 (1916) . Under the provisions of law above cited the deeds filed during the pleadings, certified copies of which were sent forward to this Court in this record, viz.: lots Number 200, 212, 559 and 533 [ED. NOTE: Contemporaneous evidence indicates lot Number 533 may be lot Number 353.] situated in the city of Monrovia were void ab initio, and should be delivered up and cancelled. Furthermore, Counsellor Reeves, counsel for appellant, presented the following submission which he had culled from the pleadings, especially those of Mr. Wolo. According to the fifteenth plea in the answer of respondent, now appellee, appellant was taken seriously ill during the month of December, 1928. As no date is given in the record, counsel for appellant asks us to assume that the illness began on December 7 as the last day in the first week of December of said year. Count sixteen avers that two weeks thereafter he was sent for and came to the bedside of his unconscious wife and, assuming as above that the illness began on December 7, he arrived at the bedside of his unconscious wife on December 21, 1928. For twenty-one days, the fifteenth plea in the sworn answer of appellee continues, she continued to remain unconscious while he, the said Wolo, remained in a pajama suit and slippers at the bedside of his unconscious wife nursing her back to health and keeping off all intruders, especially her near relatives. This period of twenty-one days ended on January 11, 1929. But the doctor, Mr. Wolo continues in his verified pleadings, ordered him to nurse her another fourteen days, and especially to keep out her near relatives. That period continued until January 25, 1929. How then, continued Mr. Reeves, could she, having been so seriously ill, have executed the deeds for two hundred dollars each in that condition, three of which as per their

own date and as per recitals
in other parts of the record, were executed on January 16, 1929, and the fourth on January 24 of the same year, the last named having
been executed according to the recitals therein contained but one day before the doctor permitted him to relax his vigilance at the
beside of his seriously ill wife? Nor did Mr. Reeves neglect to stress this important point, that although Mr. Wolo claimed that
she was estopped to deny the rehearsals in the deed that he had paid two hundred dollars for each lot, nowhere in his answer or rejoinder
does Mr. Wolo aver that he ever made any such payment. The facts which Mr. Wolo himself placed upon record under oath against himself
are sufficient to dispense with those others recorded in this record, also under oath, by his wife. The only logical conclusions
which we feel able to draw from the facts are : ( ) That the deeds executed by Mrs. Wolo were issued contrary to the laws of the
land ; (2) That they were without any valid consideration; (3) That they fitted in with Wolo's scheme to secure her real estate and
then abandon her, as the letter she had written to her husband on the eve of commencing suit avers; and (4) That said deeds should
be delivered up, declared null and void, and cancelled; and that Mary Elizabeth Wolo, privy in representation of the said deceased
Wolo and substituted appellee, should be ruled to pay all costs ; and it is hereby so ordered.
Reversed.

Konneh et al v Marshall [2001] LRSC 28; 40 LLR 688 (2001) (21 December 2001)

SHEIK KAFUMBA KONNEH, agent of MOHAMMED SYLLA, First Appellant, K & K TRADING COMPANY, represented by its Manager, CHAWKI H. KADOUH and other Authorized Officials, Second Appellant, and JOHN MARSHALL, sole surviving heir of the late JOHN W. MARSHALL, Third Appellant, v. THE INTESTATE ESTATE OF THE LATE JOHN MARSHALL, represented by its Administratrix, CECELIA MAYSON, Appellee.

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

Heard: November 21, 2001. Decided: December 21, 2001.

1. Ejectment is a legal action by which a person wrongfully ejected from property seeks to recover possession and damages.

2. The essential allegations in an action of ejectment are: (1) that the plaintiff has title to the **land**; (2) that the plaintiff has been wrongfully dispossessed or ousted; and (3) that the plaintiff has suffered damages.

3. The act of submitting fraudulent documents to a court as a basis for obtaining a favorable judgment is unprofessional, unethical, and a violation of a lawyer's duty of truth, honesty, and integrity.

4. The question of the authority to administer an intestate estate is not determinable by an action of ejectment in the circuit court, but rather in probate proceedings in a probate court or the probate division of a circuit court.

5. The probate court or a circuit court, sitting in its probate division, has the power to exercise full and complete general jurisdiction in law and equity to administer justice in all matters relating to the affairs of decedents and over whose affairs the court has jurisdiction.

6. The probate court has jurisdiction in its territorial locale over the granting of letters testamentary and administration, the sale and distribution of the real property of deceased persons, general supervision and direction of the estates of deceased persons and of minors, mentally disabled persons, and persons judicially declared as incompetents, and of all affairs connected with them.

7. An action of ejectment is incorrectly brought in the Civil Law Court for the Sixth Judicial Circuit, to determine, not title to real property, but the authority to administer intestate estate and thereby convey leasehold rights.

An action of ejectment was commenced in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, by the Intestate Estate of the late John W. Marshall, appellee, against the appellants, Sheik Kafumba Konneh, purporting to be sub-lessor of property claimed by the Intestate Estate, K & K Trading Company, lessee of the said property, and John A. Marshall, Jr., lessor, who claimed ownership of the said property by virtue of inheritance as the grandchild of the deceased. The appellee asserted that it had title to the **land**, that it had been wrongfully dispossessed of it, and that as a result it had suffered damages. It sought to eject the appellants as well as recover damages.

The appellants alleged that the claimed administratrix of the estate had secured letters of administration fraudulently and clandestinely and was not entitled to such letters of administration, that she had the said letters under the misrepresentation that it was to protect John A. Marshall, Jr. interest as he was a minor, and that John A. Marshall, Jr., as the surviving heir of John W. Marshall, was legally clothed with the legal authority to administer the estate as he had legally obtained letters of administration.

Following a trial, the jury returned a verdict of liable against the appellant, which was confirmed in a judgment by the trial court. On appeal, the Supreme Court reversed the judgment of the trial court, holding that while the letters of administration made proffer of by the appellants was fraudulent, an action of ejectment, commenced in the Civil Law Court for the Sixth Judicial Circuit, was not the proper action to bring in a matter concerning the issuance of letters of administration to administer an estate. Such matter, the Court said, was cognizable before the Monthly and Probate court or the probate division of a circuit court. The Court therefore remanded the case to the Monthly and Probate Court for Montserrado County for trial in probate.

H. Varney G. Sherman and Momodu T. W. Jawandoh, II, of Sherman and Sherman, Inc. appeared for the appellants. Stephen B. Dunbar, Jr. of Dunbar and Dunbar Law Offices appeared for the appellee.

MADAM CHIEF JUSTICE SCOTT delivered the opinion of the Court.

The records in this case revealed that J. W. Marshall, who died intestate in the mid sixties, seized of both real and personal properties, was survived by his widow, Annette, who had no children of her body. There is a controversy as to the number of children J. W. Marshall had out of his body during his lifetime. The appellants contended, on the one hand, that J. W. Marshall had one child, John Marshall, who predeceased his father in 1991, leaving one minor child, John Marshall, Jr. The appellee, on the other hand, contended that the decedent, during his lifetime, had four sons out of his body, namely, Robert, Majesus, and D. P. Marshall, all of one mother, and John Marshall, who was of another mother.

After the passing of the decedent, his widow, Annette Marshall, entered into a lease agreement with Amer H. Eid. for the lease of lot no. 72, located at Halfway Farm, at the corner of Newport Street and U.N. Drive in Monrovia, for a period of twenty years, commencing from March 31, 1968, up to and including March 31, 1988. The lease agreement was amended when Mrs. Annette Marshall, the widow, and Cecilia Mayson, entered into an amendatory lease agreement with Amer Eid, with the terms and conditions being identical to the original lease, except that the rentals were increased and an optional period of ten years was granted to the lessee.

Subsequently, the lessee, Amer Eid, assigned the leasehold to Mohammed Sylla, who in turn appointed Sheik Kafumba Konneh as his attorney-in-fact. After the expiration of the lease agreement, Co-appellant Sheik Kafumba Konneh, agent of Mohammed Sylla, continued to occupy the said demised premises. Upon request and demand of the appellee, counsel for the 1st and 2nd appellants informed appellee that they were occupying the premises upon a lease agreement entered into between the 1st appellant and John A. Marshall, Jr., and a sublease

agreement subsequently entered into between the 1st appellant and the 2nd appellant for the lease of the said premises. Whereupon, the appellee instituted an action of ejectment against the appellants in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County. A trial was had and a jury verdict of liable was brought against the appellants. The trial court thereafter affirmed the verdict in its final judgment. The appellants excepted to the said verdict and judgment and announced an appeal there from to the Honorable Supreme Court.

In fulfillment of the requirements of the appeal statute, the appellants duly filed a bill of exceptions which basically raised two issues. We regard these issues to be determinative of the instant controversy. The issues are:

(1) Whether or not Cecelia Mayson, the alleged administra-trix of the appellee intestate estate failed to prove and/or establish legal title and ownership to the intestate estate of the late J. W. Marshall? and,

(2) Whether or not the judge committed reversible error when he ruled that legitimization documents evidencing the legitimization of John Marshall, Sr., which were testified to as being fraudulent, were inadmissible by the judge?

Based upon the foregoing issues, this Court must ultimately decide whether or not an action of ejectment will lie? The determination of the controversy dictates that we apply the facts to the applicable law.

"Ejectment" is defined as "...a legal action by which a person wrongfully ejected from property seeks to recover possession and damages. The essential allegations in an action for ejectment are:

(1) The plaintiff has title to the **land**; (2) the plaintiff has been wrongfully dispossessed or ousted; and (3) the plaintiff has suffered damages ...." See BLACK'S LAW DICTIONARY 534 (7th ed).

A close scrutiny of the complaint in this action revealed the following allegations:

"Count (8) That a meeting between the parties herein and their counsel was held in the office of plaintiff's counsel, and that during the said meeting the plaintiff was informed through its counsel that the property, subject of these proceedings, is leased by John A. Marshall, Jr. to Sheik Kafumba Konneh, who in turn had subleased the same to Chawki H. Kadouh and/or K.& K. Trading Company by and thru its manager, Chawki H. Kadouh, each of whom is made a party co-defendant herein.

Count (9) Plaintiff says further that the said John A. Marshall, Jr. had no authority to lease the property, subject of these proceedings. Hence, any lease agreement or sublease agreement executed by him is void ab initio".

The co-defendants, appellants herein, filed an answer setting forth the following contentions:

Count (4) 3rd defendant further says that as sole lineal heir to the late J. W. Marshall, he holds legal rights to his estate above any collateral heirs by virtue of the Decedents Estates Law of Liberia.

Count (5) 2nd defendant, K & K Trading Company, says that it is in no way illegally withholding the property, subject of these proceedings, for reason that the said 2nd defendant, K & K Trading Company, leased the said property from the 1st defendant, Sheik Kafumba Konneh, whose lease agreement was executed by and between him and the said 3rd defendant, in the person of John A. Marshall, Jr., lineal heir of the late J. W. Marshall, Sr. Therefore, the leasehold rights of the 2nd defendant, K & K Trading Company, cannot be considered illegal but rather considered genuine and proper as per the Decedents Estates Law of Liberia.

Count (8) Defendants say that as to the entire com-plaint of plaintiff, same should be denied and dismissed for being false and misleading, for reason that Cecelia Mayson enjoys no legal authority from the intestate estate of the late J. W. Marshall to claim administration of the intestate estate based on collateral heirs, whereas the 3rd defendant is administering and given credence above collate-ral heirs, as supported by the New Decedents Estates Law of Liberia.

Count (9) That as to count one (1) of plaintiff's complaint, defendants say that the letters of administration obtained by Cecelia Mayson on December 8, 1995 were secured fraudulently and are not supported by the New Decedents Estates Law of Liberia to administer the decedent intestate estate, as it was within her certain knowledge that there existed a lineal heir to the said estate, John A. Marshall, Jr., who had already obtained letters of administration to administer the said estate. Hence, the said count and the entire action should be denied and dismissed.

Count (10) Further, as to count one (1) of plaintiffs complaint, defendants say that Cecelia Mayson could not and can never be legally clothed with authority to administer the intestate estate of J. W. Marshall without the consent of the 3rd defendant, John A. Marshall, Jr., the only surviving lineal heir of the late J. W. Marshall, Sr., and that the purported letters of administration and administratrix's oath relied upon by Plaintiff Cecelia Mayson to administer the intestate estate of the late J. W. Marshall, were acquired under clandestine means and therefore were acquired in bad faith with the sole intent to deprive the 3rd defendant, John A. Marshall of his legitimate inheritance. For this reason defendants, especially the 3rd defendant, pray this Honorable Court to deny and dismiss plaintiff's complaint.

Count (14) That as to count five (5) of the plaintiff's complaint, defendants say the that same should be dismissed for reason that upon the death of the late J. W. Marshall, Sr., he was survived by his widow, Annette J. Marshall, and the 3rd defendant, John A. Marshall, Joseph W. Bailey had prayed for and were issued letters of administration to administer the said intestate estate of the late J. W. Marshall, Sr. After the issuance of the said instrument, they connived to close the estate fraudulently to the detriment of the 3rtd defendant, John H. Marshall, Jr., who was still a minor. This is how Cecelia Mayson came into the picture of the J. W. Marshall

Intestate Estate. According to Cecelia Mayson, she became overwhelmed with the attitude of Annette Marshall and Joseph W. Bailey, and in her quest to protect and defend the interest of the minor child, John A. Marshall, Jr., she protested that the widow was entitled to only one-third (1/3) of her deceased husband's real property as her dower's right for life. She further stated that she, the said Cecelia Mayson. could not allow the late Annette J. Marshall, who did not have an issue of her body for her late husband, J. W. Marshall, Sr., to transfer title of the said estate, thereby depriving the only legitimate heir, John A. Marshall, Jr., from benefitting from his inheritance. For the same Cecelia Mayson to now speak of 'collateral heirs' without mentioning the interest of the 3rd defendant, John A. Marshall, Jr., at this time, is an act to deprive the said John A. Marshall, Jr. of his inheritance.

Count (17) That as to count eight (8) of plaintiff's complaint, the 2nd defendant, K & K Trading Co., says that the same should be denied and dismissed for reason that John A. Marshall, Jr. is the legal owner of the subject property, and that he in turn had leased the same to Sheik Kafumba Konneh, and Sheik Kafumba Konneh had in turn subleased the same to the 2nd defendant, K & K Trading Company, thereby making the leasehold right of the 2nd defendant, K & K Trading Company, genuine and legal, in keeping with the laws of Liberia. Hence, the said count eight (8) should be denied and dismissed.

Count (18) That as to counts nine (9) and ten (10) of plaintiff's complaint, defendants say that the same should be denied and dismissed for reason that John A. Marshall, Jr., being the only surviving heir of the late J. W. Marshall, Sr. and having obtained genuine letters of administration to administer the said estate, is legally clothed with the authority, under the law of this juris-diction, to enter into lease with any person or persons whomsoever; and that the said lease agreements are legal and are not to be disturbed by any person or persons."

We think it befitting to note that during the trial, witnesses from the Monthly and Probate Court for Montserrado County and the National Archives and Documentation Center testified that the probate court did not issue letters of administration to John Marshall Jr... and that the true and certified copy of the purported letters of administration were fraudulent. Also, in the arguments before this Court, the counsel for the appellants conceded that Co-appellant John Marshall had filed a petition for letters of administration for the intestate estate of the late J. W. Marshall but that no letters of administration had been issued to him by the Monthly and Probate Court for Montserrado County. This Court finds it appalling and dishonorable that a lawyer and counsellor of the Honourable Supreme Court would file pleadings and thereto attach fraudulent documents. We believe a lawyer is under a duty of truth, integrity and honesty to the court and to his client. The act of submitting fraudulent documents to a court as a basis for obtaining a favorable judgment is unprofessional, unethical, and a violation of a lawyer's duty of truth, honesty and integrity. This Court therefore finds the Jones and Jones Law Firm guilty of unethical behavior for submitting fraudu-lent documents to the court and orders that said law firm pays a fine of Five Thousand Liberian dollars (L$5,000.00) into the government treasury and exhibit a receipt to the Marshal of this Court within 72 hours, as of the rendition of this Opinion. Should there be a failure to comply with this order, the Marshal is ordered to place the proprietor(s) of said law firm in the common jail until the said fine is paid.

Now back to the issue of whether an action of ejectment will lie under the given facts and circumstances of this case and the governing law.

The appellee's basic complaint is that Co-appellant John A. Marshall, Jr. did not have any authority from the Monthly and Probate Court for Montserrado County to administer the intestate estate of the late J. W. Marshall, and that therefore the lease agreement signed by John Marshall, Jr. is void ab initio. Hence, the co-appellants were illegally occupying the said premises. The appellants, on the other hand, contended that John A. Marshall, Jr. is the lineal heir of J. W. Marshall, and therefore has the right to enter into a lease agreement for the intestate estate of his grandfather, J. W. Marshall. Hence, they say, the lease agreement is legal and their occupancy of the premises is legal.

Both parties agreed that the premises in controversy are part and parcel of the intestate estate of J. W. Marshall. The only point of disagreement is whether the appellee, who was appointed to administer the said intestate estate, should have the authority to administer the said intestate estate, instead of Co-appellant John Marshall, Jr., who was not appointed by the Monthly and Probate Court to administer the said estate, but claims to be the only lineal heir?

The question which we must first address is, can the issue of authority to administer the intestate estate be determined by an action of ejectment in a circuit court? Clearly, the answer is no. The appropriate and legal jurisdiction to determine who shall administer an intestate estate is in probate proceedings in a probate court or in the probate division of a circuit court. The Decedents Estates Law, at chapter 102, section 102.1, under jurisdiction and powers, provides that the court, meaning the probate court or a circuit court sitting in its probate division "...shall exercise full and complete general jurisdiction in law and in equity to administer justice in all matters relating to the affairs of decedents and others over whose affairs the court has jurisdiction." Decedents Estates Law, Rev. Code 8:102.1.

Also, the New Judiciary Law, Rev. Code 17, provides at section 5.2, under the caption Original Jurisdiction (exclusive) of the Monthly and Probate Court, the Provisional Courts and the probate divisions of the Circuit Court, that "The Monthly and Probate Court for Montserrado County, the Provisional Monthly and Probate Courts, and the probate divisions of the circuit courts, shall have exclusive original jurisdiction of the following matters arising within their respective territorial jurisdictions.

(b) to grant letters testamentary and of administration;

(e) to order the sale and distribution of the real property of deceased persons;

(g) to have general supervision and direction of the estates of deceased persons and of minors, mentally disabled persons, and persons judicially declared as incompetents, and of all affairs connected with them. Judiciary Law, Rev. Code 5.2(b), (e) and (g).

Therefore, it is the opinion of this Court that the action of ejectment was incorrectly brought in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, to determine, not title to real property, but the authority to administer intestate estate and thereby convey leasehold rights. The proper jurisdiction to determine who has the legal authority to administer intestate estates is the monthly and probate court.

Wherefore, and in view of the foregoing, it is hereby ordered that the final judgment of the trial court in this cause of action is reversed and the case remanded to the Monthly and Probate Court for Montserrado County for trial in probate. The Clerk of this Court is hereby ordered to send a mandate to the court below ordering the judge therein to give effect to this judgment. Costs are ruled against the appellee. And it is hereby so ordered.

Judgment reversed.

Cooper v Scott [1954] LRSC 14; 12 LLR 15 (1954) (28 May 1954)

CHARLES E. COOPER, Appellant, v. FLORENCE COOPER-SCOTT, Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued March 8, 1954. Decided May 28, 1954. Iii ejectment the plaintiff must allege and prove his title to the property
in question, and cannot rely upon the weakness of defendant's claim to title.

On appeal from judgment of the court below in ejectment
proceedings, judgment reversed and case remanded with instructions that the parties replead.
R. F. D. Smallwood for appellant. and
T. Gyibli Collins for appellee. D. C. Caranda

MR. JUSTICE Court.

SHANNON

delivered the opinion of the

This is the second time
that this case has been before us, for we remanded it during the March, 1950, term. Cooper v. Cooper-Scott, i 1 L.L.R. 7 (1951). We find no alternative but to remand it again. About a century ago, one Hilary Teague became an insolvent debtor, and one
Dixon B. Brown was appointed trustee of his estate for the creditors. The said trustee sold to Edward J. Roye a parcel of land located
on the waterfront in Monrovia, which land is the bone of contention in these proceedings. Edward J. Roye died intestate. His surviving
heirs were Victor L. Roye, Lionel E. A. Roye, and Matilda Roye McGill. They became tenants in common of the estate of their late

father; but there is no evidence that the said estate was ever administered, distributed, or apportioned. In 1888, Victor L. Roye, one of the heirs, and his wife,

Affiah E. Roye, quitclaimed their "right, title, interest and estate" in and to Lot Number 325, Monrovia, which lot is the subject of the present controversy, to Lionel E. A. Roye, another heir. Thereafter one N. E. Carter also quitclaimed right, title and interest in and to said Lot Number 325 to the same Lionel E. A. Roye, without any record of the nature of such relationship, right, title, or interest. On January 2, 1893, after Lionel E. A. Roye had died intestate, Victor L. Roye became the administrator and, "in pursuance of a sale had at public auction in conformity with court's decree," sold the identical property, Lot Number 325 at the waterfront in Monrovia, to Thomas A. Mitchell, Sr., of the settlement of Millsburg, Montserrado County, for one thousand and ninety dollars, "being the highest bidder." On the same day, January 2, 1893, Thomas A. Mitchell, Sr., who had bought the lot at public auction, sold it back to Victor L. Roye for ten thousand and ninety dollars. Victor L. Roye executed a will whereby he appointed his brother, Robert, Smith, and his uncle, Richard H. Mitchell, Sr., legatees, entitling the former to one-tenth, and the latter to nine-tenths of his estate with the following provisos : (1) "Should my uncle survive my brother and he, my brother, has no heirs, his portion of property shall go to my uncle and his heirs . . . ."; and (2) "I will, that should my brother survive my uncle, my uncle's portion of property shall go to my uncle's heirs." It is interesting that, although Edward J. Roye died intestate, and although his estate apparently has not been apportioned among his heirs, a fact which is shown by the pertinent quitclaim deeds mentioned, supra, nevertheless, Victor L. Roye, in assuming the administration of his brother Lionel's estate, accepted the whole of Lot Number 325 as his brother's absolutely, and sold it to Thomas H. Mitchell who, in turn, resold it the self-same day to the said Victor L. Roye without regard to the interest of

Matilda Roye McGill, who, as one of the heirs of the late Edward J. Roye, had not in any way alienated her share of the estate. Thomas H. Mitchell, perhaps upon the strength of the devise made to him under the will of Victor L. Roye, but without any showing that the said estate had been apportioned between him and Robert Smith according to the terms of the will, so as to give him his nine-tenths share, entered into leases with firms on the waterfront in Monrovia, including a lease dated June 7, 1927, to Paterson Zochonis & Co., Ltd. In 1932 Robert F. Smith, T. Samuel A. Mitchell, and Tyler H. G. Mitchell, and in 1933 Tony Mitchell, sold the land in question to Charles E. Cooper, the original defendant in this case, in separate parcels, without showing that the property had ever been distributed or apportioned,

or even under what color of right they sold it. In this manner the defendant herein came into possession of the said property. The present plaintiff on the other hand, is claiming under Clause "4" of the will of the late James B. R. McGill, a maternal grandson of Edward J. Roye, which will has been admitted to probate and provides, inter alia, as follows : "I will and devise to Florence Cooper, daughter of John W. Cooper and S. A. Cooper, all of my right, share and interest in the estate of the late Honorable E. J. Roye, my late lamented grandfather."

The line of descent of James B. R. McGill from the late Edward J. Roye is not contested. But the defendant contends that, since James B. R. McGill is not a direct descendant, it was incumbent upon him to show that the devisees intervening between him and Edward J. Roye did not alienate his right and interest--a line of argument which might have had some force if the defendant had alleged that such alienation was effected by the mother of the said James B. R. McGill. But this was not alleged, since Count "3" of the defendant's answer is worded as follows :

"And also because, according to Clause "4" of the will of the late James Boyer McGill, a copy of which is annexed hereto there is nothing therein contained which gives evidence that the property which the plaintiff seeks to recover formed any part of his estate at the time of his death; nor does said will refer specifically to said property as being devised, since indeed the said testator had ancestors who were heirs to the estate of the late E. J. Roye before his time who could have easily disposed of said property before their death, and from the grandfather direct under the law of inheritance."

There is no showing of the means whereby plaintiff ascertained the extent of the interest of James B. R. McGill in the estate of E. J. Roye, or of how the executor was able to determine said interest in the execution of an executor's deed, since the said will does not show it, and no record has been adduced to show any distribution or apportionment thereof. With all these intricacies and complexities which the pleadings have not at all served to unravel, but rathe4- have rendered still more confusing, we deem it impossible for this Court to determine the issues presented. The law of inheritance, especially in respect to the adjustment of rightful claims, is tedious, complex, and intricate, so that the greatest care should be taken in deciding cases arising thereunder. In the case at bar, with Edward J. Roye as the common ancestor, it is necessary in the apportionment and distribution of his intestate estate to take into consideration the number of direct legal heirs and from that point determine the "stirpes." In this case, Matilda Roye McGill would be one ; and the extent of her right, interest, and title must be determined. There is no evidence that this was ever done. Nor is there any proof that the right and interest of any of the other heirs has ever been determined, notwithstanding the several quitclaims shown in the records.

It is a fundamental principle of law in ejectment proceedings that the plaintiff must allege and prove his own title, and cannot rely upon alleged defects in the defendant's title. Bingham v. Oliver, i L.L.R. 47 (1870) ; Savage v. Dennis, i L.L.R. 51 (1871) ; Birch v. Quinn, L.L.R. 309 (1897) ; White V. Steel, 2 L.L.R. 22 (1909) ; Couwenhoven V. Beck, 2 L.L.R. 364 (192o) ; 19 C.J. 1039 Ejectment § 14; 28 C.J.S. 856 Ejectment § 1o; 18 AM. JUR. 21 Ejectment § 20. In the light of the foregoing, this Court has decided to reverse the judgment from which the instant appeal was taken, and to remand the case with instructions to the trial court to resume jurisdiction so that the parties may replead in a manner that will clearly and concisely, present the issues. Each party is to pay its own costs; the trial costs are to be born equally by the parties; and it is hereby so ordered. Reversed.

Thomas et al v Dayrell [1963] LRSC 28; 15 LLR 304 (1963) (9 May 1963)

LUCINDA THOMAS and ETHEL MOORE, by her Husband, JAMES MOORE, Sisters of JOSEPH T. DAYRELL, JR., Deceased, and ETHEL DAYRELL, a Minor Heir of said JOSEPH T. DAYRELL, JR., by her Mother, ELIZABETH WILSON, Appellants, v. ADELAIDE DAYRELL, nominated Exectrix of an Instrument offered for Probate as the Will of said JOSEPH T. DAYRELL, JR., LOUISE DAYRELL and ADELAIDE FERNICIA DAYRELL, named Legatees under said Instrument, Appellees.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued March 12, 25, 1963. Decided May 9, 1963. 1. All issues of law raised in the pleadings must be decided before trial of issues of fact. 1956 Code, tit. 6, § 620. 2. Where an instrument offered for probate as a will was executed as a result of undue influence, and the subscribing witnesses neither signed in each other's presence nor saw the testator sign the instrument, it will not be recognized as valid. 3. Undue influence invalidating a will is that which substitutes the wishes of another for those of the testator. 4. A charge to the jury by a trial judge is adequate when all the material facts have been presented to the jury, and the charge correctly explains all the relevant law. 5. A will may be revoked by a subsequent will. 6. In an action on a contested will, the instrument at issue may be admitted into evidence. 7. An instrument which is not recognized as a valid will may nevertheless effectively revoke a prior will.

On appeal from a judgment declaring an instrument to be a valid will, the judgment was reversed and the decedent's estate was declared intestate.

Josephus C. N. Howard for appellants. Caranda and T. Gyibli Collins for appellees.
304

D. C.

LIBERIAN
LAW REPORTS
MR. JUSTICE MITCHELL

305

delivered the opinion of the

Court. The records before us on appeal show that one Joseph Theodore Dayrell, Jr., executed a purported will on May 14, 1946, which instrument we quote hereunder : "I, Joseph T. Dayrell, Jr., of the City of Monrovia, Montserrado County, Republic of Liberia, being of sound mind and disposing memory, conscious of the certainty of death, do hereby make, publish and declare this to be my last will and testament, in manner and form as follows, to wit: it T. I will and direct that my executrix hereinafter nominated shall, as soon as possible immediately after my demise, defray my funeral expenses and just debts. "2. I will and bequeath to my wife, Adelaide Florence Dayrell, my dwelling house at the corner of Ashum and Johnson Streets, Monrovia, same being Lot Number 4, with all the buildings and appurtenances thereto belonging, and after her death, to my daughters Florence Adelaide, Malisa Louise and Adelaide Fernicia, together with all other children that might be by me begotten by my present wife, Florence Adelaide Dayrell, to them and their heirs forever. II 3. I bequeath one of my evening apparels to my daughter Ethel Theodocia, to her use forever, all the rest of my personal effects and furnitures, I give them to my wife Adelaide Florence and to her children forever. "4. I hereby designate, nominate and appoint my wife Adelaide Florence Dayrell, sole executrix of this, my last will and testament, and because of the implicit confidence I have in my said executrix, to faithfully and honestly discharge the duties herein required of her, it is my desire

306

LIBERIAN LAW REPORTS

and request that she be not required to give any bond, nor shall any inventory of my estate be taken ; and that the only thing which the court will have to do with this my will, is to have same probated according to law. "In witness whereof I have this r4th day of May, 1946, hereunto set my hand and signature in the presence of attesting witnesses. [Sgd.] "JOSEPH THEODORE DAYRELL, JR., Testator.

"This instrument consisting of one sheet of written matter, was signed by testator, in our presence and in each others' presence as attesting witnesses, upon his

request. [Sgd.] "ROBERT T. PHILIPS, Witness. [Sgd.] "L. Kwia JOHNSON, SR., Witness." Almost three calendar years thereafter, the same testator, in an attempt to revoke the will quoted supra, executed another will on April 29, 1949, in which he included a clause of revocation, and which was subsequently offered for probate. Then and there, Adelaide F. Dayrell, appellee in this case, appeared through her counsel in the probate court, and filed objections to the probate of the 1949 will. After pleadings were rested in the contested will case, and the records forwarded to the circuit court for a jury trial according to law, the abovequoted 1946 will, the subject of the appeal now before us, was introduced in the probate court, read and sent forward to the circuit court to form a part of the records in the case then pending before that court for adjudication. A verdict having been found in favor of the objectant in the contested will case, an appeal was prosecuted before the Supreme Court. On a final determination, the judgment of the court below, was affirmed, and the contested will was set aside, which necessarily au-

thorized the estate to be administered as an intestate one. A mandate to that effect was accordingly sent to the circuit court. Quite strangely, these orders from this Court, communicated through its mandate to the Circuit Court of the Sixth Judicial Circuit, Montserrado County, at the close of its March, 1957, term, were never executed by that court. Instead, the judge proceeded to detach the purported will of the late Joseph T. Dayrell, Jr., made in the year 1946, which was not the subject of the mandate, and had only been made a part of the records in the then contested will case; and this he ordered forwarded to the probate court for its action, in absolute disregard to the orders of this Court. Thereupon, the objectants filed the following objections : "Objectants in the above-entitled cause most respectfully object to the probation of the purported last will and testament of the late Joseph T. Dayrell, Jr., for the following legal and factual reasons : Because objectants submit that, according to the Supreme Court's decision during its March, 1957, term, the will of Joseph T. Dayrell, Jr., dated April 29, 1949, was declared void and ordered returned to the Monthly and Probate Court, Montserrado County to be disposed of in keeping with the decision of the Supreme Court. It 2. And also because objectants further submit that the mandate of the Honorable Supreme Court has not been carried out by the Circuit Court of the Sixth Judicial Circuit Montserrado County, in that the will of the late Joseph T. Dayrell, Jr., dated April 29, 1949, has not been returned to the Monthly and Probate Court by the resident judge of the circuit court who received the mandate, and who should have acted upon the same, but who, instead, sent the will of the late

Joseph T. Dayrell, Jr. dated May 14, 1946 which was never before the Supreme Court, and on which no judgment was ever rendered by said Court, to be disposed of in keeping with law, quite contrary to the decision of the Supreme Court of Liberia and its mandates. " 3. And also because objectants submit that the resident judge of the circuit court had no instruction from the Supreme Court of Liberia to transmit to the Monthly and Probate Court of Montserrado County, the uncontested will of the late Joseph T. Dayrell, Jr., dated May 14, 1946, to be disposed of according to law, which will was never passed upon by the Supreme Court of Liberia. The Supreme Court of Liberia, in clear and plain language, directed the resident judge of the circuit court to return the will of the late Joseph T. Dayrell, Jr., dated April 29, 1949, which was disposed of by said court on appeal, to be disposed of in keeping with law. Objectants ask the court to take judicial notice of a certificate from the clerk of said court hereto attached. 4. And also because objectants submit that the will of the late Joseph T. Dayrell, Jr., dated April 29, 1949, having been declared void by the Supreme Court of Liberia, and said Court having, by mandate, ordered the probate court to resume jurisdiction over the said will of 1949 and carry out the mandate of said Court, the said estate became intestate and should have been managed by the Curator of Intestate Estates for Montserrado County under the orders of the court. And also because objectants submit that since the will of 1946 was not passed upon by the Honorable Supreme Court of Liberia, nor does

said 1946 will form a part of the judgment of the Supreme Court of Liberia, this court has no jurisdiction over the subject matter of the said purported will. "6. And also because objectants further submit that the purported will of 1946, mysteriously appearing before this court after the decision of the Supreme Court and before its enforcement by the lower court, was illegally and improperly forwarded to this court by the clerk of the circuit court, thereby disobeying the mandate of the Supreme Court. "7. And also because objectants submit that this court has no jurisdiction over the will of 1946, since it was never contested and passed upon by the Supreme Court of Liberia; and if the respondents, for any reason, wanted to offer said will of 1946 after the decision of the Supreme Court of Liberia making void the contested will of 1949, they should have filed a petition offering the said purported will into probate. But attempting to offer the said will of 1946, which is supposed to be in the office of the clerk of the circuit court, as a part of the record in the defeated will case, which has been exposed to the general public at the trial of the 1949 contested will case, and remained exposed for almost eight years before being now presented for probate, is irregular, illegal and inconsistent. "8. And also because objectants submit that the purported will of 1946 was made

under influence and pressure, and not by the free will of the testator, because respondent, Adelaide F. Dayrell, has put on record that since she was not joined as one of the grantees in testator's deed for said property, she was determined to put him in court, and being under such threat, in-

fluence and pressure, he was compelled to execute a will bequeathing all of his property to her and her children in order to keep him from being sued by his wife, Adelaide F. Dayrell, one of the respondents in this action. "9. And also because objectants further submit that the said will of 1946 was not made of the free will and pleasure of the testator, but was made under pressure, undue influence and threat of lawsuit by his wife, Adelaide F. Dayrell, because, after making said will, testator called in one Mrs. Gertrude Tay and read the will to her, and asked if that will would please his wife, Adelaide, meaning thereby for him to have peace in his home, Mrs. Tay being his wife's personal friend, and she replied : 'She should be satisfied now, but your daughter will not agree.' "10. And also because objectants further submit that the said will of 1946 was made under threat, undue influence and pressure, because the testator, Joseph T. Dayrell, Jr., was afraid to will his legitimate daughter, Ethel Theodocia Dayrell, who was, at the time of the making of the will, only thirteen years of age, any of his real and personal property save one used evening apparel, notwithstanding she was a minor and his estate was lucrative." To the above-quoted objections, the respondents, in their answer and in their attempt to traverse the grounds of objections, besides their plea of general denial, merely averred that Counts 1 to 8 of the objections were without legal merit, self-serving and contemptuous, and should therefore be ruled out; and in Count 4 of their answer denied the truthfulness of Counts 9, to and 11, on the ground that Adelaide Florence Dayrell, the sole executrix under the will in question, holds a joint purpose right in

Lot Number 4 mentioned in Clause 2 of said will of May 14, 1946, with her husband, the testator. When this case came for hearing before the circuit court, with Judge Samuel B. Cole presiding, that court refused to pass upon the jurisdictional issue which the objectants had raised as a plea in bar and ruled on the pleadings as follows : "This court says, after hearing the reading of the pleadings in this case, as well as arguments pro et con, we observe that the main point in the law issues is whether or not the objections were filed within statutory time. A recourse to the records shows that the notice for the probation of the last will and testament of the late Joseph T. Dayrell, Jr., subject of this suit was placarded on April 26, 1957, with this provision: `Person or persons having legal objections to the probation and registration of said last will and testament, are hereby required to file in the clerk's office within 3o days from the date above-mentioned,

which will be on May 27, 1957.' We observe further that a caveat to this notice was filed on May 27, 1957, the deadline date for any person having objections to said will to file. Three days after the filing of this caveat, that is to say, on May 3o, 1957, the objections were filed. In the opinion of the court, the filing of objections should be made ten days after notice is given to court that any party has objections to said probation. The court takes this position because it is possible that anyone having objections to the probation of a will might not have seen or known that a notice thereof has been placarded before the deadline date. It is our opinion, therefore, that the objections were filed within statutory time. This case is ruled to trial by a jury to ascertain whether or not the will is .a genuine one; that is to say, whether or not said will was made .under undue influence." Upon this ruling of the court below, the case found its

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way before a jury which, after deliberation, returned a verdict declaring the will valid ; and after the usual preliminaries, the court entered its judgment affirming the same. It is from this verdict, judgment and other rulings, that the objectants excepted and appealed their cause on a bill of exceptions containing eight counts which we shall review in this opinion as far as they relate to the case. In Count i of the bill of exceptions, appellants allege that on April io, 1958, the trial judge, in passing on the law issues raised in the pleadings, failed to consider them as the law requires, especially the issues raised in the objections, but simply ruled the case to trial to ascertain whether the will in question is genuine or not, without passing upon any of the legal issues raised. In considering this count of the bill, it is our opinion that the trial judge erred in refusing to pass upon all of the legal issues raised in the objections and pleadings as the law directs, especially since objectants had attacked the jurisdiction of the court over the subject matter. Our Civil Procedure Law makes it mandatory that, at any trial, all issues of law raised by the parties shall be disposed of first. 1956 Code, tit. 6, § 62o. In the case at bar, apparently the only matter which claimed the judge's attention was that raised in respondents' answer, in so far as it attacked the filing time of the objections. Count 1 of the bill of exceptions is therefore sustained. In Count 2, appellants contend that the trial judge's failure to pass upon the points raised in the objections simply narrowed the issue to the genuineness of the purported will, notwithstanding objectants had charged Adelaide Dayrell, one of the respondents with having induced, coerced and unduly influenced the testator to make said will and that: "Your Honor's questions to the witnesses give objectants the impression that a genuine will, as referred

to by you, only requires the signature of the testator to a will, regardless of whether signed in the presence of attesting witnesses and in the presence of each of them, and regardless of whether such a will was signed under undue influence, and coercion or not; and that, if once the signature is proved to be that of the testator, the will is ipso facto genuine." Before taking recourse to the law controlling, we will first address our attention to the records before us. Robert Phillips, one of the attesting witnesses to the purported will, testified as follows on direct examination : "Q. Please tell the court and jury to the best of your knowledge and recollection whether or not you are aware that the said Joseph T. Dayrell, Jr., during his lifetime, executed a last will and testament. "A. I am aware of the fact that during the lifetime of Mr. Joseph T. Dayrell, Jr., he did execute a will. "Q. I hand you, Mr. Witness, this instrument of writing marked by the court Exhibit R-i. Please look at it carefully and tell the court and jury what you recognize it to be. "A. I am definitely sure that the signatures of Robert S. Phillips and Joseph Theodore Dayrell are seemingly original. "Q. I hand you again the instrument, Mr. Witness. Please look at it carefully and tell the court and jury, to the best of your recollection, whose signatures you recognize thereon, and whether or not they were affixed in your presence? "A. As I remember signing a will of Mr. Dayrell. As I look at this will, the signatures of Robert S. Phillips and Joseph Dayrell are seemingly original. "Q. Look at this instrument again which I hand you, Mr. Witness, and tell the court and jury whether you recognize the signature immediately appear-

ing after yours on said instrument, and whether or not it was affixed in your presence? "A. At the signing of a will of the late Joseph Dayrell, this was done in the presence of the two of us ; that is, Mr. Joseph T. Dayrell and myself. I was not present when the second witness signed the bill. I recognize the name to be L. Kwia Johnson, but I cannot say this is his signature because I am not acquainted with his signature." That is a portion of the testimony of attesting witness Robert S. Phillips ; and again, on cross-examination, he gave these answers : "Q. Objectants have filed objections to the probation and registration of the will in point on the grounds that it was made under undue influence, pressure and threats brought upon the testator by his wife, who was at the time Mrs. Adelaide F. Dayrell. Please say to the best of your recollection, and as one of the confidential or personal friends of testator, if you know anything in connection with testator being forced to sign this will. By this will, I mean the one marked by the court Exhibit R-1. "A. I do recall that the will that was witnessed by me was sealed and placed in the custody of Mr. Dayrell's father. After a period, there came a suspicion that his will had been intercepted because, when it was delivered to his father, it was sealed. This suspicion grew out of expressions he

heard with regard to his will which was not known to persons who had become in knowledge. It was then he went to check on his will,
and there he found that it had been intercepted. Result of which he decided to change his entire plans in his will. This is as much
as I know about it. The will that I witnessed was voluntarily done." Besides this testimony by one of the attesting witnesses

to the purported will, another witness of the appellants took the stand ; and here is a portion of her testimony
: "Q. What is your name, and where do you live? "A. Gertrude L. Tay. I live in Schieffelin. "Q. Please say whether or not you can
recall Mr. Dayrell showing you a will and asking you if said will would satisfy his wife, Adelaide Dayrell. "A. Mr. and Mrs. Dayrell
jointly bought the property he got the deed for. The deed did not have her name on it. She was dissatisfied. She contended that Mr. Dayrell should have her name on the deed because they
jointly bought the property, as her salary went towards the upkeep of the house, and his salary towards the purchase of the land.
After the deed was shown to Mrs. Dayrell and she became dissatisfied, she sent to Mrs. Fuller for me to show me the trick that was
played on her after spending her money so many years on the home, and the deed only carried his name as well as his children. He
said that he did order the lawyer to prepare the deed like that, but ordered that said deed should have both Mr. and Mrs. Dayrell's
names placed therein. Mr. Dayrell then said to his wife : 'I can't take this deed to the court today, but you wait.' Few weeks after
that, Dayrell sent for me to his office. It was on a Wednesday morning. He said: 'Friend Gertrude, look at this l' He took out a
brown envelope from the safe, and took out an envelope from that brown envelope, and handed it to me and asked me to read it. I told
him that I did not have my spectacles, so I could not read it. Then he took the will out and read it to me and said : 'I have a God
to face. Adelaide and I bought this piece of land. Her contention is right, but I can't fix the deed over again. But the error can
be cured in my will and I have done

it.' He said further : 'If I should die before Adelaide, she is
still in possession of her land, she is the only administratrix.' He said : 'The land goes to her and her children. My other child
can only have possession of my wearing apparrel.' I asked him : 'What will she do with your clothes?' He said : 'She can sell them
and raise the money; but this land which Adelaide and myself bought; you know all about it; I could not be unfair to the children
begotten by Adelaide, by sharing the real estate with another child. I am taking this will now to the bank and deposit it there.
The duplicate I will take home and keep it there.' He said further : 'This will will stop everything because my wife, Adelaide, is

not satisfied.' " By reason of the absence of controlling statutory law our courts have been compelled, in contested will matters, to be guided by common-law authorities. Hence, we shall direct our attention to some common law theory, before deciding upon merits of Count 2 of the bill of exceptions. Witness Robert Phillips testified that he did not sign the purported will in the presence of attesting witness, L. Kwa Johnson, and therefore could not identify his signature as the genuine one. He also testified that he subsequently learned that the will which he had signed as a subscribing witness had been intercepted, and that the testator contemplated destroying the same. Further, he stated that he recollected signing a will, and recognized the two signatures attached to the will shown to him on the stand as bearing the signatures of himself and Joseph T. Dayrell, Jr. In our opinion, such testimony, coming from a witness who subscribed to the instrument as an attesting witness is incomplete, since he never saw the testator sign the purported will, and the attesting witnesses did not sign the instrument in the presence of each other.

Gertrude Tay testified that respondent Adelaide Florence Dayrell became dissatisfied when she learned that the deed for Lot Number 4 was issued exclusively in the name of the testator and his heirs. Testifying further, she stated that the respondent threatened the testator with court litigation if he did not join her in title to the property, and that the purported will would stop everything because Adelaide was not satisfied. This evidence is sufficient, in our opinion to invalidate the instrument as a will under principles of law which have been authoritatively summarized as follows : "Threats of violence, litigation, personnal estrangement or other matters producing fear, which place the mind of the testator in subjection and destroy his free agency, constitute undue influence and invalidate a will made as a result of them." 40 CYC. 1149 Wills.

Having taken recourse to the law controlling, we have no alternative other than to sustain Count 2 of the bill. Counts 3 and 4 having been covered by the foregoing review of Count z, the necessity is not apparent for us to explore them any further. Count 5 is thus laid : "And also because . . . the objectants objected to the admission into evidence of the purported will, which objections the court overruled. . . ." The court below made the following ruling on objections against the admission of the purported will into evidence : "The court says that the document marked by the court Exhibit R-1 is a will contested in the probate court, and which was sent to this court for the jury to say whether or not it is the genuine will of the testator. The records in this case disclose that witness L. K. Johnson and witness John C. A. Gibson, marshal of the Honorable Supreme Court, testified that the signature of the testator on said document is the genuine signature of the testator. Under our law, when a document is sufficiently identified and is relevant to the

issue at bar, said document should be admitted into evidence to be sent to the jury who will decide on its credibility. In view of the above, the document marked by the court Exhibit R-1 is hereby admitted as written evidence." The contested will was the subject matter before the court, and once identified as such, it would have been error on the part of the trial judge to have denied its admission into evidence when its credibility rested exclusively with the jury. Without its admission, the jury would have been unable to pass upon its validity or invalidity. Hence Count 5 of appellants' bill is not sustained. Count 6 raises several questions of law and fact on which appellants' counsel requested the court charge the jury because the court had failed to pass upon them in ruling on the law issues. It is the right of a party to request the court to charge the jury on any point of law on which the minds of the jury might not be sufficiently clear; but as triers of the facts, it is their right to weigh the evidence presented in any given case. In this particular instance, all of the facts were presented to the jury, and the law in relation to the case had been explained to the jury by the judge. Therefore, it cannot be conceded by us that the judge erred in his procedure as contended in this count of the bill ; hence, the same is dismissed. We have endeavored to review herein all of the important points of issue involved in the case according to the records before us. We have culled some of the evidence adduced at the trial ; but before arriving at a conclusion, we shall make one or two important comments. In 1946, the will which is the subject of this case is supposed to have been made by the testator. On April 29, 1949, the testator made another will containing the following clause : "I, Joseph Theodore Dayrell, Jr., of the City of Monrovia, Montserrado County, Republic of Liberia,

being of sound mind and disposing memory and being conscious of the uncertainty of human life, do hereby make, publish and declare this as my last will and testament in manner followed, revoking all other wills heretofore made by me." When this will was offered for probate, serious objections were raised against it which finally defeated the will. Thereafter, and without legal precedent, through the clandestine and deliberate act of Judge Morris, and in absolute disregard of a mandate from this Court, the will of 1946 which had been effectively revoked by the act of the testator was ordered transmitted to the probate court to be probated and registered--an outright act of contempt. When this case was called for hearing before us, we particularly inquired of appellees' counsel as to the possibility of the will of 1946 being taken from the records in the former contested will case, and offered in probate, when the mandate of this Court in the former case had not been enforced and executed ; and his reply was to the effect that the former case bore no relationship whatever

to the one in point. What a novelty! It is also evident that the above-quoted clause of the · contested will of 1949 revokes the will of 1946 in its entirety, since the property which the appellees would now claim under the 1946 will is the same property which the testator distributed among other persons by the subsequent will of 1949. We are therefore of the opinion that the judgment of the court below should be reversed. The will in question is declared invalid, and the clerk of this Court is hereby ordered to send a mandate to the court below ordering it to direct the probate court to resume jurisdiction and declare the estate of the late Joseph T. Dayrell, Jr., intestate, and administer the same according to the law controlling. Costs against the appellees. And it is hereby so ordered.
Reversed.

Barbour v Bickersteth [1944] LRSC 1; 8 LLR 184 (1944) (4 February 1944)

CASES ADJUDGED
IN THE

SUPREME COURT OF THE REPUBLIC OF LIBERIA
AT

NOVEMBER TERM, 1943.

JOSEPH W. S. BARBOUR, Appellant, v. ELIZABETH BICKERSTETH, Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, MONTERRADO COUNTY.

Argued January 19, 1944.
Decided February 4, 1944. A neglect to have probated and registered any deed of conveyance with reference to real property within the time prescribed by statute renders said document null and void as against any party holding a subsequent instrument relating to such property which is duly probated and registered.

On appeal in an action of ejectment, judgment affirmed.

A. B. Ricks for
appellant. pellee.

Charles T. 0. King for ap-

MR. JUSTICE DAVID delivered the opinion of the Court.
This is an action of ejectment instituted in the Circuit Court for the First Judicial Circuit, Montserrado County, by Elizabeth Bickersteth against Joseph W. S. Barbour for a certain piece of property which the said plaintiff, now appellee, contended was held under sheriff's deed and by her

duly purchased according to law. The defendant in the court below resisted the plaintiff's complaint by filing an answer to the effect that he is the

lawful owner of the said land by lease agreement made and entered into on March 1, 1939 by and between himself and one T. A. Dundas, lessor, both parties being of the county of Montserrado. The pleadings in this case extended to the sur-rejoinder, all of which were overruled, and the case was ruled to trial on the complaint of the plaintiff. A jury of twelve men was selected, sworn, and empanelled to try the issue thus joined which jury, after hearing the evidence of both parties and the instructions of the court, returned a verdict to the effect that the plaintiff is the owner of said lot Number 58. This verdict was confirmed by his honor the judge and final judgment was entered in favor of the plaintiff. From said ruling, verdict of the petit jury, and final judgment entered, appellant prayed an appeal to this Court. According to the records certified to this Court, one T. A. Dundas, former owner of the said lot Number 58, was sued in the Circuit Court for the First Judicial Circuit by one A. K. D. Sodjie for the amount of three hundred and eighty-eight dollars and seventy-eight cents in an action of debt, which suit he, T. A. Dundas, lost. Final judgment was entered against him and an execution was duly issued in favor of the said judgment creditor against the judgment debtor, which writ of execution was duly served and returned before the trial judge, the said T. A. Dundas having turned over to the sheriff for Montserrado County his original deed for a half acre of land in lieu of a cash settlement. The sheriff's request for an order of sale was granted by the court, whereupon the sheriff, after giving notice of the time and place of the sale, proceeded to auction said piece of property. The plaintiff offering the highest bid, the sheriff accordingly issued his deed conveying the premises to said appellee. This deed was probated and registered according to law without objection and plaintiff was put in possession of said piece of land.

The defendant, now appellant, claims ownership of said property by lease agreement made profert of by him and marked exhibit "1" which plaintiff, now appellee, claims to be invalid since by inspection thereof it will be seen that, although said agreement of lease was entered into on March 1, 1939, the probate and registration thereof was not performed until February 24, 1941, approximately one year and eleven months from the date of execution and an additional nine days after the order of sale had been issued. The failure to have probated and registered said agreement within the time prescribed by statute renders same voidable under the conditions prescribed in the enactment stated below. "Every instrument relating to real

estate, before the same shall be entitled to be registered, shall be presented to the Probate Court of the County in which the property is located. . . ." 2 Rev. Stat.
§ 1299. "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. § 1302. See L. 1861, 90, § 5. The law prescribing the duties of the Registrar provides that: "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, bills of sale, partnership deeds, articles of incorporation of domestic companies and associations, and such other agreements between two or more parties as they may desire to have recorded." 2 Rev. Stat. § 1305. The records in the case show that although the deed of lease from T. A. Dundas to Joseph W. S. Barbour for ten

years was executed on March 1, 1939, and would thereby have constituted an incumbrance upon the land, same was not offered for probate until, February 24, 1941. Hence said conveyance was ipso facto voidable, and became absolutely null and void according to the statute when Barbour, by his negligence aforesaid, allowed the sheriff's deed to Elizabeth Bickersteth, executed February 28, 1941, to be probated and registered within the legal time. Moreover, it is worthy of note that the said Barbour, now appellant, not only did not offer his deed for probate within the time prescribed by law, but also did not offer his deed for probate until February 24, 1941, four days before the execution of the sheriff's deed to Elizabeth Bickersteth which was nine days after the issuance of the execution of the writ of sale upon which the sheriff sold and conveyed the said premises. This looks to us like sharp practice which this Court cannot but frown upon. It is our opinion therefore, that the judgment of the court below should be affirmed with costs against defendant, now appellant; and it is hereby so ordered. Affirmed.

Coker et al v Rasamny [1984] LRSC 15; 32 LLR 75 (1984) (10 May 1984)

PHILIPPA COKER et al., represented by and thru CHRISTIANA V. COKER-SMITH, Appellants, v. **NAIF RASAMNY,** Agent of K. RASAMNY BROTHERS, Appellee.

MOTION TO DISMISS APPEAL FROM THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT, GRAND BASSA COUNTY.

Heard: April 3 & 4, 1984. Decided: May 10, 1984.

1. The failure to list the names of sureties on an appeal bond in alphabetical order is not a statutory ground for dismissal of an appeal, or to render the bond defective.

2.The affidavit of sureties on an appeal bond pledging real property as security must specifically state that the sureties are owners of the property, the assessed value of the property, a statement of any liens and encumbrances, and a complete description of each piece of property setting out the metes and bounds as required by statutes.

3.Sureties on an appeal bond pledging real property as security cannot merely state in their affidavit that they are the owners of realty and that the personal net worth of each exceeds the amount required by the appeal bond.

4. The affidavit of sureties on an appeal bond must specifically describe the real property offered as security by identifying each piece of real property by plot number and metes and bounds

5. The court has no jurisdiction to open and review the record of a case when the appeal bond has not conformed to the statutory requirements.

6. The description of the property must be contained in the affidavit itself and sworn to by the sureties under oath before a Justice of the Peace.

7. Where an appellant fails to process an appeal in keeping with the requirements of the statutes, the Court will dismiss the appeal for want of jurisdiction to open the record and review the appeal.

The appellant appealed the ruling of the lower court in an action of damages for injury to property. The appellee filed a motion to dismiss the appeal on the grounds that: (1) the appeal bond was defective as the sureties' affidavit did not, inter alia, include the description of the real property offered as security for the bond; (2) the affidavit did not state in its body that the properties offered as security were unencumbered and taxes thereon had been paid; and (3) the names of the sureties were not arranged in alphabetical order. It is noteworthy that the appellant attached to the affidavit a separate piece of paper containing the statement of property valuation and description of each parcel of **land** offered as security on the appeal bond.

The Court overruled counts two and three, but sustained count one, maintaining that the appeal bond had not complied with the requirements of the statutes. The appeal was accordingly dismissed.

S. Edward Carlor for the appellants. E. Wade Appleton for appellee.

MR. JUSTICE SMITH delivered the opinion of the Court.

The appellee has moved this Court not to hear this appeal on its merits, but to dismiss it for reasons as laid down in his motion to dismiss, as follows:

1. That the appeal bond is defective, in that the sureties' affidavit thereto attached does not conform to statutory provision;

2.That the affidavit fails to state in its body that the property offered as security is unencumbered and that taxes thereon have been paid; and

3. That the names of the sureties are not arranged in alphabetical order.

The affidavit of sureties as attached reads, as follows:

AFFIDAVIT OF SURETIES

"PERSONALLY APPEARED BEFORE ME, a duly qualified Justice of the Peace for Grand Bassa County, R. L., Frank E. McCormack, Stanley Dingwall and Bertha Dalmadia, property owners, and made oath according to law that all and singular the allegations contained in the attached statements of their property valuation issued from the Ministry of Finance, Grand Bassa County, R. L., in favor of Christiana V. Coker-Smith are true and correct to the best of their knowledge, information and belief . . . ."

Recourse to the record on appeal discloses that there is a statement of property valuation dated August 5, 1983, issued by the Bureau of Internal Revenues, Real Estate Tax Division, Ministry of Finance, signed by D. Reeves, Real Estate Tax Collector, and approved by J. L. Elliott, Collector of Internal Revenues, Grand Bassa County. This statement lists the properties of the respective sureties. It is therein stated that the "bond in favor of Christiana V. Coker-Smith paid up to date." By this notation in the statement of property valuation, and the fact that a statement of property valuation was issued by the Ministry of Finance, in our opinion, it means that taxes on the property had been paid. The statement could not have been issued if taxes on the property had not been paid. Furthermore, the statement does not show on its face that said property, or any of them, has ever been offered as security on any other bond, neither has the appellee shown to this Court that there is a lien already on the property offered as security, nor has he shown that the value of the property is insufficient to cover the value of the bond because of other encumbrances on the property. Under the circumstances, the second count of the motion cannot be sustained.

Count three of the motion will also not be sustained because the failure to list the names of sureties on an appeal bond in alphabetical order, besides not being the duty of the appealing party or person furnishing the bond, is not a statutory ground for dismissal of an appeal, or render the bond defective. Recording of bonds in a book provided for the purpose, in alphabetical order, is the duty of the clerk and not of an appellant.

In his argument on count one of the motion, counsel for appellee contended that the appeal bond does not conform to the statute, in that the parcels of real property offered as security are not described by metes and bounds, a useful means of identifying real property and establishing whether or not there is a lien on the property.

In countering this argument, counsel for appellants contended that the property of each of the sureties is described on a paper attached to the statement of property valuation from the Ministry

of Finance, and this has fulfilled the requirement of the law. The appellants further contended that the two lawyers for appellee, Counselors James G. Johnson and E. Wade Appleton were not licensed for the year 1984 and, hence, their motion was a nullity.

For the benefit of this opinion, we quote the relevant portion of the statute on “affidavit of sureties” bond. It reads as follows:

"Affidavit of Sureties. The bond shall be accompanied by an affidavit of the sureties containing the following:

"(a) Statement that one of them 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 I:63.2(3).

From this provision of the statute quoted supra, it is mandatory that the affidavit to the bond meets the statutory requirements enumerated above in order for the bond to be sufficient.

In the case Gabbidon v. Toe, [1974] LRSC 24; 23 LLR 43 (1974), this Court held that: "Sureties on an appeal bond pledging real property as security cannot merely state in their affidavit that they are the owners of realty, and that the personal net worth of each exceeds the amount required by the appeal bond. The sections setting forth the requirements necessary for validation of an appeal bond, after approval thereof, are to be complied with as the Legislature intended, and may not be treated casually by an appellant."

Also, in the case West Africa Trading Corporation v. Alraine (Liberia) Ltd., [1975] LRSC 16; 24 LLR 224 (1975), this Court interpreted the statute as it relates to the description of property in an affidavit of sureties. Here is what the Court said, speaking through Mr. Chief Justice Pierre:

". . . We interpret this part of section 63.2(b) to mean offering the property as security in order that an appellee be protected against loss as a result of costs or injury sustained by the appeal. Black's Law Dictionary has defined description relating to real property to mean 'that part of a conveyance, advertisement of sale, etc., which identifies the **land** or premises intended to be affected.' In giving effect to the text of this statute, we must consider that description of **land** merely means designating the particular space occupied, or to be occupied so as to enable anyone to find it, should this become necessary. Hence, in deeds which convey real property we have description by metes and bounds, to sufficiently and correctly identify the particular plot of **land**.

"With this as a background it is our opinion that description as used in this section means that **land** offered as security for appeal bonds must be described in the affidavit of the sureties sufficiently well to identify the particular piece of property intended to be encumbered by the bond. It is not sufficient to say that a surety owns an acre on a particular street; that property must be described in a manner to make finding it on the ground an easy exercise. We hold that this is best accomplished by stating the number of the plot and the metes and bounds . . .”

Reviewing the subject affidavit, as quoted supra, we find no such description of the property of any of the three sureties who swore and subscribed to same before the Justice of the Peace. In the absence of such description to identify the particular property of each of the sureties being offered as security to indemnify the appellee, the contention of the appellee is well taken.

Counsel for appellants argued that the description of the property is on a separate sheet of paper attached to the property valuation certificate from the Ministry of Finance, and is a part of the affidavit; hence, the affidavit has sufficiently identified the property.

Taking a closer look at the attached sheet of paper, argued by appellants' counsel to be the description of the property attached to the property valuation statement from the Ministry of Finance, we discovered that the said document had not been signed by the Collector of Real Estate Tax Division or the sureties themselves, or by anyone for that matter. But more than this,

the statute quoted supra requires that the property be described in the affidavit and signed by the sureties under oath before the Justice of the Peace, and not otherwise.

With respect to appellants' contention that the two lawyers: Counsellors E. Wade Appleton and James G. Johnson, who signed the motion, were not licensed for the year 1984 to practice law, the court suspended the argument and required the counsels for appellee to produce their 1984 lawyer licenses at the resumption of the case. On April 4, 1984, when the case resumed Counsellor Appleton who argued the motion presented to Court the following:

4. Official receipt bearing No. 550438 in favor of Counsellor E. Wade Appleton for $300.00 as license fee for January to December 1984, dated March 3, 1984;

5. Official license to practice law for 1984 in favor of Counsellor E. Wade Appleton, bearing No. 42195, dated March 3, 1984;

6.Official receipt bearing No. 466116 in favor of Counsellor James G. Johnson for the amount of $300.00, for 1984 lawyer license, January to December 1984; and

7. Official license to practice law for 1984 in favor of Counsellor James G. Johnson, bearing No. 49543.

The licenses having been presented, appellants' resistance with respect to the lawyers' licenses is not sustained.

In view of the foregoing, and the legal authority cited, it is our opinion that the motion to dismiss the appeal should be, and the same is hereby granted for want of jurisdiction for this Court to open the record and review the appeal. The appellants' appeal is hereby dismissed with costs against the appellants. And it is hereby so ordered.

Motion granted; appeal dismissed.

Massaquoi et al v RL et al [1943] LRSC 3; 8 LLR 112 (1943) (29 January 1943)

AL-HAJ MASSAQUOI and NATHANIEL MASSAQUOI, Heirs of MOMOLU MASSAQUOI, Appellants, v. REPUBLIC OF LIBERIA, P. C. PARKER for his Wife, IDA C. PARKER, FRANK 0. ROBERTS, and CHARLES B. ROBERTS, Heirs of S. S. ROBERTS, Appellees.
APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued December 3, 1942. Decided January 29, 1943. 1. Although there is no express statute specially adopting the Statute of Frauds of England, yet it nevertheless became a part of the laws of Liberia by the amendatory statute of 1860. 2. It is generally held that oral evidence of title to realty is inadmissible to establish title in real actions.

Appellants filed objections in the probate division of the circuit court to the probate of a warranty deed. On appeal from judgment dismissing objections, judgment affirmed.
D. C. Caranda for appellants.
S. David Coleman A. B. Ricks

and

for appellees. delivered the opinion of

MR. CHIEF the Court.

JUSTICE GRIMES

On April 12, 1938 the late Momolu Massaquoi, by his attorneys, filed in the Probate Division of the Circuit Court of the First Judicial Circuit, Montserrado County, a caveat to the probate of a transfer deed, or agreement of lease, for a certain property on Ashmun Street, Monrovia, upon which is erected a building popularly known as the "Executive Mansion." Said caveat was in an-

ticipation of a deed, whatever it might be, that anyone might offer conveying any right, title, or interest in or to the aforesaid property. At some time between that aforesaid or aforementioned date and April 21 of the same year a deed conveying the title in said property from the heirs of S. S. Roberts to the Republic of Liberia was offered for probate, since the records show that on April 21 objections raised in four counts were filed. These were claims that: (1) Objector

had an interest in said premises and had not been consulted before the sale was effected ; (2) Respondents had sold the premises for twelve thousand five hundred dollars without paying unto him his share of the purchase money; (3) The transfer deed did not bear the signature of him, the said objector; and (4) An action with respect to the said property was then pending in the equity division of the said circuit court. The heirs aforesaid of S. S. Roberts on April 3o filed an eight point answer in opposition to said objections; but inasmuch as it appears from the decree of the trial court that only two of those points were stressed in the argument and disposed of by the judge presiding, we are confining our review to a consideration of those two points, viz.: the fifth and sixth in the answer. These are: (1) The signature of objector to the deed, the subject of this suit, was unnecessary and would have been absurd since the objector had no legal title to the said property, and (2) If it be true that an action was still pending in the equity division of the circuit court as alleged by objector without making profert of any part of the record, it was the duty of the objector to have filed an action of injunction to stay further proceedings until said cause so pending in the equity division of the circuit court had been disposed of. The basic points in issue which by this appeal are submitted to us for decision have been so clearly stated in the opinion of the trial judge from whom this case was ap-

pealed that we deem it helpful to here reproduce said opinion in full. "From the pleadings and the argument thereon, it appears the objector's contention is that Messrs. S. S. Roberts and Momolu Massaquoi during their lives entered into an agreement to build a hotel. Roberts gave the land and erected the building and Massaquoi the materials or money to purchase them. They were to share equally the profits accruing from the venture. Instead of carrying out their original plan, after the house was completed, it was leased to the Government by Roberts who shared the rents equally with Massaquoi. After Roberts' death his children, the respondents in this case, sold the house to the Government without any reference to the objector or a division with him of the purchase money. Hence these objections to the respondents' resistance to these allegations is that whilst admitting they had sold the property to the Government of Liberia they say that the allegations made by the objector are untrue. There are other points in the pleadings but the Court considers what was or has been said the salient issue. It should be noticed that the questions involved in this issue are all allegations of facts which should be proven by evidence. The first point to be decided, however, is, can the court properly hear evidence to prove the objections? It must be observed that objector in his pleadings and arguments did not say that the alleged verbal agreement gave him title to the property equally with Roberts but that it gave him an interest in it and as such said property could not be transferred without his knowledge and consent. This might be true but the Court thinks differently. It appears that even if such a verbal contract was made, Roberts never intended

to give Massaquoi a joint title on equality with himself to said land and this is strongly evidenced by the fact that when the

property was leased to the Government, only Roberts signed as lessor, not for any company or partnership,
but for himself alone and it would seem that knowing that he had an equal interest with Roberts as is urged in this case, Massaquoi
should have joined as one of the lessors and if denied this right should have objected. His failure in this respect gives the court
the idea that he did not consider the alleged verbal agreement gave him title equally with that of Roberts to the property which
alone would have given him the right to join in the lease as one of the lessors. "Again suppose we . . . permit the objector to prove
all which he says he can prove by evidence, proof of such verbal agreement could not be permitted to defeat the title by deed for
the Statute of Frauds provides that all deeds, agreements or contracts relating to sale, transfer, mortgage, exchange or otherwise
or real property shall be in writing, and our Statute provides that such documents shall be registered and probated within four months
from execution. His counsel did not seem to think that the common law definition of the Statute of Frauds of the United States of
America should be admitted to apply in this case since it has not been shown that there is any special statute in Liberia on the
subject. The court cannot at present refer to any such statute but remembers having read in several of our Supreme Court decisions
reference to the Statute of Frauds. And if there be no special statute on this subject in Liberia, it must be that the Supreme Court
cited and quoted the Statute of Frauds on the authority of our Statute which provides that the laws of England and the United States
of America not in conflict with any law in Liberia shall become part of the laws of this country. "Further our statute of 1864 provides
that all deeds and other conveyances for all lands be probated and registered and this obviously carries the idea that all

such instruments shall be in writing since it is impossible to probate and register spoken words. Therefore
even if there were a verbal agreement made by Roberts and Massaquoi, it is useless to hear evidence to prove its existence and the
terms of same since no oral contract relating to realty can be permitted to set aside title by deed. The objections to the Warranty
Deed in this case are dismissed and costs against objector. Nothing in this ruling shall be construed to bar objector in applying
for relief in equity or in law for damages in debt for recovery of rents or part of purchase money paid for said property if the
objector be of the opinion that the law gives rights for such. AND IT IS SO ORDERED. "GIVEN officially this i4th day of September A. D. 1939. [Sgd.]
EDWARD SUMMERVILLE
Assigned Judge."

When the case was called at the bar of this Court Counsellor Charles T. 0. King, of counsel for appellants, filed an application to be permitted to withdraw from further representing his side of the case upon the ground that he and his colleague were unable to agree upon certain salient points in the case; and his said application was allowed by this Court. Later on, after argument had begun, Counsellor Caranda, the other counsel for appellants, having been requested to read and construe certain sections of the Statute of Frauds hereinafter quoted, did not further press his argument. In our opinion the issues were correctly settled by his honor the trial judge, and the only duty we have now to perform is that of elucidating certain points which the said judge in the relative haste which pervades the proceedings in a trial court did not fully recite and explain. " 'Statute of Frauds' is a term which is commonly applied to a statute entitled, 'An Act for Prevention of Frauds and Perjuries,' enacted in England in 1676,

and the American statutes modeled thereon. The chief object of these statutes is to prevent the facility to frauds and the temptation to perjury offered by the enforcement of obligations depending for their evidence upon unassisted memory of witnesses. Hence their leading feature is to render certain contracts and conveyances inoperative unless evidenced by a writing signed by the party to be charged thereby. . . ." zo Cyc. of Law & Proc. Statute of Frauds 156 (1906). And further on this same authority states on page 211 that "It is generally held that oral evidence of title to realty is inadmissible to establish title in real actions." According to Bouvier: "Sections 1-3 [of 29 Car. II c.3, the Statute of Frauds] provide that all interest in real estate created by livery of seisin only, or by parol, and not put in writing, and signed by the parties, or their agents authorized by writing, shall have the effect of leases or estates at will only, except leases not exceeding three years. · "[S]pecial promises by executors or administrators to answer damages out of their own estate; special promises to answer for the debt, default, or miscarriage of another; agreements made upon consideration of marriage; contracts for the sale of lands, tenements, or hereditaments, or any interest in or concerning them; agreements not to be performed within the space of one year from the making thereof; contracts for the sale of goods, wares, and merchandise for the price of ten pounds sterling or upwards. All these matters must be, by the statute, put in writing, signed by the party to be charged, or his attorney.
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"A parol submission of matters involving the title to real estate is invalid under the statute." 2 Bouvier,

Law Dictionary Statute of Frauds 1308 (Rawle's 3d rev. 1914).
We, like the learned judge, know of no statute specifically adopting in express terms the said statute ; but it nevertheless became a part of the laws of Liberia by the amendatory statute of 186o which reads as follows : "That so much of the seventh Section of an Act entitled, 'An Act defining certain Crimes, and relating to the punishment of Crimes' as reads :--`Such parts of the Common law set forth in Blackstone's Commentaries as may be applicable to the situation of the people; except as changed by the laws now in force, and such as may hereafter be enacted shall be the civil code of laws for the Republic'--be so altered and amended as to read--that, Blackstone's Commentaries, as revised and modified by Chitty or Wendell, and the works referred to as the sources of Municipal or Common law in Kent's commentaries on American law, volume first--shall be the civil and criminal code of laws for the Republic of Liberia; except such parts as may be changed by the laws now in force, and such as may hereafter be enacted : And all laws or parts of laws conflicting with the provisions of this Act be, and the same are hereby, repealed." L. 186o, 72 (4th) § 1. Our Supreme Court commenting upon said statute of ours in the case of Roberts v. Roberts at our session of 1878 said: "Here is an adoption not only of the common law as set forth in Blackstone's Commentaries as in the previous act amended by this, but of the whole of those Commentaries as revised and modified by the writers named in the act. The statutes embraced in those Commentaries, where they remain unchanged by laws now in force, have thus been adopted as laws of this Republic, and among these are the Statute of Wills and the Statute of Uses, which Blackstone says

made a great alteration as to property, the former by allowing the devise of real estate by will, etc. (Chitty's Blackstone, Vol. 12, p. 43o.) "Kent in his Commentaries, Vol. 1, in giving an account of the sources of the common law to the American people, makes this statement: 'It is also the established doctrine that English statutes passed before the emigration of our ancestors, and applicable to our situation, and in amendment of the law, constitute a part of the common law of this country.' (See page 473.) " Id. i L.L.R. 107, 112. Hence it is that the Statute of Frauds has from the case Roberts v. Roberts been consistently considered a part of the common law of Liberia. Our colleague, Mr. Justice Russell, although in agreement with the final conclusions we have reached, has insisted that we, herein, make record of his dissent in one matter of procedure. His opinion is that his honor the trial judge, having rehearsed in his ruling that "it should be noticed that the questions involved in this issue are all allegations of facts which should be proven by evidence," was incorrect in giving a decree without having called for witnesses to testify in said cause; and Mr. Justice Russell cites in support of his contention the following: "This court again reaffirms the doctrine well founded in the statute laws of this Republic, that `every person alleging the existence of a fact is bound to prove it' ; . . . and further, that the allegations of a party, however logically stated in the court of law, cannot be taken as evidence. Proof to a judge, in

the trial of a case, is what a compass is to a mariner on the ocean." McAuley v. Lackman, 1 L.L.R. 474, 475-76 (1906). But the majority of the Court are fully in accord with the said opinion of the trial judge. For, had the issue submitted
for decision in the trial court and appealed to us been that S. S. Roberts and Momolu Massaquoi, now

both deceased, had entered into an oral agreement to build a hotel as was argued here from the record, the former to furnish the
land and the latter to supply the necessary materials, and to divide the profits ; and that either party had failed to live up to
his covenant thereby violating the agreement in any particular, then and in that case the trial judge would have been legally bound
to hear testimony so as to ascertain : ( ) What the contract really was since it had not been reduced to writing; (z) In what respect
it had been violated ; and (3) What amount of damage the injured party had sustained. But inasmuch as the issue before the trial
judge was not that, but that the late Momolu Massaquoi had objected to the probate of a deed claiming title to the premises without
alleging some written evidence of title, it is the opinion of the majority of us that his claim had no foundation because of the
provisions of the Statute of Frauds above cited, and it would have been a useless waste of time to hear oral evidence on the point
unless objector had claimed that by adverse possession of twenty years he had obtained title by limitation. It follows then that
the judgment of the court below should be affirmed ; and it is hereby so ordered.
Affirmed.

Kanneh v Manley et al [2002] LRSC 3; 41 LLR 25 (2002) (14 June 2002)

MUSA KANNEH, Informant, *v.* **MANSTON J. MANLEY** of the LAW OFFICES OF WHITE AND ASSOCIATES, ABRAHAM SAYSAY, JAMES DESHIELD, et al., Respondents.

INFORMATION PROCEEDINGS.

Heard: April 29, 2002. Decided: June 14, 2002.

1. If an appeal is taken from a judgment of a court not of record in favor of a plaintiff in a proceeding to recover possession of real property, the issuance and execution of a writ of possession shall be stayed pending the rendition of final judgment.
2. Under Liberian jurisprudence, the justice of the peace court is classified and categorized as a court not of record; therefore an appeal taken from that court in a proceeding to recover real property shall stay issuance and execution of writ of possession, the appeal serving as a *supersedeas* pending the rendition of a final judgment.
3. The eviction of a defendant from the subject property in an action to recover possession of real property pending a hearing of his appeal constitutes a reversible error.
4. The following acts are 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; and (d) service and filing of the notice of completion of the appeal, all of the foregoing within the time allowed by statute.
5. A failure to comply with the any of the requirements for the perfecting of an appeal within the time allowed by statute shall be ground for the dismissal of the appeal.
6. An appellant must present his bill of exceptions for approval of the trial judge within ten days after the rendition of the judgment.
7. An appeal may be dismissed by the trial judge on motion for failure of the appellant to file a bill of exceptions within the time allowed by statute.
8. The statutory law on appeal in the Liberian jurisdiction is mandatory and should be strictly adhered to and a failure to do so renders the appeal dismissible.
9. An inferior court's disregard of the Supreme Court's mandate is contumacious.
10. If a judge or any judicial officer attempts to execute the mandate of the Supreme Court in an improper manner, the correct remedy is to proceed by a bill of information.

Informant filed a bill of information before the Supreme Court alleging that upon information filed in the Circuit Court for the Sixth Judicial Circuit, Montserrado County, the judge of the lower court had suspended the enforcement of the mandate issued by the Supreme Court Justice in Chambers. In the case, the co-respondent, James DeShield, had instituted in a justice of the peace court an action of summary proceeding to recover possession of real property from the informant because of the latter's failure to pay the rental for said property. In that action, in which Co-respondent DeShield had obtained a judgment in his favour, the informant had appealed to the circuit court. Notwithstanding the appeal, the justice of the peace had proceeded to dispossess the informant of possession of the property. Whereupon the informant filed a bill of information before the circuit court. From a decision of the circuit court ordering that the informant be repossessed of the property, co-respondent DeShield announced an appeal, which was never perfected. Whereupon the circuit court ordered the justice of the peace to enforce of its ruling and to place the informant in possession of the premises.
From the decision of the circuit court, Co-respondent DeShield sought prohibition from the Chambers Justice of the Supreme Court. The Chambers Justice denied the writ and or-dered enforcement of the ruling of the circuit court. However, upon the circuit court assuming jurisdiction over the case, the Co-respondent Abraham Saysay, who was a tenant of Co-respondent DeShield filed a bill of information praying the court to stay the enforcement of the proceedings until the informant produced evidence that he had title to the property in question. It was from the granting of the information and the stay of the enforcement of the Supreme Court Justice's mandate that the informant filed the bill of information.

The Supreme Court granted the information, stating several grounds for its decision. The Court reasoned that, firstly, a justice of the peace court, being a court not of record, cannot enforce a decision made by it in an action to recover the possession of real property where an appeal had been announced by the defendant in such proceeding. The action of the justice of the peace in dispossessing the informant of the property after an appeal had been announced and while the same was still pending before the circuit court, was a reversi-ble error. The Court said that the circuit court judge acted properly in ordering that the informant be repossessed of the property and that the respondents had forfeited their right to prevent such repossession or enforcement of the circuit court's ruling since they had failed to perfect the appeal announced by them from the said ruling.

With regard to the suspension of the service of the writ of repossession by the succeeding circuit court judge, the Court opined that not only was the action an affront to the Supreme Court, a disobedience of its mandate by the trial judge, and hence, contemptuous, but that the action also amounted to the succeeding trial judge reviewing and reversing the ruling of his predecessor. The Supreme Court noted that the succeeding trial judge had no authority to review or reverse the ruling of his predecessor and that his action was therefore illegal and reversible. The Court reasoned that under the circumstances, information was the proper course available to the informant and the fact that the trial judge, who committed the error, was no longer in office did not preclude the informant from bringing to the attention of the Court the violation committed by the judge in enforcing the Court's mandate. The Court, in granting the information, and noting that the case was not one involving a dispute as to title, ordered the trial court to resume jurisdiction of the same, conduct a trial *de novo*, and render an appropriate decision.

J. Emmanuel R. Berry appeared for the respondents/ appellants. *Joseph H. Constance* appeared for the informant/ appellee.

MR. JUSTICE MORRIS delivered the opinion of the Court.

Culled from the certified records transmitted to this Court, the facts revealed that James DeShield et al., respondents, rented a zinc shack to one Jusufu, the alleged brother of the informant. After the death of Jusufu, the informant, Musa Kanneh, informed Co-respondent James DeShield that the late Jusufu was his brother and that he was therefore requesting the co-respondent's permission to continue renting the said zinc shack. The informant than moved into the zinc shack with Co-respondent DeShield's approval. Subsequently, the infor-mant, Musa Kanneh, defaulted on several occasions in his rental payment. As a result, Co-respondent DeShield, in 1982, instituted an action of summary proceeding to recover posses-sion of real property against Mr. Kanneh in the justice of the peace court of His Honour B. S. Tamba, where he obtained a judgment against the informant. Informant Kanneh, being dis-satisfied with said judgment, excepted thereto and announced an appeal therefrom to the Sixth Judicial Circuit Court for Montserrado County, Republic of Liberia. The records revealed that Informant Kanneh

alleged that he was evicted from the subject property pending his appeal to the Sixth Judicial Circuit Court. Hence, Informant Kanneh filed a bill of information before the Sixth Judicial Circuit Court, conten-ding therein, amongst other things, that his eviction from the subject premises by Justice of the Peace Tamba, whose court was a court not of records, and in favor of the co-respondent, notwithstanding the pendency of his appeal before the circuit court, was illegal and not in keeping with the statutory laws of this **land**. The certified records before this Honourable Court further revealed that the information was resisted by the Co-respondent DeShield, and was heard and granted on Sep-tember 27, 1994 by His Honour Varnie D. Cooper, Sr., who at the time was presiding over the September Term, A. D.1994, of the circuit court by assignment. The co-respondents excepted to Judge Cooper's ruling of September 27, 1994, and announced an appeal therefrom, which was granted.

However, Co-respondent DeShield failed to file a bill of exceptions within ten days (10), as required by statute. There-fore, the trial court, on November 22, 1994, upon a motion filed, dismissed the co-respondent's appeal. On November 23, 1994 the trial court judge, His Honour Varnie D. Cooper, ordered the justice of the peace, His Honour B. S. Tamba, to resume jurisdiction over the case and to place the informant in possession of the premises. The co-respondents then sought the aid of the alternative writ of prohibition with the filing of a petition in the chambers of the Associate Justice. The petition was heard and denied, and the justice of the peace, His Ho-nour B. S. Tamba, was mandated directly by Mr. Justice Smith to place informant in possession of the subject property rather than having the said act done through the Sixth Judicial Circuit Court.

The certified records also revealed that one Abraham Saysay, a lessee of the DeShield Family, filed a bill of information on February 23, 1995, in the Circuit Court for the Sixth Judicial Circuit, Montserrado County, during its December Term, A. D. 1994, before His Honour C. Alexander B. Zoe, presiding by assignment. Informant Saysay requested the trial court to temporarily suspend the service of the writ of possession until the informant produced his title deed or squatters right from the Liberian Government showing his entitlement to remain on the **land** and in the zinc shack.

On February 24, 1995, the assistant clerk of court upon orders of His Honour Judge Zoe, issued a writ of summons commanding the then justice of the peace, His Honour B. S. Tamba, to suspend the writ of possession until hearing shall have been held on Saturday, February 25, 1995, at 10:00 o'clock a. m. The justice of the peace acknowledged receipt of the writ of summons, on February 25, 1995, at 12:25 p. m.

On December 23, 1998, Musa Kanneh, informant herein, filed a seven-count bill of information before this Court alleging, amongst other things that, the enforcement of the Chambers Justice's mandate had been suspended by His Honour Judge C. Alexander B. Zoe based upon a bill of information filed by Abraham Saysay, by and through the Law Offices of White and Associates. Consequently, he said, the mandate to repossess Musa Kanneh of the subject property had still not been enforced and that he was therefore still dispossessed of the premises. The informant therefore prayed this Court to grant the information and to order that Mr. Justice Smith's mandate be enforced.

On May 4, 1999, the respondents filed a seven-count returns to the information, contending that the informant should have brought his information to the immediate atten-tion of the Supreme Court, if indeed Judge Zoe had suspended its mandate, and not to wait until Mr. Justice Smith

had died and Judge Zoe had been relieved of his judgeship. The respondents therefore prayed this Court to deny and dismiss the information proceeding and sustain the returns.
After a careful perusal of the certified records transmitted to us, we have concluded that the below points constitute the germane issues for the determination of this case.

1. Whether or not a judge of a court not of records, who has rendered a judgment in an action of summary proceeding to recover possession of real property, from which an appeal has been announced and granted, can, during the pendency of the appeal, evict the defendant from the premises in question and issue a writ of possession in favor of the plaintiff, and does such action constitute a reversible error?
2. Whether or not the trial court judge committed a reversi-ble error when he dismissed the respondents' appeal because of the respondents failure to file their bill of exceptions within statutory time of (l0) ten days? and
3. Whether or not a trial court judge of a subordinate court may suspend a mandate or order of the Supreme Court or its Justice presiding in Chambers?

With regard to the first issue, i.e., whether or not a judge of a court not of records, who has rendered a judgment in an action of summary proceeding to recover possession of real property, from which an appeal has been announced and granted can, during the pendency of the appeal evict the defendant from the premises and issue a writ of possession in favor of the plaintiff, and whether such action constitutes a reversible error, we observe from the certified records before us that James DeShield, for the DeShield family, instituted an action of summary proceedings to recover possession of real property against Informant Musa Kanneh before Justice of the Peace B. S. Tamba; that a judgment was rendered against Informant Kanneh who, being dissatisfied with said judgment, excepted to the same and announced an appeal to the Sixth Judicial Circuit Court for Montserrado County, which appeal was granted; and that Justice of the Peace B. S. Tamba pro-ceeded to evict Informant Kanneh from the subject property notwithstanding the pendency of the hearing of his appeal before the Sixth Judicial Circuit Court, Montserrado County.
The statutory law of this country provides, amongst other things, that "if an appeal is taken from a judgment of a court not of record in favor of the plaintiff in a proceeding under this sub-chapter, the issuance and execution of a writ of possession shall be stayed pending the rendition of final judgment..." For reliance, see Civil Procedure Law, Rev, Code 1:62.24. It is the considered of opinion of this Honourable Court that under Liberian jurisprudence, the justice of the peace court is classified and categorized as a court not of record. Therefore, where an appeal is taken from a judgment of the said court not of record, in favor of the plaintiff, the issuance and execution of a writ of possession shall be stayed, the said appeal serving as a supersedeas pending the rendition of a final judgment. Accordingly, it is the holding of this Court that the eviction of the informant from the subject pro-perty by Justice of the Peace B. S. Tamba while the hearing of the informant's appeal was still pending before the Sixth Judicial Circuit Court, constituted a reversible error.
With respect to the second issue, which is whether or not the trial judge committed a reversible error when he dismissed Co-respondent DeShield's appeal because of the co-respon-dent's failure to file a bill of exceptions within the statutory time of ten (10) days, we observe from the certified records that the informant filed a bill of information before the Sixth Judicial Circuit Court alleging that he was evicted from the premises despite the pendency of his appeal taken

from the said court. The information was resisted, heard, and granted by the court on September 27, 1994, then presided over by His Honour Varnie D. Cooper, Sr., at its September, A. D. 1994 Term.

The records further showed that Co-respondent DeShield excepted to the trial judge's ruling and announced an appeal therefrom to this Court, which was duly granted. However, he failed to file a bill of exceptions within (10) ten days, as required by law. The trial judge, on November 22, 1994, and upon a motion duly filed, dismissed the appeal because of the failure of the co-respondent to file the statutorily required bill of exceptions within (10) ten days. The trial court further ordered the justice of the peace court to resume jurisdiction over the case and place the informant in possession of the property. Could we assign error to the trial court judge's actions in granting the informant's motion and in dismissing the co-respondent's appeal because of his failure to file a bill of exceptions within the time prescribed by statute? We think not. The law on appeal is mandatory, both by dictates of the statute and the opinions of this Honourable Supreme Court. The statute states that a failure to comply with any one of the requirements is ground for dismissal of such appeal. For reliance see Civil Procedure Law, Rev. Code 1:51.4 The statute specifically provides, as follows:

"The following acts shall be *necessary* for completion of an appeal: (Emphasis supplied)."

(a) Announcement of taking of the appeal;

(b) Filing of the bill of exceptions

(c) Filing of an appeal bond; and,

(d) Service and filing of notice of completion of the appeal.

Failure to comply with any of these requirements with-in the time allow by statue shall be ground for dismissed of the appeal" Civil Procedure Law, Rev. Code 1:51.4.
The Civil Procedure Law also provides that "the appellant shall present a bill of exceptions signed by him to the trial judge within (10) ten days after rendition of the judgment". Civil Procedure Law, Rev. Code 1:51.7, I LCLR 250. And further, that "an appeal may be dismissed by the trial court on motion for failure of the appellant to file a bill of exceptions within the time allowed by statute..." Civil Procedure Law, Rev. Code 1:5 1.16.

From the certified records before us, we observed that the final judgment in this case was rendered and an appeal an-nounced therefrom on September 27, 1994. Under the appeal statute, Co-respondent DeShield should have filed his bill of exceptions on October 7, 1994, which was (10) ten days after rendition of the judgment. However, this was not done. More than that, the co-respondent could have filed a motion for enlargement of time with justification; but on the contrary, he did nothing. See Civil Procedure Law, 1.7(2). Rather, the co-respondents resisted the motion by raising issues not res-ponsive to the motion's central theme, that the co-respondent had failed to file his bill of exceptions to the final judgment within the time allowed by law. The issue raised in the motion being one of law, the court obviously passed on it, granted it, and dismissed the appeal, The granting of the informant's motion is part of the subject of this

information proceeding.
As stated *supra*, the statutory law in our jurisdiction on appeal is mandatory and should be strictly adhered to, and that a failure to do so renders the appeal dismissible. For reliance, see *Bility v. Sirleaf*, [1976] LRSC 68; 25 LLR 319 (1976); *Delaney v. Republic*, [1935] LRSC 3; 4 LLR 251(1935); and *Saudi v. Gebara*, [1964] LRSC 18; 15 LLR 598 (1960). However, we note that when the respondents sought the aid of prohibition, which was denied, Mr. Justice Smith's mandate was sent directly to Justice of the Peace B. S. Tamba, instead of the Sixth Judicial Circuit Court, for execution, as the law of this **land** directs. In doing so, the Chambers Justice committed a reversible error.
Traversing the third and last issue, which is whether or not a trial court judge or a subordinate court judge may suspend a mandate or order of the Supreme Court or that of its Justice Presiding in Chambers, we observe from the certified records that Abraham Saysay, a lessee of the DeShield Family, filed a bill of information on February 23, 1995, in the Sixth Judicial Circuit Court, during its December Term, A. D. 1994, presided over by His Honour C. Alexander B. Zoe, assigned judge. In the bill of information, Mr. Saysay requested the trial court to temporarily suspend the service of the writ of possession until Informant Kanneh shall have produced his title deed or squatter's right from the government for the **land** claimed by him instead of the zinc shack.
On February 24, 1995, the assistant clerk of court, upon the orders of Judge Zoe, issued a writ of summons commanding Justice of the Peace B. S. Tamba to suspend the writ of pos-session until hearing of the information filed by Mr. Saysay on Saturday, February 25, 1995, at the hour of 10 o'clock a. m. The justice of the peace acknowledged receipt of the writ of summons on February 25, 1995, at the hour 12:25 p. m.

On December 23, 1998, Co-respondent Musa Kanneh filed a seven-count bill of information contending that the enforce-ment of the Chambers Justice's mandate had been suspended by Judge Zoe, upon a bill of information filed by Abraham Saysay, by and through the Law Offices of White and Asso-ciates. As such, the mandate to repossess Musa Kanneh of the subject property was still not enforced and Musa Kanneh was therefore still dispossessed of the premises. Informant Kanneh, therefore, prayed this Court to grant the information and order that Mr. Justice Smith's mandate be enforced.
On May 4, 1999, the respondents filed a seven-count returns to the information. This Court considers count 7 of the returns relevant for the determination of this case. The respon-dents contended in count 7 of the returns that the informant should have brought his information to the immediate attention of the Supreme Court if he felt that Judge Zoe had suspended the Supreme Court's mandate, and not to wait until Mr. Justice Smith's had died and/or Judge Zoe had been relieved of his judgeship. The respondents therefore prayed this Court to deny the bill of information and dismiss the information proceedings.
A careful recourse to the certified records in this case evidently shows that the then circuit court judge, His Honour C. Alexander Zoe, did, on February 24, 1995, issue a precept temporarily suspending the mandate emanating from the Chambers Justice of this Honourable Court. Thus, the said mandate is still unenforced and Informant Kanneh is yet to be repossessed of the subject property. From all legal intents and purposes, there is a clear defiance of this Honourable Court's authority and dignity by the respondents, which is highly contemptuous. This Court has held that "an inferior court's disregard of the Supreme Court's mandate is contumacious." For reliance, see *The National Industrial Forest Corporation v. Baysah*, [1976] LRSC 30; 25 LLR 74 (1976).

Further to the above, this Court, in the case *Raymond International (Liberia) Ltd. v. Dennis*, [1976] LRSC 35; 25 LLR 131, Syl. 6, (1976), held that: "If a judge or any judicial officer attempts to execute the mandate of the Supreme Court in an improper manner, the correct remedy is by bill of information".

The informant, Musa Kanneh, therefore has every right under the laws of this **land** to bring to this Court's attention the fact that its mandate has been disregarded as long as said mandate is unenforced. The fact that Mr. Justice Smith has died and Judge Zoe has been relieved of his judgeship do not preclude the informant from informing this Honourable Court of the disobedience and obstruction of its mandate as in the instant case. Hence, this Honourable Court shall entertain this information in preserving its authority and dignity, despite the relieving of His Honour Judge Zoe from his judgeship and the death of Mr. Justice Smith.
The Supreme Court strenuously frowns on the behavior of a circuit court judge in impeding and obstructing the execution of this Court's mandate. Henceforth, we shall not hesitate to discipline any practicing lawyer or judge of a subordinate court who disobeys or frustrates the enforcement of the mandate of this Court or its Justice presiding in Chambers.
From the certified records in this case and also during oral arguments made by counsels for both parties, they agreed and identified the below listed facts as follows to wit:

(1) That this case does not involve the issue of title as in an action of ejectment; and,

(2) That the appellee was only a tenant of the DeShield family who occupied a zinc shack, and that on several occasions he had defaulted in his rental payments. Consequently, the respondents had instituted an action of summary proceeding to recover possession of real property against him in 1982.
Wherefore, and in view of the foregoing facts, circum-stances and laws controlling, it is the considered opinion of this Court that the information should be and the same is hereby granted, and the peremptory writ ordered issued. The Clerk of this Court is hereby ordered to send a mandate to the trial court to resume jurisdiction over this matter, with instructions that the said court conducts a *de novo* trial of the case on its merits. Costs are to abide final determination. And it is hereby so ordered.

Information granted.

Dennis et al v Dennis et al [1976] LRSC 7; 24 LLR 490 (1976) (2 January 1976)

VENUS DENNIS, et al., Appellants, v. JOHN L. DENNIS, et al., Appellees. APPEAL FROM THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued November 10, 12, 1975. Decided January 2, 1976. 1. The rights of a person shall not be concluded by a judgment rendered

in a suit to which he was not a party. 2. When a lessee of land is named as defendant in an ejectment action, the title holder lessor must be joined as co-defendant. 3. A trial judge commits reversible error when he overrules a judge of concurrent jurisdiction. 4. All legal issues must be ruled upon before factual issues can properly be referred to a jury.

The lessor appellees were not made parties to an action of ejectment successfully brought by appellants against the lessee of appellees. The appellees claimed to be owners of the property involved as heirs of their father who had asserted ownership rights over the property. The appellees brought a suit in equity to set aside the judgment previously obtained by appellants. The appellees contended that their rights had not been concluded, by reason of the failure to join them as parties. The lower court granted the relief sought by appellees, set aside the judgment and ordered redocketing of the previously described ejectment action. The Supreme Court agreed with the appellees about their rights not having been concluded, but because the lower court had failed to pass upon issues of law raised and because the judge had overruled a colleague, the judgment was reversed and the case remanded. M. Fahnbulleh Jones, Nathan Ross and D. Caesar Harris for appellants. Samuel Pelham for appellees.

MR. JUSTICE HENRIES delivered the opinion of the Court. According to the record certified to this Court, George C. Dennis, Sr., of Louisiana, Montserrado County, willed to his wife, Julia E. Dennis, for her natural lifetime and after her death, to their son George C. Dennis, Jr., lot No. 109 on Broad Street in Monrovia, on which is constructed the Gabriel Cinema. George, Jr., predeceased his mother, Julia, leaving two minor children, Venus Dennis and Beatrice DennisWebb, who are the appellants in this action. Although she allegedly possessed a life estate in lot No. 109, Julia E. Dennis died purportedly willing it to Gabriel L. Dennis, her sole executor, and father of appellees. In 1954, he leased the property to Liberia Amusements Ltd., one of the appellants, for a period of twenty years. Although Gabriel L. Dennis did not bequeath this property to anyone, after his death it was listed in an inventory as part

of his estate. The appellants filed a petition in the Probate Court of Montserrado County to delete lot No. 109 from the inventory. This petition was denied. In 1974, appellants Venus Dennis and Beatrice DennisWebb instituted an action of ejectment against Liberia Amusements, Ltd., lessee of lot No. 109, which was in the process of negotiating a new lease with appellees, heirs of the late Gabriel L. Dennis, in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County. There is conflicting testimony about whether the appellees were informed of the action brought against their lessee. In any event, they were not party to the ejectment action. The Liberia Amusements, Ltd.,

defendants in the action, filed its appearance, but failed to file an answer. The trial judge, Hon. Tilman Dunbar, ruled defendant to a bare denial, and after hearing the testimony of the plaintiffs' witnesses, the jury brought in a verdict in favor of the plaintiffs, Venus Dennis and

Beatrice Dennis-Webb. Judgment was rendered and no appeal was taken therefrom. Liberia Amusements, Ltd., paid the court's costs and Venus and Beatrice were put in possession of lot No. 109. Apparently in order to continue their business operation, Liberia Amusements, Ltd., began negotiations with the "new" owners for a possible leasehold. While these negotiations were going on, the appellees, who were not party to the ejectment suit, filed a "bill in equity to set aside a void judgment and grant relief against fraud for lot No. 109" against Venus Dennis and Beatrice DennisWebb and Liberia Amusements, Ltd., parties in the ejectment action, in the Civil Law Court for the Sixth Judicial Circuit. Separate answers, containing altogether 37 counts were filed. The petitioners filed a single reply to the two separate answers and Judge Alfred Flomo ruled on the legal issues raised in the pleadings, heard the factual issues, and rendered a decree dropping Liberia

Amusements, Ltd., as a party, and ordering the redocketing of the ejectment action which had been heard and decided by his colleague, Judge Dunbar. It is this decree which is now before this Court for appellate review.

While the ejectment suit is not now the subject of review, because the judgment was never excepted to or appealed from, it is incumbent upon us that some observations be made about the trial of that case, since the instant case grew out of the ejectment action and since several references were made to it during argument before this Court. Our first observation is that the judgment in the ejectment suit sought to dispossess John and Wilmot Dennis of property they are claiming to be theirs, even though they were never brought under the jurisdiction of the court. The action was brought against their lessee, Liberia Amusements, Ltd., but they themselves were never served with process, nor did they intervene, even though as heirs and privies of the lessor, their father, they are bound to

warrant and defend their lessee against attempts to disturb their peaceful enjoyment of the leased premises.

They claim that they did not know of the pendency of the action until after the judgment had been rendered and their tenant evicted.

Giving them the benefit of the doubt, we wonder why their lessee did not file an answer alleging the circumstances under which it was occupying the premises, or why the court itself did not join them as necessary parties. Our Civil Procedure Law addresses itself

to intervention. "Upon timely application, any person shall be allowed to intervene in an action 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 of an officer thereof." Rev. Code i :5.6r (lc). Section 5.62 provides for permissive intervention. "r. Upon timely application, any person may be allowed to intervene in an action : . . . "(b) When the applicant's claim or defense and the main action have a question of law or fact in common. "2. Consideration by court. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." Section 5.63 (2) of the Civil Procedure Law sets forth procedures in intervention. "A person desiring to intervene shall serve a motion to intervene upon all parties affected thereby. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought." As far back as 1946, in Johns v. Witherspoon, [1946] LRSC 3; 9 LLR 152 (1946), this Court held that under certain circumstances a third party may be permitted to intervene in a

case pending in a court prior to the rendition of the judgment where his rights and interests are or will be materially affected ; and that the rights of no one shall be concluded by a judgment rendered in a suit to which he is not a party. Again, in Gaddini v. Iskander, [1970] LRSC 20; 19 LLR 490 (1970), we held that the right to intervention should be asserted within a reasonable time after knowledge of the pending action.

Since the appellees in this case contend that they did not intervene because they did not know of the pendency of the ejectment suit, recourse to the Civil Procedure Law shows that another method could have been used to bring them in. They could have been joined as defendants in the action in accordance with section 5.5 r. 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. "2. Compulsory joinder. 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 provision of paragraph i 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." On motion of any party, or on its own initiative, the court itself may order that additional parties be brought in at any stage of the action or on any terms that are just. Rev. Code :5.54. See also Lartey v. Community Funeral Home Service, Inc., [1970] LRSC 12; 19 LLR 447 (1970) FrancoLiberian Transport Co. v. Republic, 13 LLR 54.1 (1960) . We have made observations on the questions of intervention and joinder of parties in order that we may state clearly again that one who is not a party to an action can-

not be concluded by a judgment arising therefrom ; and
that a court's judgment is not binding upon one over whom it had no
jurisdiction either by service of process or by his voluntary
appearance and submission to the court's jurisdiction. Tubman v. Murdoch,
[1934] LRSC 26; 4 LLR 179 (1934) ; Gbae v. Geeby, [1960] LRSC 50; 14 LLR
147 (1960) ; and Schilling & Co. v. Tirait, [1965] LRSC 3; 16 LLR 164
(1965). Where a lessee of land is named as defendant in an ejectment
action, the titleholding lessor must be joined as co-defendant.
Liberian Trading Corporation, Ltd., v. Cole, is LLR 61 (1962). This not
having been done, and appellees' not having intervened, the
judgment in the ejectment suit cannot affect the rights of the appellees and,
therefore, they are at liberty to pursue the appropriate
remedy to establish their purported ownership to lot No. 109, if they so
desire. During argument before us, it was brought to our
attention that no deed was ever introduced into evidence in the ejectment
suit. This seems very strange, for in Cess-Pelham v. Pelham,
[1934] LRSC 6; 4 LLR 54 (1934), we held 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. In Duncan v. Perry, 13 LLR
510 (1960), we declared that a plaintiff in an ejectment action must furnish
clear and convincing proof of title, and in Dundas v. Botoe,
[1966] LRSC 53; 17 LLR 457 (1966), we held that in ejectment, a deed must be
alleged in or proferted with the pleadings. We mention this only in passing.
Turning
to the case at bar, we find that the appellants filed a ten-count bill of
exceptions, but we are of the opinion that only two basic
points warrant our consideration at this time, and they are ( ) that the
judge did not pass upon all of the legal issues raised in
the pleading and ; (2) that the trial judge erred in ordering the redocketing
of the ejectment action which had been disposed of
earlier by a judge with concurrent jurisdiction.

Taking the latter issue first, we must reiterate here
that Judge Flomo committed reversible error when he ordered the redocketing
of the ejectment action for a new trial, for judges in
courts of concurrent jurisdiction have no power to overrule each other.
Republic v. Aggrey, 13 LLR 469 (196o) ; Kanawaty v. King, [1960] LRSC 66;
14 LLR 241 (196o) ; and Kaizolu v. Corneh, [1968] LRSC 22; 18 LLR 369
(1968). Therefore, however sound Judge Flomo's ruling might seem to be in
substance, it cannot be upheld by any legal authority;
and however erroneous or sound might be the ruling of Judge Dunbar in the
ejectment action, the only judicial tribunal clothed with
legal authority to have reviewed it is the Supreme Court. Judge Flomo,
presiding over the December 1974 Term of the court, exercising
concurrent jurisdiction with Judge Dunbar who presided over the September
1974 Term, had no authority to review his acts. With respect
to the question of the disposal of the issues of law, it is an elementary
principle of law that all legal issues must be ruled upon

before factual issues may properly be referred to the jury. Reeves v. Knowlden, LLR 199 (1952). The appellants contend that the trial judge did not rule upon many issues of law. The judge, in ruling upon the issues, said : "Although there are many issues raised in the petition and the answers of the respondents, as well as the reply of the petitioners, we are of the opinion that those issues are not pertinent to this petition because they are cognizable in an action of ejectment, and, therefore, the court disregards and overrules those issues. The only issue which is germane to the just determination of the petition is whether or not the petitioners were informed of the institution of the action of ejectment from which this petition has grown, and if so, what step have they taken to protect and defend their title." It is our opinion that the issues were worthy of consideration and the ruling of the trial judge did not meet

the requirement set in several recent opinions of this Court with respect to ruling upon legal issues. These issues, as all issues of law raised in the pleadings, should have been passed upon in a comprehensive manner, and where this is not done, the case will be remanded for proper disposition in the lower court. Zakaria Bros. v. Pierson, [1969] LRSC 8; 19 LLR 170 (1969) ; Claratown Engineers, Inc. v. Tucker, [1974] LRSC 48; 23 LLR 211 (1974) Under the circumstances and the law, the decree is reversed and the case is remanded for a new trial, beginning with the proper disposition of the issues of law. Costs to abide final determination. It is so ordered. Reversed and remanded.

Bonah et al v Kandakai [1971] LRSC 86; 20 LLR 677 (1971) (29 September 1971)

MUSU BONAH and MOMOLU MANO BALLAH, Petitioners, v. HON. JAMES KANDAKAI, Presiding over the Ninth Judicial Circuit, Bong County, August Term, 1971, and JARSO McGILL, Respondents.
PETITION FOR A WRIT OF PROHIBITION.

Decided September 29, 1971. 1. A court may correct its record or judgment at any time before it is made final, provided notice is given to the parties. 2. A court may not entertain a matter when such matter is pending in another court of concurrent jurisdiction.

While an action between the same parties over the same subject matter was pending in the Sixth Judicial Circuit, plaintiff in that action commenced another suit in the Ninth Judicial Circuit, which had not been established as a judicial circuit at the time the original action was commenced. The judge in the Ninth

Judicial Circuit denied a motion to dismiss the complaint on the ground that the matter was pending before another court of concurrent jurisdiction. The defendants therein applied for a writ of prohibition. The petition was granted. Appearances not indicated. PIERRE, C.

J., presiding in chambers.

When the statute establishing the new counties was passed in 1963, the Ninth Judicial Circuit Court was also established in Bong County, which was previously known as the Central Province of the hinterland administration. Before this, in 1949, Momolu Mano Ballah, one of the petitioners herein, had filed an action of ejectment in the

Sixth Judicial Circuit
Court, Montserrado County,
677

678

LIBERIAN LAW REPORTS

against Jarso McGill of Kakata, involving fifty acres of land in the Kakata area. A public land sale deed for the aforesaid fifty acres was signed by the President on July 6, 1948, and a copy of this deed was made profert with plaintiff's complaint in the action of ejectment. Previous to the establishment of the four new counties in what had been the three provinces of the interior, all civil and criminal matters arising in these provinces were filed in and heard and determined by the circuit court nearest the province in which the case arose. Thus, cases arising in Bong County, which was the Central Province, were heard and determined in the courts in Montserrado County. This was the reason for the ejectment action for land in the Central Province having been filed in the Civil Law Court, Montserrado County. The case progressed through the pleadings and the appointment of a board of arbitrators, consisting of three surveyors, who filed their report on January 14, 195o. There is no record of any further development in the case, and there matters stood in respect of this case when the statute abolishing the provinces and establishing counties was passed into law in 1963. According to a certificate of the clerk of the Sixth Judicial Circuit Court filed with the petition in these certiorari proceedings, no judgment had been rendered in the case. While this action of ejectment was still pending determination before the Sixth Judicial Circuit Court in Monrovia, Jarso McGill, who is plaintiff in the undetermined suit in Monrovia, filed another action of ejectment for the same property in the Ninth Judicial Circuit Court, Bong County, and has named Musu Bonah, wife of Momolu Mano Ballah, who is defendant in the case pending in Monrovia, as defendant. At this point Momolu Mano Ballah filed a motion to intervene as a codefendant, since he had not been joined in the second action of ejectment filed in Bong County. In the motion for intervention and in his answer to the

LIBERIAN LAW REPORTS

679

complaint, he raised the principle of lis pendens. The judge denied the relief thereby sought by holding that prior jurisdiction in another court had not been established. To satisfy the judge's desire for proof of the pendency of the ejectment action in Monrovia, the intervenor produced a certificate from the clerk of the Sixth Judicial Circuit Court, listing all of the documents found in the file of the ejectment action in Monrovia, marked "A" to "R," which action is still pending. Notwithstanding the judge denied the motion. Hence, the application for a writ of prohibition. The returns filed by the respondents have not denied any of the averments of the petition, but rather have relied upon, and sought to defend, points on which the judge denied intervenor's motion. Within the term of the court over which a circuit judge presides, he may correct any decisions made by him, and any rulings entered. The fact that he had already passed on the issues of law during the term over which he was presiding is no excuse for him to evade a plain duty to take notice of the fact that a like case involving the same parties and the same subject matter was already pending before another court with concurrent jurisdiction. "It is 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). It should have been clear to the respondent judge that his civil jurisdiction in Bong County not being superior to the Sixth Judicial Circuit Court's in Montserrado County, he could not take jurisdiction over, pass upon or determine any issues pending before another court with like jurisdiction. If the judge could have claimed ignorance of the pendency of the other action in ejectment filed

in Montserrado County, involving the same subject matter and the same parties, his refusal to vacate jurisdiction might have been excusable. But the certificate of the clerk of the Sixth Judicial Circuit Court was sufficient notice to him of the pendency of the first ejectment case in Montserrado County. According to Bouvier, lis pendens is the control which a court of competent jurisdiction has over property in litigation until judgment has been rendered. BOUVIER'S LAW DICTIONARY. What a confused state of affairs there would be if several courts were allowed to hold hearing and determine jurisdiction over the same case. There would be no end to litigation, and there would be no protection to the rights of the parties. Other authorities state the matter at length. "Basis of Doctrine. Two different theories have been advanced as the basis of the doctrine of lis pendens. According to some authorities, a pending suit must be regarded as notice to all the world, and pursuant to this view it is argued that any person who deals with property involved therein, having presumably known what he was doing, must have acted in bad faith and is therefore properly bound by the judgment rendered. Other authorities, however, take the position that the doctrine is not

founded on any theory of notice at all, but is based upon the necessity, as a matter of public policy, of preventing litigants from disposing of the property in controversy in such manner as to interfere with execution of the court's decree. Without such a principle, it has been judicially declared, all suits for specific property might be rendered abortive by successive alienation of the property in suit, so that at the end of one suit another would have to be commenced, and after that, another, making it almost impracticable for a man ever to make his rights by a resort to the courts of justice." 34 AM, JUR., § 3, 3634.

And constructive notice is provided for by statute. "A notice of pendency may be filed in any action in a court of the Republic of Liberia in which the judgment or order demanded would affect the title to, or the possession, used or enjoyment of, real property. The pendency of such an action is constructive notice, from the time of filing of the notice only, to a purchaser from, or encumbrancer against, any defendant against whose name a notice of pendency is indexed. A person whose conveyance or encumbrance is recorded after the filing of the notice is bound by all proceedings taken in the action after such filing to the same extent as if he were a party." Civil Procedure Law, L. 1963-64, ch. III, § 791. In this case the parties to both ejectment actions are the same, so the notice of pendency only reminded the respondents that an action of ejectment had been filed previous to the filing of the second case in Bong County, and that the case was still pending in the Sixth Judicial Circuit, Montserrado County. It has been contended in argument before this bar that failure of the plaintiffs in the action filed in 1949 to proceed, was an indication of abandonment of the said case. The peculiar situation showing in this case would seem to indicate that there was a lack of interest on both sides, by failure to have moved the court to render judgment on the award of the arbitrators. Either side might have so moved, but neither did. According to the respondent judge's own words he should "have been convinced if the defendant or intervener had brought, or by some showing indicated Jarso McGill had been brought under the jurisdiction of the Montserrado County Court." That proof was evidenced by the certificate of the clerk of the Sixth Judicial Circuit Court, as aforesaid. It has also been contended that with the establishment of Bong County in 1963, the Sixth Judicial Circuit Court

lost jurisdiction which it had acquired by law and, therefore, the case could not be determined by the Sixth Judicial Circuit Court. All writers agree that jurisdiction is properly acquired only by law, and that once a court

acquires competent jurisdiction over a cause, it retains such jurisdiction until rendition of judgment, unless jurisdiction is acquired by a superior tribunal. Bouvier's Law Dictionary adequately defines jurisdiction. "The authority by which judicial officers take cognizance of and decide causes. . The power to hear and determine a cause. "The test of jurisdiction of a court is whether or not it had power to enter upon the inquiry ; . . . "The right to adjudicate concerning the subject matter in the given case. To constitute this there are three essentials : First, the court must have cognizance of the class of cases to which the one to be adjudicated belongs ; second, the proper parties must be present ; and third, the point decided upon must be, in substance and effect, within the issue. . . . "Jurisdiction is given by law ; and cannot be conferred by consent of the parties ; nor can silence or positive consent of parties confer on a federal court jurisdiction denied by statute. . . . "Jurisdiction given by law of the sovereignty of the tribunal is held sufficient everywhere, at least as to all property within the sovereignty ; and as to persons on whom process is actually and personally served within the territorial limits of jurisdiction, or who appear and by their pleadings admit jurisdiction." In this case all of the parties admitted jurisdiction of the Sixth Judicial Circuit, by the pleadings which they filed and which progressed as far as the surrebutter. It would be strange, therefore, that parties who admitted the jurisdiction of one court should attempt to confer upon another court of concurrent jurisdiction control over the same subject matter.

Ample relief is provided for the issues herein, as well, by the Civil Procedure Law, L. 1963-64, ch. III, § toz(id) : "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." In view of the foregoing, it is ordered that the Clerk of this Court send a mandate to the judge now presiding in the Ninth Judicial Circuit, commanding him to immediately surrender jurisdiction over the case of ejectment out of which these proceedings have grown. The Clerk will also send a copy of this ruling to the judge now presiding in the Sixth Judicial Circuit, and have him call the ejectment case now pending before him involving the parties herein, and determine the matter without further delay during the present sitting of the September Term, 1971. Costs are ruled against the respondents.
Petition granted.

Massaquoi v Administrators [1941] LRSC 14; 7 LLR 273 (1941) (3 May 1941)

Ex Parte J. J. MASSAQUOI for his Wife, SARAH MASSAQUOI, Petitioner-Appellee, Administrators of the Estate of the Late MOMOLU MASSAQUOI, Intervenors-Appellants.
APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued April 7, 14, 1941.
Decided May 3, 1941. Where a petition, filed in court and intended to commence an action at law or equity, fails to be properly entitled or to give the cause and the names of the parties as plaintiffs and defendants, it will not receive the favorable consideration of the court and the petition will be denied.

Appellee filed a petition in the circuit court praying to confirm a survey of .a town lot and to correct a number in a mortgage deed executed on said lot. The court sustained appellee's petition and ordered the survey confirmed and number corrected. On appeal to the Supreme Court, petition denied.
A. B. Ricks and Anthony Barclay for appellants.
No appearance for appellee.

MR. Court.

JUSTICE DOSSEN

delivered the opinion of the

This cause comes up to this Court for review from the Circuit Court of the First Judicial Circuit, Montserrado County, which court decided favorably upon an application filed by J. J. Massaquoi * for his minor children, heirs of Sarah Massaquoi his wife, praying that the court confirm the survey of one town lot of land Number 272 in the City of Monrovia, made by B. J. K. Anderson, Public

* ED. norm: This case and the related cases are defective in that there are conflicting statements as to who instituted this proceeding in equity and in what capacity.

Land Surveyor, Montserrado County, and correct the number of said lot in a mortgage deed issued on the twenty-fifth day of February, 193o, for this same tract of land. This Court, taking judicial notice of the records, observes that the question of the number of the property was adjudicated in the court below on the twentieth day of October, 1939. The lower court in its ruling entertained and sustained the application and ordered the survey confirmed and the number corrected in the mortgage deed which had been executed on the twenty-fifth day of February, 1930. Objectors, now appellants, administrators of the estate of the late Honorable Momolu M assaquoi, were dissatisfied with the several rulings and opinion of said court, and appealed to this Court for a review of said ruling, contending that the application failed to set forth any names of objectors (intervenors). This Court, taking due

judicial notice of the records filed, observes that said documents in this case fail to state the names of any objectors in the court below. This Court further observes that in Ex parte Williams, which involved an application for the restoration of sundry real estate claimed by one E. W. Williams to be his property, the Court gave the following reasons for denying the application : It [S]aid document cannot be considered by .. . [this Court] as a legal instrument . . . in that there is no title of the cause nor anyone named as respondent. "[A]n action . . . [is] 'an ordinary proceeding in a court of justice by which one party prosecutes another . . . for the enforcement or protection of a right. . . . The party complaining shall be known as the plaintiff, and the adverse party as the defendant.' 1 Rev. Stat. § 252." Ex parte Williams, [1934] LRSC 27; 4 L.L.R. 189, 190 (1934). This Court regrets to say that the document filed by peti. . .

tioner contains none of these requisites and therefore cannot receive the favorable consideration of this Court. This being in the nature of an action, and not within the embrace of the law and rule of this Court governing the filing of pleadings, we regret to say that said petition should be denied, the case dismissed, and petitioner ruled to pay all legal costs; and it is hereby so ordered. Petition denied.

Coleman v Stubblefield [1968] LRSC 39; 19 LLR 29 (1968) (14 June 1968)

JOSEPH CARMO KUTUBU COLEMAN, Appellant, v. PHILIP F. N. CRAWFORD and JOHN DEXTER STUBBLEFIELD, Appellees.
APPEAL FROM THE RULING
OF THE JUSTICE PRESIDING IN CHAMBERS DENYING A WRIT OF PROHIBITION TO THE DISTRICT COMMISSIONER, KLAY DISTRICT, MONTSERRADO COUNTY.

Argued (date not indicated). Decided June 14, 1968. 1. A private prosecutor, being one who only sets in motion the machinery of criminal justice operated by the State, is in no way concerned with the matter should the State's case fail, except in cases of breach of peace. 2. When the Republic of Liberia is a party to a suit, it neither recovers nor pays costs on appeal. 3. A writ of prohibition may issue even though the customary appeal procedures have not been pursued against the person sought to be enjoined. 4. An appeal to the Supreme Court from a ruling of a Justice presiding in chambers is tried de novo upon the entire record and not merely those phases of the case presented before the Justice.

The appellant was the private prosecutor in the Court of the County Commissioner,

Klay District, charging petty larceny, in which case the Commissioner discharged the defendant and held the private prosecutor liable for the costs of the case. The appellant applied for a writ of prohibition against the enforcement of the judgment after abandoning his appeal, and the writ was denied by the Justice in chambers, from which ruling this appeal was taken. The ruling of the Justice was reversed and the peremptory writ of prohibition ordered issued. Lawrence 11. Morgan for appellant. Solicitor General Nelson W. Broderick for the appellees.

· MR. JUSTICE WARDSWORTH delivered the opinion of the court. This case emanates from the Court of the
County Com missioner, Klay District, Montserrado County, in which,
29

according to the certified record,
one Joseph Carmo Kutubu Coleman, a Liberian citizen, at Klay, within the Territory of Bon-ii, Montserrado County, swore to a writ of petty larceny against one Momo Seh, on March 2, 1963. Predicated upon this, a writ of arrest was issued against the said Momo Seh by Philip F. N. Crawford, then Assistant District Commissioner for the Area. Upon being arrested and brought before the Commissioner, the defendant pleaded not guilty to the charge. In his defense, he contended that he had been instructed and authorized to take and carry away the said property by a Mr. Maxwell Warner, who, the defendant alleged, informed him that he was the legitimate owner of the land and the fruits thereon. At this stage of the petty larceny proceedings, the court called the private prosecutor to prove ownership of the land, and that said property had been stolen as claimed. The private prosecutor and his witnesses testified, and so did the defendant and his witnesses. For reasons best known to himself, the respondent Commissioner apparently concluded that the defendant had not committed petty larceny as charged, but instead of dismissing the charge, and discharging the defendant without delay, and without any case having been brought against petitionerappellant, he proceeded to render judgment against private prosecutor Joseph Carmo Kutubu Coleman, adjudging him liable for costs. The appellant applied for a writ of prohibition against the enforcement of that judgment. The matter was taken up in the chambers of Mr. Justice Simpson, whose ruling appellant feels was not in keeping with the law, and he has appealed to the Court. Before proceeding further, we deem it essential to quote the first four counts of the petition for the writ, said petition comprising seven counts. "I. That on the znd day of March, 1963, petitioner complained to Mr. Philip F. N. Crawford, at the time

Assistant District Commissioner, Klay District, Montserrado County, Republic of Liberia, of a Mr. Momo Seh, at the time lodging in his District, who has stealthily entered your petitioner's premises

at Klay and stolen therefrom sundry crops and other personal property, asking that the said Momo Seh be apprehended and sent to the proper judicial forum to be dealt with
according to law. "z. That pursuant to this report, the said Commissioner ordered arrested Momo Seh who, having been brought before
the Commissioner, admitted taking away the property, but claimed that he had been sent to do so by one Maxwell Warner. Instead of
forwarding the case to a Justice of the Peace, or Magistrate, with competent authority to try the charge of petty larceny, the Commissioner
embarked upon a hearing of the case, requiring your petitioner to produce his deed to prove title to the land on which the stolen
fruits had been planted, or to pay the costs of court. "3. That your petitioner, realizing that the Commissioner had no jurisdiction
over petty larceny, informed him that he had only requested that the defendant be apprehended and sent to a court of competent jurisdiction,
and not for trial of the charge. Nevertheless, quite contrary to law, he embarked upon trial of a case of ownership of the parcel
of land and the fruits planted thereon. "4. That having thus proceeded, and although there was no complaint before him concerning
ownership of the land, the Commissioner proceeded to render final judgment against your petitioner, the private prosecutor in the
petty larceny case, and ordered that he pay costs." Countering the petition, respondents filed a return consisting of ten counts,
of which three and four, in substance,

contended the failure of petitioner initially to plead lack of jurisdiction, and claimed, in fact, jurisdiction to try cases of petty
larceny. From the picture given of this case as revealed by
the record, it is crystal clear that the Commissioner in concluding the case of petty larceny did assess costs against the private
prosecutor, who was not a party to the petty larceny proceedings. According to Judge Bouvier, a private prosecutor is defined as
follows : "A private prosecutor is one who prefers an accusation against a party whom he suspects to be guilty. Every man may become
a prosecutor; but no man is bound, except in some few of the more enormous offences, as treason, to be one." 2 BOUVIER'S LAW DICTIONARY,
2753. Again, we have the following: "Private prosecutor. One who sets in motion the machinery of criminal justice against a person
whom he suspects or believes to be guilty of a crime, by laying an accusation before the proper authorities, and who is not himself
an officer of justice." BLACK'S LAW DICTIONARY, p. 1451. From the above, a private prosecutor is one who brings to the knowledge
of the law, or a judicial officer, that an offense has been committed, upon whose information the court might act in bringing a culprit
to justice. This is done through the State and, if the State fails to convict the offender and the case is dismissed, the private
prosecutor is in no way concerned, especially so in criminal matters, except for cases of infraction of the peace. Criminal Procedure
Law, 1956 Code 8:44o. Further, the Commissioner contends, substantially, that petitioner should have continued the prosecution of
his appeal and, having failed to do so, prohibition does not lie and, therefore, the petition should be denied. This Court, in Fazzah

v. Phillips, [1943] LRSC 2; 8 L.L.R. 85 (1943), held that prohibition will issue to prevent a tribal tribunal

from enforcing its judgment where there has been a notice of appeal therefrom. The Republic of Liberia, when a party to a suit, does not receive nor pay costs. Civil Procedure Law, 1956 Code 6;1064. In the prosecution of all criminal matters the Republic of Liberia is a party, the case of petty larceny being no exception. It was brought out during the argument before the Court that this particular phase of the petition, the assessment of costs against the private prosecutor, as contained in count four, was not argued before the Justice whose ruling is now under review. Unlike matters on appeal from the subordinate courts which are principally based upon bills of exception, an appeal from the ruling of a Justice is not conditioned upon any technical legal formality, such as an approved bill of exceptions, or appeal bond, nor is it required that the parties should file briefs. Consequently, an appeal from the ruling of a Justice opens up the entire record without any reservation, and is heard by the full bench de novo, in that certain phases of the petition or the return not having been argued before the Justice whose ruling is being reviewed does not preclude the parties from argument when on appeal before the full bench. In view of the foregoing, and the law cited, it is obvious that the respondent Commissioner erred in assessing costs against the private prosecutor. Therefore, the petition is hereby sustained, the alternative writ upheld, and the peremptory writ ordered issued. And it is hereby so ordered. Reversed. MR. JUSTICE SIMPSON dissenting. The fallibility of man is readily evidenced by his daily life, which constitutes a continuing pursuit of perfection.

It therefore follows that man must accept his ability to err, for this makes him human. Our Constitution, which is in a large measure patterned after that of the United States, divides Government into three distinct branches, Legislative, Executive, and Judicial. We, of the judiciary, are also governed by the Constitution, statutes made in pursuance thereof, and our rules that are not violative thereof. The present case strikes me as being rather simple in respect to a determination thereof. The appellant, who was the petitioner in prohibition, was also the private prosecutor in a petty larceny suit at the level of the District Commissioner of Klay Sub-District, which is now a part of Bomi Territory. At the court of first instance, the private prosecutor contended that certain oranges had been unlawfully removed from his property by one Momo Seh. Momo Seh was thereupon arrested and brought into court, at which time he pleaded not guilty, not because he had not taken the oranges, but because of the fact that the oranges were on the property of one Maxwell Warner, and the said owner had authorized the picking and removal of these oranges. In view of the above developments, the District Commissioner,

acting under the quasi-judicial authority with which he was clothed by virtue of the provisions of the Aborigines Law, set out to determine whether or not the property was, in fact, that of Maxwell Warner, thus deviating from the original matter, to determine whether trespass had actually been committed, since there can be no larceny without trespass. The trial took five days and at the conclusion thereof the Commissioner gave what he styled a decision, which held that the private prosecutor was not the owner of the premises upon which the orange trees were situated. The Commissioner thereupon discharged Momo Seh and assessed costs against the private prosecutor, whom he at that time styled "plaintiff." An appeal was then taken from the decision of the Commis-

sioner to the Superintendent of Tribal Affairs. After the decision of the Commissioner was affirmed by the Superintendent, and no appeal was prosecuted from his affirmation of the Commissioner's decision, an attempt was thereupon made to enforce the decision of the Commissioner. It was at this time that prohibition was sought in this Court by an application for an alternative writ predicated upon the lack of jurisdiction of the Commissioner to entertain and determine a criminal cause involving petty larceny. It was in count four that the petition made mention of the order of the court that petitioner, now appellant, pay the costs of court. (For easy reference, see the majority opinion for count four of the petition.) Count seven of the same petition held, and we quote : "That not only is the respondent without jurisdiction over the subject matter, but that this action is also illegal and contrary to rules which ought to be observed at all times, and should not be allowed." This petition was filed on the 23rd day of April, 1965, based upon a decision that had been rendered on the 17th day of February, 1964, one year and two months earlier. In his return, the Commissioner contended that he did have jurisdiction over matters involving petty larceny and, for authority, cited the Aborigines Law, which not only conferred jurisdiction, but also established penalty for the offense. In the argument before the Justice, the main contention centered around the existence of jurisdiction over subject matter and party, and the issue of estoppel in respect to a party raising a jurisdictional issue when the matter before the court has been by him instituted. The issue of costs was never raised nor argued before the Justice and, therefore, constituted no part of his ruling. Irrespective of the above, when argument commenced before the bench on an appeal taken from the ruling of the Justice, counsel for appellant most strenuously argued that prohibition would lie by virtue of the fact that costs had been a part of the decision of the Commissioner, and

enforcement of the decision would mean the payment of costs

in an action to which the State was a party. When asked whether or not the particular issue had been raised before the Justice and if he had passed thereon, counsel for appellant was unable to say, for he had not himself conducted the case before the Justice.
It is elementary that our statute provides that where the Republic is a party to an action, costs may not be levied for or against her and, in the present case, the Republic, through the Commissioner, was in fact a party. However, in my view, the pivotal issue is concerned with whether or not the Supreme Court en banc, while engaged in the review of a ruling of a Justice in chambers, may not only touch upon but reverse that ruling predicated upon an issue subsequently raised in the application for the writ, but nowhere mentioned prior to a review by the full bench. The Court has stated that an appeal from a Justice in chambers to the full bench constitutes a hearing de novo devoid of legal technicalities. This is an appellate court and we have often held that we entertain solely appellate jurisdiction while sitting en banc, except in instances where there has been a specific conferral of original jurisdiction by the Constitution. This Court has also held that even in instances where the Legislature attempts to confer upon it original jurisdiction in violation of the Constitution, the Court will refrain from acting in pursuance of this jurisdiction improperly conferred. In the circumstances, I say that for this Court to hear anew the application for the issuance of an alternative writ is to impliedly confer original jurisdiction upon an appellate court. For generally, in the review of a ruling, decree, or judgment, it predicates its affirmation, remand, or reversal, upon the ruling or other final determination of the inferior tribunal. What has happened in the present case is that the Court has gone outside the ruling to find a ground for reversal.

Another interesting issue here is whether the reversal of ruling just effected by the majority of my colleagues determines that the Commissioner had no jurisdiction, or means that no costs should have been assessed. What in actuality is the retrospective effect of the prohibition? Does it mean that the Commissioner had no jurisdiction irrespective of the plain wording of the Aborigines Law which does give jurisdiction? Or, does the granting of the peremptory writ mean that where a party appeals from a decision but finds that the appellate tribunal affirms that decision, he may come by way of prohibition to correct an alleged error that was not "corrected" by the regular appeal? In any event, I shall not labor too much on this particular issue. It seems to me, that where an individual submits himself to the jurisdiction of a court which is possessed of in rem jurisdiction, and permits the proceedings of that court to reach final judgment, and subsequently appeals from the judgment rendered to an appellate tribunal, such an individual is estopped from denying the existence of jurisdiction. And where the judgment thus rendered is inclusive of certain provisions contrary to the interests of the particular individual, he may not have redress by way of prohibition. Prohibition lies where there is an improper exercise of jurisdiction, or, where jurisdiction properly exists, the court is proceeding by rules different from those that ought at all times be observed. When we speak here of

"proceed by rules," it necessarily follows that the rules spoken of appertain to procedure, and when a trial judge or, in this instance, a Commissioner, violates a provision of substantive law, this, in my view, does not constitute a breach of rule so that prohibition would lie. Redress here must be had by appeal, since the appeal would have the same supersedeas effect and would eventually correct any substantive errors if there be any in the decision or judgment being appealed from. I have pointedly and intentionally refrained from mak-

ing specific mention of other issues that would cause the peremptory writ of prohibition not to issue, and this I have done primarily because these are issues that were neither raised nor argued before the Justice and, therefore, should not here be determined, for a cardinal rule, hoary with age, is that this Court, or any other court for that matter, will not raise issues or do for parties litigant that which they ought to do for themselves. And this legal principle, in my estimation, should be followed when the raising of such an issue would give rise to the reversal of a ruling or judgment. In consequence of the above enumerated facts and applicable legal precedents, I find myself unable to sign the judgment of the majority of the Court and, in the circumstances, must file this dissenting opinion.

Wright v Richards [1954] LRSC 5; 11 LLR 388 (1954) (22 January 1954)

JOSEPH J. WRIGHT, Brother and Next-of-Kin of the Late EDDIE D. WRIGHT, Appellant, v. J. W. A. RICHARDS, Curator of Intestate Estates for Montserrado County, Appellee.
APPEAL FROM THE MONTHLY AND PROBATE COURT OF MONTSERRADO COUNTY.

Argued March 26, 1953. Decided January 22, 1954. 1. Where an appeal bond had a revenue stamp affixed, and the clerk of the trial court certified thereto, the appeal will not be dismissed merely because the appeal bond certified with the records on appeal does not indicate that a revenue stamp was affixed. 2. An appeal bond will not be held defective for insufficiency of the amount thereof alone where the property for indemnification of which the bond was filed remains in the possession of the Curator of Intestate Estates.

On motion to this Court to dismiss an appeal, motion denied. T. Gyibli Collins, for appellant. K. S. Tamba for ap-

pellee. MR. Court.
JUSTICE

BARCLAY delivered the opinion
of the

We are passing upon a motion to dismiss this appeal on two counts : I. That the appeal bond certified with the records sent
up to this Court does not indicate that any revenue stamp was affixed thereto. 2. That the appeal bond is incurably defective because
the penalty of the bond is only one hundred dollars, although petitioner, now appellant, alleged in the court below that the estimated
and ascertained value of the personal property alone of which the deceased died possessed did not exceed two hun-

land located on Carey Street in the Commonwealth of Monrovia, bearing the number 237. He erected a house on this parcel
of land where he and his three children lived tip to the time of his demise. Sarah Jane Harris and Julia R. C. Harris, her sister,
died without heirs of their body. Nevertheless, before the death of Julia R. C. Harris, she adopted William Harris II. The brother,
Frederick W. Harris, died after Sarah Jane and before Julia R. C. Harris. After Frederick W. Harris, the brother, died, Julia R.
C. Harris was the only surviving child of William Harris. Frederick, however, left an heir, Jeanette Worjroh, one of the parties
herein. Upon the death of Julia, she left a will devising to her adopted son, William Harris II, two-thirds of lot number 237 acquired
by her late father, William Harris. When this will was offered for probate, Jeanette Worjroh, niece of the testatrix and petitioner
in these proceedings, interposed objections to its admission, on the ground that testatrix, Julia R. C. Harris, could not dispose
of or will two-thirds of the lot in question because she was entitled to only one-half of the said property, since the other half
was petitioner's share of the property which she inherited from her late father, Frederick W. Harris, testatrix's brother. William
Harris II, nominated executor under the will, did not answer these objections. Consequently the Circuit Court of the Sixth Judicial
Circuit, to which this will had been forwarded, in keeping with our statutes, for trial of the issues of fact involved, made the
following ruling: "Respondents have not answered the objections to the probate and registration of the fourth clause of the will
of the late Julia R. C. Harris, but have appeared and requested the court to render judgment on Counts `3' and '4' of the objection
which aver that the objector is entitled to half of the property devised by the said testatrix to respondent William Harris II, in
the fourth clause of the said will and that the said Jeanette

Harris-Worjroh, objector, is, by virtue
of her relationship to the said textatrix a beneficiary under the said will. The fact having been admitted by respondents that the

said objector is entitled to the said one-half of the premises devised by the testatrix to the respondent, and in view of the Supreme Court's ruling in Roberts v. Howard, 2 L.L.R. 226 (1916) , in which the syllabus states as follows : `Where in a case 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.' it is adjudged that the said testatrix was not the sole owner of the said lot number 237, two-thirds of which was devised to the said respondent as mentioned in the fourth clause of her will, and therefore had no power to devise two-thirds of said property to him. Said fourth clause of the said will, and the devise therein made, is therefore rejected and the court orders that said clause be deleted from the said will." Neither of the parties took exception to the foregoing ruling. Later, however, in September, 1952, Counsellor Doughba Carmo Caranda, on behalf of Jeanette Worjroh, who had filed the objections to the will, and who is now party petitioner in these proceedings, filed in the Monthly and Probate Court of Montserrado County the following submission : "Petitioner in the above entitled cause most respectfully showeth as follows, to wit: "1. That she is the legitimized daughter of Frederick W. Harris, now deceased, of Monrovia, Liberia, as seen from Exhibit 'A' hereof, being a part of this petition. "2. That her said late father inherited lot number 237, City of Monrovia, along with his two only sisters Jean Harris and Julia R. C. Harris, who

"3.

"4.

"5.

"6.

survived him and are now deceased without heirs whatsoever. That, in the effort of her said late paternal aunt, Julia R. C. Harris, to dispose of her personal property possessed in her own rights, she, in so doing, willed a portion of lot number 237 aforesaid illegally to William Harris, a legatee and one of the executors of her estate; said illegal act having been contested and adjudged in favor of the petitioner as by records of this court, judicial notice of same is most respectfully requested. That the dwelling home situated on the said lot number 237 built by her said late father, Frederick W. Harris, the land owned by her late grandfather, William Harris, being a completed one, contained furnitures and heirlooms of great traditional value up to and at the death of her aunt Julia R. C. Harris, May 6, 1951, inclusive of her father's family Bible with his birth record now illegally in the possession of executor William Harris. That the said William Harris, executor, has continuously occupied and controlled the said lot and premises with the buildings from the time of the death of the said Julia R. C. Harris to the present. Wherefore, in view of the foregoing premises,

your petitioner most humbly prays this court to cause her said inherited home and premises, being lot number 237, City of Monrovia, as aforesaid, to be delivered to her by the executors, the above respondents, along with the deed and such other property appertaining thereto, and to grant such other and further relief as this petition may, in law and justice, properly require."

Following the filing of the submission of petitioner, Jeanette Harris-Worjroh, the executors of the last will and testament of Julia R. D. Harris, namely, William Harris II, and Jacob Browne, through their attorneys, S. Raymond Horace and Lawrence Morgan, promptly filed the following answer denying petitioner's right to recover: "Respondents in the above entitled cause of action deny the right of the petitioner to recover against them for the following reasons : i. Because respondents say that this court is without authority to hear, try and determine the petition as filed by petitioner, in that said petition raises a question of title to realty, which, under the statutes of this Republic, must be decided by a jury under the direction of the court. This court therefore being without jurisdiction over the subject matter, respondents pray that the petition be denied. z. And also because Count (2 7 of the petition is false, misleading and untrue, in that Julia R. C. Harris, sister of Frederick W. Harris, and Jean Harris, did leave an heir to her estate who is legally entitled to her property, real and personal. "3. And also because William Harris II, one of the respondents in this cause, is the adopted son of Julia R. C. Harris, and was adopted for the purposes of inheritance and all other legal consequences, as appears from copy of decree hereto annexed and marked Exhibit 'A,' and is the only surviving heir. "4. And also because respondents say that there is no order or judgment conferring on petitioner title to lot number 237; neither does petitioner have any other title to said property. "5. And also because Julia R. C. Harris, late of this
"

city, nowhere in her last will and testament bequeathed, willed or in any other manner set over or conveyed to petitioner title to lot number 237 in the City of Monrovia ; under which condition the executors in execution of her last will and testament might be requested and required to deliver same to her." The pleadings ended with the rejoinder of the respondents. The Commissioner of Probate made a ruling denying petitioner's request, to which she took exceptions and has brought the case hither for review. Were it not that there is an important issue involved in these proceedings, injected by petitioner's counsel in the court below, and that we do not favor the manner in which the Commissioner of Probate disposed of same, we would simply affirm his ruling denying the petition. We refer particularly to the proposition, accepted

by the court below that the estate created by the late William Harris was held in joint tenancy by the two sisters, Sarah Jane Harris and Julia R. C. Harris, and their brother Frederick Harris. But this estate could never rightly be regarded as held in joint tenancy; for according to Blackstone, the creation of an estate in joint tenahcy depends on the wording of the deed or devise by which the tenants claim title, and such an estate can only arise by grant, purchase or acquisition, that is, by act of the parties, and never by operation of law. The nature of a joint estate depends upon its unity; it must be created by one and the same conveyance. The conditions and requirements recited, supra, are indispensable to the creation and existence of a joint tenancy. See: Blackstone, Commentaries, Bk. II, ch. XII ; 14 Am. Jur. 79-87, Cotenancy, §§ 6-14. Evidently the petitioner herein misunderstood the difference between an estate in joint tenancy and an estate in common; for the former can arise only by purchase or grant, and not by descent or operation of law per se; whereas the latter may arise solely by descent or operation

of law. Since the Harris estate, the subject of these proceedings, was created by descent, it is definitely not an estate in joint tenancy as argued at this bar with forensic eloquence by petitioner's counsel. Rather, it is an estate in common.

When we first opened the record and read the briefs in this case, we could not perceive the propriety of petitioner requesting the Monthly and Probate Court of Montserrado County to deliver to her the deed for the said property, and to turn the entire estate over to her as sole owner of same, when so recently she had placed herself on record as entitled to only one-half of the property in question. However, as the arguments at this bar progressed, we discovered that petitioner was laboring under another misconception with respect to the distribution and enjoyment of estates held in joint tenancy. Petitioner demanded possession of the entire estate as sole owner because she regarded the estate as one in joint tenancy controlled by the principle of survivorship. According to this principle, upon the deaths of joint tenants, the whole estate rests in the survivor with reference to the heirs of the deceased tenants. Thus, petitioner reasoned, since she was the only surviving heir of the "original" stock, the whole estate should vest in her. This is a fallacy because, even if the estate in question were held in joint tenancy, the original joint tenants would have been Frederick W. Harris, Sarah Jane Harris, and Julia R. D. Harris. Thus, at the time Frederick and Sarah Jane died, leaving Julia R. C. Harris as the only surviving tenant, the entire estate, according to the doctrine of survivorship, would have vested in her without reference to petitioner, who was the heir of Frederick W. Harris. In that case petitioner would have been entirely out of the estate. But, in fact, since the estate was created by descent, and not by purchase or grant, it is an estate in common. Therefore petitioner, R. C. Harris, is entitled to one-half of the property and William Harris II is en-

titled to enjoy the other half. The ruling of the Probate Commissioner is hereby affirmed in all respects other
than on the question of joint tenancy. Costs of these proceedings are to be paid by petitioner; and it is hereby so ordered. Affirmed.

Wreh v Azango [1968] LRSC 16; 18 LLR 293 (1968) (19 January 1968)

ELIZABETH W. KARPEH-WREH, by and through her husband, PHILIP WREH, and CHARLES C. MONGER, Appellants, v. BERTHA W. BAKERAZANGO, by
and through her husband, ROBERT G. W. AZANGO, and HON. ALFRED L. WEEKS, Circuit Judge, Sixth Judicial Circuit Montserrado County,
Appellees.
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APPEAL FROM RULING OF JUSTICE PRESIDING IN CHAMBERS DENYING A WRIT OF ERROR TO THE CIRCUIT COURT OF THE SIXTH JUDICIAL
CIRCUIT, MONTSERRADO COUNTY.

Argued November 7, 1967. Decided January 19, 1968. 1. When a writ of possession, pursuant to judgment,
has been executed and proof of execution filed more than two months prior to an application for a writ of error, the judgment will
be deemed fully satisfied, and the petition must fail on that score. 2. A party to an action in which an arbitration award was confirmed
and judgment entered thereon, has not been deprived of a constitutional right to trial by jury, since provision is made for such
procedure in the Civil Procedure Law, 1956 Code 6:1286. 3. When four days have elapsed between the rendering of the arbitration award
and the entry of judgment thereon, plaintiffs in error are deemed to have had a sufficient time to interpose objections to the award,
and a contention that the brevity of time, as alleged, deprived them of a right, lays no groundwork for the issuance of a writ of
error.

After judgment against defendants upon an award in arbitration proceedings involving title to real property, a writ of error
was applied for, claiming inter alia, insufficiency of time to protest the arbitration award and denial of trial by jury in confirmation
of the award. On appeal from ruling of the Justice presiding in chambers denying the application by the plaintiffs in error, the
ruling was affirmed and the petition for the writ of error denied.
G. P. Conger-Thompson for appellants. Diggs for appellees.
293

Richard A.

MR. JUSTICE WARDSWORTH

delivered the opinion of

the Court. Petition for a writ of error
was filed by plaintiffs in error in the chambers of the presiding Justice who ordered the alternative writ of error issued and served,
commanding the defendants in error to appear and to show cause, if they so desired, why the peremptory writ of error as prayed for
should not be granted. In response thereto, the defendants in error appeared and filed their answer. Before considering the merits
or demerits of the contending parties as contained in the petition and the return, we shall turn to the record in the trial court.
Plaintiff in the court below, Bertha W. Baker-Azango, by and through her husband, instituted an action of ejectment against Elizabeth
W. Karpeh-Wreh, by and through her husband Philip Wreh, and Charles C. Monger, for the recovery of a certain parcel of land described
as containing three-fourths (4) acre of land, known as block # 1,
situated, lying and being on Bushrod Island, City of Monrovia.
The defendants, having been summoned, filed their appearance in the office of the clerk of the trial court and subsequently filed
their answer. The pleadings progressed as far as the surrejoinder. It would appear that the parties in the above-entitled action
jointly applied for a board of arbitration to be set up to settle the dispute in relation to the claim of the plaintiffs as against
the denial of defendants. Accordingly, the court having acceded to the joint prayer of the parties for the appointment of arbitrators,
the following named persons, or surveyors, were commissioned to perform said duty : J. F. Dunbar, chairman, Lawrence K. Boyah, for
plaintiffs, and Jimmie K. T. Scotland, for defendants. After having qualified, the board met and summoned

all parties concerned, and after discussion they surveyed the disputed area with the cooperation of the parties concerned.
On January 22, 1965, the board tendered its final report, along with the award, which award the clerk was ordered to read and file
as part of the record in this case. On January 28, 1965, the trial judge rendered final judgment on the award of the arbitrators, which follows : "The signatures of the arbitrators
having been established as their genuine signatures and handwriting and their having made an award to plaintiff, Bertha BakerAzango,
which includes portion of defendant's copy, shaded yellow in the plot, with a house shaded red, and finding that the deed of Mrs.
Azango was probated on the 22nd day of September, 1964, (1954) , and was registered in vol. 67, page 139, and that the deed of the
defendant, Elizabeth W. Karpeh, was probated and registered on March 24th, 1958, in vol. 8o, pages 75 76, and that these parcels

of land were sold by Mr. Henry B. Logan, Bushrod Island, Montserrado County, and the board of arbitrators being of the opinion that Mrs. Bertha Azango is correct as indicated on the attached plot, it is, therefore, adjudged that the award be and the same is hereby confirmed and affixed and the property in question is by this judgment awarded to the plaintiff in this case, and the clerk of this court is to issue from under his hand and seal of court, a writ of possession and place same in the hand of the Sheriff to put the plaintiff in possession of her land, and it is hereby so ordered. "Given under my hand in open court this 28th day of January, 1965.
"[Sgd.] A. L. WEEKS,
Circuit Judge.

The arbitrators rendered their report on January 22, 1965, whereupon judgment was rendered on January 28, 1965. From January 22, 1965, when the arbitrators filed

their report, to January 28, 1965, when final judgment was rendered, gave plaintiffs in error sufficient time to file objections to the award, the subject of the proceedings, if they so desired. Their contention that they did not have an opportunity to file objections to the arbitrators' award in these proceedings is unmeritorious, to which this Court will not give credence. They further contend in their answering affidavit that the judgment entered in the case was decided against plaintiffs in error and, hence, they were by law responsible to pay the costs they have not paid. It is more than strange for plaintiffs in error to raise such a contention. In the judgment of the trial judge we observed that no mention was made of costs. We must not forget that costs should be awarded to the prevailing party and it was within the province of the plaintiffs who prevailed in the case to have raised this issue and not the losing party. Further, the omission to assess costs by the trial judge in his judgment in these proceedings is considered as being the disallowance of costs by implication ; therefore, the contention of the plaintiffs in error that costs in these proceedings have not been paid is untenable.
In count six of their assignment of errors, plaintiffs in error stressed the point of their constitutional rights because the trial judge failed to empanel a jury to dispose of the arbitrators' award in these proceedings. This contention at first blush would seem reasonable and consistent with the law controlling ejectments, but the following statute disposed of the contention. "Effect of award.--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." Civil Procedure Law, 1956 Code, Tit. 6, § 1286.

The
writ of possession was issued on April 21, 1965, over the signature of John B. P. Morris, clerk of the Circuit Court, Montserrado
County, and return thereto was made by the Sheriff of Montserrado County, which reads as follows : "On May 6, 1965, I placed Mrs.
Robert G. W. Azango in possession of the parcel of land named in the within writ of possession and now make this as my official return
to the office of the clerk of court. "Dated this 7th day of May, 1965.
"[Sgd.] JAMES W. BROWN, Sheriff, Montserrado County." Since the writ of possession was served on May
7, 1965, and the petition of the plaintiff in error was filed on July 19, 1965, more than two months subsequent to the service of
the writ of possession, it is clear that the judgment of the trial court has been fully executed and there is nothing left to be
done by the trial court in carrying out its judgment. Wherefore, in view of the foregoing, the ruling of the Justice in Chambers
in these proceedings is hereby affirmed, with costs against appellants. And it is hereby so ordered.
Affirmed.

Testate Estate of Sherman v Nimely [2002] LRSC 24; 41 LLR 215 (2002) (13 December 2002)

THE TESTATE ESTATE OF CHARLES DUNBAR SHERMAN, represented by one of its Administrators Cum Testament to Annexo, ERIC SHERMAN, Appellant, *v.* **A. TOGA NIMELY**, Appellee.

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

Heard: November 11, 2002. Decided: December 13, 2002.

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.
2. An action of ejectment may be brought when the title to real property as well as the right of possession is in dispute.
3. The sole object of an ejectment suit is to determine the validity as well as the strength of the titles of the party litigants and to award possession thereof to the rightful owner against the adversary title.
4. An ejectment suit contains a mixture of both issues of law and facts, and therefore is always tried by a jury under the supervision of the trial court.

5. Where issues are joined by the parties to an ejectment suit, a trial by jury is mandatory in order to determine the weight and genuineness of the titles and/or claims of the parties to the litigation.

Appellant, the Testate Estate of the late Charles Dunbar Sherman, instituted an action of ejectment against the appellee and his landlord, praying that they be ousted and evicted from premises to which the appellant claimed title and ownership. Answers were filed by the appellee and the other defendants in the trial, along with motions to dismiss the action, asserting that they held titles superior to that of the appellant, that the appellee was a bona fide innocent purchaser, and that the appellant had suffered laches and waiver in not raising a claim prior to the completion of residential structures undertaken by the appellee. The trial court heard and denied the motions, but subsequently, while disposing of the issues of law, discharged the appellee from further answering to the complaint on the ground that the appellee was a good faith innocent purchaser of the **land** who had no notice of any adverse claim of the appellant and that the appellant had suffered laches and waiver.

On appeal to the Supreme Court, the ruling of the trial court was reversed. The Supreme Court opined that as ejectment suits contained mixed issues of law and facts, they could only be decided by a trial by jury. The judge, it said, could not therefore discharge a party while disposing of the law issues in the case, especially where the parties had joined issue. The Court noted that where issues are joined a jury trial becomes mandatory as only the jury could determine the weight and genuineness of the titles and claims of the parties. Accordingly, the Court remanded the case for a jury trial on the merits.

H. Varney G. Sherman and *F. Musah Dean, Jr.* of the Sherman and Sherman Law Firm appeared for the appellant. *Farmere G. Stubblefield* of the Stubblefield and Associates Law Firm appeared for the appellee.

MR. JUSTICE JANGABA delivered the opinion of the Court. On the 28th day of August, A. D. 2000, the Testate Estate of the Late Charles Dunbar Sherman, by and thru its administrator *cum testaments annexo,* Eric Sherman, instituted an action of ejectment in the trial court against the Intestate Estate of the late Lewis Minor, represented by its administratrix and administrator, Ida Morgan and Solomon T. Williams, as 1st defendant, A. Toga Nimely, as 2nd defendant, Grace B. Collins, as 3rd defendant, and all other persons who purchased portion of the appellant's property, as 4th defendants. The plaintiff, appellant herein, claimed ownership of a ten and one-half (10½) acre parcel of **land**, situated in the Township of Congo Town, by virtue of a public **land** sale deed executed on April 10, 1960 by the late President William V. S. Tubman in favor of the late Charles Dunbar Sherman. The records before us showed that the interstate estate of the late Lewis Minor, as 1st defendant, and A. Toga Nimely, as 2nd defendant, filed their respective answers and motions to dismiss the ejectment action. Both defendants substantially alleged in their respective responsive pleadings, as well as their motions, that they had a superior title to that of the appellant. The 2nd defendant also asserted that the appellant had suffered laches and waiver because of the alleged failure to assert any claim to the subject property at the time of the construction and completion of his residential building thereon without any notice, constructive or otherwise, being given of the appellant's claim, The 2nd defendant, appellee herein, contended further that the appellant had no capacity to sue, in that he, the appellee, was an innocent purchaser for value, without any notice, either constructive or otherwise, being given or asserted regarding the adverse claims of the appellant. He finally asserted that the appellant was barred and estopped, under the doctrine of equitable estoppel,

from ever asserting such claim against him.
The two (2) motions to dismiss, filed by the 1st defendant and the appellee herein, were consolidated and argued, and both motions were denied and dismissed on the 26th day of January, 2001. Thereafter, the case was called for disposition of the law issues on the 6th day of February, 2001, and arguments were heard, *pro and con,* on February 20, 2001. His Honour Varnie D. Cooper ruled, *inter alia,* discharging the appellee from further answering the claims in the ejectment suit on the grounds that the appellee was a good faith innocent purchaser who purchased the subject premises from the 1st defendant without any notice of the adverse claim of the appellant and that the appellant had suffered laches and waiver under the doctrine of estoppel. It is from this ruling that the appellant had noted exceptions and announced an appeal to this Court upon a four-count bill of exceptions. We deem count 3 to be decisive of the determination of this case. We hereunder quote verbatim count three (3) for the benefit of this opinion:

"3. Also that the circumstance surrounding the acquisition and subsequent occupancy of the plaintiffs property by the 2nd defendant, which resulted into the ejectment suit, like all other ejectment suits, cannot be exclusively concluded or determined by reference to only law issues. For all ejectment cases are mixture of law and fact. Therefore, to rule in favor of the 2nd defendant discharging/dropping him from the action and alleging that there is no factual issue to be determined, is a gross usurpation of the function of the jury (determiners of the facts) and therefore erroneous; to which the plaintiff/ appellant excepts."
The appellant raised and argued three (3) issues before this Court, but we deem the 3rd issue to be relevant to the determination of this case. The appellant vehemently argued that the trial judge erred when he dismissed the ejectment suit only on the law issue, in that ejectment proceedings in this jurisdiction involve mixed issues of law and fact and are always tried by a jury under the direction of the court. The appellant also argued that issue having been joined by and between the parties, the trial judge committed a gross prejudicial error when he discharged and dropped the appellee from answering the claim brought against him by the appellant on ground that the appellee was an innocent purchaser for value, which issue in itself, was factual. The decision, the appellant asserted, deprived the jury of the opportunity to determine the factual issue mentioned. The appellant requested this Court to review and reverse the ruling of the trial judge and remand this case for a trial by jury.
During the arguments also, the appellee contended that he had acquired the property from the first defendant as a good faith purchaser, without any notice or knowledge of the adverse claim of the appellant to the disputed premises. He also contended that the appellant suffered laches and waiver since it had sat supinely without any objection until the appellee had completed the construction of his residential building. The appellee therefore requested this Court to confirm the judgment of the trial court dismissing the action against him, but with modification that the entire action should be dismissed against all of the other defendants since there were no issues of fact or error committed in the court below to warrant a trial or reversal.
The facts and circumstances in this case present only one issue for the determination, which is "whether or not the trial judge committed a reversible error when he dismissed the ejectment suit only on law issues and discharged the appellee from the action without the aid of the jury? The records in this case show that the issues of good faith purchaser and laches and waiver were also pleaded in the appellee's motion to dismiss the appellant's action of ejectment, which motion was denied by the trial judge and the resistance filed by the appellant sustained. However, the

trial judge, in disposing of the law issues in his ruling, dismissed the action and discharged the appellee from further answering the ejectment suit on the ground that the said appellee was entitled to protection as a bonafide innocent purchaser, and that the appellant had suffered waiver and laches from further asserting any claims against the appellee.

The appellee, second defendant in the trial court, contended in count 6 of his responsive pleading that the first defendant had sold and parted with title of the parcel of **land** by virtue of a legitimate sale transaction effected by and between him and the 1st defendant. The appellee, in one of his prayers, requested the trial court to "recognize and uphold the validity of 2nd defendant's title deed as being the product of a legitimate transaction growing out of a much older and therefore preferred public **land** sale deed from the State." This Court holds that the appellee had joined issue with the appellant when he filed his responsive pleading disputing the appellant's title to the property and claiming a superior title thereto by virtue of his deed being the product of his grantor's title deed which was older than that of the appellant's title deed. Thus, the appellant and the appellee and his grantor were claiming title to the same property. We therefore cannot perceive by what legal parity of reasoning the trial judge *sua sponte* dropped or discharged the appellee from further answering in the ejectment suit since any adverse judgment in this case will also conclude and affect the right and interest of the appellee.

A recourse to section 62.1 of the Civil Procedure Law, Rev. Code I, revealed the following provision: "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."

This Court holds that an action of ejectment in this jurisdiction is the proper remedy where title to a real property and the right to possession thereof are in dispute, The sole object of an ejectment suit is to determine the validity as well as the strength of titles of parties litigant and to award possession thereof to the rightful owner against his adversary's title. In this jurisdiction also, an ejectment suit contains a mixture of both issues of fact and law and is always tried by a jury under the supervision of the trial court. Where issues are joined by and between parties in an action of ejectment, the trial by a jury is mandatory to determine the weight and genuineness of titles and/or claims of all the parties to the litigation. *Gbassage v. Holt*, [1975] LRSC 23; 24 LLR 293 (1975), and *Scott v. Sawyerr*, [1976] LRSC 9; 24 LLR 500 (1976). Therefore, the trial judge com-mitted a reversible error when he ordered Appellee A. Toga Nimely dropped and discharged from further answering the claim brought against him by the appellant without affording the jury an opportunity to pass on and determine all the factual issues in the case.

In view of all that we have stated in this opinion, the ruling of the trial judge discharging and dropping the appellee, A. Toga Nimely, from further answering the ejectment suit is thereby reversed and the case is remanded for trial on its merits by a jury, under the direction of the trial court. The Clerk of this Court is hereby ordered to send a mandate to the court below commanding the presiding judge therein to resume jurisdiction over the case and to give effect to this opinion. Costs are to abide final determination of the case. And it is hereby so ordered.

Ruling reversed.

Gray et al v Kaba et al [2000] LRSC 5; 40 LLR 38 (2000) (12 May 2000)

MORRIS GRAY, Administrator of the Intestate Estate of the Late O. J. KAI GRAY, et al., Plaintiffs-In-Error, v. HIS HONOUR YUSSIF D. KABA, Assigned Circuit Judge, Sixth Judicial Circuit Court, Montserrado County, June Term, A. D. 1999, and the INTESTATE ESTATE OF THE LATE DAVID SAMPSON, represented by its Administrator, HARRISON R. SAMPSON, Defendants-In-Error.

PETITION FOR A WRIT OF ERROR FROM THE RULING OF THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: April 5. 2000. Decided: May 12. 2000.

1. A party may intervene in an action as a matter of right when such party is likely to be bound by a judgment in the action, or when he is so situated as to be adversely affected by a distribution or disposition of property in the custody or subject to the control of the court or an officer of the court.

2. The executor or administrator of an estate is a necessary and proper party to any action affecting the property rights of the estate.

3. The judgment of a trial court cannot legally be enforced against persons who were not parties to the suit and such persons cannot be bound by the judgment rendered in such action.

4. Persons affected by a writ of possession who were not served with summons are not to be concluded or bound by the judgment in the case.

5. The administrator of an estate is the proper and necessary party to defend and protect the estate.

6. The object of the provision of the appeal statute providing for the appointment or deputizing of an attorney to take the court's ruling for the absent attorney or party is to afford the absent party the opportunity to announce an appeal in open court at the time of the rendition of the final ruling or judgment.

7. It is irregular for a trial judge to ignore the statutory provision for the appointment or deputizing of an attorney to take the court's final judgment for an absent attorney.

8. The failure of a trial court to serve notice on a party for trial of a case or rendition of final judgment and to appoint and deputize counsel to take the court's final judgment constitutes sufficient legal ground for the granting of a writ of error.

9. An appeal is a matter of right which cannot be denied by a trial court.

The co-respondent, the Intestate Estate of the late David Sampson, by its administrator, Harrison T. Sampson, instituted summary proceedings against certain of the plaintiffs-in-error to recover real property. While the action was pending O. J. Kai Gray filed a motion to intervene and an answer. However, the movant died before the motion was called for hearing. Not-withstanding, the motion, which had been resisted, was called for hearing and granted by the trial court. Thereafter, the Co-respondent Intestate Estate filed a motion praying the trial court to rescind its ruling on the ground that the movant had died and that the Estate now had an administrator. Whereupon the administrator filed a notice of withdrawal of the motion to intervene previously filed by the decedent, and substituted the same with a new motion to intervene on behalf of the Estate.

In the absence of the administrator, the trial court entered a ruling denying the motion to intervene, without designating or deputizing an attorney to take the said ruling for the Estate or the absent counsel. The court then proceeded to enter default and final judgment in the matter, again in the absence of counsel for the estate and without designating or deputizing an attorney to take the ruling for the Estate. Thereafter, the trial court ordered enforcement of the judgment and proceeded to have the co-plaintiffs-in-error evicted from the premises, subject of the judgment. From this enforcement process the plaintiffs-in-error applied to the Supreme Court for a writ of error.

The Supreme Court held the trial court to be in error, noting firstly that intervention was a matter of right for the Estate and for the tenants since it was obvious that they were likely to be bound by the judgment of the trial court or that they would have been adversely affected by any distribution or disposition of the property by the court or the control of said property by the court. The Court noted also that the administrator was the proper party to represent the Estate and to therefore file on behalf of the Estate a motion to intervene to protect the rights and interests of the Estate.

Secondly, the Supreme Court held that the trial judge had erred in not designating or deputizing an attorney to take the ruling or final judgment of the court, noting that the purpose for the statute imposing this requirement on the trial judge was to afford the absent party the opportunity to make an oral announcement of an appeal to the Supreme Court. The Supreme Court opined that in ignoring the requirement, the trial court had deprived the plaintiffs-in-error of the right to an appeal and that in such a case a petition for a writ of error would lie.

The Court rejected the contention of the defendants-in-error that the administrator of the Estate could not benefit from a writ of error, having withdrawn without reservation the motion to intervene filed by the decedent prior to his death. Noting that the decedent and the Intestate Estate arising from his death were not one and the same, the Court declared that the with-drawal by the administrator of the motion to intervene and the answer filed by the decedent were legally

invalid and could therefore not serve to prevent the administrator intervening to protect the rights and interests of the Estate.

The Supreme Court also ruled that as the plaintiffs-in-error were never served with summons, they could not be bound by the judgment of the trial court. As such, the Court said, the trial court could not legally issue a writ of possession against the plaintiffs-in-error.

Accordingly, the Supreme Court granted the petition for the writ of error, reversed the trial court's judgment, and ordered the case remanded for a new trial commencing with the disposition of the administrator's motion to intervene.

George Tulay of Tulay & Associates appeared for the plaintiffs-in-error. Frederick A. B. Jayweh of the Civil Rights Association of Liberian Lawyers Associates appeared for the defendants-in-error.

MR. JUSTICE JANGABA delivered the opinion of the Court.

On September 1, 1998, the Intestate Estate of the late David Sampson, by and thru its administrator, Harrison T. Sampson, instituted summary proceedings to recover possession of real property against the Plaintiffs-in-error Cespha T. S. Fahn-bulleh, Fatu Golafalie, Marie Gibson, Kebbeh Kollie, Piance, Solomon Tars, Sam Benda, Solobery Kanneh, Ma Mary, Martha Pennoh, Joseph Sackie, Mapa, et al., in the Sixth Judicial Circuit Court for Montserrado County, during its September Term, A. D. 1998, before His Honour Wynston O. Henries, resident circuit judge. Co-defendant-in-error Harrison T. Sampson sought to repossess 10 acres of **land** situated and lying at Bushrod Island in Monrovia.

A writ of summons was accordingly issued on September 1, 1998, commanding the plaintiffs-in-error to appear and or file their returns on the 11th day of September, A. D. 1998. The writ was served and returned served on the 2nd day of September, 1998, as shown by the sheriff's returns. The records in this case show that the plaintiffs-in-error failed to file returns to the petition in the summary proceedings to recover possession of real property, a fact supported by a clerk's certificate issued on the 24th day of September, A. D. 1998. A further recourse to the records in this case disclosed that on the 11th day of September, A. D. 1998, O. J. Kai Gray, the decedent, filed a motion to intervene along with an answer. In the motion and answer, the intervenor (now deceased) disputed the claim of petitioner/co-defendant-in-error's to the premises and denied that the latter possessed title thereto, contending instead that title to Lot No. 2-B, containing 34 acres of **land** situated, lying and being along Somalia Drive opposite the Free Port of Monrovia, Bushrod Island, was vested in the intervenor/ decedent. The intervenor proferted a public **land** sale deed executed in his favor on the 4th day of April, A. D. 1963 by the Republic of Liberia, under the signature of the late President William V. S. Tubman. The deed showed that it was probated on the 4th day of September, A. D. 1963 and registered according to law in volume 67-E, at page 2004.

The motion to intervene was resisted and heard, and, as a matter of right, granted on the 18th day of December, A. D. 1998 by His Honour Joseph W. Andrews, Assigned Circuit Judge.

Thereafter, on the 8th day of December, A. D. 1998, Co-defendant-in-error Sampson filed a four-count motion praying the court to rescind the ruling. He contended that as O. Jung Kai Gray, II was dead, he could not have intervened; rather, he said that as that Morris Gray was the administrator of the Intestate Estate of the late O. Jung Kai Gray, II, he should have been the proper party to seek intervention. He proferted with his motion photo copies of Morris Gray's letters of admini-stration and the administrator's oath, dated August 13, 1997, respectively, as well as a petition for a decree of sale, dated August 18, 1997. On the 25th day of February, A. D. 1999, while the motion to rescind the ruling granting the motion to intervene was still pending, counsel for O. Jung Kai Gray, II, filed a notice of withdrawal of the motion to intervene without indicating any reservation.

The records further revealed that on the 16th day of March, A. D. 1999, Morris Gray, as administrator of the Intestate Estate of his Late father, O. Jung Kai Gray, II, filed a motion to intervene and an answer. In the motion and answer he claimed ownership to the 34 acres of **land** that his late father had acquired from the Republic of Liberia, and challenged the title and claim of Co-defendant-in-error Sampson, petitioner in the summary proceedings to recover possession of real property. This new motion was resisted and argued.

On the 26th day of June, A. D. 1999, His Honour Yussif D. Kaba, assigned circuit judge, ruled denying the motion. This ruling was made in the absence of the intervenor and his legal counsel. Although counsel for the intervenor had received and acknowledged a notice of assignment for the ruling, neither the intervenor nor his counsel had appeared as commended by the notice of assignment. The presiding judge did not appoint or deputize any counsel to take the ruling for the intervenor for the purpose of announcing an appeal therefrom. The trial court, upon a notice of assignment duly issued assigned for hearing on Saturday, July 10, 1999 the summary proceedings to recover possession of real property. The trial judge rendered default judgment against the plaintiffs-in-error when they failed to appear, and again as before, without appointing a deputizing counsel to take the ruling. The plaintiffs-in-error were ordered evicted and ousted from the premises. Thereafter, a writ of possession was accordingly issued and served to effect the eviction of the plaintiffs-in-error.

On the 27th day of July, A. D. 1999, Morris Gray, the administrator of the Intestate Estate of the late O. J. Kai Gray, II and the respondents in the court below filed an eleven-count petition for a writ of error. The alternative writ was issued on the 29th day of July, A. D. 1999, and was served and returned served on the 30th day of July, A. D. 1999. In the petition, the plaintiffs-in-error raised five (5) issues, of which 1, 2, 4, & 5 are deemed by this Court to be worthy of determination of this case. The first issue raised in the petition and brief, and argued before this Court, is whether the trial judge committed a reversible error when he denied the motion to intervene filed by Morris Gray, administrator of the Intestate Estate of the late O. J. Kai Gray, II who, prior to his death, had acquired 34 acres of **land** from the Republic of Liberia and had sold a portion thereof to some of the co-plaintiffs-in-error.

Plaintiffs-in-error also averred that the denial of the motion to intervene deprived the Intestate Estate of the Late O. J. Kai Gray, II of its constitutional and statutory right to defend and protect the property and the grantees of the decedent.

We are in full agreement with the assertion of the plaintiffs-in-error, in that our statute clearly provides that a party may intervene in an action as a matter of right when such party could be bound by a judgment in such action, or where the party is so situated as to be adversely affected by a distribution or disposition of the property in the custody or subject to the control of the court or of an officer of said court. Civil Procedure Law, Rev. Code 1:5.61(1)(b)(c). The administrator of the Intestate Estate of the late O. J. Kai Gray, II, Morris Gray, has legal and equitable interest in and rights to the property of his late father. He therefore has an interest in the suit since he may be bound by a judgment in the action and adversely affected by a distribution or disposition of said property. This Court has consistently held in a long line of cases that the executor or administrator of an estate is a necessary and proper party to any action affecting the property rights of the estate. Sharpe v. Urey, [1952] LRSC 20; 11 LLR 251 (1952), Syl. 4, text at 255-256; Cooper v. CFAO, [1972] LRSC 68; 20 LLR 554 (1972), Syl. 7, text at 565. The trial judge therefore committed a reversible error when he denied the administrator's motion to intervene to protect and defend the rights and interests of the intestate estate of his late father as well as the grantees of the decedent. The motion to rescind the ruling granting O. J. Kai Gray, II motion to intervene clearly acknowledged the death of O. J. Kai Gray, II and recognized Morris Gray as the legal personal representa-tive of the Intestate Estate of the late O. J. Kai Gray, II. We observed from the records that counsel for Co-defendant-in-error Harrison T. Sampson proferted documentary evidence which he obtained from the administrator. The filing of a motion to intervene in the action by the decedent in his own name rather than by and thru his legal representative, as required by law in this jurisdiction, is a legal nullity and there-fore has no legal effect to preclude the administrator of said estate from filing a motion to intervene in the case before us.

The second and fourth issues raised by plaintiffs-in-error revolved around whether the trial judge erred when he failed to appoint or deputize counsel to take the court’s ruling for the administrator on the motion to intervene. This failure, the plaintiffs-in-error contended, deprived the administrator of the right of appeal to this Court for a review of the trial judge’s ruling. The plaintiffs-in-error also contended that the trial judge’s rendition of final judgment in their absence and in the absence of their counsel, without appointing or deputizing another counsel to receive and except to said final judgment and appeal therefrom, deprived them of their constitutional and statutory rights of appeal. We shall decide these issues later in this opinion.

The fifth and last issue raised and argued by the plaintiffs-in-error is that the writ of possession was issued only against twelve persons, but that other co-petitioners not named in the writ of summons were also evicted from their lawful premises. They obtained a clerk's certificate dated the 23rd day of July, A. D. 1999 to substantiate that nine business houses were not parties to this case but were affected by the writ of possession. One Emily J. Moore, co-plaintiff-in-error, is

also alleged to have been affected by the writ of possession. Plaintiffs-in-error strongly maintained that the judgment of the trial court, out of which these proceedings grow, cannot legally be enforced against those who were not parties to the suit and that they can-not be bound by the judgment rendered in such action. This principle of law is hoary with age in this jurisdiction. Hence, those who were affected by the writ of possession without being summoned are not concluded or bound by the judgment in this case. Tubman v. Murdoch, [1934] LRSC 26; 4 LLR 179 (1934); Eitner v. Sawyers, [1977] LRSC 47; 26 LLR 247 (1977); Boye v. Nelson, [1978] LRSC 33; 27 LLR 174 (1978), Sy1. 1, text at 176; Karneh et al. v. Karneh et al.[1976] LRSC 66; , 25 LLR 300 (1976), Syl. 1.

The defendants-in-error filed returns, wherein they raised three issues which they also included in their brief. In the first and third issues raised, and which were argued by defendant-in-error, they contended that the writ of error cannot lie because the plaintiffs-in-error had failed and refused to file an answer and to take part in the trial of the case notwithstanding the fact that they were served with a copy of summons along with the complaint, as well as served a notice of assignment for the hearing of the case.

We agree with this assertion. This fact is not in dispute. However, the principal contention of the plaintiffs-in-error is that the trial judge committed a reversible error when he ruled on the administrator's motion to intervene and rendered his final judgment in the case in the absence of the administrator and his counsel and the respondents in the court below and their counsel without appointing or deputizing counsel to take and receive the ruling and final judgment so as to afford them the opportunity to appeal to this Court for appellate review. This is the decisive issue before this Court for consideration, which issue we observe the defendants-in-error failed to traverse in their brief.

The second issue relates to the withdrawal of the decedent's motion to intervene and his answer without reserving the right to refile. Defendants-in-error contended in their brief that a litigant seeking a writ of error cannot benefit under the error proceedings where he files a motion to intervene along with an answer but subsequently withdraws the same without reserving the right to refile. We disagree with this contention for the reasons herein stated, supra. The decedent and the administra-tor of his intestate estate are not one and the same person; and as such, the filing and withdrawal of the motion to intervene and the answer of the decedent in his own name is a legal nullity which cannot legally bar the representative of the deceased from intervening for the sole purpose of defending and protecting the interest and right of the intestate estate. The administrator is the proper and necessary party to defend and protect said estate as rightly and correctly contended by the co-defendant-in-error in his motion to rescind the ruling granting the decedent's motion to intervene in the case.

The defendants-in-error also contended before this Court that the plaintiffs-in-error had failed to pay the accrued costs and to annex a counsellors' certificate to their petition for the writ of error, and that because of these failings, the writ of error cannot be granted. In count 10 of the plaintiffs-in-error petition, they pleaded the payment of accrued costs and at-tached thereto as exhibits "E" and "F" respectively, the receipt for payment and the counsellors' certificate. A recourse to the records in this case reveals that the plaintiffs-in-error paid the sum of L$1,495.00 on the 22nd day of July, A. D. 1999 as accrued costs, and that Counsellors Joseph H. Constance

and Snonsio Nigba signed the counsellors' certificate on the 22nd day of July, A. D. 1999. The contention of the defendants-in-error that the plaintiffs-in-error had failed to pay accrued costs and to attach a counsellor's certificate to the petition is therefore not sustained.

The last issue for the determination of this case is whether or not a writ of error can be granted for the failure of a trial judge to appoint or deputize counsel to take a ruling or judg-ment for the absent party and his counsel.

Our Civil Procedure Law governing the announcement of appeal states that "[a]n appeal shall be taken at the time of rendition of the judgment by oral announcement in open court. Such announcement may be made by the party if he represents himself or by the attorney representing him, or, if such attorney is not present, by a deputy appointed by the court for this purpose." Civil Procedure Law, Rev. Code 1:51.6. In the case Mitchell v. The Intestate Estate of the Late Robert F Johnson, [1999] LRSC 14; 39 LLR 467 (1999), text at page 473, this Court held that "the object of this statutory provision providing for the appointment of a deputy attorney in the absence of a party or attorney representing such a party, is to afford an opportunity to such a party to announce an appeal in open court at the time of rendition of final judgment. It was therefore irregular for the trial judge to ignore this statutory provision when he rendered his final judgment without notice to the plaintiff-in-error and without an appointment of a court appointed counsel to take the final judgment. The failure of a trial court to serve the plaintiff-in-error with notice for trial and final judgment as well as the failure to appoint or deputize an attorney to take the final judgment constitute sufficient and legal grounds for the application for a writ of error."

In the instant case, the defendants-in-error do not deny that the trial judge never appointed a deputy counsel in the absence of the plaintiffs-in-error and their counsel at the time he ruled on the motion to intervene and subsequently rendered his final judgment in this case, subject of these error proceedings. We therefore hold, consistent with the decision in the Mitchell case, that the trial judge committed a reversible error when he ruled on the motion to intervene and subsequently rendered his final judgment without appointing a deputy counsel to take the ruling and the final judgment, respectively, so as to afford the plaintiffs-in-error their constitutional and statutory right to announce an appeal to this Court for our review of said ruling and the final judgment of the trial court. An appeal is a matter of right which cannot be denied by the trial court as was done in the instant case.

Wherefore, and in view of the foregoing, the petition for a writ of error should be, and the same is hereby granted. The ruling on the motion to intervene and the final judgment are hereby reversed and the case is remanded. 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 this case for hearing, commencing with the administrator's motion to intervene. Costs are assessed against the defendants-in-error. And it is hereby so ordered.

Petition granted.

Miller et al v Parker et al [1982] LRSC 73; 30 LLR 412 (1982) (9 July 1982)

RANDOLPH MILLER et al., Appellants, *v.* **HELEN PARKER et al.**, Appellees

APPEAL FROM THE MONTHLY AND PROBATE COURT FOR MONTSERRADO COUNTY.

Heard: May 5 & 6, 1982. Decided: July 9, 1982.

1. The bill of exceptions must state distinctly the grounds on which exception are taken.

2. All instruments, in property cases, which convey property to two or more persons, without any qualifying words indicating intention of creating tenancy in common, should be construed to mean joint tenancy with its peculiar doctrine of survivorship, and not a tenancy in common.

3. Rulings of the trial judge to which no exceptions are noted cannot be reviewed on appeal.

4. No party may assign as error, the giving or the failure to give an instruction unless that party objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the reasons of his objection.

5. Where a party excepts to the entire charge of the trial court to the jury without specifying the parts of the charge he is excepting to and the grounds therefor, the Supreme Court will disregard the exceptions.

6. The procedure of appointing a lawyer to take the ruling for the absent party, should be followed only in the absence of a notice to the party or lawyer.

7. The withdrawal of a petition for certiorari by the petitioner without reservation to refile, constitutes a waiver of the points therein contained, and a bar to the appellate court entertaining the same on appeal.

8. Where property is willed by a testator and becomes operative by probation, no heir, lineal or collateral, of the testator can legally assert any claim to the subject property under the Testator.

9. Although a clause in a Will refers to the property devised as a homestead, the absence of evidence to prove the existence of homestead, does not revert the property to the testator, his lineal or collateral heirs.

10. Where a bill of exceptions attacks the factual phase of the verdict and the final judgment, the Supreme Court shall review the entire evidence adduced at the trial to ascertain whether the final judgment is supported by the evidence.

11. Where the attesting witnesses are available and testify to the genuineness of the signature of the testatrix, their own signatures, and identify same, the writing shall be admissible and secondary evidence such as handwriting expert shall be unnecessary.

12. Where, however, the subscribing witnesses are unavailable, recourse to secondary evidence to prove the execution and authenticity of a writing will be justified, and proof may be established by circumstantial evidence.

13. Where forgery is alleged, the claimant cannot rest on the statement of fact in the declaration as proof of the truthfulness, but must produce evidence to substantiate the allegation.

These proceedings grow out of a final decree of the Monthly and Probate Court for Montserrado County, in which the Last Will and Testament of the late Melinda Jackson Parker was ordered admitted into probate over the objections of appellants, lineal and collateral heirs of the late Randolph H. Jackson. From the facts of the case, Randolph H. Jackson, prior to his death, executed a Last Will and Testament in which he devised certain properties to his three daughters, namely Sara Jackson-Parker, Jessina A. Hill, and Eliza R. Jackson Pritchard.

Eliza R. Jackson Prictchard died leaving no heirs of her body. Later S. M. Jackson-Parker also died and her share of the property went to her sole surviving heir, Melinda Jackson-Parker. Subsequently, the last of the three children, Jessina A. Hill died leaving no surviving heir. Prior to her death, Jessina Hill executed a Last Will and Testament in which she devised her share of the property to J. J. Hill, which upon presentation to the probate court, after Jessina Hill's death, was objected to by Melinda Jackson-Parker. The Will was set aside and the Supreme Court on appeal held that the property willed to the three daughters was held in joint tenancy, and that Melinda Jackson-Parker being the last survivor of the three tenants, became the sole owner.

Having been declared the sole owner by the Supreme Court, Melinda Jackson-Parker prior to her death, executed a Last Will and Testament devising the property she had acquired. After her death, the Will was presented to the Monthly and probate court for admission into probate to which appellants herein objected. The probate court declared the Will genuine to which objector excepted and announced an appeal to the Supreme Court.

The Supreme Court, taking note of its prior opinion that the Will of the late Randolph H. Jackson, devising the property created a joint tenancy and that Melinda Jackson-Parker being the last survivor took the property in its entirety, ruled that Melinda Jackson-Parker had the right to devise the property by will. Concluding that the only issue to determine is whether or not the signature on the purported will is that of Melinda Jackson-Parker, the Supreme Court *affirmed and confirmed* the decree of the probate court.

M. Fahnbulleh Jones appeared for the objectors/appellants. *Roland Barnes* appeared for respondents/appellees.

MR. JUSTICE YANGBE delivered the opinion of the Court

The late Randolph H. Jackson, of the settlement of Louisiana, Montserrado County, was a father of three daughters, namely: S. M. Jackson-Parker, Jessina A. Hill, and Eliza R. Jackson-Pritchard, all of whom their father pre-deceased.

On the 18th of April, A. D. 1910, Randolph H. Jackson executed a last will and testament in which he devised real and personal properties to his three daughters. The will was duly admitted into probate and registered in 1914. Only the realty devised to the three children of the testator is in contention in this case. In April, A. D. 1919, Eliza R. Jackson-Pritchard and her four children got drowned in Grand Cape Mount County, Republic of Liberia, leaving the other two children, S.M. Jackson-Parker and Jessina A. Hill. Later, S.M. Jackson-Parker also died, leaving her share of the property with her daughter, Melinda Jackson-Parker as the only heir.

After the death of Jessina A. Hill, Melinda Jackson-Parker apparently suspected that the will of her aunt, Jessina, was being offered for probate; therefore, Melinda filed a caveat in the Monthly and Probate Court for Montserrado County, and consequently when the last will and testament of Jessina A. Hill was presented to court by I. J. Hill, the stepdaughter of Jessina A. Hill, Melinda Jackson Parker interposed objections thereto on the ground: 1) that the testatrix had no fee simple title to the property; hence, she could not legally will same; and 2) that the Will of the late Jessina A. Hill had been executed under undue influence. The case was sent to the People's Civil Law Court, Sixth Judicial Circuit, Montserrado County, for trial by jury. After a due trial, the trial jury returned a verdict, setting aside the Will. Subsequently, the verdict was confirmed in a final judgment, but an appeal was announced therefrom to this Court, and this Court, in its opinion, affirmed and confirmed the judgment of the trial court, declaring the real property that was willed to the three daughters of the late Randolph H. Jackson as joint tenancy, and that Melinda Jackson-Parker was the last survivor of the three tenants as per the will of Randolph H. Jackson. Therefore, according to the Opinion, Melinda Jackson-Parker became the sole owner of the entire fee *Hill and Hill v. Parker*, 13 LLR 556 (1960).

On the 20th of April, A. D. 1978, Melinda Jackson-Parker executed a last will and testament devising the self-same **land** she had acquired from her grandfather, and after her death it was presented to the monthly and probate court for admission into probate, to which objectors/appellants objected. The grounds of objections were essentially the same grounds of objections interposed to the last will and testament of Jessina A. Hill by Melinda Jackson-Parker, which grounds have been earlier stated in this opinion.

After the probate judge had disposed of the issues of law tendered in the pleadings, the case was forwarded to the People's Civil Law Court, Sixth Judicial Circuit, Montserrado County, for a trial by a jury in keeping with law and procedure.

During the June A. D. 1981, Term of the People's Civil Law Court aforesaid, presided over by His Honor M. Fulton W. Yancy, Jr., the case was called for trial by jury. The jury was duly empanelled to try the single issue of fact ruled to trial by the Probate Judge. After the production of evidence on both sides, the court charged the jury, who thereafter retired to the room of deliberation to consider their verdict. Subsequently, the jury returned with a verdict declaring the will genuine, and said verdict was ordered recorded by the court below. However, before the trial judge could proceed further, the objectors/ appellants petitioned the Chambers Justice of this Court for a writ of certiorari, but said petition was later withdrawn before it could be heard, and Judge Yancy by influx of time had lost jurisdiction; and upon a mandate emanating from the Chambers Justice, the court below was ordered to resume jurisdiction over the matter and proceed in keeping with the law. Consequently, His Honour Frank W. Smith, the presiding judge by assignment over the People's Civil Law Court, ordered the clerk of the court to dispatch all the record in the case to the probate judge for a final decree to be entered in accordance with the statute, to which ruling objectors/appellants noted exceptions. Accordingly, the records were sent to the probate court and final decree was rendered from which the objectors/appellants appealed to this Court of denier resort for review.

The salient issues raised in the bill of exceptions for our review and determination are hereunder summarized as follows:

(a) Whether the probate judge was right when she overruled and dismissed all the other issues of law raised in the objections and ruled the case to trial on the single issue, that is, as to whether or not the signature of Melinda Jackson-Parker, appearing on the will, was her genuine signature?

(b) Whether a handwriting expert as witness should be allowed by the trial court to take home a disputed will for technical analysis?

(c) Whether a party may except to the entire charge of the trial court to the jury without specifying the grounds of objections?

(d) After receipt of the mandate of the Chambers Justice to resume jurisdiction in the case and to proceed according to law, was Judge Smith in order when he ordered the clerk to send the record including the verdict to the Probate Court for the probate judge to enter a decree in the case that was presided over by Judge Yancy during the 1981 June Term of that Court?

(e) What is the effect of a withdrawal of a petition for remedial writ in a case that is pending in the trial court?

(f) Whether the property of the late Randolph H. Jackson which he willed to the three children devolved upon them as joint tenants or tenants in common?

We shall now proceed to pass upon the contentions of the parties hereinabove summarized and resolve the issues raised.

Counsel for objectors/appellants in his history of the case stated, among other things, that:

"The probate judge in passing on the pleadings overruled all those issues except that of the allegations that the signature appearing on the will was not the genuine signature of Melinda Jackson Parker and that the signature was forged. The judge ruled based upon the opinion in the case *Hill v. Parker,* 13 LLR 556 (1960). The case was then forwarded to the People's Civil Law Court for the Sixth Judicial Circuit, in keeping with the law."

Yet, at the end of count one of appellants' brief, they also contended that:

"These issues of law should have been fully and legally passed upon by the probate judge. But in the opinion of your appellants they were not legally passed upon in the ruling of the law issues."

Counsel for appellants cited in support of this contention *Reeves et. al. v. Knowlden,* 11LLR 199 (1952) and *Johns and Witherspoon v. Johns,* [1952] LRSC 29; 11 LLR 312 (1952), to the effect that the probate court should have disposed of all the issues of law, which suggests that the judge failed to pass upon all the issues of law raised by the parties.

There is an obvious conflict in the history of the case of appellants. With regard to count one of the brief and in the bill of exceptions, a question was propounded from the Bench during the argument as to which of these contentions the Court should accept, i.e. whether the probate judge failed to pass upon the issues of law or not, or whether the ruling was in counsel's opinion erroneous. Counsel for appellants answered in the affirmative and stated that all the issues of law raised in the pleadings were decided by the probate judge. Therefore, we shall now pass upon the point of contention raised in count one of the brief.

The appellants have merely stated in count one of the bill of exceptions that the probate judge ruled out and dismissed all the other issues on law that had been raised without specifying same for us to review.

This Court has held that a bill of exceptions must state distinctly the grounds on which the exception is taken. It is improper, therefore, to place upon the Court the burden of searching the records in order to discover the exception taken and the grounds therefor. *Sampson and Johnson v. Republic*, [1952] LRSC 5; 11 LLR 135,138 (1952). The holding in this case also finds support in a recently decided case *of Keller v. Republic*, [1979] LRSC 5; 28 LLR 49 (1979) Supreme Court's Opinion, March Term 1979.

Accordingly, count one of the brief is not well taken; hence same is overruled as far as it relates to the alleged failure of the probate judge to pass upon all the issues of law.

Relevant portion of the ruling of the learned probate judge, on pages 5 and 6 thereof, as far as the nature of the estate of Randolph H. Jackson and the rights of Melinda Jackson-Parker are concerned, reads as follows:

"objectors argued that the mere statement by Randolph H. Jackson in his Will, that the sixty acres in Louisiana is a homestead for his three daughters, does not make the said property a homestead as to give Melinda Parker the right to will said **land** to strangers; that said **land** should go to the Jackson Family. We hold that the Will of Randolph Jackson is not in issue, and therefore, cannot be made a proper object for attack.

Our further comment on the will of Randolph Jackson which both parties have made profert of in support of their contentions, especially the contention that the Supreme Court has settled the

issues relating to the position of Melinda Parker and the estate of Randolph Jackson, is that the said Will having created a joint tenancy in the three daughters, S. M. Parker, Jessina Jackson Hill and Eliza Jackson, left no question unanswered as to who should inherit after the death of the three joint tenants; for under the doctrine of joint tenancy the survivor takes the whole. In the case at bar, we are in no position to rule differently from the ruling of the Supreme Court in the case *Hill and Hill v. Parker*, 13 LLR 556 (1960). The last survivor takes the whole to herself to the exclusion of all persons. In the face of that decision just cited, we hold that the only issue of fact for the jury to determine is whether or not, the signature that appears on the purported last will is that of Melinda Jackson-Parker."

Thus, from the ruling of the probate judge as quoted herein-above, the legal authority of the probate court for overruling the issue that no fee simple title vested in Melinda Jackson-Parker, is crystal clear. Therefore, the probate judge correctly opined that she had no legal authority to hold differently from the opinion of the Supreme Court cited by her, and that the Will of the late Randolph H. Jackson was not in issue.

Assuming that the will of Randolph H. Jackson was the subject of objections, we quote hereunder clauses two, three, and four of the Will by which the testator disposed of the realty in question:

I give and bequeath to my three daughters, S.M. Parker, Jessina Hill and Eliza R. Jackson, the place I am now living and consisting of sixty acres of **land** with the improvements formerly known as the Estate of my father, Seymore Jackson, as a homestead for them.

I give and bequeath all my real estate not disposed of during my life time to my three daughters. The Real Estate at Monrovia, that is, the store on the Waterside now occupied by P. Z. & Co. and the retail shop occupied by W & Hare, to be kept rented and proceeds equally divided after the expense of keeping up the places, are deducted.

I give and bequeath to my two daughters, S. M. Parker and Jessina A. Hill, my house on Broad Street, known as Jessis Sharp & House.

None of these quoted clauses of the will indicates as to how the three daughters should hold the **land** willed to them, except that the will conveyed a fee simple title.

The authority cited in *Hill and Hill v. Parker* referred to hereinabove is:

"The ancient English law was apt in its constructions, to favor joint tenancy rather than tenants in common; and where an estate was conveyed to two or more persons with-out any words indicating an intention that it should be divided among them, it was construed to be a joint tenancy."

Counsel for appellants contended that the Last Will and Testament of the late Randolph H. Jackson created a tenancy in common and not a joint tenancy; therefore, he asked us to recall the opinion of this Court declaring same to be joint tenancy. At this juncture, it is significant to reiterate that the will of the late Randolph H. Jackson is not assailed in this case. The learned counsel also correctly admitted that in this jurisdiction, there are two views controlling the doctrine of joint tenancy and tenancy in common: one is the English and the other is the American rule; hence, the question that now presents itself before us is, which one of the said rules has been adopted and followed in Liberia?

In Richardson v. Stubblefield and Collins-Jones, 6 LLR 107 (1940), this Court held that the common law provisions for joint tenancy remain in vogue in this jurisdiction and that our courts must in all cases interpret a joint conveyance, unlimited by any qualifying words, as one creating an estate in joint tenancy with its attendant doctrine of survivorship, and not a tenancy in common.

The reason for suggesting a recall of the opinion of this Court in *Hill v. Parker*, 13 LLR 556 (1960), cited earlier in this opinion was not stated, and the learned Counsel for appellants did not cite any authority to justify the request for the recall. Therefore, having adopted the English view on the subject of joint tenancy and tenancy in common in Liberia, over forty-two years, we have no reason to depart from the interpretation of all instruments, in proper cases, which convey property to two or more persons without any qualifying words indicating an intention of creating tenancy in common, to be construed to mean other than a joint tenancy with its peculiar doctrine of survivorship and not a tenancy in common. Consequently, we have no valid reason to recall the opinion of this Court as suggested.

The minutes of the trial court, as found on sheets 6, 7, 8, and of 29th day's jury session, July 29, 1981, show that a request was made by counsel for the appellants to allow their expert witness to

take home the will and other documents bearing the genuine handwriting of the testatrix and her disputed signature, for the purpose of technical analysis. The request was resisted and denied by the trial court. No exceptions were noted thereto. Notwithstanding the provisions of the Civil Procedure Law, Rev. Code 1: 51.7, and several holdings of this Court on the effect of failure of a party to note exceptions to alleged adverse rulings or decisions of the trial court, counsel for appellants has raised the issue in the bill of exceptions. In the absence of any exception being noted to the ruling of the trial judge denying the request, we have no legal authority to review same. Consequently, count two of the bill of exceptions has no legal basis. *Richards v. Coleman,* [1935] LRSC 32; 5 LLR 56 (1935).

The statute provides that no party may assign as error, the giving or the failure to give an instruction unless that party objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the reasons for his objection. Civil Procedure Law, Rev. Code, 1: 2.9, 22.9; *Liberia Mining Company v. Zwannah,* [1968] LRSC 46; 19 LLR 73 (1968); and *Scott v. Republic,* [1967] LRSC 2; 18 LLR 13 (1967).

Counsel for appellants has generally excepted to the charge of the court to the jury without any specification and without stating the grounds therefor in keeping with our law. Therefore, we have no other alternative but to ignore the contentions.

Appellants have argued that when the trial jury returned with its verdict in which it was stated: "Respondents are not liable", in the absence of counsel for appellants and without appointing a lawyer to take the said verdict for the appellants, the trial judge recharged the jury, and they again returned to the room of deliberation. Counsel for appellants also contended that he excepted to the instructions of the judge.

We wonder how was it possible for counsel for objectors/ appellants to have noted exceptions to the recharge of the court to the jury when he contended that the jury returned with its verdict in his absence. Certainly it was not possible for the appellants to have excepted to the recharge, especially when they claimed that the jury returned in their absence. However, the records do not show that an exception was noted, and the record also does not show that a lawyer was appointed by the court for that purpose in keeping with Civil Procedure Law, Rev. Code 1: 51.6.

The procedure in this jurisdiction has been that in the absence of a lawyer at the rendition of a ruling or judgment, the court usually appoints a lawyer to take the ruling for the absent party, and this procedure obtains even in the appellate Court. We hold that this procedure should be

followed only in the absence of notice to the party or lawyer; in this case, however, no notice was served.

In our opinion, in the absence of notice to counsel to be present and receive the verdict or for the recharge to the jury, the trial court should have appointed a lawyer to note an exception, thereby reserving the point for appellate review.

Counsel for appellants realized the adverse effect of this act of the judge by not deputizing a lawyer to take the ruling for him; therefore, he sought appellate review when he petitioned this Court for a writ of certiorari, which was issued and served. But the petitioners in the certiorari proceedings, for reasons not disclosed by the records, unconditionally withdrew the petition for certiorari, and as a result, the Chambers Justice did not hear and decide the petition.

It is the right of a party to withdraw a cause with or without reservation, and we cannot, therefore, question the wisdom of the petitioners for not permitting the Court to pass upon the issues.

The withdrawal of the petition for certiorari by the appellants, in our opinion, constituted a waiver of the points therein contained. Therefore, the appellate court is precluded from entertaining same on a regular appeal, *Horton v. Horton*, [1960] LRSC 39; 14 LLR 57(1960), since certiorari serves the same function as a regular appeal; that is, to review and correct alleged irregularities committed during the trial while the case is pending. Civil Procedure Law, Rev. Code 1:16.24; and *Attia v. Rigby*, 2 LLR 9 (1908).

The trial records, as found on sheet 7, 30th day's jury session, July 30, 1981, show that his Honour Judge Yancy ordered the clerk to record the verdict of the empanelled jury on that date, and that the only thing His Honour Judge Smith did was he ordered the clerk to forward the verdict and other relevant documents to the probate judge to render a decree in keeping with law and the mandate of the Chamber Justice. Therefore, we have no evidence to the effect that Judge Smith did order the verdict recorded as contended by the appellants.

We have already dealt with the procedural aspect of the appeal as raised by the parties; we will now consider the evidence adduced at the trial to determine the merits of the allegations disclosed by the records.

The Will was further objected to on the grounds that: (a) the respondents/appellees had no heritable blood from the testatrix, Melinda Jackson Parker; (b) Melinda Jackson-Parker having died without leaving heirs, her mother's share of the property she inherited from her maternal grandfather, Randolph H. Jackson automatically reverted to the collateral heirs of Randolph H. Jackson; (c) the property which the three children acquired by Will from Randolph H. Jackson was never partitioned among the three children. Therefore, appellants argued, no stranger could legally claim heritable relationship and inherit the realty from Melinda Jackson-Parker.

There are many major points the objectors/appellants may have ignored, among which is the fact that Randolph H. Jackson, the original owner of the property in litigation, willed same to his three daughters already named herein above and the will became operative after his death when it was probated in 1914. Therefore, no heir, lineal or collateral, of the late Randolph H. Jackson could logically and legally assert any claim to the subject property under the late Randolph H. Jackson. The significant uncontroversial fact is that none of the appellants is claiming under any of the three children who are the only devisees of the late Randolph H. Jackson, and they are not claiming under Melinda Jackson-Parker who inherited the property from her mother, S. M. Jackson Parker. Furthermore, the appellees assert their rights to the property in issue upon the strength of the will executed by Melinda Jackson Parker. Therefore, the contention of lack of heritable relationship of appellees to Melinda Jackson-Parker is not relevant.

We come now to the contention which is not challenged and which deserves our comments, and that is the property, now subject of objections, was held and enjoyed by the three devisees named in the will of the late Randolph H. Jackson and was not partitioned among the three children. This contention buttresses the position of this Court in *Hill v. Parker*, 13 LLR 556 (1960), cited *supra.*

With regard to joint tenancy, we find the following in American Jurisprudence, at section 16:

"Any act of a joint tenant which destroys one or more of its necessarily co-existent unities operates as a severance of the joint tenancy and extinguishes the right of survivorship. The act of one joint tenant in severing his interest in the property by alienation severs the joint tenancy to that extent, so that if there were but two tenants, the joint tenancy is terminated. Termination of the joint tenancy also results of necessity where all but one several joint tenants convey their interests to a stranger. However, if there are three or more tenants, a conveyance by one to a stranger will severe the joint tenancy only as to the share conveyed, which will be held by the grantee as a tenancy in common while the other joint tenants continue to hold their interest in

joint tenancy. If the conveyor reconveys to his conveyor, the joint tenancy interest of the latter does not revive and he holds only as tenant in common. . . .”

Therefore, in our opinion, the fact that the property was held and enjoyed together by the three children, predicated upon the will of the late Randolph H. Jackson, without being partitioned among them, does not destroy the tenancy thus created under the will.

Although clause two of the Will of the late Randolph H. Jackson refers to a portion of the property he devised to the three daughters as a homestead, and there is no evidence that a homestead was created in accordance with the Act of 1888 - 1889, it does not affect the joint tenancy that was devolved upon the three daughters, nor does the absence of evidence to prove the existence of homestead exemption, revert the property to Randolph H. Jackson, his lineal or collateral heirs.

During the trial, appellants asked the trial court to qualify four witnesses, the first of whom was the handwriting analyst, Foday Korneh. A request was made for the expert witness to take home the documents bearing the signature of the deceased for two weeks, which the court below denied, but the appellants failed to take any exception. Earlier in this opinion, we passed upon such negligent failure and the implications thereof.

Our distinguished colleague, Mr. Justice Mabande, in his dissenting opinion has opined that this Court should have reviewed this issue and reverse the ruling of the lower court denying the request. He has also raised the issue that this Court should confine itself to the points raised in the bill of exceptions.

As we have already observed above, there was no exception noted by the appellants to the ruling denying the request and, therefore, according to the Civil Procedure Law, Rev. Code 1: 51.7, coupled with the long line of opinions of this Court, in the absence of any exception being noted during trial, the appellate court should not take cognizance of such contentions. This procedural phase of appellate review was recognized by the learned Justice in his dissenting opinion when he held that we should confine ourselves to the issues raised in the bill of exceptions. Yet, he maintains that we should have reviewed the ruling of the trial judge denying the request in the absence of exception noted to same. This, in our opinion, renders the dissenting opinion inconsistent and not supported by the very statute and opinions of this Court relied upon by the dissenting Justice.

With further reference to the request for the handwriting expert to take home the will for two weeks in order to analyze same, which the dissenting Justice considered as denial of due process, *Rule 7 of the Revised Rules of Circuit Courts* frowns upon postponement of cases during trial to obtain evidence. Here is the relevant portion of said rule:

"Witness for either side must be duly summoned, and evidence thereof must in every case be shown by the Sheriff's returns, before the case is ready for hearing...."

This provision of the rule quoted herein above was not taken into consideration by the dissenting Justice when he hastily arrived at the conclusion that the objectors/appellants were not accorded fair opportunity to be heard.

It is stated in the dissenting opinion that the grounds of the appeal before us are only procedural and that we went beyond the contentions raised in the bill of exceptions.

A relevant portion of count eight of the bill of exceptions reads as follows:

"objectors say that Your Honour rendered final judgment confirming and affirming the illegal verdict and ordered the purported last will and testament of Melinda Jackson Parker admitted into probate....."

This quoted count of the bill of exceptions, from all indications, attacked the factual phase of the verdict and the final judgment; therefore, it is necessary to review the entire evidence adduced at the trial with the view of ascertaining whether the final judgment of the trial court is supported by the evidence in order to do justice to the parties concerned. Seemingly, this is another oversight on the part of the Justice who has dissented in this case.

The next witness for the appellants was Georgia McGill, one of the appellants. She testified to the effect that she never saw the deceased, Melinda Jackson Parker write, but that she saw the note she had written her family.

The third witness was Lurime Sharp Crawford Coleman. This witness told the court that Melinda Jackson Parker did not own any property, nor did she make a will; and that the property was owned by James Sharp. The witness identified the document marked by court P/1 as bearing the original signature of the Testatrix. However, on the cross-examination, she said that she did not have any business transaction with the late Melinda Jackson Parker; that she knew her signature because she was appointed administratrix of Joseph Sharp Estate. After this witness was discharged, the appellants rested oral evidence and asked the court to take judicial notice of the document marked P/1, and they rested evidence in toto.

The appellees produced two witnesses, Daniel Draper and Robert Barclay, who testified in essence that the testatrix had signed the will in their presence and upon her request they also signed the will in her presence and in the presence of each other, in the office of Counsellor Daniel Draper, located in the Bank of Liberia Building in Monrovia. Both attesting witnesses also recognized and identified the signature of the Testatrix as well as their respective signatures appearing on the will bearing court's mark P/1. The testimony of the attesting witnesses are in harmony with the Decedents Estates Law, Rev. Code 8: 113.4. Whereupon, the appellees rested oral evidence and offered the will bearing court's mark P/1 in evidence, which was duly admitted and the case submitted to the court.

The general rule of law on this subject is that, except where the statutes have changed or modified the rule, generally in the case of attested instruments, proof of execution or authenticity must be made by the subscribing witnesses if available.

As a general rule, unavailability of the subscribing witness will justify use of secondary evidence to prove execution and authenticity of a writing.

A *prima facie* case of execution or authenticity is generally required or is sufficient to render the writing admissible. Proof may be established by circumstantial evidence.

Testimony by an attesting witness that he was present, saw the execution of the writing, and attested the same is generally held sufficient to render the writing admissible. 32 C.J.S., Secs. 739, 741 & 742.

In the case in point, the attesting witnesses were available and testified to the genuineness of the signature of the testatrix, their own signatures and identified same; therefore, secondary evidence such as the handwriting expert was unnecessary.

The objectors have alleged forgery of the signature of testatrix to the will, but have failed to produce evidence to substantiate the allegations of forgery.

In *Hill v. Hill*, 13 LLR 257, 268(1958), this Court held that "the want of proof will defeat the best laid action; the statement of facts in a declaration, however clearly and logically they may be set forth, cannot be taken as proof of the truthfulness."

Proof of the allegations stated in the objections are wanting; therefore, we do not hesitate to consider same as not supported by the record in point of fact. Accordingly, the decree of the lower court is hereby affirmed.

The Clerk of this Court is instructed to send a mandate to the trial court to resume jurisdiction over the matter and enforce its decree. Costs are ruled against the appellants. And it is hereby so ordered.

Decree affirmed.

MR. JUSTICE MABANDE *dissents*.

The issues presented by this appeal are solely procedural and not factual as misconceived by the majority. The factual consideration of the case is not supported by the records.

This Court, in the exercise of its appellate powers over a civil case, is limited to a review of only the issues raised in the bill of exceptions as supported by the records and coached in the briefs of the litigants. A determination of any other issue is outside the realm of its appellate power. *Bryant v. African Produce Company*[1940] LRSC 4; , 7 LLR 93 (1940).

The evidence in support of the genuineness of the signature of the testator are equally impeached by the evidence contradicting the same. Where there is an equilibrium of the weight of the evidence, the verdict in support of one side cannot convincingly support a judgment.

Accordingly, where the evidence of opposing litigants pre-sents equal weight of credibility, each party has the burden of convincingly offsetting the evidence of the other. The party with the burden of proof who fails to produce a preponderance of proof in his favour must suffer his neglect. Only a preponderance of evidence establishes a civil claim. Civil Procedure Law, Rev. Code 1: 25.5(2).

In this case the objector produced an expert witness whose qualification was without challenge established by the trial judge. The denial of opportunity to the expert witness to have produced his expert testimony is violative of the doctrine of fair and impartial trial. Where an expert witness requests the court to take a specimen of the evidence to the laboratory for testing, such opportunity must be freely accorded him and a court is not to indefinitely suspend a jury trial already in progress. If the specimen is a valuable the loss of which may impede the claim of a party, its safe return may be secured by a bond or some valuable property pledged by the party producing the expert witness and the witness himself. In case of a will, a certified copy of the will should be procured by the court and if the expert loses the original, the loss of such evidence should be counted against the litigant producing the witness. The denial of the testimony of the expert witness in the case is surely a deprivation of the due process of law.

Concerning the charging of the jury by the trial judge, a charge or recharge of the jury on any issue must be with due notice to both party litigants. A party has a legal right to be adequately notified and given sufficient opportunity to attend every step of the trial. A denial of this privilege is in fact a deprivation of a party's right to have his day in court. Without the free exercise of this right, no person can be bound by a judgment against him.

I am of the opinion that the recharge of the jury on any issue without notice to a party and an opportunity to attend deprives him of his right to object and challenge the charge and consequently his right to a fair and impartial trial. *Johnson-Maxwell v. Tulay and Dennis,* [1981] LRSC 35; 29 LLR 355 (1981), decided July 30, 1981.

In view of these gross trial irregularities, I have voted to have the judgment set aside for a new trial to be conducted in consonance with the principles of fair and impartial trial. I therefore dissent.

Moore v Gye [1970] LRSC 8; 19 LLR 429 (1970) (29 January 1970)

SUNDAY MOORE, Appellant, v. BLAYONDE GYE, Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT, MARYLAND COUNTY.

Date of argument not indicated. Decided January 29, 1970. 1. A defendant in an action of ejectment is permitted in his answer to allege his right of occupancy by title or other claim. 2. The defendant's right of occupancy, constituting a denial of plaintiff's ownership, may also be alleged by implication, as in the instant case, where the defendant stated that he was occupying the premises.
3. In an action of ejectment, if neither party establishes any legal right, the plaintiff cannot recover. 4. Questions of fact are to be determined by the jury, and its verdict returned under the law applicable to the facts, as charged by the trial judge.

In an action of ejectment the plaintiff claimed title to real property occupied by defendant. The defendant in his answer set up a defense alleging he was the owner of the property by virtue of a deed which he proferted as part of his answer. The plaintiff replied that the answer should be stricken since defendant neither denied nor admitted the wrongful withholding of plaintiff's alleged property.
The trial court agreed with plaintiff's contention and the defendant was ruled to trial on a bare denial. The jury returned a verdict for the plaintiff and the defendant appealed from the judgment of the trial court.
Judgment reversed, case remanded. Wellington K.
Neufville for appellant. No appear-

ance for appellee. MR. court.
JUSTICE SIMPSON

delivered the opinion of the

At the August 1964
Term of the Circuit Court for the Fourth Judicial Circuit, Maryland County, Blayonde Gye, of Pleebo, instituted an action against
Sunday

Moore, of the same Township, for the recovery of a portion of a two-acre tract of land situated, lying and being on the highway leading from Pleebo to Gbolobo. After filing his formal appearance as required, defendant, the appellant before this bar, filed a five-count answer to the complaint, challenging the legal validity of the paper title made profert by appellee in his complaint. The claim of plaintiff in ejectment was predicated upon an Aborigine Land Grant Deed issued him by the Republic, dated March 13, 1963, which purports to entitle him to approximately two acres of land. The appellant contended that he was in possession of a Public Land Sale Deed executed by the President of Liberia on February 21, 1961, for the selfsame portion of property. The relevant deed was annexed to the answer by way of a profert marked exhibit "A." To this answer, a reply was filed, which held that there was no specific denial of ownership by plaintiff, for the appellant, then defendant, should have denied or admitted the wrongful withholding of a portion of plaintiff's land which was described in the title deed proferted. This omission, the appellee contended, constituted a fatal error. The reply further contended that the unsigned deed for the subject property had been presented to Everett J. Goodridge, Administrative Assistant to the President, on February 5, 1959, for the President's signature. This presentation had been effected by attorney H. Nyema Prowd, of Maryland County. After making profert of a receipt evidencing the above-referred-to submission to the then Administrative Assistant, an undated certificate from the same office was proferted. This certificate substantially stated that the deed of appellee, together with another, had been published and found to have no protest made against them. The reply was the last pleading filed. Subsequent to hearing argument on the issues of law, Hon. Frederick K. Tulay, Circuit Judge presiding by as-

signment, proceeded to rule thereon on June 22, 1965. The judge overruled all four counts of specific traversals contained in the answer, thus relegating appellant to a bare denial of the facts contained in the complaint. Since the trial judge deemed it best to pursue such a conclusive course, let us, therefore, proceed to carefully examine the counts he overruled. In count one of the answer, the defendant contended that he held an older deed for the "premises occupied by him," since his deed had been signed by the President of the Republic of Liberia on February 21, 1961. Defendant stressed that, in the circumstances, plaintiff could not claim possession of defendant's property. On this score the judge held in his ruling on the issues of law, and we quote, "Defendant in his answer does not admit that he lives on the premises, from which plaintiff seeks to eject him, that he has title to it or denies that he lives on the same premises. This omission is both fatal and incurable. Counts 1, 2, 3, and 4 of defendant's

answer are, therefore, dismissed and the case ruled to trial on plaintiff's complaint, and count 5 of defendant's answer which, of course, is a bare denial and it is hereby so ordered." The position of the judge in striking out the first four counts of defendant's answer for the reasons stated above, is so patently irregular that it needs hardly any sustained discourse on the law to prove it.
In Salifu v. Larsannah, [1936] LRSC 13; 5 L.L.R. 152 (1936), this Court held that a plaintiff is precluded from insisting that his adversary cannot set up an outstanding title, or the defense of trespass, and if neither party has any, legal right plaintiff cannot recover. Furthermore, count one of the answer clearly states that defendant was occupying the premises in question. In these circumstances, this Court cannot permit the four essential counts of the answer to be overruled upon legally unfounded premises. Where there are mixed questions of law and facts, they

must go to the jury for determination, especially when the action is predicated upon a claim in ejectment.
In view of the above, we must hold that the judge erred in his ruling on the issues of law and therefore the trial of the issues of fact was not in accord with the applicable law. Therefore, the judgment is hereby reversed and the case remanded, the issues of law to be first argued. Costs ruled against appellee. And it is hereby so ordered. Reversed and remanded.

J.J Mends-Cole v Weeks [1960] LRSC 18; 13 LRSC 525 (1960) (15 January 1960)

J. J. MENDS-COLE, MABEL FAGANS, MAUDE FAGANS-FREEMAN by and through her Husband, GEORGE FREEMAN, Heirs of the Late EDMUND SCHAVERS, Appellants-Plaintiffs in Error, v. His Honor, A. LORENZO WEEKS, Assigned Judge Presiding over the Circuit Court of the Sixth Judicial Circuit, Montserrado County, S. DAVID NAYREAU, Qualified Land Surveyor, W. 0. DESHIELD, HENRIETTA WILLIAMS-BANGURI, and JAMES DE SHIELD, Heirs of the Late JOHN SCHAVERS, Appellees-Defendants in Error. APPEAL FROM RULING IN CHAMBERS ON APPLICATION FOR WRIT OF ERROR TO THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued December 10, 1959. Decided January 15, 1960.
1. An application for a writ of error may be dismissed as materially defective where the parties are wrongly described therein as petitioners and respondents instead of plaintiffs and defendants in error, and the affidavit submitted therewith fails to state that the application was not made for purposes of embarrassment and delay, and the counsellor's certificate attached thereto fails to state that, in the opinion of counsel, real errors were assigned. 2. An appeal from a ruling in Chambers may be dismissed where the appellant fails to appear for a hearing thereon.

On appeal from a ruling in Chambers denying issuance of a peremptory writ of error
in an injunction action, appeal dismissed.

No appearance for appellants. appellees. MR. Court.
JUSTICE MITCHELL

D. B. Cooper for

delivered the opinion of the

When an application is made in assignment of error, if it does not conform with the statutes in the
essential pre-

requisites, the issuance of the peremptory writ may be denied and the petition dismissed
for insufficiency in law. J. J. Mends-Cole, et al., the within named appellantsplaintiffs in error, filed a suit of injunction before
the Circuit Court of the Sixth Judicial Circuit, Montserrado County, in its September, 1959, term. They sought to enjoin, prohibit
and restrain the above named appelleesdefendants in error from surveying a sixty-acre tract of land, situated in the Long Beach Settlement,
City of Monrovia. In accordance with the petition before us, the case was assigned and called for hearing in the absence of both
the appellants-plaintiffs in error and of their counsel ; and they contended that the trial Judge was in error to have heard the
case in their absence. But another glance at the same petition praying for the issuance of the writ shows that the said plaintiffs
in error were served with notice of the aforesaid assignment, and that Attorney Robert G. W. Azango, representing the said appellants
wantonly absented himself after the service of the notice had been made on him. We would make an outline of the conduct of this attorney
in the court below; but because of the fact that the records show further that the Justice presiding in Chambers, from whose ruling
this appeal has been taken was not privileged to probe into the merits of the petition, we feel it unnecessary to do so in this opinion.
Upon the service of the alternative writ, the appelleesdefendants in error filed returns in which they attacked the insufficiency
of the petition on the following grounds : "I. Because the petition wrongly entitled the parties thereto as petitioners and respondents,
whereas, they should have been entitled as : plaintiffs in error and defendants in error. "2. Because the affidavit which is indispensable
to a petition in error is defective and bad, in that, it fails to state that the application was not made for

the mere purpose of embarrassment and delay, which the law mandatorily requires in such cases. "3. Because the counsellors' certificate attached to the petition fails to state that, in the opinion of counsel, real errors had been assigned." The Justice presiding in Chambers, after hearing arguments by counsel on both sides, sustained Counts "t," "2," and "3" of respondents' returns which were based upon the foregoing legal grounds, dismissed the petition and denied the issuance of the peremptory writ of error. From this ruling of Mr. Justice Mitchell, made in Chambers for Mr. Justice Harris, who having recused himself, requested Mr. Justice Mitchell to sit, the appellees-petitioners excepted and took an appeal before the bench sitting in full for a further hearing. The appeal was granted without reservations to facilitate a speedy hearing by the relief afforded under the 1956 Code. To avoid undue delay and the thwarting of justice, appelleesdefendants in error, availing themselves of their right under the statutes quoted, supra, made application to the Acting Chief Justice for the hearing of the appeal without delay. This application was granted and assignment made for the hearing of the appeal on December io, 1959. According to the marshall's returns endorsed on the back of the aforesaid notice of assignment, both parties were duly notified ; but at the call of the case, the appellants failed to appear. Appellees' counsel moved the Court to dismiss the appeal with costs against the appellants. Under Rule IV, Part 6, of the Revised Rules of this Court (13 L.L.R. 697), appellees' motion is hereby granted ; the appeal is dismissed ; and the appellants are hereby ordered to pay all costs in the case.
And it is so ordered.
Appeal dismissed.

Wolo v Samobollah [1972] LRSC 3; 21 LLR 22 (1972) (21 April 1972)

MATTHEW D. WOLO, Appellant, v. MOMO SAMOBOLLAH, Appellee.
APPEAL FROM THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued March 23, 1972. Decided April 21, 1972. 1. The procedure for questioning the correctness of records transmitted to the Supreme Court is by a motion for diminution of record. 2. The falsification of court records is a serious offense and perpetrators will be dealt with severely by the Supreme Court. 3. It is the bill of exceptions, embodying only exceptions taken during the trial, which brings errors complained of to the attention of the Supreme Court, to which appellant is confined and which are deemed waived if not included in the bill, the only exception thereto arising in appeals from conviction of capital offenses. 4. When a defendant's answer is dismissed and he is deemed thereafter to only deny the facts alleged, he is barred from introducing affirmative matter

at the trial. 5. The Supreme Court deems the practice of law to be more than a mere trade or business, and expects of practitioners devotion to study and dedication to the law's ideals.

The jury returned a verdict for the plaintiff in an action of ejectment, awarding possession and damages, after a trial in which the defendant was held to a bare denial because of the dismissal of his answer and pleadings subsequent to it. Defendant moved for a new trial, and it was discovered that two contradictory rulings were in the record, the one granting it not being genuine. No motion was made by either side for diminution of the record to question its correctness. Nor did the defendant except to the adverse ruling and include it in his bill of exceptions, as he had failed to do with the verdict and the final judgment. The Court pointed to all the errors committed by the defendant who appealed from the final judgment, nor was he sustained in any of his exceptions taken to the rulings of the trial judge, but because the verdict of the jury failed to establish the portion of plain22

tiff's property wrongly occupied, the Supreme Court to ensure justice reversed the judgment and remanded in order to have a survey taken and a report made by a board of arbitrators. Appellant, pro se.
Richard A. Diggs for appellee.
MR. JUSTICE HENRIES delivered the opinion of the Court.

Appellee instituted ejectment proceedings against the appellant in the Circuit Court for the Sixth Judicial Circuit, Montserrado County. Pleadings progressed as far as appellant's rejoinder. Hon. John A. Dennis, presiding by assignment over the June 1970 Term of the said court, heard and determined the issues of law raised in the pleadings, dismissed appellant's answer and subsequent pleading, and ordered him to trial on a bare denial of the facts stated in the complaint. The case came up for trial during the December 1970 Term of the court and the jury returned a verdict in favor of the plaintiff to the effect that he was entitled to possession of the property in dispute, and awarded him damages in the amount of $250.00. Defendant filed a motion for a new trial, which was denied and not excepted to, and final judgment was rendered on February 26, 1971. It is from this final judgment that appellant appealed to this Court. The appellant in his opening argument called the Court's attention to what appeared to be two rulings on his motion for a new trial, one granting the motion, and the other denying it. Upon careful review of the record, it was discovered that there were two such rulings. According to a sheet dated February 18, 1971, which purports to be the 4.2nd day's session of the court, the appellant was represented by counsellor James Doe Gibson, and the court requested counsellor Brumskine to take the ruling on behalf of counsellor Richard A. Diggs, counsel

for appellee. The ruling states : "The ruling for a new trial is hereby granted." On the other sheet, dated February 26, 1971, the 6th day's chamber session, appellant was represented by himself and counsellor James Doe Gibson, and appellee was represented by counsellor Diggs. The ruling on that sheet denied the motion and extensively gave the reasons for the denial. It is the mind of this Court that the latter document is genuine, and that the former was inserted to create mischief and thwart justice. Be that as it may, it appears that neither party made an effort to question the correctness of the record. This Court has consistently followed the principle that courts cannot do for parties that which they should do for themselves. Rule 31 of the Revised Rules of the Circuit Court requires that counsel on both sides tax the record in any case on appeal to the Supreme Court before they are sent up by the clerk of court. There is no indication that this was done, or, if done, that the insertion was discovered then and brought to the attention of the judge who, according to the rule, must settle the matter. Furthermore, the proper procedure for questioning the correctness of records transmitted to the Supreme Court on appeal is by a motion for diminution of record. Cooper v. Brapoh, [1965] LRSC 15; 16 LLR 297 (1965). At this juncture it might be necessary to declare that this Court frowns upon the falsification of court records in any manner, and anyone discovered doing so will be punished severely, as was done in Whea v. Bonwein, [1964] LRSC 35; 16 LLR 51 (1964). It is also important to mention that on February 26, 1971, when the alleged second ruling denying the motion for a new trial was made, appellant, a counsellor-at-law, was in court representing himself and being assisted by counsellor James Doe Gibson, yet they both failed to except ito the adverse ruling on the motion and, therefore, did not include it in the bill of exceptions. He also failed to include his exceptions to the verdict and the final judg,

ment. When asked why he did not include them in his bill of exceptions, he argued that this Court had declared in one of its opinions that it would consider exceptions taken at the trial, though not included in the bill of exceptions. Needless to say he failed to find such an opinion. In this jurisdiction the law is, and always has been, that in appeals the bill of exceptions must set forth the points upon which it is believed the court decided erroneously--Anderson v. McLain, i LLR 44. (1868) ; exceptions taken and noted during a trial, but not included in the bill of exceptions, are considered as having been waived--Torkor v. Republic[1937] LRSC 25; , 6 LLR 88 (1937) ; appellant must confine himself only to complaints set out in his bill of exceptions--Richards v. Coleman[1938] LRSC 15; , 6 LLR 285 (1938) ; only such matters as were interposed in the lower court and appear in the bill of exceptions as record can be taken cognizance

of in the appellate tribunal--Bryant v. The African Produce Company[1940] LRSC 4; , 7 LLR 93 (194o) ; and finally, points not raised in appellant's bill of exceptions will not be considered by the Supreme Court--Jackson v. Trinity, [1966] LRSC 80; 17 LLR 631 (1966). The only exception to the rule on the inclusion of exceptions in the bill of exceptions is that omissions of errors in a
bill of exception are not deemed waived in a criminal appeal on a capital offense. Johnson v. Republic, is LLR 66 (1962). During
the hearing of this case appellant's presentation was exceptionally poor. He displayed a complete lack of knowledge of the elementary
principles of the law and practice. The practice of the law is more than a mere trade or business, and those who engage in it are
the guardians of ideals and traditions which they should cherish and maintain by continuous study, and to which they should from
time to time dedicate themselves anew. The appellant's bill of exceptions contained nineteen counts, all concerning adverse rulings
made as a result of questions asked by him. Appellant argued before this Court that since the case was ruled to trial on a bare de-

nial, the trial judge should have overruled all objections to his questions. For the benefit of the appellant,
where an answer has been dismissed and the defendant is placed on a bare denial of facts alleged by the plaintiff, the defendant
is barred from introducing affirmative matter. Saleeby v. Haikal, [1961] LRSC 35; 14 LLR 537 (1961). Since the questions asked tended to violate this rule, or the best evidence rule, or involved attempts to explain a written instrument by parol evidence where this was no ambiguity, or the cross-examination of one's own witness, the judge was correct in
sustaining the objections, and therefore this Court does not find any errors on the part of the judge as far as the counts in the
bill of exceptions are concerned. A careful reading of the certified record shows that three deeds were before the court below :
one dated July 12, 1956, for a half-lot, another dated October 15, 1960, for a quarter lot of land, both in favor of appellee, and
still another dated June 5, 1956, for a half-lot in favor of appellant. All of these parcels of land are situated in Block No. 1
t on Lynch Street, in the City of Monrovia. Appellee's parcels of land adjoin that of appellant, who has the oldest deed. Appellant's
deed and appellee's deed of July 12, 1956, show that both parties derive their title from a common grantor. Appellee complained that
appellant had illegally entered upon the southern portion of his premises, and prayed that appellant be evicted and made to compensate
him in damages, but appellee never established how much of the southern portion of his land was being occupied. A request for arbitration
was made by the appellant on his rejoinder, but it appears that he either did not know or forgot that the Civil Procedure Law, L.
1963-64, ch. III, § 901 ( ), provides that: "there shall be a complaint and an answer; and there shall be a reply to an answer which
contains affirmative matter or a counterclaim. No other pleading shall be allowed." In order to be fair and to do justice it is the
considered opinion of this Court that the judgment be reversed and

the case be remanded to the court
from which the appeal was taken, with instructions that a board of
arbitration consisting of competent and legally qualified surveyors
be appointed to make an impartial survey of the area in dispute to determine
whether appellant has encroached upon appellee's land
and, if so, the extent of the encroachment; and thereafter to submit a report
to the court below. This must be done in the presence
of the interested parties on whom notice must be served. Costs to abide the
final determination of this matter.
Reversed and remanded
for survey and report.

Zayzay et al v RL [1983] LRSC 26; 30 LLR 692 (1983) (4 February 1983)

YARKPAWOLO ZAYZAY et al., Appellants, v. **REPUBLIC OF LIBERIA**, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE TENTH JUDICIAL CIRCUIT, LOFA COUNTY.

Heard: December 22, 1982. Decided: February 4, 1983.

1.The mere overruling or disallowing of irrelevant and immaterial questions of a defendant or sustaining objections interposed by the prosecution, no matter how erroneous the rulings may be, does not by itself render the trial judge guilty of partiality to warrant the reversal of his judgment.

2. The extent to which a witness may be cross examined for the purpose of affecting his credibility rests entirely in the discretion of the trial judge.

3. The Supreme Court will not take cognizance of exceptions not supported by the records.

4. For issues to be reviewed by the Supreme Court, they must have been objected to during the trial, noted on the records, and set forth in the bill of exception.

5. Inclusion of wordings of two separate penal laws in an indictment goes to immaterial defect in the indictment and does not affect the jurisdiction of the court over the subject matter.

6. Failure to raise objections to present defense or raise objection to the indictment before trial constitutes a waiver.

Appellants were convicted of criminal mischief in the Tenth Judicial Circuit, Lofa County, from which they announced an appeal to the Supreme Court. In their bill of exceptions, they contended among other issues that the trial judge did not exercise the spirit of cool neutrality during the trial, in that he overruled questions put to witnesses without objection being interposed by the prosecution, and that in sustaining objections of the prosecution, the trial judge on his own added other grounds to those given by the prosecution; that the trial court was without jurisdiction over the subject matter because the indictment under which the appellants were tried, was drawn up under the 1956 Penal Law which had been repealed and was not operative when the indictment was found; and that the prosecution witnesses were allowed to testify without first been sworn.

The Supreme Court upon review of the records, found that appellants did not aver that the verdict is contrary to, and manifestly against the weight of the evidence at the trial, and that in the absence of such allegation, the court must assume that the verdict of guilty, as returned against the appellants is supported by the evidence. Noting that evidence of the prosecution was clear and cogent, and that appellants did not deny committing the crime charged, the Supreme Court overruled the contentions of the appellants, and affirmed the judgment.

Robert G. W. Azango appeared for appellants. Richard F. MacFarland, Acting Solicitor General, appeared for appellee.

MR. JUSTICE SMITH delivered the opinion of the Court.

This case originated from the Tenth Judicial Circuit Court, Lofa County, and was subsequently transferred to the First Judicial Circuit Court, Criminal Assizes "A", Montserrado County, based upon an alleged existence of local prejudice. It later came on appeal to this Court on a twelve-page, thirty-nine count bill of exceptions supported by a twenty-three page brief as well as a two-page supplement to the brief, accompanied by a three-page legal citations in addition to the legal citations contained in the brief. During argument before us, the learned counsel for appellants could not support his bill of exceptions and arguments by the trial records; and what was most amazing in the whole exercise is the evasive manner in which the learned counsel answered questions posed to him by the Bench.

However, since the appellants' brief does not sum up the points of contention for the consideration of this Court, the Bench during arguments required counsel for appellants to state the prime issues on which he based his case. And in response, he listed the following as being appellants' main points of contention for their appeal:

1. That the trial court was without jurisdiction over the subject matter because the indictment under which the appellants were tried was drawn up under the 1956 Penal Law which had been repealed and was not operative when the indictment was found.

2. That the prosecution's witnesses were allowed to testify without first being sworn.

3. That the trial judge did not exercise the spirit of cool neutrality during the trial, because, in many instances, he sustained objections interposed by the prosecution and went to the extent of adding other grounds which the State did not anticipate.

Taking recourse to appellants' bill of exceptions, we found no averments therein contesting the verdict of the jury as being contrary to, and manifestly against the weight of the evidence adduced at the trial. In the absence of such allegation, we must assume that the verdict of guilty as returned against the appellants, is supported by the evidence. We shall therefore proceed in the reverse order to discuss the issues which form the basis of appellants' appeal as presented by their counsel in his argument.

Counsel for appellants argued that the trial judge did not exercise the spirit of cool neutrality during the trial, in that, he overruled questions put to witnesses without any objections being

interposed by the prosecution, and further that in sustaining objections of the prosecution, the trial judge on his own, added other grounds to those given by the prosecution. Of the 39 count bill of exceptions, sixteen are specifically complaining about the rulings of the trial judge made on such objections.

In a jury trial, the judge is the referee; he is required to decide all questions of law while the facts are for the jury to decide. The making of rulings on objections interposed, whether they be for or against the objector, is a judicial duty to be performed by the trial judge; and, hence, the question of non-exercise of the spirit of cool neutrality is inapplicable .

As already observed, an objection to a question during trial, as a matter of law, is for the decision of the judge, while the facts are left to the jury to decide; and not only is the trial judge authorized to either sustain or overrule an objection, but he is also required to state his legal reason for so ruling. He may overrule inapplicable grounds of objection and at the same time disallow questions on proper legal ground, because it is his sole duty to control the trial and the records in order to avoid the burdening of the record and ensure proper maintenance of the accepted practice and procedure. As referee, it is the duty of the trial judge to sum up the evidence adduced at the trial to the jury and also identify the applicable law to the points in issue; and, therefore, he may ask questions aimed at a complete revelation of the truth since the purpose of a trial is to find out the truth. This, however, should be done without bias towards the accused; and no matter how erroneous his rulings may be, he cannot be assumed guilty of partiality and failure to exercise a spirit of cool neutrality in the performance of his judicial duty. The extent to which a witness may be cross-examined for the purpose of affecting his credibility rests almost entirely in the discretion of the trial judge. Peehn et al. v. Republic[1936] LRSC 18; , 5 LLR 192 (1936).

A neutral and impartial judge, as frequently used, means a judge who does not favor one party against the other, un-prejudicial and disinterested in matters before him or her. He or she is also one who should have an impartial frame of mind from the beginning to the end of the trial, influenced only by legal and competent evidence produced during trial. He or she is considered neutral when not engaged on one side, and impartial when not taking active part with either of the contending parties.

A judge is said to be partial and not exercising the spirit of cool neutrality in a trial where he or she is disqualified and yet elects to preside over the trial of a case because of his/her relationship with either of the parties; where he or she had once acted as counsel for either of the parties and expressed his or her opinion in the case before trial. Hence, it is generally assumed that he or she may be bias and prejudicial, and, therefore, the trial cannot be said to be fair and impartial. But

the mere overruling or disallowing of irrelevant and immaterial questions of a defendant or sustaining objections interposed by the prosecution, no matter how erroneous the rulings may be, will not in itself render the judge guilty of partiality to warrant the reversal of his/her judgment.

No one can reasonably conclude that Judge Obey, resident in Montserrado County, who tried this case when it was transferred to Montserrado County from Lofa County, would be biased and prejudicial to the interest of the appellants, all citizens and residents of Lofa County, who have charged that they could not have had a fair and impartial trial in their own county by the peers of their own vicinity because of alleged local prejudice. Not having found any partiality in the trial on part of the trial judge, we cannot sustain the contention of appellants that the trial judge did not exercise the spirit of cool neutrality during the trial. This issue and along with it the counts of the bill of exceptions in connection therewith are, therefore, overruled.

The next issue as stated hereinabove is the contention of the appellants that witnesses for the prosecution testified without being placed under oath. This allegation is contained in counts 4, 14, 19 and 22 of appellants' bill of exceptions. In these counts, appellants alleged that the prosecution's witnesses, namely: Flomo, Bardura, Sekou, Zoe Flomo, Mulbah Sumo Gliwu and Edwin Zakarma took the witness stand and testified for the prosecution without being placed under oath. This contention is not supported by the records, which indicate at sheets 2 and 6 of the 7th day's session of the court, May 19, 1981, that when the case was called for trial and the trial jury was selected, sworn and empaneled, the prosecution requested the court for the qualification of five witnesses, namely: Sekou Kamara, Garfour Kongbowale, Zoe Flomo, Flomo Mulbah Sumo and Flomo Bahula, which application was granted and the witnesses were ordered qualified and seque-strated. The trial records also show that only these five witnesses testified for the State, and that on the 28th day of May, 1981, being the 14th day's session of court, the prosecution rested evidence. There is no where shown in the records that the appellants noted objection to any of the witnesses testifying for not being sworn. These counts of the bill of exceptions, that is to say, counts 4, 14,19 and 22 are not supported by the records and, therefore, cannot be considered by this Court. There are a long line of opinions of this Court that this Court will not take cognizance of exceptions not supported by the record. Johnson v. Powell, [1934] LRSC 32; 4 LLR 221 (1934) and Elliott v. Dent, [1929] LRSC 8; 3 LLR 111 (1929). For issues to be reviewed by the Supreme Court, they must be set forth in a bill of exceptions which shall contain the objections made at the time of the trial, raising such issues for the court's consideration. Wilson v. Dennis et al.[1974] LRSC 52; , 23 LLR 263 (1974). The contention that witnesses for the prosecution testified without being qualified, as contained in counts 4, 14,19 and 22 of the bill of exceptions, is therefore not sustained.

The issue which counsel for appellants argued very strongly and for which he prayed the discharge of the appellants is that, the trial court lacked jurisdiction over the subject matter of the case because the indictment under which the appellants were tried was drawn up under the 1956

Penal Law which had been repealed and not operative when the indictment was found. Counsel for appellants contended that he moved the trial court to refuse jurisdiction but the trial judge denied the motion.

The trial records show that during the November 1980 Term of the First Judicial Circuit Court, Criminal Assizes "A", Montserrado County, presided over by His Honour Jessie Banks, a motion was made for the court to refuse jurisdiction; the said motion was resisted, heard and denied by the court. During the February, A. D. 1981 Term of the said court, presided over by His Honour Eugene L. Hilton, a similar motion was also made, resisted, heard and denied by the court. However, the case was not heard until the May 1981 Term of the court, presided over by His Honour A. Wallace Octavius Obey. After the prosecution presented and rested evidence, counsel for appellants moved for judgment of acquittal, which motion was heard and correctly denied by the court, judging from the evidence presented by the prosecution. Following the trial judge's ruling denying the motion for judgment of acquittal, counsel for appellants made another motion for the court to refuse jurisdiction over the subject matter on the ground that the statute under which appellants were held to answer had been repealed. This motion was also resisted by the prosecution and denied by the court. Because we are in full agreement with the conclusion of the trial judge, we deem it necessary to quote his ruling on the motion to refuse jurisdiction for the benefit of this opinion, as follows:

"An application or motion to court to refuse jurisdiction over the subject matter is not one of those defenses or objections which may be raised before trial, as the same may be raised at any stage of the trial. The court, however, finds it necessary to have a look at the indictment itself which was founded for the first time during the February 1978 Term of Court. The Court says that this first indictment which was dismissed upon application of the prosecution was founded under the old statutes.

A look at the indictment subsequently drawn up during the August 1979 Term of the Court, shows evidence on its face that the defendants were indicted for commission of the crime of criminal mischief. Although the indictment reads, inter alia: "That the defendants in violation of Title 27, Section 194, Chapter 11, Sub-section (d), pages 976 and 977, Volume 3 of the Liberian Code of Law which pro-vides that: "... Nevertheless, immediately after this quotation and in the indictment, the prosecution quoted as follows:

'CRIMINAL. MISCHIEF: A person is guilty of criminal mischief if he: (a) damages tangible property of another purposely or recklessly; or (b) damages tangible property of another negligently in the employment of fire explosives or dangerous means listed in section 15.4(1).'

Looking at the New Penal Law, at page 87, the court finds that criminal mischief as quoted hereinabove falls under the statute of 1976 which was approved April 18, 1978, by its amendment on September 2, 1978. Criminal mischief, as quoted hereinabove, may never be found on pages 976 and 977 of Title 27 of the Liberian Code of Law of 1956. It would seem that the preparation of the second indictment by the clerk, or whoever did it, did not quote the page and section of the New Penal Law, but carried the same description of the old title; nevertheless, what is more important is the quotation laid down in the indictment relates to the definition of criminal mischief under the New Penal Law. Had the indictment relied upon the definition of malicious mischief, as found in the statute of 1956, the contention of the defense would have been taken into consideration, but the court is of the opinion that the application of the defense as made hereinabove is based merely on a microscopic technicality which the modern practice of law does not entertain. This is the old legal practice. Under the circumstance, the application or motion, or whatever it is, is denied. And it is so ordered."

The subject matter, criminal mischief, charged against the appellants was a result of their destruction of 1,118 live trees "purposely, or recklessly, or negligently". These terms, in our opinion, are synonymous with: "unlawfully, wrongfully, illegally, maliciously, intentionally, and deliberately cutting, damaging and destroying tangible property of another without legal justification". The inclusion of the wordings of the two separate Penal Laws in the indictment charging "Criminal Mischief" does not in any way affect the jurisdiction of the trial court over the subject matter; it only goes to an immaterial defect of the indictment which does not in itself oust the trial court of its jurisdiction or deprive the appellants of that notice needed for them to ably prepare their defense; in fact, the so-called defect was cured by the failure of the appellants to raise objection to the indictment before trial. "Any defense or objection which is capable of determination without trial of general issue may be raised before trial by motion to dismiss the indictment. Defenses and objections based on defects in the institution of the prosecution or in the indictment other than that it fails to show jurisdiction in the court over the subject matter or to charge an offense, may be raised only by motion before trial to dismiss. The motion shall include all such defenses and objections then available to the defendant. Failure to present any such defense or objection as herein provided constitutes a waiver . . . " Criminal Procedure Law, Rev. Code 1: 16.7(1) and (2). It is, therefore, our holding that the trial judge correctly denied the motion to refuse jurisdiction over the subject matter, the main issue and/or basis of the appellants' appeal as contained in count one of the bill of exceptions. Count one of the bill of exceptions is, therefore, overruled.

There are sixteen counts of the thirty-nine count bill of exceptions which counsel for appellants did not bother to argue, because he could not find records to support his contentions therein, and therefore limited his argument to the three main issues which we have just discussed. It is our opinion that the trial judge's ruling on questions and objections referred to by the appellants' counsel, have no defeating effect on the evidence adduced at the trial that would suggest a

reversal of the judgment, and, therefore, we do not consider any further discussion on the point. We also consider the discussion of the other counts of the bill of exceptions as fruitless exercise if we must compare the evidence with the ruling complained of.

It should be remembered that the appellants were charged with the crime of criminal mischief, for purposely and recklessly destroying the live trees of the private prosecutor without any legal justification. For the benefit of this opinion, we quote hereunder the relevant testimony of each of the appellants herein, in support of their plea of not guilty. The first appellant to take the witness stand was Walubah Tarnu. Here is what he said at sheet 11 of the minutes of court, June 1, 1981:

"When Town Chief Mulbah Wezeh presented the 50 cents that Mr. Sekou gave as an apology, Mr. Lavala Yaryay told Sekou that I have many boy children, so in order for me to allow you to stay here we have to make paper to the effect that you will not have to plant any cocoa, orange, plum, etc. again on this **land**. Sekou agreed to this and the paper was made. One of the writing was given to Zoe Flomo and the other to Lavala Yaryay. From that day if Mr. Sekou planted live tree, I do not know anything about it. When Mr. Sekou planted the first cocoa, the old man told us, the five boys that went to find out, to uproot all the cocoa and bring them to town. And this we did . . ."

The second defendant, Wolubah Sumo, while testifying as witness in his own behalf, on sheet 5 of the minutes of court, June 2, 1981, said:

"What I have to say is just what Mr. Wolubah Tarnu explained here is what happened. The only thing I have to add is concerning the character of the Private Prosecutor. Mr. Sekou Kamara went to Mr. Flomo Badubu and brushed his farm. The people stopped him from doing so and moved him from there. He left and went to Town Chief Kogbogolor who told him since we allowed you to make this farm, do not even build a kitchen. When you cut the sticks, do not even put it on top of some sticks. When Mr. Tarnu talked about Sekou moving from place to place, this is what I have to add and which Mr. Tarnu did not mention of; this is all I know" (sic).

The third defendant, Yarkpawolo Zayzay, also testified on sheet 6 of the minutes of court, June 2, 1981, as follows:

"We the family advised him enough not to plant live trees, they would all be uprooted. Sekou Kamara agreed to it that he would never plant any live tree on the **land** . When he agreed with the agreement they made together with Mr. Zavala Yaryay, after two years time, Sekou Kamara started planting live trees on the **land** . When Mr. Zavala heard the news, he sent for him on the farm. When Sekou came they asked him since you are here, you do not want to obey any rule. The result to that is that all of your trees will be uprooted"(sic).

The records do not show that the other two defendants, Zubah and Kpageh Balla Mongla, took the stand to testify; however, three other witnesses in persons of Kulubah Sumo, Wolobah, and Wolobah Wezzeh testified in substantiation of the testimonies of the appellants. We deem it necessary to only quote a relevant portion of the testimony of one of these witnesses, in the person of Kulubah Sumo. Here is what he said on sheet 4 of the minutes of court, June 3 , 1981:

"Before the Quarter Chief Sekou admitted planting cocoa on the **land** in the sugar farm, Sekou begged my father admitting that he was wrong with a token of 50 cents; when the 50 cents was presented to the quarter chief, he reached the palaver to my father. My father told him to keep the 50 cents and said that his foremost concern or desire was for the cocoa trees to be uprooted that very day from the **land**. After my father said this, the quarter chief gave somebody to go and have the cocoa trees uprooted. I was one of the persons who went to uproot the cocoa trees. A man named Wolobah was one; the third person was Yarkpawolo Zay-zay, and the fourth, who is now dead, was Flomo Marrow. When we returned from uprooting the cocoa, the private prosecutor himself went and uprooted the balance trees that we forgot to uproot and which were planted in the young bush."

From the testimonies of the appellants and their witnesses, we do not hesitate to conclude that in contrast to appellants' plea of not guilty, they did not deny committing the crime charged as per the records; and where the evidence of the prosecution is clear and cogent, a judgment of conviction will be confirmed.

In view of the foregoing, the judgment of the trial court is hereby confirmed and affirmed. And it is hereby so ordered.

Judgment affirmed.

Kuyette et al v Sirleaf et al [1983] LRSC 6; 30 LLR 507 (1983) (3 February 1983)

LANSANA KUYETTE and **MALIKE KUYETTE,** Petitioners, *v.* **MOIGBE SIRLEAF** and **HIS HONOUR JAMES KANDAKAI,** Circuit Judge presiding over the People's Tenth Judicial Circuit, et al., Respondents

A PETITION FOR RE-ARGUMENT

Heard: October 14, 1982. Decided: February 3, 1983.

1. An opinion of the Supreme Court is considered published from the moment it is read from the Bench.
2. For the purpose of computing the time for the filing of a petition for rehearing, the day and date of the filing of the opinion is the day and date on which it is read from the Bench, while the date on which the order for reargument is signed is regarded as the date of presentation.
3. Petitions for re-argument not presented within three days as required under the Revised Rules of the Supreme Court, will not be entertained, unless upon special leave granted by the Court.
4. No rehearing can be entertained unless a material fact or principle of law has been overlooked.

In a motion for reargument of a bill of information growing out of an error proceedings, petitioners contended that the Supreme Court inadvertently overlooked certain salient issues raised in the information, and did not pass upon them in its opinion. Respondents urged the Court to dismiss the petition on grounds that it was not filed within three days after the rendition of the Supreme Court's judgment as prescribed by law. The Supreme Court sustained respondents' contention and denied the petition.

John A. Dennis appeared for petitioners. *Robert G. W. Azango* appeared for respondents.

MR. JUSTICE MORRIS delivered the opinion of the Court.

During the March 1982 Term, this Court decided a case between the above named parties on a bill of information filed by the petitioners against the enforcement of this Court's mandate in an error proceeding decided in 1979 and sent to the People's Tenth Judicial Circuit Court for Lofa County in favour of the respondents. The informants opined that the Court had inadvertently overlooked some salient points of both law and fact in its decision. Hence, this three-count petition for re-argument as quoted thus:

"1. That they filed a seven (7) count bill of information before this Honorable Court, submitting many irregularities in the trial and disposition of a disputed **land** issue, which culminated in the trial of an ejectment suit.

2. Further, that among the many issues submitted in the said information as found in counts five and six (5 & 6) respectively, copy of which is hereto attached and marked exhibit "A", forming an integral part of this petition for reargument, is that the Executive Branch of Government intervened in the said matter and ordered the release of the informants from further imprisonment, and the abolition of the illegal and irregular damages of ($50,000,00) awarded though not alleged nor proven at the trial.

3. During the March term of this Honourable Court, an opinion was handed down which inadvertently omitted these salient issues, not having been passed upon in the said opinion being a ground palpable for the allowing of this petition for reargument. Copy of said letter from the late and former President W. R. Tolbert hereto attached and marked exhibit "B", and also forms an integral part of this petition for reargument."

The respondents filed a twenty-count returns, but only count one is pertinent to the determination of this petition. Count one of the returns states:

"Because respondents submit that the entire petition should be dismissed with costs against petitioners for failure to file their petition within three days after the handing down of this Honourable Court's opinion and judgment on the 8th day of July, A. D. 1982, when indeed and in fact, said petition or motion should have been filed on or before July 12th, 1982 in keeping with Part 9 of the Revised Rules of the Supreme Court of Liberia. On the contrary, petitioners without special leave, granted by this Court, elected to file their said petition on the 13th day of July A. D. 1982 much in violation of the rule, referred to *supra*. Respondents request this

Honourable Court to take judicial notice of its opinion and judgment rendered in this case on the 8th day of July, A.D. 1982, and the filing date appearing on the petition of petitioners as well as the affidavit attached thereto. For this incurable legal blunder, respondents pray the dismissal of petitioners' entire petition."

The rule relied upon by counsel for respondents provides:

"Time of 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." Rule IX, Part 2 of the Revised Rules of the Supreme Court, page 43, under Re-argument.

Counsel for petitioners in arguing this point reminded the Court that the period was less than ten days. Therefore inter-mediate Sunday and holidays should be excluded. He also contended that he presented his petition to the Chief Justice on the 12th of July 1982 and was therefore within the time allowed by the Rules of Court. Counsel for petitioners further contended that the filing of the opinion of this Court just quoted refers to the time the mandate is sent to the lower court.

The opinion of this Court was delivered on July 8, 1982 which was on Thursday. Computation of the three days commenced on Friday, the 9th of July, 1982. The order for reargument to the Clerk of Court from the Chief Justice was issued on the 13th day of July and was filed by the Clerk of Court on the 14th of July, 1982. The order was issued on the 5th day and filed on the 6th day, but because the period is less than ten days, we hold that the order was issued on the 4th day and filed on the 5th day by the Clerk of Court, excluding the one intermediate Sunday which was the 11th of July, 1982.

The moment the opinion is read from the Bench, it is considered published *Barnes et al. v. Republic[1937] LRSC 8;* , 5 LLR 395 (1937). Hence, the day and date of the filing of the opinion is the day and date on which it is read from the Bench. In the instant case, the time of filing was Thursday, July 8, 1982 and the petition for reargument should have been filed on or before Monday, July 12, 1982. By inspection of the record, we observed that the petition is not dated but the affidavit is dated on the 13th of July, 1982 and is on sheet two of the petition. We wonder if petitioners' counsel presented the petition to the Chief Justice without an affidavit on July 12, 1982 as argued by him or was the affidavit thereafter attached and predated. However, we hold that the date on which the order for reargument is signed or issued will be regarded by this Court as the date of presentation. The petition was presented on the 4th legal day and therefore without the time allowed by the Rules of this Court. Count one of the returns is sustained as against the

entire petition. There is a legal maxim which says "that which is not legally done is not done at all." There is no showing that special leave was granted the petitioners by this Court. The petition is not therefore properly before us because it was not presented or filed within the three day period provided by the Rules of Court which ended on Monday, July 12, 1982.

However, we wish to observe that the executive intervention referred to in counts two and three of the petition was passed upon on page six of the opinion under review, and we quote:

"....except there was cause for reargument 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 Justice Barnes speaking for the Court, a definite end and finality was put to the error proceeding, 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 8: 2.2; and Decree # 3, §1.3."

We interpret this portion of the opinion to mean that neither this Bench nor any other branch of government including the executive could and can interfere with the opinion of this Court handed down on the 20th day of December 1979 without contravening the law of the **land**, except if a petition for re-argument had been filed. This implies also that the late President Tolbert, as the head of the Executive Branch of Government, could not legally give directives that would interfere with the opinion of this Court in a civil case without contravening the law of the **land** under the separation of powers as was provided by the then Constitution of Liberia (1847), Art. 1, sec. 14. We mentioned this only in passing since the petition is not properly before us.

The object for a rehearing or reargument is to point out mistakes of law or fact, or both, which it is claimed the Court has made in reaching its conclusion, or to present to the Court some point which it overlooked or failed to consider, by reason whereof its judgment is alleged to be erroneous. To entitle a party to a rehearing, there must be a manifest error in the opinion on the question of fact or law that may have an adverse effect on the previous opinion. But no rehearing will be entertained unless a material fact or principle of law has been overlooked. 4 C. J. S., *Appeal and Error*, § 2479 (3) and 2480 (4).

With reference to petitioners' application requesting this Court not to allow Counsellor Robert G. W. Azango to represent the respondents on the grounds that he was the trial judge in the lower

court who decided the **land** dispute in these proceedings, we affirm our opinion in the information proceeding handed down during the March 1982 Term. In that opinion, we decided that if Counsellor Robert G. W. Azango heard and decided any phase of the case as a circuit judge and thereafter appeared as counsel for one of the parties in the court below, 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.

In view of the foregoing facts and the laws cited, the petition must crumble and the same is hereby denied. And it is hereby so ordered.

Petition denied

Doe v Davies [1978] LRSC 56; 27 LLR 306 (1978) (14 December 1978)

LEWIS DOE, Appellant, v. MARY L. DENT-DAVIES, Appellee.

MOTION TO DISMISS APPEAL FROM THE CIRCUIT COURT,

SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued October 30, 1978. Decided December 14, 1978.

1. In order for an affidavit of sureties accompanying an appeal bond to fulfill the statutory requirement that the property offered as security be sufficiently identified to establish the lien of the bond, Rev. Code 1 :63.2(3), the property should be described by metes and bounds.

On an appeal in an action of ejectment, appellee moved to dismiss the appeal on the ground that the affidavit of sureties accompanying the appeal bond did not sufficiently identify the property offered as security, since it was not described by metes and bounds. The Supreme Court upheld appellee's contention as correct and *granted* a *motion to dismiss the appeal.*

J. Dossen Richards for appellant. *Lewis K. Free* for appellee.

MRS. JUSTICE BROOKS-RANDOLPH delivered the opinion of the Court.
Mary Dent-Davies, appellee in these proceedings, instituted an action of ejectment against Lewis Doe, alias Ya-Wli, of Logan Town, Bushrod Island, and Monrovia. The plaintiff received a verdict and judgment in her favor, to which counsel for the defendant excepted and appealed to this Court of dernier resort.

Counsel for the appellee filed a motion to dismiss the appeal, then withdrew it and refiled an amended motion which claimed that the affidavit of sureties accompanying the appeal bond was deficient in not containing a description of the property offered as security by metes

and bounds as required by the case law interpreting the

statutory provisions. To the amended motion counsel for defendant/appellant replied that the affidavit of sureties met the requirements in accordance with the statutory provisions. Those provisions are set forth in subparagraph 3 of section 63.2 of the Civil Procedure Law:

"Affidavit of sureties. The bond shall be accompanied by an affidavit of the 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." The body other affidavit of sureties filed by counsel for defendant/appellant reads as follows : "Personally appeared before me, a duly qualified Justice of the Peace for Montserrado County, Christine Richards and Wreh Gbeh, sureties to the appeal bond of the defendant/appellant and being duly qualified stated the following :

"(a) That each of them is the owner respectively of the property as offered as security.

"(b) That the property of Christine Richards situated in Sinkor, Monrovia, Liberia, and bearing the No. 3, 5, R.F. and next to the property of Mrs. Hemena Yates, and the property of Wreh Gbeh is in New Kru Town, Monrovia, Liberia, bearing the No. N/N and is the rear of Mr. J. C. Sompon.

"(c) That there is no lien or impaired taxes on either of the properties offered as security.

"(d) That the assessed value of each property offered is as indicated on the attached statement of property valuation from the Bureau of Revenues, Ministry of Finance."
The Supreme Court has held that sureties on an appeal bond pledging real property as security cannot state in their affidavit merely that they are the owners of realty and that the personal net worth of each exceeds the amount required by the appeal bond.
The sections setting forth the requirements necessary for validation of an appeal bond after approval thereof are to be complied with as the Legislature intended and may not be treated casually by an appellant. *Gibbidon v. Toe,* [1974] LRSC 24; 23 LLR 43 (1974). If an appeal

bond is defective, the appeal may be dismissed. *Wright v. Wright*, [1938] LRSC 8; 6 LLR 229 (undated).

In *West Africa Trading Corporation v. Alraine (Liberia) Ltd.*, [1975] LRSC 16; 24 LLR 224, 228 (1975) the Chief Justice dealt succinctly with the very question regarding the validity of an affidavit of sureties as filed in that case and asked the question, "Does this affidavit contain a description of the sureties' property 'sufficiently identified to establish the lien of the bond,' as the statute requires?" He proceeded to say : "We interpret this part of section 63.2 (b) to mean offering the property as security in order that an appellee be protected against loss as a result of costs or injury sustained by the appeal." He cites Black's *Law Dictionary* as it defines description relating to real property to mean "that part of a conveyance, advertisement of sale, etc., which identifies the **land** or premises intended to be affected." Thus the Chief Justice stated that "in giving effect to the text of this statute, we must consider that description of **land** merely means designating the particular space occupied, or to be occupied so as to enable anyone to find it, should this become necessary. Hence, in deeds which convey real property we have descriptions by metes and bounds, to sufficiently and correctly identify the particular plot of **land**."

We hold that the requirements of the statute with respect to the affidavit of sureties are mandatory and must be literally met. For the statute is not ambiguous. If to designate a parcel of **land** for the purchaser, in this case the sureties, the deed itself must delineate said property by metes and bounds, it seems natural to hold that the statute requires the property being offered as a lien to carry the same description which delineated it for the owner or sureties.

In law we cannot regard the description "next to the property of Mrs. Hemena Yates" for Christine Richards, and "is the rear of Mr. J. C. Sompon" for the property of Wreh Gbeh quoted above, as being legally meaningful or sufficient.

As in a line of cases by this Court, in this case the law states positively that the affidavit of sureties must contain "a description of the property, sufficiently identified to establish the lien of the bond." The affidavit accompanying the bond in this case, not containing the proper description of the property offered as security, renders the bond defective, and as such affords ground for dismissal of the appeal. The motion to dismiss the appeal, is therefore granted with costs against the appellant.

Motion to dismiss appeal granted.

Jarboe et al v Sartee [1981] LRSC 26; 29 LLR 282 (1981) (30 July 1981)

RUFUS JARBOE and **DORIS JARBOE**, legal surviving heirs of the late SOLOMON JARBOE, Appellants, v. **DANIEL SARTEE**, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE THIRD JUDICIAL CIRCUIT, SINOE COUNTY.

Heard: May 4, 1981. Decided: July 30, 1981.

1. Every appellant shall give a bond in an amount to be fixed by the court, with two or more legally qualified sureties to the effect that he will indemnity the appellee from all costs or injury arising from said appeal if unsuccessful, and that he will comply with the judgment of the appellate court or any other court to which the case removed.

2. The portion of section 63.2(3) of the Civil Procedure Law which requires that the property be described and sufficiently identified to establish the lien of the bond means that the description must include the number, if any, and the metes and bounds of the property.

3. The number of a lot alone is not a description sufficient to easily identify and locate the lot on the ground.

4. The statutory requirements relating to an appeal must be strictly adhered to; otherwise courts will have no alternative but to grant a motion to dismiss the appeal when timely and property filed.

5. The requirements of the affidavit of sureties which accompanies the bond are mandatory, and failure to strictly adhere to them, will render the appeal dismissible.

From a final judgment dismissing a cancellation proceedings in the Third Judicial Circuit Court, Sinoe County, appellants announced an appeal to the Supreme Court. When the case was called for hearing, appellee informed the court that he had filed a motion to dismiss the appeal on the grounds that the appellants' appeal bond was defective. In the motion, the appellee contended that the properties offered as security were not properly and sufficiently described, as to be properly identified, in order to establish a lien on the bond as the statute mandatorily requires. Appellants, on the other hand, maintained that by stating the number of the lots and indicating that they were situated in Greenville, Sinoe County, they had sufficiently described the property as required by the statute.

The Supreme Court, after defining what constitutes a description of property, sufficiently identified to establish a lien on the bond under Section 63.2 of the Civil Procedure Law, disagreed with the contentions of the respondents, and held that the lot number alone is not sufficient to describe a property offered as security on a bond; the metes and bounds must also be stated in the affidavit of sureties. The Court opined that the affidavit of sureties accompanying the bond did not state the metes and bounds of the property offered as security for the bond, and therefore held that the bond was defective. The Court accordingly *granted* the motion and dismissed the appeal.

MR. JUSTICE MORRIS delivered the opinion of the Court.

Clarence 0. Tuning appeared for appellants. *Jenkinson T. Nyenpan, Sr.* and *John T. Teewia* appeared for appellee.

The appellants, surviving heirs of the late Solomon Jarboe of Sinoe County, filed a cancellation proceedings in the Third Judicial Circuit Court for Sinoe County, to cancel one warranty deed issued to the appellee by Rachel Morris Kennedy, Susanna Morris, Polin Turner and Josephine

Watkins in 1953 for lot number 885. Their reason for filing the cancellation proceedings was that the appellee had obtained said deed by fraud practiced on the late Solomon Jarboe. Appellants maintained that the amount of $71.00 used by appellee to purchase lot number 885 was given to him by the late Solomon Jarboe to buy one lot in Greenville, Sinoe County, for the said Solomon Jarboe, but that after purchasing the lot, the appellee had the grantors prepare the said warranty deed in the appellee's name instead of in the name of the late Solomon Jarboe. Pleadings progressed to reply and rested. During the August 1980 Term of the Third Judicial Circuit, Judge Eugene L. Hilton dismissed the action while ruling on the law issues because, according to the judge, the entire case was predicated upon agency relationship and the master principal having died, the said relationship automatically ceased. Appellants appealed from this judgment to this Court of last resort. When this case was called for hearing, the appellee informed us that he had filed a motion to dismiss the appeal. It is this motion to dismiss the appeal with its resistance, that we will now address.

The one-count motion filed by the appellee attacked the appeal bond as being badly defective in that the properties offered as security were not sufficiently described to be identified in order to establish a lien on the bond as the statute mandatorily requires. He attached photocopies of the appeal bond, affidavit of sureties and the certificate from the Ministry of Finance. Appellants maintained that by stating the numbers of the lots and indicating that they are situated in Greenville City, Sinoe County, they had sufficiently described said properties to establish a lien on the bond. Appellants further contended that the revenue certificate clearly shows that taxes have been paid on the properties and therefore the appeal bond is not defective.

Every appellant shall give a bond in an amount to be fixed by the court, with two or more legally qualified sureties, to the effect that he will indemnify the appellee from all costs or injury arising from the said appeal if unsuccessful, and that he will comply with the judgment of the appellate court or any other court to which the case is removed. Civil Procedure Law, Rev. Code 1: 51.8. Our Civil Procedure Law provides that the bond secured by natural persons shall be accompanied by 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 lien, unpaid taxes, and other encumbrances against each property offered; and

(d) A statement of the assessed value of each property offered.

A duplicate original of the affidavit required by this section shall be filed in the office where the bond is recorded." *Ibid.,* 63.2(3).

What then constitutes description of property, sufficiently identified to establish a lien on the bond? Black's Law Dictionary defines description as that part of a conveyance, advertisement of sale, etc. which identifies the **land** or premises to be affected.

The Dictionary adds that to describe is to narrate, express, explain, to give the metes and bounds. BLACKS LAW DICTIONARY 531-532 (4th ed.). We hold therefore that section 63.2(3)(b) refers to the number, if any, and the metes and bounds as description sufficient to identify the **land** offered as a security to establish a lien on the bond. The number with the metes and bounds of the **land** would make its location on the ground an easy exercise. The number of a lot alone is not a description sufficient to easily identify and locate the lot on the ground. We find ourselves unable to agree with the contention of the appellants that the lot number alone fully describes the property offered as security for the appeal bond. Statutory requirements relating to appeal must be strictly adhered to, otherwise this Court would have no other alternative but to grant a motion to dismiss when properly filed. *Gabbidon v. Toe*, [1974] LRSC 24; 23 LLR 43 (1974); *West Africa Trading Corporation v. Alraine (Liberia)*, [1975] LRSC 16; 24 LLR 224 (1975).

The requirements of the affidavit of sureties which accompanies the bond are mandatory and failure to strictly .adhere to them will render the appeal dismissible. In the case at bar, the appellants' counsel argued before us that by stating the numbers of the lots and indicating that they are situated in Greenville City, Sinoe County, he has fully complied with the requirements of the affidavit of sureties. Therefore, according to him, the properties are well described, sufficiently identified to establish a lien on the bond. We disagree with appellants' contention and hold that to describe the **land** offered as a security for bond, the metes and bounds must be stated in the affidavit of sureties. The affidavit of sureties accompanying the appeal bond in this case does not describe the property as the law requires and therefore renders the appeal bond defective. A defective appeal bond affords ground for the dismissal of the appeal as in the instant case. The motion to dismiss the appeal is, therefore, granted with costs against the appellants. And it is so ordered.

Motion granted; appeal dismissed

Oppong et al v Shaheen Trading Corp. [1988] LRSC 81; 35 LLR 495 (1988) (29 December 1988)

A. K. OPPONG and **THE BOARD OF GENERAL APPEALS**, Appellants, v. **M. G. SHAHEEN TRADING CORPORATIONS**, Appellee.

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

Heard: October 31, 1988. Decided: December 29, 1988.

1. For an affidavit of sureties accompanying an appeal bond to meet the statutory requirements that the property offered as security is sufficiently identified to establish a lien on the bond, the property should be described by metes and bounds.

2. Indication of the number of the plot of **land** and a description of its metes and bounds is a sufficient description of realty in an affidavit of sureties so as to make finding it on the ground an easy exercise.

Appellant filed a wrongful dismissal action against appellee before the Ministry of Labour. The hearing officer decided that case by default in appellant's favor. Appellee appealed to the Board of General Appeals of the Ministry of Labour, now defunct, which body affirmed the ruling of the hearing officer. Appellee did not file a notice of appeal to any reviewing court. Appellant subsequently filed a petition before the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, to enforce the decision of the Board of General Appeals. The lower court reversed the decisions of the hearing officer and the Board of General Appeals, remanding the case to the hearing officer for a de novo hearing. Appellant appealed to the Supreme Court. Appellee filed a motion to dismiss the appeal on the ground that appellant's appeal bond was defective. In granting the motion to dismiss the appeal, the Supreme Court found that appellant's appeal bond did not meet statutory requirements. Motion granted

Francis Y. S. Garlawolo and J. Laveli Supuwood for appellant. Toye C. Bernard for appellee.

MR. JUSTICE JUNIUS delivered the opinion of the court.

A . K . Oppong was complainant in an action of wrongful dismissal against M. G. Shaheen Trading Corporation before the Ministry of Labor. The hearing officer decided the complaint by default in favor of complainant. M. G. Shaheen Trading Corporation excepted to the ruling and announced an appeal to the Board of General Appeals. Accordingly, the Board of General Appeals reviewed the ruling of the hearing officer and rendered its decision confirming and affirming the decision of the hearing officer, from which an appeal was announced. Thereafter, no notice of appeal nor petition was filed in the circuit court or the debt court for judicial review by the Appellant. Complainant A. Oppong, through his counsel, filed a petition for enforcement of the decision of the Board of General Appeals before the Civil Law Court of the Sixth Judicial Circuit, Montserrado County, sitting in its December 1984 Term. The trial judge heard the petition and reversed the decision of the hearing officer which was confirmed by the Board of General Appeals with instruction that the case be remanded to the hearing officer of the Ministry

of Labour for hearing de novo. It was from the ruling of the trial court, that A. K. Oppong, complainant/ appellant excepted and effected an appeal to this Court for review.

Before the hearing of the appeal, appellee brought to our attention that he had filed a motion to dismiss complainant/ appellant's appeal which contains four counts. Complainant/ appellant filed a four count resistance.

When the case was argued before us movant/appellee presented the below issues for our consideration:

1. That the property tendered by the surety, Lucretia Appleton is not accurately and properly described as to make it ascertainable and easily found on the ground, because, (a) the Statement of the Property Valuation issued by the Ministry of Finance indicated that the property lot No. 5A is located in Paynesville, Montserrado County, whereas the affidavit of sureties states that the property is located in the City of Monrovia, Montserrado County; (b) the location and description of the property in the affidavit of surety being different from the Statement of Property. Valuation renders the property unascertainable and unidentifiable, and thus fails to establish the lien of the bond and therefore the Bond is defective for which the Appeal should be dismissed.

2. That the affidavit of sureties carries A. K. Oppong, complainant/appellant, as one of the sureties along with Lucretia Appleton. But the said A . K Oppong has tendered no property of his own and therefore cannot be surety to his own appeal bond.

3. That the property tendered by Lucretia Appleton is exempted from the payment of all taxes. The law requires that the real property offered as bond should be unencumbered and taxes thereon should have been paid. The failure of the Appellant surety to pay taxes on the real property tendered as security on the bond to show evidence that said property is exempted from the payment of taxes rendered the bond defective and the appeal should be dismissed.

4. That the bond is further defective in that there is only one person as surety on the bond tendered by the Appellant. The law requires that a surety on the bond must be either two natural persons or an insurance company authorized to execute surety bond within the Republic of

Liberia. In this case, only Lucretia Appleton has signed as surety on the bond which is contrary to the law and therefore in violation of the statute controlling.

Appellant/Respondent' s resistance contains nine (9) counts and was argued as follows:

1. That the movant's motion is merely filed for the purpose to delay and baffle the hearing and speedy determination of this appeal on its merits and same being unmeritorious, prays that the motion should be denied.

2. That appellee/movant's motion failed and neglected to state any factual or legal ground for the dismissal of appellant/ respondent's appeal.

3. That under our law, the dismissal of an appeal is restricted to statutory provisions and/or grounds, but that none of which exist nor/is alleged in the motion filed by appellee/ movant; hence, the bond is valid.

4. That the allegation contained in Appellee/Movant' s motion that the property of surety Lucretia Appleton is not accurately and properly described as to make it ascertainable and easily on the ground are false and misleading because the Affidavit of Sureties supporting the appeal bond clearly and distinctly described the property of Lucretia Appleton by the metes and bound for the fact that the property is located in the City of Monrovia, Montserrado County as per the Affidavit and that the Statement of Property Valuation states that the property is located in Paynesville, Montserrado County is no material variance, no contradiction, to invalidate the appeal bond.

5. That the law only require that the property pledged as security be fully described in the affidavit of sureties by metes and bound and the fact that both Paynesville and Monrovia cities are in Montserrado County makes the description of said property more clear, especially so, Oldest Congo Town being within the city limit of Monrovia and the City of Paynesville being recently created as a city, was originally within the City of Monrovia. Therefore, mere technicalities which do not affect the merits of the case nor the right of the parties are not favored by law as a basis for deciding cases on appeal.

6. That the purported motion to the effect that the affidavit of sureties carries A. K . Oppong, the Appellant, as one of the sureties and that the said A. K . Oppong has tendered no property of his own and therefore cannot be surety of his own appeal bond, such contention of the appellee/movant in this respect is immaterial and contemptible in law to constitute any legal ground for the dismissal of an appeal.

7. That the appellee/movant has not attacked the sufficiency or insufficiency of the amount of indemnification stated in said bond for appellant/respondent is not legally required to be to be property owner to sign his own appeal bond and the fact that the appellant signed the affidavit of sureties as a surety is a mere surpluses of sureties as a surety is a mere surplusage and harmless error does not affect the merits of the case nor the right of appellee/movant.

8. That under our law, if the property of one surety to a bond especially an appeal bond is sufficient to cover the amount of indemnity in said bond, the bond is valid and cannot be disturbed.

9. That the allegation herein made by appellee/movant to the effect that the respondent/appellant failed to provide evidence that the property tendered by Lucretia Appleton is exempted from the payment of all taxes is futility and raises no legal ground for the dismissal of this appeal.

Therefore, in our consideration of this motion and the resistance the sole question to be answered is whether or not complainant/appellant's appeal bond meets the statutory requirements?

The Civil Procedure Law, §51.8, provides: "Every appellant shall give an appeal bond in an amount to be fixed by the court, with two or more legally qualified sureties, to the effect that he will indemnify the appellee from all costs or injury arising from the appeal, if unsuccessful, and that he will comply with the judgment of the appellate court or of any other court to which the case is removed. The appellant shall secure the approval of the bond by the trial judge and shall file it with the clerk of the court within sixty days after rendition of judgment. Notice of the filing shall be served on opposing counsel. A failure to file a sufficient appeal bond within the specified time will be a ground for dismissal of the appeal; provided, however, that an insufficient bond may be made sufficient at any time during the period before the trial court loses jurisdiction of the action." Civil Procedure Law, Rev. Code 1:51.8.

Moreover, the law states: "An appeal may be dismissed by the trial court on motion for failure of the appellant to file a bill or exceptions within the time allowed by statute, and by the appellate court after filing of the bill of exceptions for failure of the appellant to appear on the hearing of the appeal, to file an appeal bond, or to serve notice of the completion of the appeal as required by statute." Civil Procedure Law, Rev. Code 1:51.16.

In March v. Sinoe, [1978] LRSC 58; 27 LLR 320 (1978), this Court strongly stated that lawyers should be careful how they handle their client's interest. Yet, some lawyers have persistently handled cases with a "don't care" attitude. As in this case, appellant's counsel negligence has resulted into the appeal bond being presented for approval with these defects:

1. Property not accurately and properly described.

2. Bad Affidavit of Sureties (one property valuation instead of two).

3. Failure to present proof that Lucretia Appleton is exempt from the payment of taxes.

4. One person as surety on the bond tendered.

An appeal bond can be filed, but it must meet the statutory requirements to be valid: "Every appellant shall give an appeal bond in an amount to be fixed by the court, with two or more legally qualified sureties, to the effect that he will indemnify the appellee from all costs or injury arising from the appeal, if unsuccessful, and that he will comply with the judgment of the appellate court or of any other court to which the case is removed Civil Procedure Law, Rev. Code 1:51.8.

"Failure to comply with any of these requirements within the time allowed by statute shall be ground for dismissal of the appeal." Civil Procedure Law, Rev. Code 1:51.4. Appellee's contention is that 51.4 (c) is not complied with:

The Civil Procedure Law explicitly states who may be sureties to an appeal bond: "Who may be sureties. Unless the court orders otherwise, a surety on a bond shall be either two natural persons who fulfill the requirements of this section or an insurance company authorized to execute surety bonds within the Republic." Civil Procedure Law, Rev. Code 1:63.2. Appellant did not offer an property valuation neither did his name appear on the bond.

This Court has held in the case Doe v. Dent-Davies, [1978] LRSC 56; 27 LLR 306 (1978), that "In order for an affidavit of sureties accompanying an appeal bond to fulfill the statutory requirement that the property offered as security be sufficiently identified to establish the lien of the bond, Civil Procedure Law, Rev. Code 1:63 (3), the property should be described by metes and bounds." To all intents and purposes, the property offered here is not clearly and sufficiently described. In West African Trading Corporation v Alraine (Liberia) Ltd, [1975] LRSC 16; 24 LLR 224 (1975), this Court held: "A sufficient description of realty in the affidavit of sureties means property so described as to make finding it on the ground an easy exercised; the Court suggested the best means to be the number of the plot of **land** and its description by metes and bounds."

We also note appellant's contention that if the property of one surety to a bond, especially an appeal bond, is sufficient to cover the amount of indemnification on said bond, the bond is valid and cannot be disturbed. But this is not the case. One of the sureties on appellant's appeal bond is himself; and he offered no property valuation neither has he affixed his name to the bond as surety.

Therefore, and in view of the foregoing, this Court sees it both just and equitable to grant the motion to dismiss this appeal. The Clerk of this Court is hereby ordered to send a mandate to the court below to resume jurisdiction over the matter and to enforce its judgment. Costs disallowed. And it is hereby so ordered.

Motion granted; appeal dismissed.

Morris v Jebbah [1963] LRSC 17; 15 LLR 278 (1963) (8 February 1963)

GEORGE D. N. MORRIS, Appellant, v. JARYENEH JEBBAH, Appellee.
APPEAL FROM THE MONTHLY AND PROBATE COURT OF MONTSERRADO COUNTY.

Argued
January 18, 1963. Decided February 8, 1963. Where an appellant has neglected to file a bill of exceptions the appeal will be dismissed.

On appeal from a ruling of the probate court on objections to the probation and registration of a deed conveying public land, the Supreme Court granted a motion to dismiss.

No appearance for appellant.
spoon for appellee.

William N. Wither-

MR. JUSTICE PIERRE
delivered the opinion of the Court. Appellee in this case has filed an application for an order of the Supreme Court, to command the commissioner of probate in Monrovia to resume jurisdiction over and to enforce a judgment already rendered, and which was appealed. The application reads, word for word, as follows : Jaryeneh Jebbah, respondent-appellee in the above entitled cause, hereby begs to show unto Your Honors that on February 16, 1961 final judgment was rendered in this case, whereupon objector-appellant gave notice of appeal to the Honorable Supreme Court of Liberia at its March, 1961, term; but up to this time, now 58 days since said final judgment, objector-appellant has neglected and failed to prepare and file any bill of exceptions which is one of the jurisdictional steps to be taken in an appeal.
"

"'Whereupon respondent-appellee respectively prays that this Honorable Court send a mandate down to the court below commanding it to resume jurisdiction and execute its judgment." We have examined the record and find the allegations contained in the above application to be true. At the call of the case, we inquired of appellant if he could show any legal reason why the application should not be granted; and not only did we have no legal grounds to show, but he admitted that he had indeed failed to file a bill of exceptions, which is the first step to be taken in perfecting an appeal before the Supreme Court of Liberia. Within ten days of the rendition of judgment in the court below, the bill of exceptions should have been prepared and submitted for the trial judge's approval. Failure to do so is fatal, and the appeal will be dismissed. In view of the foregoing, we have no alternative but to grant the application. Appeal dismissed.

American Int'l Underwriters Inc. v Fares Import-Export [1982] LRSC 66; 30 LLR 335 (1982) (9 July 1982)

AMERICAN INTERNATIONAL UNDERWRITER, INC., by and thru its assistant Manager, S. B. MENSAH, Appellant, *v.* **FARES IMPORT – EXPORT (FARESIMEX GENERAL MERCHANDISE)**, by and thru its Manager, M. FARES, Appellee.

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

Heard: June 16 - 22, 1982. Decided: July 9, 1982.

1. Failure of counsel to call at the clerk's office to tax the record and to take the necessary steps as provided by the Rules of the Circuit Court, constitutes a waiver of his right to raise any issue in respect of any alleged defect appearing on the records.

2. If an insurer accepts a cheque drawn on a third party for the payment of a premium, a presumption attaches, in the absence of notification to the insured to the contrary, that payment has been made, and the failure to notify the insured of non-payment will constitute a waiver of a condition as to forfeiture of the policy.

3. One who issues a worthless cheque for the payment of a premium, must be notified to make good his obligation within ten (10) working days, and failing to do so, any purported forfeiture of the policy has no effect.

4. Where a party in a case is represented by more than one lawyer, the cause should not be deferred because of the absence of one of the lawyers.

5. A motion is in the nature of issue of law and where a counsel is notified of the disposition of a motion, and he fails to appear, the court may proceed and decide the motion in his absence.

6. Issues raised for the first time in a bill of exceptions cannot be entertained by the Supreme Court

7. Points of contentions in the bill of exceptions must specifically state the issues excepted to and the reasons thereof, for the Supreme Court to pass upon.

8. Lost profits, unless expressly covered in an insurance policy, are not recoverable. Where a policy, however, states that the burden of proving that such loss or damage is covered shall be on the insured, the insured's recovery in any suit under the policy, is limited to his proofs, even if such provable items of recovery were not contemplated by the agreement.

9. In allowing for positive or consequential damages, arising from a breach of contract, courts are guided by justice, fairness and equity and not by the strict language of the party's agreement especially so where strict construction will produce harsh and unconscionable results.

10. In awarding consequential damages to a plaintiff in an insurance claim, the court shall consider the defendant's knowledge of the nature and operation of the plaintiff's business; the defendant's motive in delaying immediate recovery; the extent of the delay itself; and the foreseeability of harm to plaintiff. If it is established that the defendant's refusal or neglect was wrongful, *ab initio*, the jury may properly award such amount in damages as justice would require.

Appellee Fares Import-Export entered into an insurance contract with the appellant to cover their business premises against loss by fire. Appellee was issued a policy for which he paid his premium by cheque drawn on the Chase Manhattan Bank. Subsequently, appellee obtained additional insurance coverage for the furniture and fixtures in the building, for which additional coverage appellee paid the premium in cash. When appellant presented appellee's check to appellee's bank, the cheque was returned unpaid, with a notation "refer to maker". For reasons unknown, appellant kept the cheque, and failed and neglected to refer it to the appellee. Meanwhile, a fire broke out in appellees building as a result of which the entire business was destroyed.

Appellant refused to recognize the existence of the insurance contract between it and the appellee, claiming that since the first cheque issued by appellee was returned unpaid, the policy was cancelled. Previous to this position, Appellant had written letters at diverse times during the investigation of the fire incident not only to the appellee, but also to the CID and the Liberia National Fire Service in which it stated that the property destroyed by the fire was insured by it.

Appellee therefore instituted an action of damages of damages for breach of contract in the Civil Law Court for the Sixth Judicial Circuit. Trial was held, and from a final judgement rendered by the court in favour of appellee, appellants excepted and announced an appeal to the Supreme Court.

The Supreme Court held that since the appellant received appellee cheque unconditionally for the payment of the premium, a presumption attached that payment of the premium had been made by appellee, in the absence of a notification to the contrary. In the instant case, the Supreme Court noted that not only did appellant fail to notify appellee about the returned cheque, but that appellant itself had recognized the existence of the insurance contract through the several letters appellant had sent not only to appellee, but also to third parties during the course of the investigation of the fire incident. Accordingly, the Supreme Court affirmed the judgment of the trial court.

Philip A. Z. Banks , III appeared for appellant. *S. Raymond Horace* appeared for appellee

MR. JUSTICE YANGBE delivered the opinion of the Court

On the 15th day of December A. D. 1980, Mr. Michael Fares, proprietor and manager of Fares Import-Export, appellee, went to the American International Underwriters, appellant, to arrange for insurance for his business against loss by fire. The arrangement was concluded on the 17th day of December, A.D. 1980, under which it was agreed that appellee's business in the City of Monrovia would be insured for $205,000.00. Thereafter, appellee was required to pay a premium of $1,435.00 in three installments; on December 17, 1980, $478.34; on January 17, 1981, $478.34 and on February 17, 1981, $478.32. Appellee gave appellant a cheque, No. 183947, drawn on the Chase Manhattan Bank, Monrovia, dated December 17, 1980, in the amount of $478.34, as the first installment against the premium, which was due to be paid at the inception of the insurance policy. Consequently, appellant issued insurance policy, No. AH-F 7613332, to appellee and executed endorsement #1 on the 19th of December 1980, in favor of appellee.

Appellee realizing that the insurance policy which it had obtained from appellant did not cover the furniture and fixtures in the building, again approached appellant for additional insurance to meet this omission. It was granted additional insurance for $25,000.00 for which he paid $170.00 in cash, and endorsement #2 was executed in his favor on the 29th of December 1980. Twelve days after payment of the first installment on the policy and ten days after the endorsement, the additional insurance brought appellee's coverage up to $230,000.00.

Appellee's owner left the country at the end of December 1980, to go abroad for medical treatment. On the 3rd of January 1981, at about 10:00 o'clock p.m., fire broke out of appellee's premises that had been insured by appellant, completely destroying the entire building and all of its contents. Appellee's owner being absent from the country at the time, his wife, Mrs. Ghali Fares, promptly wrote appellant informing it of the accident. Upon the receipt of the letter from Mrs. Fares, two letters were written by Mr. S. B. Mensah, I, Assistant Manager of appellant company, one to Mrs. Fares and another to Mr. Bangalee M. Sesay, Assistant Director for CID. In the reply to Mrs. Fares' letter, Mr. Mensah said that an adjuster was being appointed to adjust the claim of appellee and that pending the arrival of the adjuster, appellee should keep the premises securely intact. Appellant also requested from appellee the report of the National Fire Service and the CID report covering the accident. In the letter to the CID, Mr. Mensah stated that the premises of appellee that were destroyed, were insured by appellant and he requested a report of the investigation of the accident.

According to the records, when Mrs. Fares went to the appellant to pay the second installment on the insurance policy, the cashier refused to accept the money. When she inquired of the reasons for the refusal, Mrs. Fares was told that she would be informed as to when she should come to pay the amount. On Friday, the 16th of January 1981, Mr. Fares returned to Liberia. On the morning of the 19th of January, both Mr. and Mrs. Fares went to the appellant to pay the second installment on the policy but they were told by Mr. S. B. Mensah that a letter would be sent to them shortly concerning the premises. On the evening of January 19, 1981, to appellee's great surprise, a letter from appellant was hand delivered to appellee, cancelling the entire insurance transaction because, according to appellant, the first cheque of $478.34, drawn on the Chase Manhattan Bank, was returned with a notation "refer to maker". In a letter dated January 30, 1981, signed by the Assistant Manager of appellant, S. B. Mensah, appellant returned the $170.00 as premium for the second endorsement #2.

The existence of insurance policy in consideration of the $478.34 Chase Manhattan Bank cheque and the $170.00 cash paid by appellee to appellant is not denied. However, appellant is contending that the $478.34 Chase Manhattan Bank cheque issued as the initial premium on the policy, was returned by appellee's bank dishonored. Therefore, appellant cancelled the entire policy.

Prior to receipt by appellee of the letter of January 19, 1981 returning the amount of $170.00 as premium for the second installment and the $478.34 cheque which was returned dishonored by appellee's bank, appellee claimed that it had no knowledge of the returned cheque from its banker. As a result, appellee on the 19 of January 1981 obtained two certified cheques from his same bank: one cheque in the amount of $478.34 to replace the returned cheque paid on

December 17, 1980, and the other as payment of the second installment on the Insurance Policy. These cheques, together with appellant's cheque for $170.00, were dispatched by letter to appellant on the 21st of January 1981. The three cheques were returned by appellant to appellee.

A dossier in connection with the cancellation of the policy and the refusal to accept the second installment by the appellant will be discussed *infra.* Appellee and appellant maintained their respective positions in connection with the existence or non existence of a policy and as a result, appellee filed this action for breach of contract. Pleadings were exchanged and rested. The issues of law raised in the respective pleadings were passed upon by the court below and the case ruled to trial by jury. At the close of the trial, the jury awarded appellee the sum of $238,492.90. Appellant excepted to the verdict and filed a motion for a new trial. A resistance was filed; the motion was denied and thereafter a final judgment rendered, confirming the verdict. Again appellant noted its exceptions, announced an appeal, and perfected the same. Hence, the case is before us for our review and a final decision.

When the case was called for argument, appellant called our attention to a motion for diminution of records and the resistance thereto to be passed upon. The motion was granted and the original case file was forwarded to this Court to be reviewed together with the transcribed record.

According to the contentions of the appellee, here are the summaries of the salient issues for our consideration and decision, to wit: (a) whether counsel for appellant was notified to call at the office of the clerk of the court below to tax the record prior to submission thereof? (b) whether there was opportunity for counsel for appellant to have brought to the attention of the judge the alleged error appearing on the verdict? (c) whether the cheque for $478.34 drawn on Chase Manhattan Bank was returned dishonored and whether the check was in fact dishonored? (d) whether the policy was legally cancelled for which there can be no recovery? (e) whether the appellant can be considered as having waived a defense by reason of two letters written by its Assistant Manager, S. B. Mensah, dated January 9, and 13, respectively, in 1981, and addressed to the appellee and to the CID Director in respect of submission of a report to the appellant company about the fire incident? (f) and whether appellant brought to the attention of the appellee the return of the dishonored cheque, 33 days after it was issued and 16 days after the fire incident?

On the 8th of April A. D. 1982, the clerk of the court below addressed a letter to the lawyers for both parties, requesting them to appear in his office on the 13th of April, 1982, at 2 o'clock p.m. to tax the transcribed record in this case. On the 12th of May 1982, one of counsel for appellants, Johnnie N. Lewis, wrote the clerk of the trial court as follows:

"We refer to the transcribed records in the case: Fares Import-Export v. American International Underwriters, Inc. ACTION OF DAMAGES FOR BREACH OF CON-TRACT, which have been referred to us for taxing. We observe that you have omitted to transcribe the "invoices and other supporting documents to plaintiff's Exhibit "Y", and that the jury's verdict is missing. (Emphasis ours).

We will appreciate were you to supply these missing documents so that the records would thus be complete."

On the same 12th of May 1982, the clerk again sent to counsel for appellant a $353.00 bill for transcribing the records and requested settlement thereof. On the bill appears this footnote:

"Notation: We wrote you a letter to tax the records which you have in your possession; since then you appeared on yesterday for a bill. This is it."

Thereafter, a series of letters written by counsel for appellant addressed to the clerk of court complaining against the alleged missing original verdict being discovered in the records. The records also show that earlier, on the 19th on March 1982, the appeal bond in this case was approved by His Honor Frederick K. Tulay. It is therefore crystal clear that Judge Tulay was immediately assigned to hold over the circuit following the elevation of His Honour Frank W. Smith on the 5th of February 1981, who conducted the trial of this case.

According to the *Revised Rules of the Circuit Courts*, page 34, it is provided that:

"Before the clerk sends up the records in any case on appeal to the Supreme Court, he shall serve a written notice on the Counsel on both sides for them to call at the clerk's office and tax the records before they are sent up. This written notice shall be signed for by the lawyer, or his clerk, or some representative of the law office in which he works. Failure to call at the clerk's office three days after receiving the notice shall be an indication that the counsel failing to call, does not intend to tax the records; in that case, the clerk shall proceed to forward them to the Supreme Court in keeping with law. All disputes shall be settled by the presiding judge. Proof of the

counsel's failure to tax the records will serve as a bar to any application for diminution of records in the Supreme Court."

No complaint was made to Judge Tulay who was in jurisdiction in the court below and who approved the appeal bond since the 19th of March 1982, with respect to the issue of Esther Davies' name appearing on the verdict, instead of Sarah Smith, who replaced her.

Appellant contended that when he received the letter inviting him in the office of the clerk to tax the records, the records were already in the Supreme Court. Therefore, the circuit court had lost jurisdiction over the case.

Assuming that the circuit court had lost jurisdiction when the records were received by the Clerk of this Court, what was the purpose of writing the clerk of the circuit court in connection with the alleged missing verdict on May 12, 22, 24, 25 and 28, 1981, after the transcribed records had already been received by the Clerk of the Supreme Court on the 7th of May 1982? Could the clerk *sua sponte* correct the record or conduct an investigation and settle the dispute without the Judge who was presiding by assignment against the Rules of Court? We differ.

Before commenting further on this issue of the verdict, we would like to observe that Esther Davies was ordered replaced by Sarah Smith only because when the case resumed on the 22nd of December 1981, Esther Davies was absent from the panel and not because of any misconduct on her part. Therefore, if she went back on the panel when she returned to court, and for any reason it was not recorded, and in fact the alternate juror, Sarah Smith, did not actually go on the panel, it did not affect or prejudice the interest of either party.

Counsel for appellant has cited the case *Bolado v. Cooper,* [1977] LRSC 3; 25 LLR 414 (1977) to support his argument for remand. In that case, the records were sent to the Supreme Court without any opportunity being afforded the parties to tax the records, but this is not so in the instant case; therefore, that case is not analogous to this case. In *McGill v. Mobil Oil Company, Inc.*, [1977] LRSC 29; 26 LLR 135 (1977), cited by counsel for appellant, the Court remanded the case for re-trial because this was an action instituted by appellant against appellee to recover damages for breach of contract entered into for the operation by appellant of appellee's gas station. At issue were the validity of appellee's notice to appellant of termination of the 1973 contract and the allocation of responsibility for certain repairs to the gas station and its equipment. The Supreme Court noted in that case, that both parties appeared to rely on a retail dealer contract of 1967 which had admittedly been cancelled by the later agreement, and that

appellant and appellee also seemed to base their contentions as to the responsibility for repairs on a lease agreement dated August 1967, which, according to its terms, ended with the termination of the retail dealer contract of that year. Because of the confusion and unanswered questions engendered by the arguments of the parties, the court reversed and remanded the case to the Court below so that the parties could replead and clarify their positions as to the alleged breach. This case is far from being analogous to the case at bar.

Counsel for appellee relied on the case *Wolo v. Samobollah*, [1972] LRSC 3; 21 LLR 22 (1972), which was remanded by this Court so that a board of arbitration comprising of qualified surveyors could be set up by the trial court to determine the quantity of **land** which the defendant was held liable for occupying in the southern portion of plaintiff's **land**. At the trial, the plaintiff had failed to establish how much of his **land** defendant was occupying, and in order to do justice to both parties, the court reversed the judgment of the lower court and remanded the case for a surveyor to determine the quantity of **land** wrongfully withheld by the defendant and belonging to the plaintiff. The circumstances in that case which necessitated the reversal of the judgment and remand are quite different, and it was based on the evidence after review of the whole case. In fact, in that case this Court held that the Court could not do for parties that which they should have done for themselves. This statement was made in that appellant did not observe *Rule 31 of the Circuit Court Rules*, quoted *supra;* he raised issues which were not part of the bill of exceptions, as was done in this case, and he did not confine his argument to the matters contained in the bill of exceptions. The Court therefore held that the trial court committed no reversible error. *Wolo v. Samobollah*, [1972] LRSC 3; 21 LLR 22, 24-25 (1972); *Bolado v. Cooper*, [1978] LRSC 21; 27 LLR 25 (1978).

The *Bolado v. Cooper* case cited by counsel for appellant and reported in [1977] LRSC 3; 25 LLR 414 (1977), which we have already treated, is the same matter dealt with subsequently by the Supreme Court. See *Bolado v. Cooper*, [1978] LRSC 21; 27 LLR 25 (1978). The circumstances noted by the Court in the earlier *Bolado* case as the basis for the remand are not analogous to the instant case. The first remand referred to in the *Bolado* case was because of the irregular manner in which the clerk of the lower court transcribed the appeal records and his failure to cite counsel on both sides to tax same before sending the records to the Supreme Court. The Court therefore remanded the case with instruction to the lower court to withdraw the records and have same properly transcribed and to invite counsel on both sides to have the records taxed.

As reported in the second *Bolado* case, reported in [1978] LRSC 21; 27 LLR 25 (1978), the first clerk who irregularly sent up the records without the same being taxed by the counsels for the parties had been dismissed and the succeeding clerk who transcribed the records upon instructions of the Supreme Court invited the counsels for the parties to tax the record, at which time it was discovered that the verdict and two sheets of the minutes of court were not among the

transcribed records. The clerk did not originally handle the records so he could not be blamed because he only transcribed what records he saw. The original clerk had been dismissed, and, therefore the need to complain to the presiding judge did not exist. The clerk therefore issued a certificate to the effect that the verdict and two sheets of the minutes of court were missing from the appeal records. Appellant thereupon filed motion before the Supreme Court for diminution of records and proferted the clerk's certificate. It was upon the motion for diminution of record, in view of the clerk's certificate that the verdict was missing, that the case was remanded for a new trial, because there was no verdict in the records at all.

In our opinion, the circumstances which necessitated the remand of that case for the second time, are quite different from those of the instant case in point of fact.

In the instant case, there is a verdict in the records but counsel for the appealing party, who has attacked the authenticity of the verdict for the first time before this Court, failed and neglected to call at the clerk's office in the trial court to tax the records and to take the required steps as provided for in *Rule 31 of the Circuit Court Rules.* That failure was in itself a waiver of appellant's right to raise any issue with respect to any alleged defect appearing on the verdict.

Moreover, there is no certificate from the clerk of the trial court to the effect that there was a verdict signed by Sarah Smith, who substituted Juror Esther Davies, and that this verdict is missing from the records.

Furthermore, the Court called for the original file from the lower court and the original verdict therein is exactly the same as in the transcribed records, awarding the amount as adjudged against the appellant in the court's final judgment.

The main issue on which the final determination of this case lies, therefore, is the existence or nonexistence of a valid insurance contract between the parties in this case by reason of what had transpired after the initial payment of the premium by cheque in the amount of $478.34 by appellee to appellant, the delivery of the insurance policy to appellee by appellant, followed by the additional payment of $170.00 in cash by appellee to appellant, and the issuance of endorsements #1 and #2 in favor of appellee.

As we have gathered from the records in this case, and as we have already shown in this opinion, an insurance contract was negotiated between appellee and appellant for appellee's proper-ties against fire and that on December 17, 1980, and on December 29, 1980, appellee paid $478.34 in cheque drawn on Chase Manhattan Bank and $170.00 in cash respectively. Receipts for these amounts covered by endorsements #1 and #2 respectively, were issued by the insurer, appellant herein, without any condition thereby receiving the check unconditionally, except that payment of the entire premium was to be made by installment in keeping with the instrument found in the record entitled "installment endorsement" dated December 17, 1980. In this instrument, it is stipulated that the premium was to be paid by three installments, the first being paid at the inception; the second payment on January 17, 1981, and the third installment of February 17, 1981.

Let us quote here some legal authority regarding receipt for payment of premium:

"The fact that a receipt is given for payment of the premium upon the receipt of a check does not affect the rule that the check is merely conditional payment, and a receipt for a premium check which has been dishonored is not binding. There is authority, however, that where the insurer on taking a check for premiums, issued its unconditional receipt showing that the payment had been paid the burden of showing that the acceptance of the check was conditional upon payment was on the insurer, and that the insurer's giving of a receipt for a check was some evidence of unconditional acceptance of the check payment. There is likewise authority that if the insurer receives and accepts a check as payment of a premium due and issues its official receipt evidencing the payment, it thereby waives its rights to declare a forfeiture of the policy, even though the bank subsequently dishonored the check." COUCH ON IN-SURANCE 2d, Vol. 6, § 31.50, *Effect of Receipt for Payment*, p.58.

For the benefit of this opinion, we quote word for word the receipt issued by insurer on December 17, 1980 for the amount of $478.34 paid in cheque, it reads as follows:

"American International Underwriters Inc. Carter Building Broad Street, P. O. Box 180, phone 221334, 221316, 222317, Monrovia, Liberia, No. 1914 Receipt date December 17, 1980.

Received from Fares Imex. Enterprises the amount of Four Hundred Seventy Eight and 34/100 Fire Insurance Policy $478.34 check No. 183947.".

This receipt which was signed by the cashier whose name is illegible is accompanied by Endorsement #1 which also states no condition, with the policy #AH-F 76613332, the said endorsement being signed by the Underwriting Manager Alfred Y. Telewoda.

"The Receipt given by the insurer upon payment by check or draft, may expressly state that payment is conditional upon the instrument being honored, in which case there is little basis for claiming that the acceptance was other then conditional as stated..." *Ibid.,* § 31.50.

The records show that Citi Bank is the appellant's bank and Chase Manhattan Bank is the appellee's bank on which the cheque was drawn. On the 23rd day of December, 1980, the cheque was presented for payment to the appellant's bank by the appellee's bank, that is to say, 6 days after it was issued and unconditionally received by appellant. The cheque was not paid but returned and marked on its face "refer to maker."

The general manager of Chase Manhattan Bank testified that the plaintiff/appellee had checking and overdraft accounts with his bank, but at the time of the presentation of the cheque in question in December 1980, it needed to be referred so that a problem which was then existing could be removed by the maker which under normal banking procedure could be done at least within three (3) working days upon referral to the maker. He also testified that the cheque was valid for six (6) months after issuance and could be re-presented for payment within that period after removal of the existing problem by the maker.

We have observed that although the said cheque was returned to the appellant by its bank, there was no notification to the appellee, the maker, as was intended. Rather, the cheque was kept by the appellant, and while in its possession, it wrote the following letter to appellee on the 9th of January, 1981, after the fire incident, which we quote hereunder, for the benefit of this opinion:

". . . . Gentlemen: we are in receipt of your letter dated January 4, 1981 with respect to the above mentioned fire loss. Please be advised that an adjuster is being appointed to adjust this claim. Until his arrival, you are requested to keep the premises securely intact. Additionally, we will need from you the report of the accident from the National Fire Service and the Criminal Investigation Department (CID). Your kind and prompt cooperation in this matter will be sincerely appreciated..."

A relevant portion of another letter written by appellant dated January 13, 1981, and signed by Assistant Manager S. B. Mensah I, and addressed to the Director of CID, while the returned check marked "refer to maker" was still in its possession reads as follows:

". . . . Re: Fire on January 3, 1981, Fares Import & Export Gurley Street. Dear Mr. Sesay: The premises rented by Mr. Michel Fares were severely damaged by fire during the evening of January 3, 1981. Mr. Fares is insured through our company. We should be grateful if you could let us have a copy of your report as soon as your investigations have been completed."

On January 22, 1981, another letter from the appellant was addressed to appellee under the signature of its said Assistant Manager S. B. Mensah I, the relevant portion of which reads as follows.

". . . .Gentlemen: As indicated during your visit at our office on January 9, 1981, and further to our letter of 9 January 1981, we would like to confirm that our adjuster has completed his investigation of your premises. There-fore, you are no longer requested to keep the premises securely intact. In other words, you may proceed to do what you wish of the premises. We thank you for your cooperation. . . ."

What is beyond our understanding is the fact that appellant was in possession of the returned check marked "refer to maker" when all these letters were written thereafter.

It is our considered opinion that appellant should have promptly referred the cheque to the maker as was contemplated to remove whatever problem that might have existed, for which the bank, as a third party, did not pay the cheque; the cheque that was unconditionally received by appellant as stated *supra*. The failure on the part of the appellant to refer the cheque to and/or notify the appellee of the non-payment of the cheque, and its subsequent letters in respect to appellee's claim, clearly indicated an acknowledgment of its liability to pay appellee's claim, rather than a waiver of any right to declare forfeiture,

Here are some authorities on the point.

"If the insurer accepts an order on a third party for the payment of a premium, it operates as an assignment of the designated fund to the insurer for that purpose, and presumption attaches, in the absence of notification to the insured to the contrary, that payment has been made, and the failure to notify the insured of non payment will constitute a waiver of a condition as to forfeiture therefore, unless it is stipulated, as it may be, that any notice of payment or non-payment of installment is waived.." *Ibid,* § 31.101, Failure of insurer to give notice of third party's default.

"The insurer who has accepted an order upon a third person in payment of premium is under a duty to make reasonable effort to obtain the payment from the third person's default..." *Ibid.,* § 31.102 - Effect of insufficiency of funds from which to pay premium.

Under our statute extant, one who issues a worthless cheque, must be notified to make good his obligation within 10 working days. It is only on his failure to meet his obligation within 10 days that he may be subject to prosecution. Penal Law, Rev. Code 26:15.58 (b). On this point, the authorities have said:

"The insurer must comply with a statute regulating the no-tice to be given of forfeiture for non-payment of premium. If the insurer fails to comply with this statute, its purported forfeiture of the policy has no effect. COUCH ON IN-SURANCE, 2d ed., § 32.99 - *Extent of Compliance With Statutory Requirement of Notice*, pp. 322.

Having disposed of the issues as disclosed by the evidence in the case, we will now deal with the points of contentions raised in the bill of exceptions that we consider salient for our decision.

In count one of the bill of exceptions, appellant submitted that its counsels were engaged in the Supreme Court when on the 3rd of November 1981, when the court below disposed of the motion to introduce newly discovered evidence. The records, however, show that a notice of assignment was served on both lawyers for the parties for the hearing of argument on the motion on that date.

There is no evidence that the trial court was notified of the alleged engagement of both lawyers for the appellant in the Supreme Court on the date the lower court passed upon the motion. However, the practice in this jurisdiction is that where more than one lawyer represents a party, a

case should not be deferred because of the absence of one of the counsels for the party. It is important to note that no resistance was filed to the motion. Therefore, the court proceeded in accordance with the Civil Procedure Law, Rev. Code 1: 10.7

The Court further cited *Rule 28 of the Revised Rules of the Circuit Court.* According to that rule, where the counsel is notified of the disposition of the issues of law, and he fails to appear, the court may proceed and decide the issues in the absence of the counsel who has failed to appear.

We hold that a motion is in the nature of issues of law, and *Rule 28* aforesaid also applies. The records further reveal that the judge deputized a lawyer for counsel for appellant who noted exception to the ruling, thereby subjecting same for appellant review as if counsel for appellant were physically present. Count one of the bill of exceptions is therefore not sustained.

In count two of the bill of exceptions, appellant contended that appellee should have averred in the motion to introduce newly discovered evidence , "that at the service of the pleadings he did not know and could not with reasonable diligence have known of the facts as to which such evidence is offered." We have no authority to entertain this contention raised for the first time in the bill of exceptions contrary to Civil Procedure Law, Rev. Code 1: 51.7, cited earlier in this opinion.

Another issue of argument is in count two of the bill of exceptions, which we quote as follows:

"Defendant submits that beside the issues of speculative damages, the issue of what is a dishonored check is the issue which Your Honour failed to pass upon, and which is the crux of defendant's defense."

A cheque is a documentary evidence. It must be testified to, marked by court, offered in evidence and duly admitted, before its credibility and effect may be properly passed upon by the court in proper cases, or by the jury. Therefore, the Court did not err by ruling the issue of the dishonored cheque to trial to be decided by the jury. *Dagber v. Molley*, [1978] LRSC 6; 26 LLR 422 (1978); COUCH ON INSURANCE 2nd, Vol. 6, § 31.7.

In count 6 of the bill of exceptions, appellant merely stated that the ruling of the lower court on the issues of law is erroneous and prejudicial, because, according to him, especially the conclusion of the ruling, the court ruled to trial facts which were not pleaded.

Several holdings of this Court repeatedly frown upon the mere reference to points of contentions in the bill of exceptions without specifically stating the issue excepted to and the reasons, therefore, in accordance with Civil Procedure Law, Rev. Code 1: 51.7. In view of the negligent failure of counsel for appellant to distinctly and specifically state the points of law or facts excepted to, we have refrained from passing upon count six of the bill of exceptions.

All recoverable damages are subject to some degree of uncertainty and contingencies, especially so when those damages seek to compensate the plaintiff for future injuries. *Texas & P. R. Co. v. Marshall*, [1890] USSC 203; 136 U.S. 393. Therefore, courts have stated that only reasonable certainty is required in proving the fact and cause of the injury. But the amount of damages - once proximate cause has been shown - need not be proved with the same degree of certainty. *Bigelow v. R. K. O. Radio Pictures, Inc.*, [1946] USSC 56; 327 U.S. 251. *Rehearing denied.* 327 U.S. 817. Accord *Story Parchment Paper Co. v. Paterson Parchment Paper Co.*, [1931] USSC 49; 282 U.S. 555. These two cases and numerous other decisions of the United States Supreme Court, uphold the principle of leniency in allowing the jury to speculate as to the amount of damages after their cause has been proximately proven. The jury may not render a verdict based solely on guess work and speculation, even if the defendant by his own wrong, has prevented a more precise calculation. But the jury made a just and reasonable estimate of the damages based on relevant data and, in such circumstances, may act on probable and inferential, as well as positive and direct proof. *Bigelow v. R. K. O. Radio Pictures, Inc., supra.*

As a general rule, damages are not rendered uncertain because they cannot be computed with absolute exactness. *Eastman Kodak Co. v. Southern Photo Materials Co.*, [1927] USSC 41; 273 U.S. 359. An element of uncertainty in the computation of damages is no bar to recovery. *Hetzel v. Baltimore & O. R. Co.*, [1898] USSC 6; 169 U.S. 26. The fact that the plaintiff's opportunities of making profits depended upon contingencies, even including third parties, does not render the damages resulting from the defendant's breach of contract incapable of assessment, though it cannot be proved with precision. Once it is established that the defendant's conduct has been related to the injury, the question of the amount of pecuniary damages is largely within the province of the jury.

In the case at bar, it is contended by the appellant that salary expenses and lost profits are not legitimate items of recovery in an insurance claim and should be excluded from the plaintiff's award. It is generally held, that lost profits, unless expressly covered in an insurance policy, are not recoverable. And, indeed, the policy now under review expressly bar recovery of

consequential loss of any kind to the insured. Clause 11 of the policy in fact, limits the recovery to the value of the insured items at the time of the loss, not including profits of any kind.

Nevertheless, clause 6 of the policy, while excluding certain kind of losses from recovery, expressly states in the last paragraph that:

"In any action, suit or other proceeding where the company alleges that by reason of the provisions of this condition any loss or damage is not covered by this insurance, the burden of proving that such loss or damage is covered, shall be on the insured."

We understand this clause in its broadest application to mean that the plaintiff's recovery in any suit arising under the insurance contract is limited to his proofs, even if such provable items of recovery were not contemplated by the agreement.

But most importantly, in allowing for positive or consequential damages arising from a breach of contract, courts have been guided, not by the strict language of the party's agreement, but by justice, fairness, and equity. This is especially so, if by strict construction of the parties' agreement, a harsh and unconscionable result is produced. The factors to be considered in allowing consequential damages to the plaintiff in an insurance claim are: (1) the defendant's knowledge of the nature and operation of the plaintiff's business; (2) the defendant's motive in delaying immediate payment ; (3) the extent of the delay itself; (4) and the foreseeability of harm to plaintiff.

If, after a careful consideration of all the attending circumstances, it is established that the defendant's refusal or neglect in honoring the claim was wrongful, *ab initio*, the jury may properly award such amount in damages as justice would require. In the instant case, the defendant insured the plaintiff's business against loss by fire. The defendant does not deny liability up to the policy limit is $230,000.00. But rather defendant disclaims any amount attributed to salaries paid to employees during the pendency of the claim and to lost profits.

On this point, it is the opinion of this Court that, if the defendant knew or had reason to know that by its delay in settling the claim, the plaintiff would suffer enormous harm, it is immaterial that the policy had expressly limited recovery to $230,000.00; it was up to the jury to decide on the extent and amount of the plaintiff's losses. The jury in this case has awarded damages to the

plaintiff, which includes salaries paid to employees and lost profits during the pendency of the claim. We are in no position to discredit the verdict of the jury. *Simpson v. Republic,* [1932] LRSC 5; 3 LLR 300 (1932); *Jones v. Republic,* 13 LLR 623 (1960).

We hold that the contentions raised by appellants with respect to loss of profits and to recover salaries for employees are unmeritorious.

From the facts and circumstances and the controlling law cited hereinabove, it is the holding of this Court that the purported cancellation of the insurance policy in this case is invalid and the contract is binding on the parties. The judgment of the court below based on the verdict of the empanelled jury should therefore not be disturbed. The same is hereby confirmed and affirmed with costs against the appellant. And it is hereby so ordered.

Judgment affirmed.

MR. JUSTICE MABANDE *dissents.*

On September 4, 1981, Fares Import and Export instituted an action of damages for breach of an insurance contract. After a jury trial and rendition of final judgment, appellant excepted to the said judgment and appealed to this Court for final redress.
The sole and fundamental issue I have considered important and decisive of this controversy is whether a verdict signed by one who is not a juror or unsigned by a trial juror is legally sufficient to support a judgment.

Counsel for appellant argued that according to the trial records, the verdict was fraudulent and forged, thereby rendering the entire jury trial a mockery of justice. Appellant's counsel further argued that where a verdict is forged or unsigned by a trial juror, the verdict is illegal and cannot constitute the unanimous decision of the twelve (12) jurors; hence, a judgment based upon such a verdict is also rendered ineffective, fraudulent and illegal, and it deprives a party litigant of a fair and just trial before an impartial jury, as required by law.

In the case *Inglee v. Coolige*, [1817] USSC 30; 2 Wheat 363 (1817), on the hearing of a writ of error, the United States Supreme Court held that a hearing by an appellate court, according to general rules of law, is confined to matters arising on the records.

In the case before us, counsel for appellee argued that a verdict other than the one which now appears in the records was in fact in the records, according to a declaration of counsel for appellant.

In the case *Sargent v. State Bank of Indiana*, 12 Howe 371 (1851), the court, in refusing to recognize the validity and genuineness of documents found in the files of the court, held that unless documents found in the files of a court are supported by the entry, the records or minutes of the court, and upon due notice to the adversary, it cannot be recognized as part of the records or be entitled to any effect.

Also, in the case Lessor of *Fisher v. Cockrell*, 5 Pet. 247 (1831), Chief Justice Marshall, speaking to the United States Supreme Court, refused to accept as genuine certain documents that were in the records along with a certificate that they did exist legally. The Court held that it was not the certificate of the clerk that a document was part of the records of that court that rendered it legal and true.

According to our statutes and the Rules of the Supreme Court, our appellate review is confined to the records. The records of court is the history of the proceedings or acts of a court of record. They are the authentic testimony as contained in the minutes of the court. This Court, being a Court of record, in the review of proceedings before it, must confine itself to mainly the records and minutes of the trial court, as supported by the bill of exceptions, the pleadings, and the briefs filed by the parties. It cannot recognize an unconfirmed oral declaration of a counsel or any party that a record not appearing in the file does in fact exist.

I therefore hold the view that to include any paper as part of the records of a court, it must be made so by the pleadings exchanged, by the ruling of the court specifically referring to it, or by the minutes of the trial court.

A portion of the trial records, sheet 6, Tuesday, December 22, 1981, of the 2nd day's jury session, reads thus:

SHERIFF: Your Honour, the panel is not full and submits.

THE COURT: Sheriff having reported that the panel is not full by the absence of Juror Esther Davies, the said jury is substituted by alternate Juror Sarah Smith. And it is so ordered."

In the exercise of our appellate review, this Court takes cognizance of only the records as supported by the minutes transcribed to it after being taxed by the parties.

The trial records transmitted to us show that Esther Davies who signed the verdict was not, as per the ruling of the trial judge, His Honour Frank W. Smith, one of the trial jurors at the rendition of the verdict, and that Sarah Smith who was a trial juror did not sign the verdict. According to our law, a verdict is the unanimous agreement and decision of exclusively all of the trial jurors. It must be signed exclusively by all the trial jurors.

It is conscientiously my opinion that the conduct of these two persons, namely, Esther Davies and Sarah Smith, rendered the instrument presented to us by the trial court as the verdict an illegally obtained verdict, thereby rendering the entire trial unjust, illegal and unfair. An illegally obtained verdict cannot be supported by a judgment. Such a judgment is unenforceable and binds no person. A judgment affirming and confirming an illegally obtained verdict makes the entire trial and judgment ridiculous and violative of the right to due process of law.

A judgment arising from a jury trial must be based on the verdict, without which there can be no appellate jurisdiction for a review of the trial records.

I also hold the view that a verdict signed by one who was not recognized by the records of the trial court as a trial juror or which was not signed by all of the trial jurors, was not a unanimous decision of all of the trial jurors and cannot therefore legally be a verdict as recognized by law. It constitutes a legal nullity and renders a judgment a judicial misfortune and a mockery of justice. A judgment based on an illegally obtained verdict is irregular and illegal; it cannot be made a basis for a review of the entire trial records, as held by the majority. It made the trial that was held legally nonexistent. Only a judgment based on a legal verdict can confer jurisdiction on this Court to review the entire trial records, when demanded by the bill of exceptions and briefs.

I therefore hold the view that the entire trial records, the fraudulent verdict, and its baseless supporting judgment should be vacated and the case remanded for a new trial. Accordingly, in view of the rules of law cited and the facts in the case, I have disagreed with my distinguished colleagues, and have therefore dissented.

DeShields v King [1934] LRSC 24; 4 LLR 170 (1934) (9 July 1934)

HENRY N. DESHIELDS, Petitioner, v. ALFRED D. J. KING, Respondent.
APPLICATION FOR A MANDATE ENFORCING A JUDGMENT.

Argued June 20,
29, and July 4, 1934. Decided July 9, 1934.

This is an application for a mandate to enforce a judgment in a suit brought by the
petitioner, plaintiff-inerror in the court below, against the respondent, defendant-in-error in the court below, objecting to the
probation of a deed. Application denied.
H. Lafayette Harmon for petitioner. gan for respondent. Edwin A. Mor-

On the 29th day of
January, 1934, H. Lafayette Harmon, Esquire, counsellor at law for Henry N. DeShields, petitioner, applied by letter to us in our
chambers for the issuance of a mandate to the court below to enforce the judgment that had been rendered in favor of petitioner in
the case just decided * and another case in which he then in his said letter alleged was "Cavalla River Company, limited, plaintiffs
and appellants versus Alfred D. J. King, defendant and appellee, in an action of debt," alleged to have been tried and determined
against the said King at the November term, 1933, of this Court. He was then told that the Court could not act upon a mere letter,
nor would it permit more than one cause to be blended in one single application. He was then given permission within forty-eight
hours to file nunc pro tunc separate applications in each case in proper form. Instead of filing the said separate applications within
See supra, p. 161.

forty-eight hours as permitted, Mr. Harmon waited until March 26th, and then filed
a separate application in each cause which he claimed was a substantial compliance with the orders of the Chief Justice ; but this
was returned to him with the information that he could not file on March 26th an application nunc pro tunc dated January 29th when
the Court had extended the privilege for fortyeight hours only. Again, on May r8th, Mr. Harmon wrote a letter complaining that the
Clerk had not acted upon orders he assumed we had given to issue mandates in the several causes which he had blended in his original
letter of January 29th. A letter dated May r9th was ordered sent him from our chambers recapitulating the orders we had previously
given with which he had not complied, and emphasizing our legal inability to act until proper applications had been filed in each
distinct cause, and also reminding him of the reason why his applications filed on March 29th had been taken off the files as noted
above. On the 21st day of May, 1934, Mr. Harmon filed an application in proper form for the enforcement of a judgment in the supposed
case, Cavalla River Company, Ltd. v. King, action of debt; but after careful search he was informed by letter dated May 23rd that
no action had ever been brought to this Court in which the Cavalla River Company, Ltd., were plaintiffs and appellants, and Alfred
D. J. King, defendant and appellee, in an action of debt. He subsequently admitted having made a mistake in his application, and
averred that the case that really had been pending in this Court against Alfred D. J. King, the judgment which he now desired to
be enforced, was the one in which Henry N. DeShields was plaintiff-inerror and Alfred D. J. King, defendant-in-error, involving objections
to the probation of a deed. He was thereupon permitted to file an amended application properly entitled, which is the subject of
these proceedings.

Reviewing the records we find that final judgment was entered on the 6th day of May,
1932, and a writ of execution issued thereon out of this Court on the loth day of May of said year 1932. We have already, in an opinion
filed this day in the case W. D. Woodin & Company, Ltd. v. Logan,* explained the views of the present Bench on the issuance of writs
of execution by this Court on matters brought up here for review. On the 17th of June, 1932, Counsellor Harmon, attorney of record
for Henry N. DeShields, wrote a letter to His Honor, the late ex-Chief Justice Johnson, requesting him to have the writ of execution amended by inserting: ( ) A clause cancelling the
deed of King's on the ground of fraud; and (2) Ordering his client, the said Henry N. DeShields, put into possession of the said
premises. The late ex-Chief Justice did not order the writ of execution amended as Mr. Harmon had petitioned, but allowed, in lieu,
a writ of possession to issue ancillary to the writ of execution, which, dated the 3oth day of June, was issued out of the office

of the Clerk of this Court, and sent by L. P. Miller, special Deputy Marshal, to Grand Bassa for service. To the service of this additional precept Alfred D. J. King protested by a letter to the then Chief Justice dated July i8th, 1932, on the ground that it was only legally possible to issue a writ of possession after an action of ejectment had been decided in favor of the plaintiff in such an action, and such writ could not legally issue following a suit upon which the only issue was whether or not his opponent's deed should be admitted to probate. It was subsequently pointed out to the Court in addition to the above that the Court's decision that plaintiff-inerror's deed should be admitted to probate did not necessarily operate as a cancellation of his own, at least not under the form of action then pending.

· See supra, p. 161, sub nom. fames v. Logan.

This protest of King's was unanimously upheld by the Supreme Court, and on the 8th day of December, 1932, an order was issued tantamount to the revoking of the second precept ordering DeShields put in possession of the premises and that ordering King's deed cancelled. In the interval Alfred D. J. King, respondent in these proceedings, had deposited with the Deputy Marshal title deeds for 215 acres of land and five acres of land respectively in Little Bassa which he claimed at this bar should be valued at five dollars per acre, and hence that he had overpaid. After having given our interlocutory ruling that the value of the land would be only what it realized at the Marshal's sale, he asked permission to withdraw his land from the hands of the Marshal, and to pay in cash. Leave having been granted, this was done by written application filed on the 6th instant. The bill of costs was then ordered taxed, and same has been presented with an amount of forty-three dollars agreed to by the parties as legitimate and seventy-seven dollars and ninety-five cents claimed by the plaintiff-inerror to be repayable to them, but disputed by the defendant-in-error. It is our opinion therefore: (1) That the sum of fortythree dollars agreed upon should be immediately paid by defendant-in-error to the Marshal of this Court; (2) That the defendant-in-error should give a bond in a sum of one hundred fifty dollars to appear before the Supreme Court at its November term, 1934, to comply with such judgment as the Court may give, after hearing evidence on the several items totalling seventy-seven dollars and ninety-five cents, the correctness of which is now in dispute. (3) That inasmuch as Counsellor Harmon has not, during the course of these proceedings, acted with that circumspection and uprightness which should characterize the conduct of a member of the bar of this Court, as a result of which the parties appear to have been misled

and the Court itself has
been made to appear ineffective and ridiculous, the Clerk of this Court is hereby ordered to issue a writ of summons directed to
the Marshal, commanding him to summon H. Lafayette Harmon, Esquire, counsellor at law, to appear before the Supreme Court at its
November term, 1934, to show cause why he should not be attached for contempt because of his conduct during the course of these proceedings,*
and it is hereby so ordered. Application denied.
* See infra, p. 314.

Roberts v Brown [1963] LRSC 40; 15 LLR 415 (1963) (9 May 1963)

JAMES ROBERTS, Appellant, v. TOMMY WOHUNWOHN BROWN, Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, GRAND BASSA COUNTY.

Argued April 22, 1963. Decided May 9, 1963. An appeal from a court of record may, upon motion properly taken, be dismissed
for want of service of notice of appeal.

On appeal from a judgment on a jury verdict in an ejectment action, appellee's motion to
dismiss was granted.
Joseph F. Dennis for appellant. Jacob H. Willis for

appellee. MR. JUSTICE the Court.
WARDSWORTH

delivered
the opinion of

The appellee in the above-entitled cause instituted an action of ejectment against the appellant in the Circuit Court
of the Second Judicial Circuit, Grand Bassa County. Count i of the complaint reads as follows : "Plaintiff complains that he is the
bona fide owner by title right, and is entitled to the possession and enjoyment of a certain piece or parcel of land situated in
River Cess Territory, Grand Bassa County, Republic of Liberia, and bearing the authentic records of said territory N/N, as will more
fully appear from records of his public land sale deed, herewith filed to form a part of this complaint and marked Exhibit A." The
appellant appeared and filed an answer denying the right of the plaintiff to recover upon legal grounds set forth in said answer.
Pleadings progressed as far as the rejoinder.
415

In passing on the law issues raised in the pleadings, Judge D. W. B. Morris ruled the answer and rejoinder out of court thereby placing appellant on bare denial. To this ruling, appellant excepted; but due to certain peculiar circumstances in these proceedings, which will later be revealed, we are without legal authority, to open or pass on the records in this case. The minutes of the court reveal that at the call of the case for trial, the appellant, being absent, was called three times at the door of the courthouse without response from him. Upon appellant's failure to answer when called, as mentioned supra, appellee asserted his legal right in applying for judgment by default. The court, passing upon the application of appellee for judgment by default, said inter alia: "This case, having been previously assigned and set down for trial during this term of court by issuance and service of notices of assignments, was reassigned for this morning at 9 o'clock. Counsel for both parties were present at the reassignment. Subsequently, notices of assignment were duly served and returned by the sheriff of this court. Neither the defendant nor his counsel appeared this morning; nor has the court any information as to their whereabouts. The defendant has been called three times at the door of the court, and has failed to answer. Plaintiff has applied to court for an imperfect judgment. The unexplained absence of counsel is a cause insufficient, says our Honorable Supreme Court of Liberia, to continue the cause. Massaquoi v. Republic, [1943] LRSC 8; 8 L.L.R. 155 (1943). The application is hereby granted ; and to perfect this imperfect judgment, a jury is hereby ordered empanelled. And it is so ordered." The jury, having heard and considered the evidence adduced at the trial by plaintiff, returned a verdict in favor of appellee. The court suspended the matter until the following day to hand down its final judgment in said cause.

At the call of the case on June 19, 1962, defendant appeared in court with a motion for a new trial, which motion was denied ; whereupon the court rendered final judgment confirming the verdict of the petty jury. The clerk of court was ordered to issue a writ of possession and place plaintiff in possession of the described premises as set out in his complaint, to which final judgment the defendant excepted and announced an appeal to this Court of last resort for review. At the call of the case for hearing, the clerk informed the Court that appellee had filed a motion to dismiss the appeal containing one count which we quote hereunder as follows : "Because appellant has failed to have served and returned on appellee or his counsel any notice of appeal in the above-entitled action so as to give this Court jurisdiction over the cause at bar, as will more fully appear from copies of a certificate from the clerk of the Circuit Court of the Second Judicial Circuit, Grand Bassa County, together with an affidavit taken by appellee and his counsel herewith filed to form a part of this motion." Countering appellee's motion to dismiss the appeal, appellant filed a two-count

resistance which, in its body, reads as follows : That whilst it is true that, in the absence of a return of service of notice of appeal, an appeal may be dismissed, as contended by the appellee in his motion, yet appellant maintains that a certificate executed by Counsellor Samuel W. Payne, the counsel who represented the appellant in the court below, and verified by affidavit whose jurat was executed by Justice of the Peace Joseph T. King, who is also the clerk of the Circuit Court of the Second Judicial Circuit, Grand Bassa County, gives evidence that the notice of appeal was issued and served. Copy of said certificate, although forming part of the appeal records trans-

mitted to this Court, is hereto annexed and marked Exhibit A to form a part of this resistance. "2. That, upon receiving a copy of the appellee's motion, and checking the records in this Court, for the purpose of verifying the omission, a radiogram was dispatched to Counsellor Samuel W. Payne, aforesaid, copy of which is hereto annexed and marked Exhibit B to form a part of this resistance; and his reply is also annexed as Exhibit C. Further, a motion for diminution of record has been filed before this Court, in respect to the omission of the return of service of the notice of appeal, of which this Court is respectfully asked to take notice." The certificate mentioned by appellee in his motion to dismiss the appeal reads, word for word, as follows: "Republic of Liberia, Office of the Clerk of Court, Grand Bassa County. Second Judicial Circuit, Grand Bassa County. "CERTIFICATE "This is to certify that according to the records filed in my office there is no returned service made on the notice of appeal in the case: "JAMES ROBERTS, of River Cess Grand Bassa County, Liberia, Action of Appellant, Ejectment "versus "TOMMY W. BROwN, Appellee.

"Given by me this 7th day of March, 1963. [Sgd.] "JOSEPH T. KING, Clerk of the aforesaid court.

[Sealed :] "Certified true and correct copy of the original. [Sgd.] "JACOB H. WILLIS." Although counsel for appellant strongly contended that a return of service had been endorsed on the back of the

notice of appeal as communicated to him
by Counsellor Samuel W. Payne legal representative of appellant in the lower court, yet, from the certificate of the clerk of the
trial court, it can be easily gathered that this information was intended to mislead this Honorable Court, especially since, indeed, there were no missing records as alleged. Under
1956 Code, tit. 6, § 1020 (d), a civil appeal from a court of record may, upon motion properly taken, be dismissed for negligent
failure to have notice of appeal served on appellee. "The omission from the records of a return to the notice of appeal is a material
error, and is ground for dismissal of the appeal." Greaves v. Johnstone, 2 L.L.R. 121 (1913) Syllabus r. "It is the service of the notice of appeal which alone gives the appellate court jurisdiction over the appellee." Brownell v. Brownell, [1936] LRSC 3; 5 L.L.R. 76 (1936), Syllabus 2. "The only legal evidence of such service is the official return of the proper ministerial officer." Id., Syllabus
3. It having been substantially proved by the certificate issued over the signature of the clerk of the Circuit Court of the Second
Judicial Circuit, Grand Bassa County, that no return of service was made on the notice of appeal, we have no alternative other than
to grant the motion of appellee. Therefore, in view of the foregoing, the appeal in these proceedings is dismissed with costs against
appellant. And it is hereby so ordered.
Appeal dismissed.

Pyne v Bardu et al [1933] LRSC 1; 3 LLR 371 (1933) (9 February 1933)

CASES ADJUDGED
IN THE

SUPREME COURT OF THE REPUBLIC OF LIBERIA
AT

NOVEMBER TERM, 1932. K. N. PYNE, Plaintiff-in-Error, v. JOHN
BARDU and His Honour MARTIN N. RUSSELL, Judge, First Judicial Circuit, Defendants-in-Error.
WRIT OF ERROR TO THE CIRCUIT COURT OF
THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Decided February 9, 1933. 1. When a party possesses an estate in fee and from either
sympathy or friendship permits another to enter and take possession of the said estate and enjoy the same as long as the landlord
shall so desire, such estate shall be termed an estate at will. 2. An estate at will is at the will of both parties ; so that either
of them may determine at his will and quit his connection with the other at his own pleasure. 3. A freehold is an estate of inheritance;

or an estate not of inheritance ; the former is either a fee simple or an inheritance limited, as of fee tail. A freehold not of inheritance, is an estate only for life; and an estate of freehold cannot be conveyed without livery of seizin.

Plaintiff tenant,
now defendant-in-error, obtained an injunction in the Circuit Court restraining the agent of his landlord, now plaintiff-in-error, from ejecting tenant. On writ of error, this Court reversed.
Doughba Carmo Carandafor plaintiff-in-error. Ricks for defendants-in-error.
A. B.

MR. JUSTICE KARNGA delivered the opinion of the

Court.

This case was brought before this Court by a writ of error issued by order of Mr. Chief Justice Johnson. The history of the case is as follows : Paul N. Revere, a citizen of Liberia, was possessed of a tract of land situated in the Borough of Krutown, in the City of Monrovia, the same being an aboriginal grant from the Republic of Liberia to the said Paul N. Revere in fee simple, dated the 13th of July, 1905. It appears that in the year 1912 John Bardu, defendantin-error, on account of old age and he also being a member of the church of Paul Revere, was placed on the property by the latter; a thatch but was subsequently built on the property by the defendant-in-error and from that time he continued to live on the premises peaceably until July, 1932. It also appears that Paul Revere left Monrovia for the United States of America sometime in the year 1929, but, before his departure, he executed a power of attorney to one K. N. Pyne, giving him full authority to look after his affairs as his agent. In May, 1932, a letter was sent to the said K. N. Pyne by Paul Revere requesting him to give thirty days' notice to the said John Bardu to quit his premises. The records show that in the month of July, X932, a notice to quit after thirty days was served on the defendant-in-error by the counsel of plaintiff-in-error. The defendant-in-error, however, refused to quit the premises on the grounds that he had paid to his landlord the sum of five pounds sterling and that by virtue of an oral contract entered into between himself and his landlord, he took possession of said property as tenant for life.
Upon representation made by the said John Bardu to the judge of the court below in August, 1932, that plaintiffin-error intended to violently eject him from the peaceful enjoyment of his said life estate, a temporary writ of injunction was issued against plaintiff-in-error pending investigation. On the 26th day of September, 1932, final

decree was entered by the judge of
the court below that the injunction be perpetuated, with costs against the
defendant in the court below. The defense excepted to
the said decree and gave notice of appeal. He did not appeal but made an
application to the Chief Justice for a writ of error to
the following effect: 1. That Paul N. Revere, a citizen of Liberia, is
possessed in fee simple of a parcel of land, one-eighth of
an acre in quantity, situated in the Borough of Krutown in the City of
Monrovia, said land being an aboriginal grant from the Republic
of Liberia and dated the 13th day of July, 1905. 2. That before his departure
for the United States of America the said Paul N. Revere, out of sympathy,
placed one John Bardu,
a member of his church, on said property to live until he should order
otherwise. 3. That while in Monrovia, he executed a power
of attorney on January 25, 1929, in favor of K. N. Pyne, a resident of
Krutown, Monrovia, giving him full authority to take care
of all his interest in his absence; and in May, 1932, sent a letter to K. N.
Pyne, his said agent, requesting him to give thirty
days' notice to John Bardu to quit his premises, and turn the same over to a
relative of his to look after. 4. That notwithstanding
the service of the notice giving the said Bardu thirty days to quit the
premises, he, through misrepresentation, caused the Judge
of the Circuit Court of the First Judicial Circuit to issue a writ of
injunction against plaintiff-in-error in August, 1932; and
5. That said Judge in his final decree perpetuating the said injunction
committed an error and therefore plaintiff-in-error prays
that said decree be reversed by this Appellate Court. Upon careful reading,
nowhere in the records of this case is there found any
evidence that the plaintiff-in-error made any attempt to violently eject John
Bardu from the

premises.
On the contrary, there is evidence to show that the defendant-in-error in the
court below took every necessary and peaceful method
in approaching the said plaintiff on the question of his removal from the
property of his principal. With reference to the second
question raised in the complaint of the plaintiff that prior to the departure
of his landlord from the Republic an oral contract
was entered into between himself and his landlord whereby the plaintiff was
to enter and live upon the property of the latter during
his natural life and that in consequence of which he, the plaintiff, paid the
sum of five pounds sterling, we are of the opinion
that a freehold is either an estate of inheritance or an estate not of
inheritance. The former is either a fee simple, or an inheritance
limited, as of fee tail, while a freehold not of inheritance is only an
estate for life ; and that estates of freehold cannot be
conveyed without livery of seizin. Blackstone in his Commentaries, Book II,
observes : "Formerly, conveyances were made by parol,

or word of mouth only, without writing; but this giving a handle to a variety of frauds, the statute 29 Car. II. c. 3 [the Statute of Frauds] enacts, that no lease-estate interest in lands, tenements, or hereditaments, made by livery of seizin, or by parol only (except leases, not exceeding three years from the making, and whereon the reserved rent is at least two-thirds of the real value), shall be looked upon as of greater force than a lease or estate at will; nor shall any assignment, grant, or surrender of any interest in any freehold hereditaments be valid : unless in both cases the same be put in writing, and signed by the party granting, or his agent lawfully authorized in writing." 2 Blackstone Comm. *297 (Chitty ed. 1826) . And all other deeds ordinarily used in conveying property must now be in writing. The defendant-in-error having admitted the title of

Paul N. Revere to the property in question, and that he also took possession of said property without livery, or any written instrument signed and delivered by the said Paul N. Revere to him, his interest in the said estate is therefore that of a mere tenant at will, and an estate at will is at the will of both parties ; so that either of them may determine at his will, and quit his connection with the other at pleasure. In the circumstances .the right of the tenant at will to bring an action of injunction after his landlord's lawful agent has ordered him to quit his premises cannot be upheld. We are therefore of the opinion that the judgment of the court below should be reversed, and the injunction dissolved with costs against John Bardu, the defendantin-error, and it is so ordered.
Reversed.

Liberia Fisheries Incorporated v Badio et al [1989] LRSC 18; 36 LLR 277 (1989) (14 July 1989)

LIBERIA FISHERIES INCORPORATED, by and thru its Managing Director, ROGER MAKLOUF, Petitioner, v. **HIS HONOUR HALL W. BADIO**, Sr., Assigned Circuit Judge, Sixth Judicial Circuit, **MAJOR JIMMY GARLEY**, Sheriff for Montserrado County, **BIRAHIM DIAGNE et al.**, Respondents.

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE GRANTING THE PETITION FOR A WRIT OF PROHIBITION.

Heard: May 17, 1989. Decided: July 14, 1989.

1. An appeal to the Supreme Court from a ruling of a Justice presiding in Chambers is tried *de novo* upon the entire records and not merely those phases of the case presented before the Chambers Justice.

2. Parties ought to be vigilant in protecting their own interests and should superintend the issuance, service and returns of precepts of court.

3. Our Civil Procedure Law requires that all pleadings and other papers required to be served in an action must be filed.

4. Courts must only decide those issues squarely raised in the pleadings and argued during the trial or hearing.

5. Every officer of court is presumed to have done his duty properly unless the contrary is shown.

6. 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 the matter of dispute over which courts of law and which courts of equity have concurrent jurisdiction. .

7. Where title is in issue, cancellation of the instrument by a court of equity is not sufficient to warrant the issuance of a writ of possession. However, where the right of occupancy, possession or enjoyment is the only issue involved and the instrument conferring said right of occupancy, possession or enjoyment is canceled by a court of equity, said court of equity may, in the same decree, order the re-delivery of the demised premises to the landlord.

8. While a decree canceling a deed does not confer title, that decree invalidates the conveyance made by the deed.

9. The cancellation of deed to real property causes the title to revert to those owning the **land** before issuance of the deed. To perfect this title, requires an action of ejectment which is triable by a jury.

10. Where prohibition would be ineffectual, it would usually be disallowed as where the act sought to be prevented or restrained is already done.

11. One remedial writ cannot obtain the objects of or substitute for another.

12. Prohibition is a preventive rather than a corrective remedy and is designed to forestall the commission of a further act rather than to undo an act already completed.

A petition for cancellation of a sub-lease agreement was filed by Birahim Diagne in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, on January 11, 1988. The respondent therein having defaulted and upon application of the petitioner in the trial court, the petition was heard and granted, the sublease agreement canceled, and Birahim Diagne was

awarded the amount of $11,579.80 as damages plus legal interest. The trial judge ordered the sheriff of Montserrado County to conduct an inventory of the assets of Liberia Fisheries Incorporated, respondent in the cancellation proceeding, to place the same on sale at a public sale to satisfy the judgment, and place Birahim Diagne, petitioner in the cancellation proceeding, in possession of the premises. The inventory was conducted, allegedly without the time allowed by statute, the assets of Liberia Fisheries Incorporated, respondent in the cancellation proceeding, were sold and Birahim Diagne was placed in possession of the premises.

The Liberia Fisheries Incorporated, as petitioner before the Supreme Court, fled to the Chambers Justice for a writ of prohibition, on the principal ground that no writ of summons was served on it and that the judgment entered against it was void *ab initio.* Specifically, the writ of prohibition was prayed for to have the co-respondent judge and other officers of the trial court desist from enforcing the alleged void final judgment. The respondents refuted the allegations laid in the petition and argued that the writ of summons was served and returned served by the sheriff, and that prohibition would not lie because the enforcement of the judgment had been completed, the sale of the assets completed, and the writ of possession served and returned served.

The Justice in Chambers passed upon the petition and ordered the issuance of the peremptory writ of prohibition. On appeal to the Bench *en banc,* the ruling of the Chambers Justice was reversed and the petition for prohibition denied on the grounds that prohibition was the wrong remedial writ chosen by petitioner, since the act or acts complained of had been done and completed several days before the filing of the petition. Further, the Court held that prohibition could not be used to review a final judgment for errors and irregularities allegedly committed during the trial. The Court noted that the prohibition was a preventive and not a corrective remedy and, hence, was not obtainable in the instant case.

Johnnie N. Lewis of the Lewis and Lewis Law Firm appeared for petitioners. *H. Varney G. Sherman,* in association with Brumskine & Associates Law Offices, represented by *Charles Walker Brumskine* and *Theophilus C. Gould,* appeared for respondents.

MR. JUSTICE AZANGO delivered the opinion of the Court.

Since an appeal to the Supreme Court of Liberia from a ruling of a Justice presiding in Chambers is tried *de novo* upon the entire records and not merely those phases of the case presented before the Justice, *Coleman v. Crawford and Stubblefield,* [1968] LRSC 39; 19 LLR 29 (1968), Syl. 4, it is in this light that we shall proceed to review this case.

On the 11th day of January, A. D. 1988, a petition for the cancellation of a sublease agreement was filed before the Civil Law Court of the Sixth Judicial Circuit, Montserrado County by Birahim Diagne against his tenant, Liberia Fisheries Incorporated, as respondent. The petition was granted and the respondent was found liable to the petitioner in the amount of $11,579.80 (Eleven Thousand Five Hundred Seventy-Nine and Eighty Cents) as damages plus interests. The judge ruled Liberia Fisheries Incorporated to the costs of the proceedings and ordered the sheriff of Montserrado County to proceed to the premises and place Birahim Diagne in possession of said premises and to have sundry items of personalty sold at public auction to satisfy the money judgment.

Based upon the ruling (decree) of the Civil Law Court, the sheriff of Montserrado County allegedly conducted an inventory of the assets of Liberia Fisheries Incorporated on January 11, 1988, the very day on which the Civil Law Court handed down its decree in the cancellation proceeding. The records revealed that on January 14, 1988, three (3) days after the inventory was taken, the sheriff of Montserrado County sold the assets of the Liberia Fisheries Incorporated at a public auction.

According to the sheriffs bill of sale, issued in favor of one Sarah Dunbar and dated January 14, 1988, the following items constituted the first lot of items allegedly sold to Madam Sarah Dunbar: Six desks, ten desk-chairs, two cupboards, two sofas, one conference table, eight conference chairs, seven arm-chairs, six sofas, six filing cabinets, four air conditioners, six tables, two radios, one shelve, one Chevrolet truck - plate #593 and one Mercedes Truck - plate #594-BT, two big trailers and three small trailers, three hundred fifty-one (351) pieces of pellets, one Chevrolet pick-up plate #1237-BT, one compressor, forty (40) empty cooking gas container, three thousand two hundred sixty-one crates, one hundred pieces of timber (planks 2 x 4), one scale, one ladder, five wheel barrows, four fire extinguishers, one crane, two plastic rolls, four air-filters, one four-wheel drive jeep, plate #1758-BC, one sewing machine, and one brother electric typewriter.

The Liberia Fisheries Incorporated, petitioner in this prohibition proceeding, considering the proceeding in the lower court and the acts of the co-respondent judge, His Honour Hall W. Badio, Sr., then presiding over the December A. D. 1987 Term of the Civil Law Court, to be illegal and prejudicial, fled to the Chambers Justice for a writ of prohibition on a five-count petition, praying for the issuance of an alternative writ of prohibition to require the co-respondent judge to desist from enforcing the alleged void judgment rendered on January 11, 1988.

For the benefit of this opinion, we shall restate the petition, substantially as follows:

1. That notwithstanding, no writ of summons in the above entitled cause, out of which this petition grows, was ever served on the petitioner, by and thru its managing director, Roger Maklouf, or any other director of the corporation, by which the Civil Law Court for the Sixth Judicial Circuit could have acquired jurisdiction over said corporation, the Civil Law Court, presided over by Co-respondent Judge Hall W. Badio, Sr. has entertained a default ruling of a petition for cancellation of a sub-lease agreement between the petitioner and Co-respondent Birahim Diagne, rendered a final judgment in favour of Co-respondent Birahim Diagne, adjudging the petitioner liable to the co-respondent in the amount of Eleven Thousand Five Hundred Seventy-Nine Dollars and Eighty Cents ($11,579.80) plus legal interest . . . " and ordering the sheriff to place Corespondent Diagne in possession of the premises and to seize the chattels on the premises owned by the petitioner and have same sold at public a auction to satisfy the judgment of the court.

2. Petitioner submits that as it was never summoned through the service of a writ of summons, either upon Roger Maklouf, managing director of Liberia Fisheries Incorporated, or any other director of the corporation, and the delivery of or a copy of the writ of summons and petition by the ministerial officer of the Civil Law Court, said court not only did not acquire jurisdiction

over petitioner, but also the petitioner never had its day in court. It necessarily follows as a matter of law that not only is the final judgment rendered against petitioner void *ab initio* but also the entire proceeding, as a court can render no valid judgment against a party over whom it has not acquired jurisdiction.

3. Petitioner further says and maintains that the final judgment rendered by co-respondent Judge Hall W. Badio, Sr., in the amount of $11,579.80 plus legal interest is further void as damages cannot legally be awarded in a petition for cancellation of a sub-lease agreement. In addition, the co-respondent judge, in an effort to have his void judgment enforced, has ordered the co-respondent sheriff of the Civil Law Court to seize the chattels of the petitioner and to expose same to public auction, which the co-respondent sheriff is attempting to execute.

4. Petitioner further says and maintains that the final judgment rendered by Co-respondent Judge Hall W. Badio, Sr., by which he ordered the co-respondent sheriff to place Co-respondent Birahim Daigne in possession of the premises, subject of the sub-lease agreement, is further void as a petition for cancellation of a sub-lease agreement is not a possessory action as would warrant the issuance and service of a writ of possession.

5. Petitioner further says and brings to the attention of this Honourable Court that since being informed of the default judgment of the petition for cancellation of the sub-lease agreement, its counsel has been unable to inspect the case file, as the clerk's office claims it has been mailed. Petitioner has therefore relied principally upon the minutes of court in the preparation of this petition."

Respondents appeared and filed in these returns which read substantially, as follows:

1. That as to counts 1 and 2 of the petition, respondents say that petitioner and co-respondent Birahim Diagne executed a sub-lease agreement (exhibit RR/1 hereto) on January 1, 1987, providing (i) no other sub-lease or assignment without the consent of Co-respondent Birahim Diagne's agent; (ii) all taxes and utility bills to be paid by petitioner; (iii) right of re-entry reserved to Co-respondent Birahim Diagne upon thirty (30) days notice for default of the covenants and conditions of the sub-lease agreement by petitioner.

2.That also as to counts 1 and 2 of the petition, on the 14th day of September, 1987, the Articles of Incorporation of the petitioner was revoked by the sovereign Republic of Liberia through its Ministry of Foreign Affairs (the certificate of revocation from the Ministry of Foreign Affairs attached as exhibit RR/2 hereto) and the business registration certificate of petitioner was also revoked by the sovereign Republic of Liberia through the Ministry of Commerce, Industry & Transportation (attached as exhibit RR/3 hereto).

3. That also as to counts 1 and 2 of the petition, respondents submit that as of the 14th day of September, 1987, petitioner was no longer a juridical person and could not transact business in the Republic of Liberia in its name as Liberia Fisheries Incorporated or through any other person such as Roger Maklouf, its former managing director. Respondents contend that a corporation is a legal entity with rights and liabilities in its own name only after incorporation (Associations Law, Rev. Code 5: 2.5) and ceases to have such power and authority to do business in Liberia

after the revocation of the Articles of Incorporation which brought it into being (Associations Law, Rev. Code 5:11.3) and the revocation of the business registration certificate, which authorized it to conduct and carry on the particular business (General Business Law, Rev Code 14:4.2)

4. That also as to counts 1 and 2 of the petition, respondents say that Co-respondent Birahim Diagne waited for nearly two months (September 14, 1987 - November 10, 1987) after the revocation of the petitioner's Articles of Incorporation and business registration certificate to see whether petitioner would challenge the acts of the Sovereign Republic of Liberia in court or before any other forum to have petitioner reinstated as a juridical person (legal entity) in Liberia. However, petitioner made no such efforts and so on November 10, 1987, Co-Respondent Birahim Diagne delivered to Roger Maklouf, managing director of petitioner, a letter of his intention to repossess and re-enter the premises subject of this proceeding for reason that petitioner was not and still is not a legal entity in Liberia and for reasons that petitioner has failed to pay taxes and utility bills as required by the sub-lease agreement.

5. On December 4, 1987, Co-respondent Birahim Diagne filed the petition for the cancellation of the sublease agreement and notwithstanding the fact that petitioner was not a legal entity in Liberia, the writ of summons was issued, served on Roger Maklouf and returns made by the sheriff for Montserrado County. The said writ of summons was served by Bailiff George Sherman of the Civil Law Court, with the returns signed by Sheriff Jimmy Garley. Respondents submit that a sheriff return are considered proof of service unless shown to be false, and the evidence to support the claim of falsity of the sheriffs returns must be specifically pleaded and must be clear, cogent and convincing. *Perry and Azango v. Ammons*, [1965] LRSC 11; 16 LLR 268 (1965).

6. Further to count 5 hereof, this Honourable Supreme Court has considered the returns of a sheriff to service of a court process as *prima facie* evidence of what is contained therein. *Dwalubor v. Good-Wesley et al.[1972] LRSC 6;* , 21 LLR 43 (1972); *Eitner v. Sawyer et al.[1977] LRSC 47;* , 26 LLR 247 (1977) and *Donzoe v. Thorpe*, [1978] LRSC 32; 27 LLR 166 (1978). Indeed, in most jurisdictions, unless the falsity of a sheriffs returns are disclosed by some other portion of the records of court, the truthfulness of the returns cannot be controverted by the defendant by answer or otherwise before judgment, or after judgment by application on motion or other proceedings to have the judgment set aside. 62 AM JUR 2d., *Process, § 177.* Even in these jurisdictions where a return to a service of process is impeachable, clean, unequivocal and convincing evidence is required to overcome its statements and recitals, and the mere preponderance of the evidence in favour of one contradicting a return is ordinarily insufficient. 72 C.J.S., *Process, §* 102(b).

7. Respondents submit therefore that it is not sufficient for petitioner to allege in the petition merely that it was not served but it should aver those facts and circumstances to support the falsity of the returns, which from the face of the petition would warrant an investigation. To merely generally deny service of process and expect the Supreme Court to stay further proceeding in the case or undo whatever has been done in the case is to mock the judicial process. For the sound discretion which is required to be exercised by the. Justice in Chambers must be aroused by such averments in the petition which, from the ordinary perception of the

matter, would militate against the truthfulness of the service of the process. However, petitioner's petition is so legally defective as it gives no such detail statement of the basis of the claim of non-service of process but merely a general denial and thereby gives no notice to respondents as to what they are to defend against or notice to Your Honour as to what Your Honour's sound discretion should be based on. Certainly, clear, unequivocal and convincing evidence is based on specific and particularized averments of facts in a pleading and not a general denial of a fact or a general attack on a court record.

8. That also as to counts 1 and 2 of the petition, respondents say that the Civil Law Court for the Sixth Judicial Circuit had jurisdiction over the petitioner by the service of the writ of summons on Roger Maklouf, its managing director and the failure of petitioner to file answer *ipso facto* supported the entry of a default judgment against petitioner. Section 3.61 of the Civil Procedure Law provides that a defendant shall appear by service of an answer or notice of appearance or the making of a motion, while Section 3.62 of the said Civil Procedure Law provides that appearance shall be made within (10) days after service of the summons or re-summons. Going further, Section 42.1 of the Civil Procedure Law provides that if the 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. These statutory provisions clearly support *Rule 7* of the *Circuit Court Rules* and therefore the default judgment entered against defendant was proper, legal and legitimate.

9. That as to count 3 of the petition regarding the award of $11,579.80 plus legal interest to co-respondent Birahim Diagne by the court below and as also narrated in count one (1) of the petition, respondents say that in equity proceedings such as cancellation of instrument, monetary claims arising out of the instrument ordered canceled, and cancelled, may be awarded by the court. While as a general rule, a court of equity does not entertain an action of damages only, where a court of equity has taken jurisdiction over a subject matter of litigation, it must do complete justice between the parties; and hence, where a right to compensation is established, the court may in its sound discretion order a personal judgment or recovery of judgment. A court of equity may retain the cause for the purpose of ascertaining and awarding damages as something which is incidental to the main relief sought. 27 Am. Jur.2d, *Equity, §* 112. Each and every monetary claim stated by Co-respondent Birahim Diagne and proven at the trial, arose out of the sub-lease agreement sought to be canceled (exhibit RR/5 hereto) and respondents submit that said claim for monetary award being incidental to the main relief of cancellation, the court did not err or proceed by any wrong rule when it awarded Co-respondent Birahim Diagne the amount of Eleven Thousand, Five Hundred Seventy-Nine Dollars and Eighty Cents ($11,579.80) plus legal interest.

10. That further to count 3 of the petition, respondents submit that a decree setting aside a deed (contract) for real property should provide for an equitable accounting (settlement) between interested parties respecting expenditures for repairs and improvements, taxes paid, value of use and occupancy of the premises and other items shown by the record to be proper for consideration by a court of equity. 13 AM. JUR. 2d, *Cancellation of Instruments, §* 66. It was held in the case *Walker v. Galt*, 171 F2d 613, 6 ALR2d 808, that plaintiffs prayer for recission of a conveyance and restoring the parties to "the status quo, and to also insofar as practicable, by way of incidental relief, provide that the plaintiff is entitled to recover from the defendant the full

stumpage value of timber removed by the defendant from the **land** with interest from the date of removal, and the fair rental value of the property during the time the defendant was in possession," was consistent with law.

Under the same parity of reasoning in *Walker v. Galt supra*, it was proper when Co-respondent Judge Hall W. Badio, Sr. in his decree ordered an award of $11,579.80 being outstanding utility bills, real property taxes and realty estate taxes, which petitioner had contracted by the sublease agreement to pay but failed to pay, and which by law constituted a lien on Co-respondent Birahim Diagne's property until paid. Revenue & Finance Law, Rev. Code 36: 13.8.

11. That also as to count 3 of the petition, the judgment being legal and legitimate, co-respondent Judge Badio did not err when he ordered the enforcement of the said judgment. Indeed Co-respondent Birahim Diagne was placed in possession of the subject premises and the chattels therein seized and sold at public auction long before the petitioner prayed for a writ of prohibition. As a matter of fact, a Mrs. Sarah Dunbar purchased the first lot of chattels on January 14, 1988; the petition was not filed until January 20, 1988, and the writ of prohibition was not issued until February 20, 1988. Consequently, there was nothing to be prohibited or undone as a writ of prohibition would not apply to upset a judgment already enforced and when nothing is left to be done. The writ of possession had already been issued, served and returns made and the chattels at the premises had been sold to a Mrs. Sarah Dunbar. Further, the premises had long been leased to Mr. Nicolas Formusa, who took possession and was enjoying the premises prior to the filing of the petition and the issuance of the writ of prohibition. Respondents pray Your Honour to take judicial notice of the records in this case. There being nothing pending before the Civil Law Court for the Sixth Judicial Circuit to do, prohibition would not lie. *Sodatonou et al. v. Bank of Liberia, Inc.[1971] LRSC 69; ,* 20 LLR 512 (1971).

12. That respondents say that where a judgment has been rendered by a court, judgment executed and third parties have acquired interest in properties sold under the said judgment, prohibition will not lie as there is nothing else left to be done by the court. Petitioner in such instance could move this Supreme Court by an application for a writ of error, which has a time limit of six (6) months after judgment but not by a petition for a writ of prohibition, which applies only when there is something pending before the court below to be done.

13. That as to count 4 of the petition, respondents say that it is the sub-lease agreement which gave the right of possession, occupancy and enjoyment of the subject premises to petitioner. Upon the cancellation of said sublease agreement by a court of competent jurisdiction, the possession, occupancy and enjoyment of the petitioner terminated and Co-respondent Birahim Diagne had the right of possession, occupancy and enjoyment and therefore entitled to a writ to enable him to exercise his right of possession, occupancy and enjoyment. While some common law countries have a writ of re-entry for such matters where title is not involved in contradiction to a writ of possession, where title is involved, the only writ available in this jurisdiction is the writ of possession. So Co-respondent Judge Badio ordered the issuance of the writ of possession to enable Corespondent Birahim Diagne to exercise his right of possession, occupancy and enjoyment under the court's decree. For it has been decided by this Honourable Supreme Court that while a decree cancelling a deed does not confer title, that decree invalidates the conveyance made by the deed. *Barbour-Tarpeh et al. v. Dennis et al.[1977] LRSC 11; ,* 25 LLR 468 (1977).

Further, cancellation of a deed to real property causes the title to revert to those owning the **land** before issuance of the deed. *Pratt et al. v. Smith et al.[1977] LRSC 32; ,* 26 LLR 160 (1977).

14. That further to count 13 hereof, respondents concede that where title is involved and required by law to be adjudicated by a jury, a decree of cancellation of a deed is not sufficient to warrant the issuance of a writ of possession because the writ of possession would connote the determination of title, which is a question for the jury. However, where title is not involved and therefore no question for the jury, then the decree of cancellation necessitates the issuance of the writ of possession as said writ of possession would not connote title (a jury issue) but will connote merely possessory right (a non-jury issue). To do otherwise is to handle the case in piecemeal and equity requires full and complete relief and the avoidance of a multiplicity of suits. 27 AM. JUR 2d., *Equity, §§* 46 & 47. Moreover, where the ground for equitable interposition is disclosed to the court in a cancellation proceeding, the court in disposing of the case may decree transference of possession. And this transference of possession is always done by a court of equity where equitable interposition has been established and there is an indisputable title or there is no real dispute over the title to the property involved in the suit. 27 AM. JUR. 2d., *Equity, §* 62. Consequently, the co-respondent judge did not err when he ordered the issuance of the writ of possession, not as a determinant of title as title to the real property was not an issue, but as a transference of possession which is not required to be determined by a jury.

15. That as to count 5 of the petition, the allegations are false and misleading. Petitioner could not have obtained the minutes of court other than from the court's file as Corespondent Birahim Diagne would have never given petitioner the records. However, petitioner neither wants to disclose all the exhibits which Co-respondent Diagne submitted at the trial nor does petitioner want to be forced to challenge those exhibits in its petition. So petitioner invented the allegation that the clerk did not allow it to inspect the file and claimed the file was mislaid.

16. That further to count 15 hereof, respondents say that it was incumbent upon petitioner to establish the injury it had suffered. Petitioner in its petition has not attached any of the species of evidence submitted by Co-respondent Birahim Diagne either through a denial of the facts regarding petitioner's non-existence and incapacity to do business or the claims for taxes and utility bills or the right of possession of Co-respondent Birahim Diagne. Petitioner has not even averred that it has evidence which, if it had submitted to the court below, would have caused a different result than what was obtained. What then is the basis of the writ of prohibition, may respondent ask? Is it merely the allegation that the writ of summons was not served, without any specific and particularized averments to warrant Your Honour's exercise of discretion? Respondents submit that the petition is totally devoid of any merit at all and is intended for the mere purpose of harassment.

17. That respondents say that being a natural person and not being a legal entity in Liberia, petitioner had no capacity to institute this prohibition proceeding as petitioner's Articles of Incorporation and business registration certificate had been revoked by the sovereign Republic of Liberia. For Your Honours to entertain this prohibition proceedings, Your Honours would be reinstating the petitioner as a legal entity and thereby performing a function of the executive

branch of government, contrary to the Constitution and the statute laws of Liberia. So respondents move Your Honours to dismiss the petition without delay.

18. That the shareholders of the petitioner have long since acknowledged that petitioner's Articles of Incorporation and business registration certificate has been revoked and so petitioner is not a legal entity with any capacity to sue or be sued and that petitioner has no authority to do business in Liberia. The shareholders of petitioner say in recognition of this that they have organized another corporation by the name and style of International Fish and Shrimps Corporation and that said International Fish and Shrimps Corporation acquired all of petitioner's assets. Now that it is clear that Roger Maklouf, claiming to bring this petition for a writ of prohibition is a renegade who does not have the support or authority of the shareholders or directors of petitioner, said petition ought to be summarily dismissed. In support of the averment of this count, respondents submit three (3) letters dated February 25, 1988, February 28, 1988 and March 3, 1988 (exhibit RR/6 in bulk).

Additionally, Co-respondent Nicolas Formusa tendered separate and individual returns as follows:

1. Because as to the entire petition for a writ of prohibition, co-respondent submits that the petitioner has no legal capacity to sue in that it is neither a corporate entity nor a natural person. Co-respondent says that the Articles of Incorporation and business registration certificate of the then Liberia Fisheries Inc., have been revoked by the Government of Liberia.

2. Because co-respondent is in possession of and operating his business on the premises located on Jamica Road by virtue of a sub-lease agreement entered into by and between him and Birahim Diagne.

3. Because co-respondent has intervened as a matter of right in the prohibition proceeding as the representation of his interest by the existing parties is inadequate and that corespondent may be bound by your Honour's ruling.

4. And also because co-respondent has intervened as a matter of right in the prohibition proceedings as he is so situated that he will be adversely affected by Your Honour's ruling on the disposition of the property subject of the petition for a writ of prohibition.

5. Because as to the entire petition, co-respondent submits that prohibition will not lie in the case where a final judgment has been rendered, executed and enforced; that is, where nothing remains to be done.

6. Because as to counts 1 and 2 of the petition, co-respondent denies that petitioner was not summoned. Co-respondent submits that petitioner's own Exhibit "A" which Your Honour is most respectfully requested to take judicial notice of, indicates that a writ of summons was indeed served on the petitioner as per the returns of the ministerial officer, but that the petitioner failed and refused to appear as provided by the law. Co-respondent says that the returns of the ministerial officer and the records of the trial court are legally presumed to be correct, and in the

absence of a showing to the contrary cannot be disturbed. Co-respondent therefore prays that the said counts of the petition be overruled.

7. And also because as to count 5 of the petition, corespondent says that whether or not damages can be awarded in a cancellation proceeding is not a basis for prohibition, as such an issue can be properly reviewed by a regular appeal or a writ of error. Co-respondent therefore prays that said count of the petition be overruled.

8. "Further to count 3 of the petition, co-respondent denies that the sheriff is attempting to execute the judgment of the trial court. Co-respondent submits that certain assets of the non-existing petitioner, judgment debtor, was purchased at a public auction by one Sarah Dunbar on January 14, 1988, who had since sold said items to co-respondent, who is a bona fide purchaser for value. Co-respondent therefore prays that said count of the petition be overruled.

9. Because as to count 4 of the petition, co-respondent says that although a cancellation proceeding is not necessarily a possessory action, petitioner having acquiesced in the enforcement of the trial court's judgment, and the premises being subsequently sub-leased to co-respondent who is now in possession, petitioner's petition is untimely and, hence, deemed a waiver of whatever right the petitioner might have had. Co-respondent therefore prays that said count of the petition be overruled.

10. Further to count 4 of the petition, co-respondent submits that following the final judgment which canceled the sublease agreement between Co-respondent Diagne and the non-existing Liberia Fisheries Inc., the reversionary interest automatically vested in Co-respondent Diagne, per the sub-lease agreement. Count 4 is therefore unmeritorious and a fit subject for dismissal and co-respondent so prays.

11. Because as to count 5 of the petition, co-respondent says that same cannot be given cognizance by Your Honour as the trial court, being a court of record, any declaration or assertion therefrom must be evidenced by the records of the court or a certificate of the clerk of the court. Petitioner having failed to provide any documents to substantiate its assertion makes the count a fit subject for dismissal and corespondent so prays.

12. Because co-respondent says that notwithstanding that petitioner prayed for the issuance of an alternative writ until Your Honour shall have had the opportunity to hear and determine its petition, the Clerk inadvertently caused a peremptory writ to be issued ordering the co-respondent judge to restore the parties to *status quo ante,* which is contrary to the law and practice of this jurisdiction.

These returns were accompanied by a motion to intervene, filed by the same Nicholas Formusa. The motion reads thus:

1. That movant is in possession of and operating his business on a premises located on Jamaica Road by virtue of a sublease agreement entered into by and between him and Birahim Diagne as is more fully shown by a copy of said agreement.

2. That movant may intervene as a matter of right in the prohibition proceedings as the representative of his interest by the existing parties is inadequate and that movant may be bound by Your Honour's ruling,

3. That movant may intervene as a matter of right as he is so situated that he will be adversely affected by Your Honour's ruling on the disposition of the property subject of the petition for a writ of prohibition. All of which movant stands ready to prove."

The Chambers Justice, upon receipt of the petitioner's petition for the alternative writ of prohibition on January 20, 1988 ordered the co-respondent judge to stay all further proceedings in the case pending a conference with the parties. However, according to the writ of possession and the bill of sale of the property auctioned, the judgment had already been executed on January 14, 1988; that is, six days before the petition for the writ of prohibition was filed. The records before us also reveal that on January 21, 1988, petitioner filed a bill of information before the Chamber Justice to the effect that the sheriff of Montserrado County had disposed of petitioner's assets by means of a public auction on January 11, 1988; that is less than the statutory period of ten (10) days notice, and that therefore, the auction by the sheriff was contrary to statute. The Chambers Justice sent another stay order with further instructions that the parties to the cancellation proceedings be rested in *status quo ante* pending the hearing of the petition. This order was again allegedly ignored by the co-respondent judge, His Honour Hall W. Badio, Sr.

It appears from the records presented to us that the first stay order which was issued upon the strength of the petition for the writ of prohibition on January 20, 1988, and the second order which was issued on January 21, 1988, upon the strength of the bill of information were never served on Co-respondent Birahim Diagne or Nicholas Formusa. Co-respondents Birahim Diagne and Nicholas Formusa argued before us that they never received said stay orders growing out of the bill of information and therefore they neither filed responsive pleadings to said bill of information nor argued it. We note, however, from the records that the two stay orders were served on the co-respondent judge but that he obviously ignored them. We note further that the writ of prohibition itself was issued on the 29th day of February, A. D. 1988, a little over one (1) month after the petition for the writ was filed; that is so notwithstanding the allegations that the corespondent judge had ignored two separate stay orders. This delay in the issuance of the alternative writ of prohibition bewilders us, but we have held repeatedly that parties ought to be vigilant in protecting their own interests, *Gaiguae v. Jallah et al.*[*[1971] LRSC 3*](); , 20 LLR 163 (1971), and should superintend the issuance, service and returns of precepts of court.

At the call of the case for argument, the motion to intervene was conceded by the petitioner. The records also reveal that a motion to dismiss the petition for the writ of prohibition had also been filed. The motion to dismiss and the resistance thereto were argued, ruling thereon reserved, and the case suspended. Then the petition and the two returns were assigned for argument and accordingly argued. The ruling on the motion to dismiss the petition and the two returns were consolidated and delivered. The said ruling reflected the contents of the bill of information despite the fact that the returns to the bill of information were neither filed nor served. In fact, the minutes of this Court are silent as to whether the bill of information was among the papers argued before the Chamber Justice. Our Civil Procedure Law requires that all pleadings and other papers required to be served in an action must be filed. Civil Procedure Law, Rev. Code 1:

8.2(1) and 8.3(1). Given these facts and circumstances, it was a material error for our colleague to have taken cognizance of the averments in the bill of information when, as we have said, the bill of information was never argued before him and no papers were ever served on the respondents. In *Gallina Blanca, S. A. v. Nestle Products, Ltd. et al.[1976] LRSC 33; ,* 25 LLR 116 (1976), this Court held that courts must only decide those issues squarely raised in the pleadings and argued during the trial or hearing.

In any event, here is the concluding portion of the ruling of our distinguished colleague, Mr. Justice Belleh, after listening to the arguments of both parties on the motion to dismiss and the petition for the writ of prohibition:

"WHEREFORE, and in view of the foregoing the petition for the writ of prohibition being sound in law, the same is hereby granted and the peremptory writ ordered issued. The Civil Law Court for the Sixth Judicial Circuit, Montserrado County, not having acquired jurisdiction over the petitioner in the cancellation proceedings, the final judgment rendered in said cancellation proceedings is hereby declared a legal nullity and ordered vacated and the parties in these proceedings are restored to *status quo ante."*

Reverting to the petition for prohibition, the petitioner vigorously maintained that it was not served with a writ of summons, even though while arguing before this Court petitioner said that it could not deny that a writ of summons was issued. It maintained nevertheless that no writ of summons was served on it. Contrary to this contention of petitioner, the records reveal that a writ of summons was issued, served and returned served. Like petitioner, the Chambers Justice simply ruled that a "copy of the writ was not in the file". He then presumed that the writ was neither issued nor served. Of course, no investigation was ordered or had regarding this issue. When asked why petitioner did not obtain a certificate from the clerk of the Civil Law Court and annexed it to his petition to substantiate his allegation that no writ of summons was served, petitioner replied that since its allegation being a negative plea, the burden of proof was on the respondents to show that a writ of summons was issued, served and returned served. While petitioner may be correct in suggesting that the respondents should have attached to their returns copies of the writ of summons and other related documents, the practice in this jurisdiction has been for the petitioner to obtain a certificate from the clerk of court and annex same to his petition showing that no writ of summons had been issued, served and returned served.

The general rule of proof in this jurisdiction is that the burden of proof rests on the party who alleges a fact. Civil Procedure Law, Rev. Code 1: 25.5. The exception is where the subject matter lies peculiarly within the knowledge of the adversary, but it is not applicable here because the proof could have been easily obtained from the clerk of court. Further, every officer of court is presumed to have done his duty properly unless the contrary is shown. *Rasamny Brothers Inc. et al. v. Gardiner[1976] LRSC 12; ,* 24 LLR 530 (1976). The failure and neglect of our colleague, the Chambers Justice, to have had an investigation or order one is a material error which warrants a reversal of his ruling. *MacCarthy v. Gray*, [1974] LRSC 34; 23 LLR 142 (1974).

The next issue of concern to this Court is whether damages may be awarded as part of a judgment in a proceeding for cancellation of a lease agreement. While it is true that our law states that there shall be only one form of civil action and that the distinction between actions at

law and suits in equity and the forms of these actions and suits are abolished, the procedure for the hearing and determination of actions at law and suits in equity remain an entrenched part of our jurisprudence. That is, except for very few actions at law such as special proceedings, all actions at law are tried by a judge with the aid of a jury. On the other hand, except for a few cases, suits in equity are tried by a judge without the aid of a jury. We therefore maintain and affirm the general rule that a court of equity does not exercise jurisdiction over an action where the sole aim of the plaintiff is "damages" and nothing else.

Consistent with the general rule is the fact that where a court of equity has taken jurisdiction over a subject matter, such as an action to cancel an agreement, the court of equity must do complete justice to the parties and where a right to compensation is established, the court of equity may, in its sound discretion, order a personal judgment or recovery of judgment. 27 AM. JUR. 2d, *Equity, §* 112. For example, a court of equity may issue a decree setting aside a contract for real property and at the same time provide for an equitable accounting between the interested parties respecting expenditures for repair and improvements, taxes paid, value of use and occupancy of the premises, etc. 13 AM. JUR. 2d., *Cancellation of Instruments, §* 66. In confirmation of these principles of law, we hold in the case *Benson v. Johnson,* [1974] LRSC 55; 23 LLR 290 (1974), that 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 the matter of dispute over which courts of law and courts of equity have concurrent jurisdiction. The test is that the damages must be incidental to the main relief sought and it must pertain to the same transaction.

In the instant case, the plaintiff in the cancellation proceeding, co-respondent herein had asked for only the unpaid utility bills and taxes which the agreement required defendant, petitioner herein, to pay. This relief is incidental to the main relief for cancellation of the agreement and to encourage multiplicity of suits by requiring the plaintiff/co-respondent to file a separate action at law to recover obligations due plaintiff/co-respondent pursuant to the terms of the canceled contract is inconsistent with the principles of equity.

The other issue of interest to us is whether a court of equity may order the issuance of a writ of possession in a suit for the cancellation of a lease agreement. This Court has decided in many of our opinions that the cancellation of a deed does not necessarily determine title; only an action of ejectment can do so.

The practice known in this jurisdiction regarding a writ of possession is that they may not be issued in cancellation of title deeds. We confirm and affirm all these rulings and holdings of this Court but we have also determined that this case is distinguishable from all the other cases which have heretofore been decided by this Court.

Under the common law, there are two basic types of interests in real property; the freehold estate and the less than freehold estate. The freehold estates are fee simple, fee tail and life estates and each of these freehold estates involve issues of title. On the other hand, the less-than-freehold estate are those estates which only confer right of possession, enjoyment and occupancy and the commonest in this jurisdiction are leases and assignments. Where title is in issue, we confirm and affirm that cancellation of the instrument by a court of equity is not sufficient to warrant the

issuance of the writ of possession. The reason is that the determination of title is an issue required to be tried by a jury and not by a judge alone. We hold, however, that where the right of occupancy, possession or enjoyment is the only issue involved and the instrument conferring said right of occupancy, possession or enjoyment is cancelled by a court of equity, said Court of equity may in the same decree order the re-delivery of the demised premises to the landlord. 27 Am. Jur. 2d., *Equity, §§* 46, 47 and 62. Therefore, the trial judge did not err when he ordered the issuance of the writ of possession, not as a determinant of title as both plaintiff/co-respondent and defendant/petitioner did not claim title but merely as a transference of possession for a re-delivery of the demised premises to the landlord.

We held in the case *Babour-Tarpeh et al. v. Dennis[1977] LRSC 11; ,* 25 LLR 468 (1977), that while a decree cancelling a deed does not confer title, that decree invalidates the conveyance made by the deed. We also held in the case *Pratt et al. v. Smith et al.[1977] LRSC 32; ,* 26 LLR 160 (1977), that cancellation of a deed to real property causes the title to revert to those owning the **land** before issuance of the deed. To perfect this title requires an action of ejectment which is tried by a jury. Civil Procedure Law, Rev Code 1: 62.1. However, to perfect a right of possession, occupancy and/or enjoyment of a demised premises under a lease agreement would require a special proceeding entitled "summary proceedings to recover possession of real property". This special proceeding is tried by a judge alone without a jury just as the trial of the cancellation of the agreement which confers the original right of possession, occupancy, and enjoyment only. Civil Procedure Law, Rev. Code 1: 62.1 and 62.2. Therefore, there is no rationale for requiring two separate and distinct actions or suits in equity to cancel the lease agreement and a special proceeding in law to recover possession of the real property demised under the lease agreement which was canceled.

The next issue of concern to this Court is whether prohibition would lie to correct any alleged prejudicial acts of the respondents or to undo what has been done by the respondent judge under the circumstances of this case. We pause here to recapitulate the essential facts in the case. We observe from the records that the writ of summons was issued on December 4, 1987, based upon a judge's order issued by the co-respondent judge on the same December 4, 1987, commanding the petitioner herein to file its answer on or before December 14, 1987, and to appear and show cause why the petition should not be granted. The sheriffs returns was made on the same December 14, 1987 that the writ of summons had been served on the petitioner's general manager, Roger Maklouf. Trial was held on January 11, 1988, and the decree of cancellation issued the same January 11, 1988. On January 14, 1988, the decree was enforced and completely executed notwithstanding the requirements of the Civil Procedure Law, Rev. Code 1:44.41(2) requiring a ten-day notice before the public auction. We have on several occasions frowned upon cases being decided in lower courts with uncharacteristic haste. *Giko v. Giko*, [1973] LRSC 46; 22 LLR 155 (1973). But the petitioner herein cannot enjoy the benefit of this holding for two (2) reasons, stated as follows:

Firstly, the circumstances of the public auction were contained in the bill of information filed on January 21, 1988, but never served on the co-respondents and never argued in open court before the Chambers Justice. That bill of information is therefore a legal nullity for the reasons stated *supra.* Secondly, the decree having been fully executed on January 11, 1988, prohibition was not the proper remedy. According to Section 16.21(3) of the Civil Procedure Law, Rev. Code 1,

prohibition is a special proceeding to obtain a writ ordering the respondent judge to refrain from further pursuing a judicial action or proceeding specified therein. The writ will not lie to correct errors or irregularities committed in a trial. *Fazzah v. National Economic Committee et al.[1943] LRSC 2;* , 8 LLR 85 (1943); neither can it be used to prohibit acts already completed. Indeed where prohibition would be ineffectual, it would usually be disallowed as where the act sought to be prevented or restrained is already done. 22 R. C. L., page 8, par. *7; Fazzah Brothers v. Collins et al.[1950] LRSC 1;* , 10 LLR 261 (1950).

The remedy available to petitioner because of the circumstances of the auction, if any at all, is the application for the writ of error because petitioner, according to it, did not have its "day in court" and was not present at the time of rendition of the decree to enable it to except and announce an appeal therefrom. For if judgment has already been executed, and nothing is left for the court to do, only the writ of error, issuable within six (6) months after rendition of final judgment may be invoked to review the matter. Civil Procedure Law, Rev. Code 1: 16.21 and 16.24.

This issue and the plea of a better writ were raised by Corespondent Birahim Diagne in counts 11 and 12 of his returns to the petition but was never passed upon by our distinguished colleague. We sustain said counts 11 and 12 of said returns and submit that pursuant to the Civil Procedure Law, Rev. Code 1: 11.6(2), petitioner should have sought a voluntary discontinuance of the Prohibition proceedings after petitioner became aware that the auction took place and the decree was fully executed six (6) days before he filed the petition for prohibition. And upon obtaining said discontinuance, the application for the writ of error could have been made. We need not reiterate the law that one remedial writ cannot obtain the objects of or substitute for another.

The final issue involves the order of the Chambers Justice for the enforcement of his ruling notwithstanding the exceptions thereto by the respondents, the announcement of an appeal to this Court *en banc,* and the granting of said appeal by him. The Civil Procedure Law, Rev. Code 1: 51.20, provides:

"On announcement of an appeal by a defendant, no execution shall issue on a judgment against him nor shall any proceedings be taken for its enforcement until final judgment is rendered, except that on an appeal from an order dissolving an order granting a preliminary injunction, such preliminary injunction shall remain in force pending decision on the appeal".

This prohibition proceeding does not fall within the exception nor does it fall within other exceptions provided by law such as debt cases where the amount is not in dispute, filiation/child support proceedings or *alimony pendente lite* proceedings. The Chambers Justice therefore erred when he ordered his ruling enforced notwithstanding the announcement of an appeal to this Court *en bane.*. We believe that since the statute is very clear with respect to the duties and functions of the remedial writ of prohibition, we will be legislating if we, at this point in time, order the granting of the writ of prohibition to review the errors of a trial judge, particularly in a case like the one at bar where the trial judge had rendered his judgment and the said judgment has already been enforced.

In respect of the law of the writ of prohibition, this Court has said:

1. Writ of prohibition is a proper remedial process to restrain an inferior court from acting beyond its jurisdiction, or if it has jurisdiction from proceeding by improper rule, different from those which ought to be observed at all times. *Parker v. Worrell,* 2 LLR 525 (1925). This is not the situation in the instant case. Further, this Court has held that for every act of commission or of omission contrary to law, there is an appropriate remedy, for one injury cannot legally be applied to another. So assuming that the auction was illegal or without legal authority, prohibition is not the cure for the remedy.

2. Prohibition prevents inferior courts or tribunals from assuming jurisdiction not legally vested in them. It cannot correct errors and irregularities committed in a trial, for adequate and complete remedy therefor lies in appeal, writ of error, or certiorari. Prohibition extends only to restraining a tribunal from usurpation and cannot be used to substitute for an appeal. *Fazzah v. National Economic Committee et al.[1943] LRSC 2; ,* 8 LLR 85 (1943).

The argument of petitioner's counsel that prohibition will lie since the trial judge rendered an erroneous and prejudicial judgment adjudging the petitioner/appellee liable to the corespondent in the amount of $11,579.80 (Eleven Thousand Five Hundred Seventy-Nine Dollars and Eighty Cents) plus legal interest as damages cannot legally be awarded in a petition for cancellation of a sub-lease agreement, and that said cancellation proceeding not being a possessory action, could not warrant the issuance and service of a writ of possession, cannot be sustained under prohibition proceedings. The remedy therefore is cognizable under the provision and interpretation of the statutes referred to *supra.* Some of the other contentions of petitioner and respondents in this proceeding, which warrant the attention of the Court, are:

1. On January 14, 1988, three (3) days after the rendition of the final judgment, Co-respondent Diagne was placed in possession of his premises and the properties contained therein sold at a public auction for the purpose of recovering the costs of court and the $11,579.80 claimed by Co-respondent Diagne as unpaid property taxes and utility bills. But Sara Dunbar was never joined as a party respondent in this prohibition proceeding.

2. That it was not until the 29' day of February, A.D. 1988, that the Clerk of the Supreme Court issued and served on Co-respondent Nicholas Formusa the peremptory writ of prohibition after the judgment had been rendered fully enforced and executed in keeping with law as far back as January 14, 1988, in which the petitioner claimed that the writ of summons which emanated from the court below was never served on Roger Maklouf, the petitioner's managing director or any other director of petitioner and that a judgment had been entered against petitioner cancelling the sub-lease agreement and awarding $11,579.80 (Eleven. Thousand Five Hundred Seventy-Nine Dollars and Eighty Cents to Co-respondent Diagne.

3. That even though the writ of prohibition contained five (5) counts claiming that the writ of summons from the court below was never served on Roger Maklouf, the petitioner's managing director or any other director of petitioner and further that a judgment had been entered against petitioner cancelling the sub-lease agreement and awarding $11,579.80 to Co-respondent Diagne, said claims are not strictly laid out in the petition to warrant its granting by this Honourable Court. Hence, prohibition will not lie since the writ of summons was accordingly served on the petitioner, but it failed to appear when the case was called. Therefore, the default

judgment is valid and binding on both parties, since the court below had jurisdiction over the case and the appellee entirely.

4. That prohibition will not lie, same not being the correct remedy in the instant case. In that, the proceeding in the court below have already been finalized after the rendition of the ruling had been enforced and executed by the court below. Therefore, the Chambers Justice was without the pale and scope of the law and also erred when he ruled that there was no summons issued and/or served on the parties and we do not know how he arrived at such conclusion."

5. Co-respondent Nicholas Formosa filed a motion to intervene, returns and motion to dismiss. The motion to intervene was conceded by appellee. The motion to dismiss was argued but no ruling was made. Then the petition and the returns were assigned for argument and argued. From the ruling of the Chambers Justice declaring the judgment null and void *ab initio* and his issuing of the alternative writ of prohibition, respondents announced an appeal.

The Marshal of the Court was unprecedentedly ordered to enforce the judgment of the court instead of the customary practice and procedure of sending a mandate to the court below for the enforcement of the judgment. Further, notwithstanding the announcement and granting of the appeal, the Marshal was ordered to enforce the judgment pending the appeal, in violation of the Constitution and the Civil Procedure Law, Rev. Code 1: 51.20.

6. Prohibition will lie since the trial judge of the court below rendered his erroneous and prejudicial judgment in which he adjudged the petitioner/appellee liable to the Corespondent Diagne in the amount of $11,579.80 plus legal interest, which judgment is further void as damages cannot legally be awarded in a petition for cancellation of a sublease agreement, same not being a possessory action as would warrant the issuance and service of a writ of possession.

7. On January 20, 1988, the petitioner filed a petition for a writ of prohibition contending that no writ of summons in the entitled cause was ever served on the petitioner. Therefore, by law and right under the statute, the Civil Law Court for the Sixth Judicial Circuit had no jurisdiction over said corporation. Hence, the Civil Law Court, presided over by the co-respondent judge, His Honour Hall W. Badio, Sr., had no right to have entertained a hearing of the petition for cancellation of the sub-lease agreement between the petitioner and Co-respondent Birahim Diagne, and to have rendered a final judgment in favor of Corespondent Birahim Diagne, not only cancelling said sublease agreement, but also adjudging the petitioner liable to the co-respondent in the amount of $11,579.80 plus legal interests and ordering that the co-respondent be placed in possession of the premises and ordering that the chattels on the premises owned by the petitioner be seized and sold at a public auction to satisfy the judgment of the court.

8. Even though on January 21, 1988, the Justice presiding in Chambers sent another stay order to the co-respondent judge, His Honour Hall W. Badio, Sr. with further instructions that the parties to the cancellation proceeding be restored to *status quo ante* pending the hearing and determination of the petition for a writ of prohibition, that order was also ignored by the co-respondent judge, His Honour Hall W. Badio, Sr. Following the issuance of the alternative writ of prohibition and service upon the respondents named in the petition, one Nicholas Formusa

filed a motion to intervene. While the motion to intervene was still pending, he also filed returns and a motion to dismiss.

Separate returns were also filed by the original respondents to the petition for a writ of prohibition. In deciding the issues raised in the petition and returns, as well as the motion to dismiss the resistance thereto, the Chambers Justice ruled that the Civil Law Court did not acquire jurisdiction over the person of petitioner, respondent in the petition for cancellation of a sub-lease agreement. Indeed, besides the fact that neither of the two returns filed carried a copy of the alleged writ of summons attached, the best evidence upon which the case admits of, an inspection of the original file of the Justice presiding in Chambers revealed that there was no writ of summons emanating from the Civil Law Court which could have regularly brought the petitioner under the jurisdiction of the Civil Law Court in the cancellation proceeding.

9. The Chambers Justice, His Honour James K. Belleh, was within the pale and scope of the statute when he granted the alternative writ of prohibition since in deed and in fact the co-respondent judge had grossly erred when he rendered his final judgment on the same day of the purported trial, awarded damages against petitioner in the cancellation proceeding, and ordered the assets of the petitioner sold at public auction in satisfaction of the judgment, contrary to the statute controlling. Hence, prohibition will lie, especially so since the trial judge did not have any authority and/or jurisdiction to award damages or to order the assets of the petitioner to be sold at public auction, all of which, being in violation of law, were null and void.

10. The petitioner had the legal capacity to come by prohibition proceeding, same being the correct remedy, especially so, that they grew out of a suit instituted by Co-respondent Birahim Diagne against the petitioner; for, assuming that the Articles of Incorporation of the petitioner were revoked by the Republic of Liberia through the Ministries of Foreign Affairs and Commerce, Industry & Transportation, Section 11.4 of the Associations Law which is applicable, provides for a winding-up period of three years which winding-up period of three years had not expired. Prohibition will therefore lie.

After a careful analysis and review of all the documents produced before us, the only issue before this Honourable Court for further consideration is whether the Chambers Justice erred when he ruled that prohibition will lie? It is this issue that governs all the other pleadings. According to the Civil Procedure Law, Rev. Code 1: 16.21(3), prohibition is a special proceeding to obtain a writ ordering the respondent to refrain from further pursuing a judicial action or proceeding as specified therein.

Moreover, this Honourable Court has held on many occasions that the purpose of prohibition is to restrain further judicial actions or proceedings specified in the writ obtained, and is not designed to review discretionary decisions on the part of a judicial officer". *Wilson v. Kandakai et al.[1973] LRSC 8;* , 21 LLR 452 (1973).

We have observed with great concern that the judgment of the co-respondent judge was rendered on the 11 day of January; A. D. 1987 and that barely three (3) days after the trial and the rendition of the mentioned judgment or ruling, the assets of the petitioner were placed on public auction. By conclusion of law and fact, the entire proceeding was finally terminated and

therefore, there was nothing left to be done by the trial judge. We have also observed from the review of the records adduced at the trial that the co-respondent judge committed other errors which could have been corrected. But the question is, can prohibition perform the function of a writ of error, appeal, or certiorari? Besides, we are of the strong opinion that this Honourable Court, being a Court of precedence, is bound to base its rulings and activities on the decisions and precedents set by our predecessors. We have at no time found the Court engaging in legislation and we have not seen or read any opinion of this Court where the remedial process of prohibition has been granted to review the errors of a trial judge after the rendition of judgment.

While we are in agreement with the legal maxim that the writ of prohibition is designed to prevent what may remain to be done as well as to undo what has illegally been done, *Ayad v. Dennis*, [1974] LRSC 42; 23 LLR 165 (1974), the Court nevertheless takes the view, regarding all of the contentions of petitioner, that where prohibition would be ineffectual, it will usually be disallowed as here the act sought to be prevented is already done, or where, if the act was performed, it would be void and could not affect the rights of the party. This is certainly true to the extent that where the proceeding in the lower court has ended, and the court has nothing further to do in pursuance or in completion of its order, or where it has dismissed the proceeding, prohibition is an ineffectual remedy. 22 R. C. L., p. 8, par. 7 (1918); *Fazzah Bros. v. ollins and Central Industrial, Ltd.[1950] LRSC 1; , 10* LLR 261 (1950).

In the instant case, there is nothing remaining to be done by the trial court, especially so when the sheriff of the Civil Law Court on the 14th day of January, A. D. 1988 declared that:

"WHEREAS on the 11th day of January, A. D. 1988 judgment was rendered by the Civil Law Court for the Sixth Judicial Circuit against the Liberian Fisheries, Inc. in the case: *Birahim Diagne, Petitioner v. Liberia Fisheries, Inc., Respondent*, petition for the cancellation of a sublease agreement entered into by and between petitioner as sub-lessor and respondent as sub-lease was cancelled and made null and void and respondent was adjudged liable to the petitioner in the total amount of $11,579.80 (Eleven Thousand Five Hundred Seventy-Nine Dollars and Eighty Cents); and

"WHEREAS on the same said 11th day of January, A. D. 1988, an inventory of the personal properties and chattels of the respondent left in the subject demised premises were taken by the sheriff for Montserrado County and a public auction conducted on the 14th day of January, A. D. 1988, at the herein demised premises; and

WHEREAS a Sara Dunbar was the highest bidder for the first (1st) Lot of items at the public auction for the amount of $14,000.00 (Fourteen Thousand Dollars),

Now, therefore, in consideration of the amount of $14,000.00 (Fourteen Thousand Dollars) paid to me the undersigned and delivered, the receipt of which is hereby acknowledged, I do hereby sell, convey, bargain and transfer to the said Sarah Dunbar all the personal properties and chattels herein below.

The items having been auctioned to the tone of $14,000.00 (Fourteen Thousand Dollars) as is indicated by the declaration of the sheriff of Montserrado County, prohibition would not lie.

Further, a writ of prohibition will not lie to prohibit acts already completed. *Coleman et al. v. Cooper et al.[1955] LRSC 7;* , 12 LLR 226 (1955).

Prohibition is a preventive rather than a corrective remedy and is designed to forestall the commission of a future act rather than to undo an act already completed. Further, prohibition is not the remedy when the writ sought is to correct errors or irregularities in such courts or tribunal when the relief then lies in appeal, writ of errors, or certiorari. *Gaiguae v. Jallah et al.[1971] LRSC 3;* , 20 LLR 163 (1971).

Application of the foregoing principles of law to the facts of this case leads to the conclusion that at the time of the filing of the petition for a writ of prohibition, the respondents had fully and completely performed and carried into effect all the acts complained of by the petitioner.

In view of these pronouncements and other legal authorities, we take the position that petitioner should have resorted to other remedies as pointed out in this opinion, which would have been most appropriate, plain, speedy and adequate than to wait until judgment of the lower court had completely been enforced and then submitted an application for a wit of prohibition. Any act now taken by this Court would in our view be ineffectual. The ruling of the Chambers Justice should therefore be and the same is reversed and the prohibition denied.

The Clerk of this Court is hereby ordered to send a mandate to the court below informing it as to the effect of this judgment. The ruling of the Chambers Justice is hereby reversed and the peremptory writ of prohibition is denied with costs against petitioner. And it is hereby so ordered.

MR. CHIEF JUSTICE GBALAZEH *dissents.*

I have refrained from appending my signature to the majority opinion in this case because I am convinced that the said majority judgment was arrived at by misinterpretation of the controlling laws regarding the writ of prohibition as are applicable to the facts and circumstances of this case. I also believe that this is a deliberate attempt on the part of the majority to close its eyes to the truth. However, here are the hard facts culled from the trial records and certified to this Court under seal for study and evaluation in accordance with the due process of law and the practice in this jurisdiction.

On the 1st day of January, 1987, the co-respondent, Birahin Diagne and the petitioner, Liberia Fisheries Incorporated, executed a sub-lease agreement pursuant to which Co-respondent Diagne sublet and demised to petitioner a building located on Jamaica Road, Monrovia, Liberia. The Liberia Fisheries was organized under Liberian law on the 23 rd day of August 1983, by Jamil S. Mohammed, Roger J. Maklouf, Dr. Aref Kasas, Ali Thorlu Banguara, Sanussi S. Dean and Patrick A. Sheriff, with Jamil S. Mohammed as the majority shareholder. On the 14th day of September, 1987, petitioner's Articles of Incorporation were revoked by the Government of the Republic of Liberia through the Ministry of Foreign Affairs. The Ministry of Commerce, Industry and Transportation also revoked the business registration certificate of the petitioner. The reasons given for the revocation are: that petitioner violated the *Liberian Maritime Law* by discharging crew on the high seas and by abandoning other crew members in the Republic of

Sierra Leone. The majority shareholders, Jamil S. Mohammed, who owned 57.5% of the total shares of petitioner, was found to have misrepresented his identity, in that the said Jamil S. Mohammed was in fact Jamil Said, a Sierra Leone National allegedly involved in subversive activities against the Government and sovereign People of the Republic of Sierra Leone.

Thereafter, the co-respondent wrote informing the petitioner of his intentions to re-possess and re-enter the demised premises, on grounds that the Articles of Incorporation of the petitioner had been revoked and its certificate of business registration withdrawn. Therefore, he said, he could not do business with a nonexisting entity. Moreover, the co-respondent's request was base on the fact that petitioner had defaulted on the terms, condition and covenants of the sublease agreement by failing to pay taxes and utility bills on the demised premises.

When the co-respondent did not hear from the petitioner, he filed a petition for the cancellation of the said sublease agreement on December 4, 1987. No answer was filed by the petitioner. Neither did the petitioner appear in court on the 11th day of January1988, when the said case was called for hearing. Under the pretext that a writ of summons was earlier served on the petitioner, and because of the alleged failure of the petitioner to appear in court on the 11th day of January, 1988, a judgment by default was entered in favor of Co-respondent Diagne. Three days after the rendition of the said default judgment, that is, on the 14th day of January, 1988, the co-respondent was placed in possession of the premises and the properties — trucks, cars, offices, equipment, etc. — contained thereon were sold at a public auction held for the purpose of recovering the costs of court and the $ 11 ,5 7 9 . 8 0 damages claimed by the co-respondent and awarded by court. That amount consisted of overdue and unpaid taxes, utility (light and water) bills plus interest.

As a result of the foregoing acts, the petitioner fled to the Chambers Justice for a writ of prohibition for the following reasons, to wit:

"That the writ of summons was never served on Roger Maklouf, appellee's (petitioner's) managing director or any other director of appellee and that the judgment had been entered against appellee cancelling the sublease agreement and awarding $11,579.80 to Co-Appellant Diagne. Appellee contends further that it never had its day in court and the judgment is invalid and void *ab initio* because the court never acquired jurisdiction over appellee. That the award of $11,579.80 plus interest is void in that damages cannot legally be awarded in cancellation proceeding. Appellee maintained that the repossession of the demised premises by Appellant Diagne upon the orders of the judge is also void because the petition for cancellation of a sub-lease agreement is not a possessory action to warrant the issuance and service of the writ of possession.

Upon receiving the petition for an alternative writ of prohibition on January 20, 1988, the Chambers Justice ordered the co-respondent judge to stay all further proceedings below in the case pending a conference with the parties. But to the contrary, this order was refused by the co-respondent judge as he proceeded to enforce the judgment against petitioner. As a result of the refusal, the petitioner herein filed a four-count bill of information informing the Chambers Justice in essence that the sheriff of said court has disposed of petitioner's assets by means of a so-called public auction on January 14, 1988, without first allowing for the statutory period of

ten (10) days notice; and therefore, the said public auction conducted by the sheriff was contrary to statute.

Based upon the said information, on the 21st day of January, 1988, the Chambers Justice again sent another stay order with further instructions that the parties to the cancellation proceeding be restored to the *status quo ante,* pending the hearing of the petition. This order was also ignored by the co-respondent judge, His Honour Hall W. Radio, Sr.

When the case was called for hearing before the Chambers Justice, both parties argued strongly maintaining their respective positions in the petition, returns, motion to dismiss and its resistance. From the contentions of the parties, the Chambers Justice ruled thus:

"That the petition for the writ of prohibition being sound in law, the same is hereby granted and the peremptory writ ordered issued. The Civil Law Court of the Sixth Judicial Circuit, Montserrado County not having acquired jurisdiction over the petitioner in the cancellation proceeding, the final judgment rendered in the said cancellation proceeding is hereby declared a legal nullity and ordered vacated and the parties in these proceedings are hereby restored to *status quo ante."*

To this ruling, exceptions were noted and appeal announced to the Full Bench of this Court sitting in its October Term, A.D. 1988.

From the study of the contentions of the parties, I have the following issues which have claimed my attention, and they are:

1. Did the trial judge, His Honour Hall W. Radio, Sr., on the 11th day of January A. D. 1988, acquire jurisdiction over the petitioner herein, respondent in the cancellation proceeding?

2. Whether or not prohibition will lie when it can be shown that the trial judge proceeded by wrong rules to arrive at a judicial conclusion?

3. Whether or not after the purported final judgment on the said 11th day of January, A. D. 1988, there was anything statutorily left to be done by the court to bring the matter to a judicious conclusion?

In an attempt to address myself to the burning issues raised herein and to state my reasons for disagreeing with the majority opinion, I shall commence with the first issue which reads: Did the trial judge, His Honour Hall W. Badio, Sr., on the 11th day of January A. D. 1988, acquire jurisdiction over the petitioner herein, respondent in the cancellation proceedings? The answer is a big NO.

The Civil Procedure Law, Rev. Code 1: 3.3, provides as follows:

"After proper service of summons a court may exercise personal jurisdiction over a person in the following actions: (a) to annul a marriage or for divorce, if the marital status is subject to

adjudication in Liberian courts; (b) affecting the possession of, interest in, or title to, real or personal property within Liberia..."

Moreover, this Court held in the case *Williams v. Horton and Bull*, 13 LI,R 444 (1960) that: "It is mandatory that a defendant be given notice of the nature of the action." In spite of the statutory provision and the case law quoted *supra*, the records in the instant case showed that no summons was served on the petitioner, as respondent in the trial court. This means that the petitioner was never given notice or legally brought under the jurisdiction of the trial court as required by the statute. Therefore, whatever judgment was entered against the said defendant is a legal nullity, and void.

In further looking at the issue of personal jurisdiction, we find in the Civil Procedure Law, Rev. Code 1: 3.42, the following provision: "The person serving the process personally shall make returns as to service thereof to the court promptly and in any event within the time during which the person served must appear..." From a careful perusal of the entire records in the case at bar, there are no returns to the writ of summons by the sheriff who allegedly served the summons on the petitioner. Notwithstanding, a judgment by default was rendered against the petitioner. As a result of the repeated disregard of known law, as stated *supra*, I am constrained to disagree with the majority; particularly when my learned colleagues completely ignored the gross violations of our statutes by the trial court and maintained that prohibition will not lie merely because, in their view, the petition for the writ of prohibition was filed late. I maintain that such a void judgment should not be confirmed.

Concerning issue number two, i.e., whether or not prohibition will lie when it can be shown that the trial judge proceeded by wrong rules, and in my judicial opinion, I believe that prohibition will certainly lie because this Court, being a court of precedents, has held in several earlier opinions that:

"A writ of prohibition is the proper remedial process to restrain an inferior court from taking action in a case beyond its jurisdiction; or having jurisdiction i he court has attempted to proceed by rules different from those which ought to be observed at all times." *Parker v. Worrell*, 2 LLR 525 (1925).

This Court has also said:

"A writ of prohibition not only prevents whatever remains to be done by the court against which the writ is directed, but gives complete relief by undoing what has been done." *Fazzah Brothers v. Collins and Central Industries, Ltd*, *[1950] LRSC 1*; *10* LLR 261 (1950).

This Court has further said:

"The writ of prohibition is designed to prevent what remains to be done as well as undo what has illegally been done." *Ayad v. Dennis et al.*, 23 LLR165 (1974).

This Court has held additionally that:

"Prohibition is a proper remedy not only to prohibit the doing of an unlawful act by a lower court, but also for undoing what has already been unlawfully done under authority of the court." *Boye v. Nelson et al.[1978] LRSC 33; ,* 27 LLR 174 (1978).

In the instant case, there is no evidence that the petitioner was ever brought under the jurisdiction of the trial court. Yet, the trial court judge disobeyed the orders of the Chambers Justice outrightly and proceeded to enforce the void judgment against petitioner. Furthermore, a review of the records showed that the application for default judgment was made on the 1 1 day of January A. D. 1988, when the summons was allegedly issued, and that the judgment was rendered on that day despite the fact that the case was not an ejectment action. The trial judge nevertheless proceeded to cancel the sublease contract and at the same time put the co-respondent in possession of the subleased property. I have on the basis of the foregoing concluded that the issue of property is involved and that therefore the trial judge ought to have observed the constitutional provision which guarantees to each citizen the right to the acquisition, protection and defense of property. Additionally, the trial judge should have taken note of the earlier holding of this Court which stated that:

"Where a defendant in an action of ejectment is returned summoned, but failed or refused to appear, the plaintiff is not thereby, as in other cases immediately entitled to judgment by default. The statutes also provide that there shall be placed upon the property, the subject of the action, copies of the summons and re-summons as further assurance that the defendant or defendants will have due notice of the pending case." *Karnga v. Williams et al.[1949] LRSC 9; ,* 10 LLR 114 (1949).

Furthermore, the Civil Procedure Law, Rev. Code 1: 42.6, clearly states that "On an application for judgment by default, the applicant shall file proof of service of the summons and complaint..."

Contrary to those precedents and statutes, there is no showing in the records before us that the applicant for default judgment herein had shown the proof of service, or that the trial judge observe all the necessary steps in order to grant petitioner sufficient time to protect and defend its interest, which act is contrary to established rules and the statutes of this Republic. Another point which has forced me not to append my signature to the majority opinion is the fact that the default judgment was rendered on the 11th day of January, A. D. 1988, and the so-called public auction was carried out on the 14thday of January, A. D. 1988, three (3) days after the rendition of the default judgment. The so-called public auction was conducted in clear violation or the statute controlling auction. The statute provides: "A printed notice of the time and place of the sale shall be posted at least ten (10) days before the sale in three (3) public places in the town or city in which the sale is to be held..." Civil Procedure Law, Rev. Code 1: 2.37.

Even more serious is that the records do not show that there was any bill of costs issued, taxed, served and returns made thereto. How then did the court reach the conclusion that the judgment debtor was unable to satisfy the judgment? Moreover, who identified the petitioner's properties that were sold at public auction? The records further show that the judgment sought to be satisfied by means of the purported public auction carried out was $11,537.80. The proceeds from the so-called public auction was about $14,000.00. There is nowhere in the entire records

where it has been shown that the trial court proceeded in keeping with the Civil Procedure Law, Rev. Code 1: 44.44, which provides that:

"After deduction and payment of fees and expenses, the sheriff making a sale pursuant to an execution or order shall distribute the proceeds *pro rata*to the judgment creditors who have delivered executions against the judgment debtor to the sheriff before the sale, which executions have not been returned... *Any excess shall be paid over to the judgment debtor."* (Emphasis mine).

The question now is, where is the excess of about $2,420.20? Has it been paid over to the judgment debtor or is it still in the possession of the court? Again, from a careful perusal of the entire records, there is no bill of costs and there is no evidence of a writ of execution ever being issued, served and returned served by the ministerial officer who allegedly carried out the execution. In the absence of all of these documentary evidences, the majority still maintained that there is nothing left to be done by the lower court, and that therefore prohibition will not lie. Given the foregoing irregularities I do not see myself under any condition agreeing with the majority, and I strongly maintain that there are still a whole lot of things which remain to be done.

Consequently, because of these violations of known rules and laws mentioned *supra,* I have further declined to agree with the majority, but especially in view of the following earlier holding of this Court:

"Though generally a writ of prohibition will only issue before judgment to stay proceedings, the rule needs not apply where judgment has been taken by default or jurisdiction is lacking upon the face of the record. "A writ of prohibition will issue in an ejectment action where judgment has been taken by default, when the defendant has not been properly served in the action and jurisdiction over him, was consequently lacking in the lower court." *Koroma et al. v. Parker Paint Company Inc.[1974] LRSC 33; ,* 23 LLR 133 (1974).

This Court also held in the case *Dweh v. Findley et al.[1964] LRSC 23; ,* 15 LLR 638 (1964), that: "Where there is no statute or precedent to support an act of an inferior court, prohibition will lie if it can be shown that such an act adversely affects the rights of the petitioning party. Although prohibition is usually used as a remedy where tribunal has unwarrantedly assumed or exceeded its jurisdiction, it will also lie where a tribunal has proceeded by rules contrary to, or different from those which regularly obtain in the disposition of such cases." Further to the case at bar, it is clear and convincing that the trial judge did not observe any of the regular rules that ought to have been observed. Admittedly, the records showed that the petitioner was never statutorily brought under the jurisdiction of the court. Therefore, I am of the considered opinion that prohibition will lie to undo that which has already been done illegally.

Even though the majority has argued and maintained that prohibition will not lie because the petitioner waited until all the necessary steps were completed, and therefore nothing was left to be done which could have been prohibited, I opine that the late making of the application for prohibition is not a sufficient ground for us to close our eyes to these glaring violations of the established rules and precedents set by this Court, as by so doing we will certainly be creating a

judicial waterloo where, in spite of all irregularities, people will cling to one technical point and thereby convince us to dismiss an entire action.

The next issue which has constrained me from appending my signature to the majority opinion is the attitude adopted by the majority to completely ignore the behavior of His Honour Hall W. Badio, Sr., the trial judge. The records reveal that the trial judge was ordered on two occasions not to enforce the judgment and to stop all further proceedings into the case at bar, but despite these mandates, the said trial judge refused and proceeded. Yet, the majority is saying that the trial judge should go unpunished in spite of the gross insubordination shown to the Chambers Justice. What a paradox! This Court is under the constitutional duty to "make rules of courts for the purpose of regulating the practice, procedures and manner by which cases shall be commenced and heard before it and all other subordinate courts..." Referring to Article 75 of the 1986 Constitution of Liberia, in spelling out the duties and responsibilities of judges, this Court, in another case, held:

"The judge of a court is not merely an officer, but he is also elevated to a dignity. As such, he is dedicated and consecrated to the adjudication of the rights of litigants, and hence, must avoid any course of conduct which could cause his impartiality to be questioned."

Moreover, this Court has in like manner 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 potent means of unifying the practice." *Richards v. McGill and McGill-Hilton*, [1937] LRSC 24; 6 LLR 81 (1937).

These basic duties and responsibilities having been violated, I insist and maintain that the said Judge Badio should not go unpunished. Furthermore, I maintain that if we encourage such attitude from judges of inferior courts, we would help expose the dignity, authority and respect of this Honourable Court to public ridicule.

Another salient and most important issue which the majority completely ignored is the failure of the petitioner, as lessee, to pay utility bills and government taxes being used as grounds for the institution of cancellation proceeding against the petitioner corporation. According to Article 11 of the sublease agreement, "the parties hereto agree that upon default by the sub-lessee in the payment of the rent, the sub-lessor shall have the right to reenter and repossess said premises..."

The sub-lessor would have only had a cause of action against the defendant provided the said defendant had defaulted in the payment of his rent, and not for utility bills and government taxes.

The only legal entities which had a cause of action against the petitioner were the Government of Liberia for taxes; the Liberia Electricity Corporation for light bills; and the Liberia Water and Sewer Corporation for water and sewer bills. The sub-lessor had no such similar authority, because the sub-lessee had paid and honored his rental obligations on the 9th day of January, 1987, as per the sublease agreement.

Moreover, it has been commonly held that one who goes to equity must go with clean hands. Contrary to this, prior to the expiration of the period paid for by the sub-lessee, the sub-lessor instituted cancellation proceeding against the sub-lessee in order to re-enter and re-possess the said leased premises; while at the same time the advance rental paid by the sub-lessee was still in the possession of the sub-lessor. The trial judge, without taking judicial notice of the holdings in the case *Ware v. Republic,* [1935] LRSC 31; 5 LLR 50 (1935), proceeded to grant the cancellation and to allow the sub-lessor to reenter and repossess the leased premises.

Because of the foregoing facts and circumstances, I am in total disagreement with the majority and have therefore filed this dissent, maintaining that the ruling of the Chambers Justice should have been affirmed with the modification that the case commences anew with the service of the writ of summons.

Pongay v Obey et al [1982] LRSC 9; 29 LLR 500 (1982) (4 February 1982)

SACKALLAH PONGAY, Petitioner, v. **HIS HONOUR A. W. OBEY,** Assigned Circuit Judge presiding over the Tenth Judicial Circuit, Lofa County, and **HARLIE KORLUBAH**, Respondents.

APPEAL FROM A RULING OF THE JUSTICE IN CHAMBERS DENYING ISSUANCE OF THE WRIT OF CERTIORARI.

Heard: November 1981. Decided: February 4, 1982.

1. The right of a party to apply for certiorari is limited to the review of an interlocutory ruling; that right terminates as soon as the trial court gives final judgment.

2. The finality of a judgment may depend on the text of the judgment itself.

3. Where a trial judge decides issues joined, gives a command and awaits its execution, it is a final judgment except the party against whose interest the order operates seeks another appropriate legal remedy to stay the judgment.

Co-respondent Harlie Korlubah sued Petitioner Sackallah Porgy in the magisterial court of Kolahum in an action of summary proceeding to recover possession of real property and obtained judgement against the said petitioner. Petitioner, thereupon, announced an appeal to the Tenth Judicial Circuit Court, Lofa County. The assigned judge presiding over the Tenth Judicial Circuit Court dismissed the appeal, following a hearing. Petitioner did not except to the ruling or announce an appeal from the said ruling. Petitioner later filed petition for the writ of certiorari.

The Justice in Chambers issued the alternative writ, but denied the issuance of the peremptory writ, following a hearing. Petitioner appealed to the Supreme Court en bane. The Court found that the ruling of the trial judge was a final judgment and not an interlocutory ruling and therefore held that certiorari would not lie to review a final judgment. Accordingly, the Court affirmed the ruling of the Justice in Chambers.

Robert G.W Azango appeared for the petitioner/appellant.

J Emmanuel Berry appeared for the respondents/appellees.

MR. JUSTICE MABANDE delivered the opinion of the Court.

The **land**, subject of this case, was originally owned by Oldman Meamah of Ndoliloe, Kissi Chiefdom, Kolahun District of Lofa County. After the death of Meamah, a dispute arose between Tengbeh Sowwinor, son of Meamah and Chief Sackallah Pongay who claimed that Mamas sold the **land** to him. Chief Sackallah Pongay is nephew of Meamah.

In November 1967, a type of class action, entitled an action of tribal bush dispute, was instituted by Tengbeh Sowwinor, Plaintiff, against Chief Pongay in the court of Paramount Chief Tamba Taylor. After regular trial according to the local tribal trial procedure, there was evidence that Chief Ponca bought the **land** from Meamah. Paramount Chief Tamba Taylor therefore ruled that defendant Chief Pongay was entitled to the disputed **land**. Plaintiff did not appeal; he paid the costs. In spite of the unappealed judgment, Harlie Korlubah, another son of Meamah filed in the magisterial court, Kolahun District, Lofa County, an action of summary ejectment against the same defendant, Chief Sackallah Pongay.

The magisterial court tried the case again and ruled against defendant Pongay, whose son Kamgba announced an appeal for and on behalf of him, to the Tenth Judicial Circuit Court, Lofa County. The assigned judge presiding over the Tenth Judicial Circuit Court assigned the case, heard it and dismissed the appeal. Petitioner Pongay who did not except to or announce an appeal from the decision later petitioned for a writ of certiorari. The writ was issued, heard and ruled against him; hence, this appeal to the Court en bane.

The main issue before this Court is to determine whether a writ of certiorari would lie when a court of record dismisses a case involving a party present in court and orders execution of the judgment?

Petitioner’s counsel argued that any judgment which has not been finally executed is an interlocutory ruling.

Respondents' counsel contended that a judgment terminating the points in issue joined by and between the adversary parties is a final judgment of that court; certiorari does not lie for a review of such a judgment or ruling.

Each of the four special proceedings has a limited scope of application. The writ of one special proceeding is not intended by law to be used by any imaginative analogy to perform the functions of the other.

According to petitioner's contention, every unappealed ruling or judgment is interlocutory until it is finally executed. To so broadly hold would mean that even the opinions of this Court are interlocutory until the mandates are finally executed.

In the case M*aritime Transport Operators, GMBH v. Koroma et al.[1976] LRSC 77;* , 25 LLR 371 (1976), this Court held that certiorari proceedings can be heard only during the pendency of an action before a court or a judge.

In the case *Republic v. Weafuah*, [1964] LRSC 47; 16 LLR 122, 129 (1964) this Court held that "the corrective competence of a writ of certiorari ends with the determination of the case out of which it grew". The efficacy of the writ of certiorari terminates by the adjudication of a case out which it may grow. In the case before us the legal foundation for the petition for certiorari did not exist at the time the petition was filed. The controversy had been finally adjudicated and execution of judgment ordered and issued fourteen (14) days before the filing of the petition.

Every man is entitled to take full advantage of the law in defense of his rights but if he fails to do so, the law gives no protection to him who abuses his own rights. Where a trial court gives a judgment and a command tending to relinquish any further determination of that controversy, the judgment is final and the party affected is entitled to appeal if he is present or applies for a writ of error only if he was absent and the command had not been fully executed. Certiorari cannot lie to do the work of other writs. The right of a party to apply for certiorari terminates as soon as the court gives judgment that ends the right of the parties to litigate before it. Such a judgment puts a stop to the duty of that court to hear the case any longer.

The finality of a judgment may depend on the text of the judgment itself. Where a trial judge decides issues joined gives a command and awaits its execution, it is a final judgment, except the party against whose interest the order operates seeks another appropriate legal remedy to stay the judgment. *Cole-Larston v. Thompson*, [1971] LRSC 41; 20 LLR 339 (1971).

In the case, *Liberian Bank for Development and Investment v. Holder*, [1981] LRSC 30; 29 LLR 310 (1981), this Court held: "The finality of a judgment rests on two (2) media of judicial consideration. In any case over which the court has jurisdiction its judgment from which no appeal is announced is final". In the present suit, the trial judge ruled dismissing the appeal, rendered judgment for respondent and ordered execution, thus terminating the case.

Petitioner's counsel still strenuously argued that where a judgment rendered by a court has not been finally executed, a party may legally apply for certiorari because, he argued, the judgment becomes interlocutory until it is finally executed. The records indicate that the counsel is apparently unfair to his client and not honestly handling the case but merely filed the petition to delay justice. We have every reason to believe that the counsel involved was fully aware of and thoroughly knew the purposes and limitations of each of the four basic special proceedings but

he filed the petition purposely to also mislead this Court. It is the historic duty of courts to exercise punitive measures on a counsel who pursue unmeritorious actions.

In the case *OAC v. Sambola and the Board of General Appeals*, [1981] LRSC 5; 29 LLR 75 (1981), this Court held: "Where a lawyer has failed to professionally and expertly handle the case of his client, it is only ethical and honest on his part to admit his faults and to advise his client accordingly, and not to induce or encourage him to defend a groundless cause with the hope to blame the judiciary for the outcome.

As no appeal was announced to the dismissal of the case while the adverse parties in interest were present, we hold that the ruling by the trial judge was a final judgment. We therefore affirm the ruling of the Chambers Justice holding that the ruling of the trial judge in dismissing the appeal of appellant, now petitioner in these proceedings, was final and not interlocutory. Under our Civil Procedure Law, Rev. Code 1, the writ of certiorari may lie only where the decision sought to be reviewed is interlocutory. Since the judgment was final, certiorari cannot lie. We therefore affirm the ruling of the Chambers Justice and hereby order the alternative writ to be quashed with costs against the petitioner.

The Clerk of this Court is therefore ordered to send a mandate to the judge presiding in the trial court to resume jurisdiction over this matter and enforce this judgment. And it is so ordered.

Ruling affirmed; certiorari denied

Smallwood v Korla [1973] LRSC 35; 22 LLR 54 (1973) (26 April 1973)

KAMALA STEPHEN KAIFA KORLA and RICHARD F. D. SMALLWOOD, Appellants, v. MAMADEE KORLA AND KIMO KORLA, Appellees.
APPEAL FROM THE CIRCUIT
COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued March 26, 1973. Decided April 26, 1973.

1. All issues of law raised in
the pleadings must first be disposed of by the
trial court before it considers the issues of fact.

An action for cancellation of
a deed executed by one appellant to the other was brought by appellees, who alleged they were owners, as well, of the unpartitioned
property conveyed. Legal contentions were advanced by both sides in their pleadings, including the issue of proper pleading in confession
and avoidance. Nonetheless, the trial court ruled that no issues of law had been presented and that the case was to proceed to trial
on the issues of fact, at which trial a final decree was rendered cancelling the deed. An appeal was taken from the judgment entered

against respondents. At the time of argument of the appeal, counsel for appellees conceded on the record that issues of law had been raised in the pleadings. He then requested the case be remanded. The Supreme Court commented on the obviousness of the issues of law raised in the pleadings and, therefore, reversed the judgment and remanded the case to be tried de novo. Appellant Richard F. D. Smallwood, pro se. Corespondent did not appear in the case. J. Dossen Richards for appellees. MR. JUSTICE HORACE delivered the opinion of the Court.

On December 3, 1970, appellees, petitioners in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, brought an action against appellants, respondents in the court below, to cancel a deed executed by corespondent Kamala Stephen Kaif a Korla to co-respondent R. F. D. Smallwood, which petitioners alleged was illegally executed because the property in question is jointly owned by petitioners and co-respondent Kamala Stephen Kaif a Korla, and has not been partitioned. Respondents were duly summoned on December 3, 1970, and on December 14, 1970, co-respondent R. F. D. Smallwood filed an answer consisting of four counts, setting forth mainly that (1) the petitioner had stated no legal ground for cancellation of his deed, which had been duly probated and registered according to law without objections; (2) that fraud, duress, and undue advantage not being evident on the face of the complaint, cancellation could not lie, especially so since nineteen years had elapsed since his acquisition of the property and petitioners had not protested until he instituted ejectment proceedings to recover his property, which indicated that they had not come into equity with clean hands; and (3) that it is a settled principle of law that where two or more parties own a parcel of land which can be easily apportioned, if one of the parties sells a portion thereof, at the time of apportionment the portion already sold may be deducted and placed against his share. Corespondent Kamala Stephen Kaif a Korla neither appeared nor answered. On December 24, Pro, petitioners filed a nine-count reply countering the points raised in the answer of corespondent Smallwood, stating, inter alia, ( ) that the answer was badly pleaded because under the principle of confession and avoidance, the factual issues averred in the complaint should have been admitted before setting up the plea in bar contained in count one of the answer; (2) that the averment in the answer with respect to ab-

sence of fraud had no basis in fact, because co-respondent Smallwood, who was counsel for petitioners, knew that the land was procured for petitioners and co-respondent Kamala Stephen Kaif a Korla jointly, and, therefore, it was Smallwood who was attempting to fraudulently dispossess petitioners of

their property; (3) that no survey was made of the property, because in an attempt to survey it the surveyor was stopped for the reason that the Sandee Bush (a secret cultural female society) was meeting; and (4) denying the legal correctness of the principle advanced in the answer with respect to the apportionment of land jointly owned by several persons, when one of the joint owners has unilaterally disposed of a portion of said land. Before the issues of law raised in the pleadings could be disposed of, Smallwood filed a motion to dismiss the action, which was resisted by petitioners. Since we are not determining this case upon the basis of all the issues involved, we do not think it necessary to go into details of the motion and resistance. On May 19, 1971, Judge Frederick K. Tulay, presiding over the March 1971 Term of the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, passed on the motion to dismiss, which he denied, and on the same day disposed of the issues of law involved in the pleadings, stating, inter alia: "In going through the pleadings, we discovered that there are not issues of law involved and for this reason, this court rules that the trial of this case must be held on factual issues raised in the petition, the answer and such factual issues raised in the reply which were not raised in the petition." The issues of law having been disposed of as indicated above, trial was held during the June 1971 Term of the Civil Law Court, Judge William 0. Kun presiding by assignment, who rendered a final decree on August 6, 1971, cancelling the deed executed by co-respondent

Kamala Stephen Kaif a Korla to co-respondent R. F. D. Smallwood. It is from the final decree that this case is properly before us on appeal on a six-count bill of exceptions. It should be remarked here that in the court below petitioners were represented by the late counsellor John Stewart, whose unfortunate and greatly regretted death made it necessary for petitioners to procure other eminent counsel in the person of counsellor J. Dossen Richards to represent them here. Counsellor R. F. D. Smallwood represented his own interest both in the court below and before us. In arguing before this Court, counsellor Smallwood particularly stressed counts one, two, and three of his bill of exceptions, dealing with the point of the judge improperly passing over the issues of law in the court below. When counsellor Richards commenced his argument after a few questions from the bench, by permission of the Court he made a statement for the record. "Counsellor Richards; after due consideration, feels that there were some issues of law raised in the pleadings that the court should have, under the law and practice, specifically passed upon and decided ; and therefore count 3 of his brief in which he contended there were no issues of law raised in the pleadings is hereby withdrawn; and that he respectfully requests that this case be remanded for retrial with instructions that the lower court resume jurisdiction and hear and pass upon the issues of law raised in the pleadings." To this laudable position of counsel for petitioners, counsellor Smallwood, of course, interposed no objections. It is our view that Judge Tulay committed reversible error when he ruled that no

issues of law were raised in the pleadings. We wonder how he could have arrived at such a conclusion when petitioners in their reply averred that under the principle of confession and avoidance, Smallwood should have admitted the factual issues

in the complaint before setting up a plea in bar, to mention just one of the issues of law raised in the pleadings. This Court has in a long line of opinions held that issues of law must be decided before issues of fact. All questions of law raised in pleadings must first be disposed of by the trial court. Wolo v. Wolo, [1942] LRSC 10; 8 LLR 36 (1942). It is a fundamental rule of law, as well as of pleading and practice, that issue must be joined before a cause can be legally tried, and it is an equally basic rule of law that all issues of law must first be disposed of by the court before considering issues of fact. Johns v. Witherspoon, [1944] LRSC 32; 8 LLR 462 (190) ; Reeves v. Knowlden, LLR 199 (1952) ; Johns v. Johns, II LLR 312 (1952) ; Togai v. Johnson, [1954] LRSC 36; 12 LLR 176 (1954) ; Johnson v. Dorsla, 13 LLR 378 (1959). From the foregoing, we do not see how we can go into the questions of fact which are contained in the complaint and subsequent pleadings. As the case at present stands we cannot do otherwise than reverse the judgment of the court below, with instructions that the trial court resume jurisdiction and try the case de novo, commencing by properly disposing of the issues of law and progressing from that point to final adjudication of the issues joined. Costs to abide final determination of the case. It is so ordered. Reversed and remanded.

Bei et al v Ginger et al [1967] LRSC 7; 18 LLR 53 (1967) (16 June 1967)

SANDO BEI,

et al.,

Appellants, v. MOSES GINGER, et al., Appellees.

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

Argued April 25, 1967. Decided June 16, 1967. 1. All parties to an action are entitled to the fair and impartial deliberations of the jury deciding the issues. 2. The verdict of a jury has been prejudicially influenced when the trial judge orders it to retire for further deliberation after having announced its verdict in favor of one of the parties.

After the jury had returned
to court with its verdict, which was handed to the trial judge, it was
ordered back to further deliberate. Moreover, it was evident
that erasures had been made in the place reserved on the slip of paper for
the prevailing party. The plaintiff appealed from the
judgment of the court. Judgment reversed, case remanded.
MacDonald Krakue Perry for appelles.

for appellants.

MacDonald M.

MR.
JUSTICE WARDSWORTH

delivered the opinion of

the Court. At the institution of these ejectment proceedings in the Sixth
Judicial
Circuit Court for Montserrado County, plaintiffs, now appellants, in their
complaint averred that they were owners of a certain tract
of land situated, lying and being on the motor road in the Settlement of
Caldwell, Montserrado County, Republic of Liberia, in the
authentic records of Settlement Seven (portion), which contained 3o acres of
land and no more. Based upon the aforesaid complaint
and their written direction, a writ of summons was issued and served upon the
defen53

dant-appellees,
whereupon the said appellees filed their formal appearance according to law
within statutory time and filed their answer denying
the allegations as contained in plaintiff's complaint. Countering defendant's
answer, plaintiffs filed their reply, and with this
reply the pleadings rested on April 19, 1966. Hon. G. W. Azango, presiding by
assignment, handed down his ruling on the law issues
involved in the pleadings and thereafter ordered the said case to trial on
the issues as contained in plaintiffs' complaint and reply,
indicating counts 1, 2, 3, and 4 of the answer and counts 3, 5, and 6 of the
reply, respectively, as the issues to be determined.
During the same term of the Circuit Court, Sixth Judicial Circuit,
Montserrado County, that is to say the March 1955 Term of the
above-mentioned court, the case was taken up, heard, and determined; the
verdict of the jury in this case was rendered in favor of
the defendants on May 4, 1966, to which the plaintiffs took exceptions,
filing a motion for a new trial, which was denied ; whereupon
the trial judge rendered final judgment in the said case on May 31, 1966, to
which plaintiffs excepted and prayed an appeal to the
Court of last resort for review and final determination. Appellants, having
conformed to the statutory provisions controlling the
jurisdictional steps to be taken in perfecting appeals to this Court, have
come forward with said appeal based upon an approved bill
of exceptions containing three counts. We deemed count one of said bill of
exceptions worthy of consideration, which we quote hereunder,

word for word, as follows : 4t 1. Because plaintiffs say, that the empaneled jury having arrived in open court with their verdict,
the clerk of court was ordered to read said verdict, the aforesaid clerk paused after reading 'in favor of the plaintiffs,' remaining
silent when plaintiffs' counsel asked him to read what he had. The court, observing the clerk's attitude, said, 'Let me see what
you have,'

which conduct of the court was performed in the presence of the jury itself, and the foreman
of the jury · was then and there ordered by the court to return to their room of deliberation for the second time. Arriving in court
the verdict read, 'In favor of the defendants,' to which plaintiffs then and there excepted." We observe that this count was not
approved by the trial judge, and we find nothing in the record in this case supporting the allegation as contained in the said count one of the bill of exceptions under review; reverting,
however, to the original verdict of the jury, it is discovered that there were several erasures apparent on the face of said original
verdict of the jury in this case, especially where the word "plaintiffs" was obliterated and the word "defendants" inserted immediately
thereunder. It is a clear proof that the original verdict of the jury was tampered with. In Potter v. Stevenson, 1 L.L.R. 53 (1871) , this Court held, inter alia, that: "First, this court therefore decides that it was an error in the court below in sending
the jury back, in the case William Stevenson, administrator of the estate of W. H. Hill v. E. A. Potter, to reconsider their verdict
to lessen the damages by them awarded. If the judge thought the damages too great or too little, he should have granted a new trial."
We hereby deprecate the act of the trial judge in sending back the jury to their room of deliberation to make changes in their verdict,
thereby causing, or influencing, their said verdict in favor of the defendants. The position of the judge in all matters should be
cold neutrality and he should not discharge his duty in such a way as to prejudice either party, each of whom is entitled to the
benefits of an impartial trial. Therefore, in view of the foregoing, the final judgment in these proceedings is hereby reversed,
and the case remanded to be heard on its merits at the next ensuing term

of the Circuit Court, Sixth
Judicial Circuit, Montserrado County, costs to abide final determination. And it is hereby so ordered. Reversed and remanded.

Williams et al v Smith et al [1982] LRSC 84; 30 LLR 788 (1982) (27 October 1982)

RULINGS IN CHAMBERS

HARRY T. WILLIAMS et al., by and thru THE MINISTER OF JUSTICE, Petitioners, *v.* **FRED V. B. SMITH et al.,** purported Trustees of the BASSA BROTHERHOOD INDUSTRIAL AND BENEFIT SOCIETY, Respondents.

QUO WARRANTO PROCEEDINGS

Decided October 27, 1982

1. The jurisdiction of the Supreme Court to hear and determine quo warranto proceedings as conferred by statute does not deter a party from exercising his rights to request for jury trial.
2. Any party to quo warranto proceedings may demand a jury trial in writing at any time after the commencement of the action and not later than ten days after the service of pleadings. Failure to serve and file such demand constitutes a waiver, unless such demand has been served by another party.
3. A quo warrantors is a special proceeding which shall be instituted by the filing of a petition by the Attorney General (Minister of Justice), with a Justice of the Supreme Court, requesting the issuance of a writ of quo warranto, and a final decision by the Supreme Court Justice in a proceeding in quo warranto may be appealed to the Supreme Court *en banc*. The appeal shall be heard and determined immediately, in or out of term time. Civil Procedure Law, Rev. Code 1:16.32 and 16.37.
4. The right to a jury trial as declared by the Organic Law of this country or as given by statutes, shall be preserved inviolate. Any party may demand a trial by jury of any issue triable of right by a jury (as in these quo warranto proceedings) by serving upon the other parties a demand therefore in writing, at any time after the commencement of the action and not later than ten days after the service of pleadings or an amendment of pleading directed to such issue. Such demand may be endorsed upon a pleading of a party.
5. A party may not withdraw a demand for a jury trial without the consent of all other parties.
6. The failure of a party to serve a demand for trial by jury of an issue as prescribed by law, and to file it as required, constitutes a waiver by him of trial by jury of such issues, unless such a demand has been served by another party. Civil Procedure Law, Rev. Code 1: 22.1.

These quo warranto proceedings were instituted by the Ministry of Justice on information given by Harry T. Williams and others (the relators), who claim to be the legitimate officers and

trustees of the Bassa Brotherhood Industrial and Benefit Society, against the respondents, who it is alleged, had been expelled from the Society, but are exercising the authority and functions of the officers and members of the Board of Trustee of the Society, and attempting to administer the property of the Society, without any authority granted them, thereby usurping the trusteeship of the Society.

The respondents, who also claim to be the legitimate officers and trustees of the said Society, filed their returns, in which they denied that the relators are the legitimate officers and members of the Board of Trustees of the Bassa Brotherhood Industrial and Benefit Society. They also challenged the jurisdiction of the Supreme Court over quo warranto proceedings, contending that the Supreme Court sits without a jury, and that quo warranto is triable by jury. Respondents also contend that relators are barred by the statute of limitations, they having not questioned the authority of the respondents since 1964 when the ejectment action was instituted by them against the late D. R. Horton and judgment rendered in their favor, writ of possession issued, and respondents placed in possession of the real property by Judge Roderick N. Lewis in 1969.

The Justice in Chambers held that the Supreme Court has jurisdiction over quo warranto proceedings, and that the exercise of this jurisdiction, does not conflict with respondents' constitutional and statutory right to a jury trial, in that, any party to quo warranto proceedings, may demand a jury trial in writing at any time after the commencement of the action and not later than ten days after service of pleading(s). The Court held that respon-dents not having made a demand for jury trial under the circumstances, the same was considered waived.

With respect to the issues of the statute of limitations and the question as to whom of the contending parties are the legitimate officers and trustees of the Bassa Brotherhood Industrial and Benefit Society, the Justice in Chambers took note of an earlier opinion of the full bench in which the legitimacy of the officers and trustees of the Society had not been determined, when it ordered the eviction of one of the contending factions and placing the other contending faction in possession of the property of the Bassa Brotherhood Industrial and Benefit Society. The Justice in Cambers also noted that during its October 1981 Term, the Full Bench had delivered another opinion, this time, in a bill of information proceeding between the same parties, in which the Court stated that it could not determine the legitimacy of the contending parties in an ejectment action, but suggested that quo warranto should be the most appropriate form of action to be instituted.

In view of these two previous opinions of the Full Bench, the Justice in Chambers opined that because of the fact that the legitimacy of the officers and trustees of the Society had not been determined when the Full Bench ordered the eviction of one of the contending factions and

placed the other contending faction in possession of the property of the Bassa Brotherhood Industrial and Benefit Society, it is only the Full Bench that could hear and decide the legitimacy of the rightful successors of the first officers and board of trustees of the Society between the two factions; for, any ruling of a single Justice presiding in Chambers may tend to overrule the opinion of the Full Bench, especially if there is evidence justifying the Justice's conclusion in favor of the relators. On the other hand, the Justice continued, ordering the eviction of one of the contending factions and placing the other faction in possession of the property of the Society, which. seems to have necessitated the institution of these proceedings, the possibility exists for the Chambers Justice to be influenced by this opinion; hence, he may not decide the issue according to the dictate of his own conscience.

Accordingly, the Justice in Chambers ruled referring the case to the Full Bench and ordered the Clerk of Court to docket same for hearing.

S. Raymond Horace appeared for relators/petitioners. *M. Fahnbulleh Jones* and *J. Emmanuel R. Berry* appeared for respondents.

SMITH, J., presiding in chambers.

In the old English practice, "quo warranto" is defined as a writ in the nature of a writ of right for the king against him who claimed or usurped any office, franchise or liberty, to inquire by what authority he supported his claim in order to determine the right. It lies also in case of non-user, or long neglect of a franchise, or misuse or abuse of it; being a writ commanding the respondent to show by what warrant he exercised such a franchise, having never had any grant of it, or having forfeited it by neglect or abuse.

Quo warranto is an extraordinary writ, prerogative in nature, addressed to preventing a continued exercise of authority unlawfully asserted. It is intended to prevent the exercise of powers that are not conferred by law, and is not ordinarily available to regulate the manner of exercising such powers. For reliance, see BLACK’S LAW DICTIONARY 1417 (4th ed).

Our own statute law defines quo warranto as a special proceeding which may be instituted on any of the following grounds:

"(a) Against a person who usurps, intrudes into, or unlawfully holds or exercises within the Republic a franchise or public office or an office in a domestic corporation.

"(b) Against a public officer or officer of a corporation who has done or permitted an act to be done which by law works a forfeiture of his office.

"(c) Against one or more persons who act as a corporation within the Republic of Liberia without being duly incorporated, or exercises within the Republic any corporate rights, privileges, or franchises not granted to it by law; or

"(d) Against a foreign corporation which exercises within the Republic any corporate rights, privileges, or franchises not granted to it by law." For reliance, Civil Procedure Law, Rev. Code 1: 16.31.

As I have gathered from the records in the quo warranto proceeding before us, the relators herein are one faction of the Bassa Brotherhood Industrial and Benefit Society, a Christian missionary organization whose membership is mainly comprised of the Bassa Tribe, who claimed and have alleged in their petition in substance that they are the legitimate officers and trustees of the Society, and that the respondents herein, who had been expelled from the Society, are exercising the authority and functions of officers and Board of Trustee of the Society, and attempting to administer the property thereof without any authority granted them, thereby usurping the trusteeship of the Society. They prayed the Court to have the respondents appear by these proceedings to show cause why they should not be declared usurpers of the offices of the Society they purportedly hold, and to have them ousted and unconditionally removed from functioning in said offices.

The respondents, who are also discovered to be another faction of the Society, claiming to be the legitimate officers and trustees of the said Society, filed their returns, and besides denying the legitimate officers and members of the board of trustees of the Bassa Brotherhood Industrial and Benefit Society, raised in their said returns the following legal issues:

1. That our statute law extant having provided for a jury trial in quo warranto proceeding as a matter of right, the Supreme Court, which sits without jury, has no jurisdiction over the quo warranto proceeding.
2. That the relators are barred by the statute of limitations, they having not questioned the authority of the respondents since 1964 when the ejectment action was instituted by them against the late D. R. Horton, and judgment rendered in their favor, writ of possession issued and respondents placed in possession of the real property by Judge Roderick N. Lewis in 1969.

In the meantime, I would prefer to table the main issue, that is, the legitimate officers and board of trustees of the Society in succession to the original officers and incorporators or trustees of the Society. I do so for reason which will be explained later, and will now proceed to dispose of the other issues.

According to our statute law under special proceedings, a quo warranto is a special proceeding which shall be instituted by the filing of a petition by the Attorney General (Minister of Justice), with a Justice of the Supreme Court, requesting the issuance of a writ of quo warranto, and a final decision by the Supreme Court Justice in a proceeding in quo warranto may be appealed to the Supreme Court *en banc*. The appeal shall be heard and determined immediately, in or out of term time. *Ibid*., 1:16.32 and 16.37.

From the statute cited hereinabove, it is clear that the statute law of Liberia gives the Supreme Court jurisdiction to hear and decide quo warranto proceedings. Respondents in their contention seem to rely on the Civil Procedure Statute, *Ibid.,* 1: 16.35, which reads as follows:

"A proceeding brought as prescribed in this sub-chapter (meaning quo warranto) is triable of right by a jury."

In my opinion, this provision of the statute creates no conflict; the right to trial by jury of the proceeding does not *ipso facto* oust the Supreme Court of jurisdiction to hear and determine quo warranto proceeding as conferred upon it by the statutes, nor will the jurisdiction of the Supreme Court to hear and decide quo warranto proceedings bar a party thereto from exercising his right to request for jury trial in order to present and establish factual issues raised by the parties. The law of this country is not silent as to how parties may exercise their rights to trial by jury.

The right to a jury trial as declared by the Organic Law of this country or as given by statutes, shall be preserved inviolate. Any party may demand a trial by jury of any issue triable of right by a jury (as in these quo warranto proceedings) 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 pleadings or an amendment of pleading directed to such issue. Such demand may be endorsed upon a pleading of a party. A party may not withdraw a demand for trial by jury without the consent of all other parties. The failure of a party to serve a demand for trial by jury of an issue as prescribed by law, and to file it as required, constitutes a waiver by him of trial by jury of such issues, unless such a demand has been served by another party. *Ibid.*, 1:22.1.

In this case, the proceeding commenced by the filing of the petition on the 23rd day of September, 1982, and having been served on the 30th of September 1982, according to the Marshal's returns, respondents filed their returns on October 3, 1982, attacking the jurisdiction of the Court without the filing of a written demand for jury trial or requesting it in their returns in the exercise of such a right under the statute, except the contention that this Court lacks jurisdiction to hear and determine the quo warranto proceedings, it not having a jury. Respondents not having made such a demand as the law requires, they can only enjoy waiver and nothing more. Count one of the returns is, therefore, overruled.

As to the other issue, that relators are barred by statute of limitations to bring these proceedings at this time, I am not inclined to pass upon this issue because this Court, sitting en banc during the October 1981 Term, suggested in its opinion delivered on the 5th day of February, 1962, in determining the bill of information proceeding instituted by the respondents against the relators in these quo warranto proceedings as respondents, and I quote Mr. Justice Yangbe, speaking for the Court, when he said on page 6 of that opinion: "Further, judging from the opinion cited *supra* and the argument of counsel for respondents, the question as to who are the legitimate members or officers of the Bassa Brotherhood Industrial and Benefit Society is not salient, procedurally, as such issue cannot be legally adjudicated in ejectment or information proceeding; we, therefore, suggest the writ of quo warranto as a better form of action." In view of this holding of the Full Bench, it is my considered opinion that any ruling given by a single Justice on this issue contrary to the said suggestion would be tantamount to overruling the suggestion of this Bench e*n banc* which suggestion, perhaps, has influenced the institution of these quo warranto proceedings. I have, therefore, decided to leave this legal issue to the final determination of the Full Bench, to say whether or not petitioners are barred by the statute of limitations to bring these proceedings.

Coming to the main issue, as to who are the legitimate officers and trustees of the Bassa Brotherhood Industrial and Benefit Society, it is my opinion also that for one Justice to hear and determine the question in any ruling which may be contrary to the opinion of the Full Bench as delivered during the October, A. D. 1981 Term referred to *supra*, would further be tantamount to overruling the majority opinion; furthermore, the majority opinion could influence the

conscience of a single Justice sitting in Chambers in the determination of this question. Here is a relevant portion of the opinion of the Court as delivered on the 5th day of February, 1982, which reads, as follows:

"In view of the revelations above, it is our candid opinion that A. Romeo Horton, the oldest son of and purported substitute for D. R. Horton, co-respondent, Harry T. Williams and Abraham Mason, be evicted from the ten acres of **land** and the one thousand acres of **land**, respectively, which were awarded the Society by the judgment of the trial court, and informants be immediately placed in possession thereof as property of the Bassa Brotherhood Industrial and Benefit Society in keeping with the metes and bounds of the deeds of the **land** in issue."

In that information proceeding, the Fred V. B. Smith group, was one faction of the Society contending to be the legitimate officers of the Bassa Brotherhood Industrial and Benefit Society entitled to the possession of the property and who were placed in possession of the real property of the Society under the February 5, 1982 opinion. The other faction of the Society, headed by Harry T. Williams, also contending to be the legitimate officers of the Society, was ordered evicted from the said **land** despite the fact that the legitimacy of the officers and trustees had not been decided. It appears to me, therefore, that in the event it is established that they are the legitimate officers and trustees of the Bassa Brotherhood Industrial and Benefit Society in succession to the original members, any ruling given in Chambers in favor of the relators in these proceedings, would overrule the opinion of the Full Bench, and this would be highly irregular.

In view of the fact that the Full Bench has suggested these quo warranto proceedings, and because of the fact that the legitimacy of the officers and trustees of the Society had not been determined when the Full Bench ordered the eviction of one of the contending factions and placing the other contending faction in possession of the property of the Bassa Brotherhood Industrial and Benefit Society, it is only the Full Bench that can hear and decide the legitimacy of the rightful successors of the first officers and board of trustees of the Society between the two factions; for, any ruling of a single Justice presiding in Chambers may tend to overrule the opinion of the Full Bench, especially if there is evidence justifying the Justice's conclusion in favor of the relators. On the other hand, ordering the eviction of one of the contending factions, and placing the other faction in possession of the property of the Society, which seems to have necessitated the institution of these proceedings, the possibility exists for the Chambers Justice to be influenced by this opinion; hence, he may not decide the issue according to the dictate of his own conscience. I am therefore of the opinion that this case be, and the same is hereby referred to the Full Bench for final determination.

The Clerk of this Court is, therefore, hereby directed to docket this case for the hearing of the Full Bench, and to inform the Chief Justice and the Justices of the Court accordingly. And it is hereby so ordered.

Petition deferred to the Full Bench.

TIC v MOJ et al [2004] LRSC 15; 42 LLR 174 (2004) (16 August 2004)

TROPICAL INVESTMENT CORPORATION, by and thru its authorized representative, KEIKURA B. KPOTO, Petitioner, *v.* **THE MINISTRY OF JUSTICE**, by and thru the Minister, COUNSELLOR KABINEH M. JA'NEH, THE LIBERIA NATIONAL POLICE, by and thru its Director, CHRISTIAN MASSAQUOI, and all persons acting under their authority, 1st Respondents, and C. Y. K. INC., by and thru its General Manager, MR. H. IRENE MARAB, 2nd Respondent.

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE GRANTING THE PETITION FOR A WRIT OF PROHIBITION.

Heard: April 8, 2004. Decided: August 16, 2004.

1. A trial judge cannot, on the basis of a mere letter by one who is not a party to a suit order the repossession of a parcel of **land** to such party.
2. Sheriffs and deputy sheriffs are ministerial officers of court and are to carry out orders, judgments and decrees of court, including service of processes and making of returns thereto.
3. The Ministry of Justice, which is an administrative agency, lacks the power to evict or repossess.
4. An administrative agency has only such powers as have been conferred upon it by law and it must act within the granted authority for an authorized purpose.
5. A writ of prohibition will be directed to an administrative agency or officer that is usurping jurisdiction where the agency or officer exercises power not granted by law.

6. Allegations well pleaded and not denied are deemed admitted.

7. The Ministry of Justice and Liberia National Police act illegally in evicting a person at night in contravention of the statute requiring a writ of possession in such cases.
8. Although the Ministry of justice may be authorized to assist the court in evicting a party, the time of eviction must not run contrary to the law, and any such action taken at such time is illegal and unwarranted.
9. Where the procedure adopted is illegal and unwarranted in the execution of a function, prohibition will lie.

10. Prohibition will lie to undo an act completed under a judgment.

11. Where the judgment has been enforced but was done illegally, prohibition will lie not only to prevent whatever remains to be done but also will give complete relief by undoing what has been illegally done.
12. The mere existence and availability of another remedy is not, in itself, necessarily sufficient to warrant denial of the writ of prohibition; and such other remedy must be plain, speedy and adequate in the circumstances of the particular case.

The petitioner/appellee filed a petition for a writ of prohibition seeking to restrain the respondents from interfering with the execution of a lease agreement executed between the petitioner and the Government of Liberia. The petitioner alleged that the respondents, acting by co-respondents Ministry of Justice and Liberia National Police, under the pretext of assisting in the enforcement of an order of the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, had around ten o'clock p.m. gone unto the premises of the petitioner, leased from the Government of Liberia, through the Ministry of Agriculture, and using force and violence by some two dozen armed personnel, had broken the locks and doors and thereafter prevented the petitioner from entering the said premises.
Responding to the petition, the respondents challenged the legality of lease agreement concluded between the petitioner and the Government of Liberia, noting that the agreement was not signed by the Minister of Finance and attested to by the Minister of Justice; that the agreement was executed at a time when there was an existing agreement between co-respondent C.Y.K., INC. and the Government of Liberia for the same premises; that a previous agreement between Liberia Investment Incorporated and the Government of Liberia having been cancelled by the circuit court and Liberia Investment Incorporated evicted from the premises, its owner, now acting through Tropical Investment Corporation had illegally evicted co-respondent C.Y.K., Inc. from the property and put Tropical Investment Corporation into possession thereof; and that it was on the basis of this action that Co-respondent C.Y.K., Inc. had appealed to the circuit court for its intervention and formed the basis upon which the clerk of said court had sent a letter to the co-respondents Ministry of Justice and Liberian National Police for their assistance in the enforcement of its decision in the cancellation proceedings and upon which the said co-respondents had acted. The respondents also contended that prohibition would not lie since the matter of enforcement was an executive act granted by statute rather than a judicial act.
On appeal to the full bench, the Supreme Court affirmed the ruling of the Justice in Chambers granting the petition. The Court noted that as the petitioner was not a party to the cancellation proceedings and the original eviction that had occurred, no eviction could be pursued against it based on the said suit. The Court noted that the trial court could not legally act in the manner it did based on a mere letter from co-respondent C.Y.K., INC. which, like the petitioner, was not a

party to the cancellation proceedings.
The Court opined further that even had the petitioner been a party to the said suit, the respondents had acted illegally and against the provisions of the law in proceedings to evict the petitioner from the premises and to repossess the co-respondent of the same at the hour of ten o'clock p. m. The act, the Court said, rendered the action void, noting that a court hearing should have been held and a proper judicial action taken.
The Court disagreed with the respondents that the enforcement of any court's decision was an executive function, noting that the law clearly provides for ministerial officers (including sheriffs and deputy sheriffs) to carry out the orders, judgment and decrees of the courts, and that it the assistance of the Liberia National Police was needed, the court officers should have been present with the police and make returns as to how the orders were carried out. This, the Court noted, was not done.
Finally, the Court held that prohibition will lie because an administrative agency, such as the Ministry of Justice, had usurped jurisdiction it did not have or acted without authority in evicting a party from property in dispute and repossessing another party of the same. Prohibition, the Court concluded, will lie even where the act has been completed, not only to prevent further action but also to undo what has been done illegally. Accordingly, the Court granted the petition and ordered the peremptory writ of prohibition issued against the respondents.

Gloria M. Musu Scott of Scott and Associates appeared for the petitioner. *Theophilus C. Gould* of the Ministry of Justice appeared for the 1st respondents, and *Beyan Howard* of the Legal Consultants, Inc. appeared for the 2nd respondent.

MADAM JUSTICE COLEMAN delivered the opinion of the Court.

This case is before us on appeal from the ruling of our distinguished colleague, Mr. Justice Francis S. Korkpor, Sr., presiding in Chambers during the current Term of this Honourable Court, granting a petition for a writ of prohibition.
The petitioner, now appellee before us, filed a petition for a writ of prohibition seeking to prohibit and restrain the respondents from interfering with the execution of a lease agreement petitioner has with the Government of Liberia. In a three-count petition, the petitioner stated: That on May 1, 2003, it entered into a lease agreement with the Government of Liberia, by and thru the Ministry of Agriculture, to lease the Monrovia Slaughter House, situated and lying on Somalia Drive, Monrovia, Liberia; that the succeeding Minister of Agriculture, Honorable George Karmee, confirmed and affirmed the said lease agreement; that during the weekend of January 10-12, 1st Respondents Ministry of Justice and the Liberia National Police took more than two dozens armed police officers along with UNMIL military personnel, at about 10:00 p. m. at night on petitioner's premises, and with the use of force and violence broke open the locks and doors, entered the premises and have since then prevented the petitioner from entering the said premises.

The 1st respondent, the Ministry of Justice, filed an eight-count returns denying any legal basis for granting of the petition for a writ of prohibition, and substantially contending that the lease agreement between the petitioner and the Government was not signed by the Minister of Finance and attested to by the Minister of Justice; that the said lease agreement was not valid because an agreement cannot be executed within an effective period of another agreement for the same subject matter to have force and effect in the same period; that there was a previous agreement between the Government of Liberia and Liberia Investment Incorporation (LIBINCO), represented by the Late Kerkura B. Kpoto, Sr., for the same premises, which agreement was cancelled in court, a writ of possession ordered issued and served in favor of the Government, and thereafter a lease agreement executed with 2nd respondent, C.Y.K., Inc.; and that the Sixth Judicial Circuit, Civil Law Court ordered 1st Respondent Ministry of Justice to assist in the enforcement of the judgment of that court. The 1st respondent, Ministry of Justice, therefore contended that prohibition will not lie against it for performing a duty which was directed by the court.

The 2nd respondent, C. Y. K, Inc., contended in its returns, along the same lines as 1st respondent Ministry of Justice, that in 1992 the Civil Law Court granted the petition for the cancellation of the lease agreement entered into between the Government of Liberia and LIBINCO, represented by its Managing Director, Kerkura B. Kpoto, Sr.; that as a result of a writ of possession issued by the said Civil Law Court, LIBINCO was evicted on January 20, 1994 and a new lease agreement was signed between the Government of Liberia and C. Y. K., Inc. on January 20, 1994, for a period of ten (10) years, ending on December 31, 2004; that C.Y.K., Inc. occupied the Slaughter House, subject of these proceedings, from 1994 to 1998 when the police, acting upon orders of Kerkura B. Kpoto, Sr., illegally evicted C.Y.K., Inc and put petitioner Tropical Investment Corporation in possession; and that following its illegal eviction by Hon. Kerkura B. Kpoto, Sr., 2nd respondent wrote a letter to the Civil Law Court requesting said the court to repossess it of the premises; that the clerk of the Civil Law Court then addressed a letter to the Ministry of Justice requesting the Ministry to assist the court in enforcing its judgment; that the enforcement of a judgment, being a statutory duty which can only be performed by the Executive Branch of Government, is not a judicial act, and hence, prohibition will not lie

The issues for the determination of the case by this Court are:

1. Whether the act of evicting the petitioner was carried out on order from the Civil Law Court for the 2nd respondent, the Ministry of Justice, to assist that court in evicting the petitioner?
2. Whether prohibition will lie under the fact and circumstances of this case?

In disposing of the first issue, it must be noted that the respondents in these proceedings do not deny evicting the petitioner from the premises of the Slaughter House during the weekend of January 10-12, 2004, through the use of police force. The 1st respondent's main argument, however, is that the action was based on an order sent to them by the Civil Law Court for the Ministry of Justice to assist the court and enforce the court's ruling by evicting the petitioner from the premises.

To support the contention that the petitioner was evicted in compliance with an order received from the Civil Law Court, Co-respondents Ministry of Justice and C. Y. K., Inc. annexed to their respective returns filed with this court two instruments. The first is a letter dated July 19, 1999, addressed to His Honour Yussif D. Kaba, Assigned Judge, Civil Law Court, under the signature

of Frank N. Hodge, General Manager of C. Y. K., Inc. In that letter, Mr. Hodge informed Judge Kaba that Hon. Kerkura B. Kpoto illegally evicted them from the Slaughter House in violation of the lease agreement between the Government of Liberia and C.Y.K., Inc., and requested the judge to intervene so that C.Y.K., Inc. can be put in possession of the premises.The second instrument, supposedly based on the foregoing letter to the Civil Law Court Judge, His Honour Yussif D. Kaba, the judge is said to have instructed the then Clerk of the Civil Law Court, Samuel A. Paasewe, to order the Ministry of Justice to assist the court to evict the petitioner. The purported written order of the judge, under the signature of Samuel A. Paasewe, dated July 19, 1999 is quoted hereunder verbatim.

REPUBLIC OF LIBERIA) IN THE CIVIL LAW COURT, MONTSERRADO COUNTY)
SIXTH JUDICIAL CIRCUIT COURT
SITTING IN ITS JUNE TERM, A.D.1999.
BEFORE HIS HONOUR:.YUSSIF O. KABA..ASSIGNED CIRCUIT JUDGE
Republic of Liberia, by and thru)

The Minister of Justice)
..... PETITIONER)

Versus) PETITION FOR CANCELLATION
) OF LEASE AGREEMENT
Liberia Investment Corporation)

(LIBINCO), by and thru)
Its Managing Director, Kerkura)
B. Kpoto..... RESPONDENT)
The Honorable
The Minister of Justice
The Ministry of Justice

By directive of His Honour Yussif D. Kaba, Assigned Circuit Judge, you are hereby ordered to assist the sheriff of this court in enforcing the judgment of this court against Liberian Investment Corporation (LIBINCO), represented by its Managing Director, Kerkura B. Kpoto.
GIVEN UNDER MY HAND AND SEAL OF THIS
COURT THIS 27TH DAY OF JULY, A.D. 1999
Samuel A. Paasewe
CLERK OF COURT
COURT'S SEAL"

The certified records of the Sixth Judicial Circuit, Civil Law Court, Montserrado County, revealed that on August 4, 1992, the Civil Law Court, then presided over by His Honour Alexander C. Zoe, granted the petition for cancellation of a lease agreement filed by the Republic of Liberia against LIBINCO. The records from the court below further show that LIBINCO was evicted and the Republic of Liberia was placed in possession of the premises (The

Slaughter House) on the 17th day of August 1992, in keeping with the sheriff's returns to the writ of possession issued. Thereafter, the Republic of Liberia, in 1994, entered into a lease agreement with the 2nd respondent, C. Y. K. Inc. The 2nd respondent, C. Y. K. Inc., is said to have occupied the premises until 1998 when the police, allegedly acting on the order of Kerkura B. Kpoto, evicted it from the premises.
In his ruling on the writ of prohibition filed before him, the Chambers Justice ruled as follows:

"This Court observes that co-respondent C. Y. K. Inc. was not a party to the petition for cancellation proceedings filed in 1992 by the Republic of Liberia, neither was Tropical Investment Corporation a party to said action. Furthermore, with the execution of the writ of possession placing the Republic of Liberia in possession of the Slaughter House in 1992, the matter of the cancellation was concluded with noting pending before the Civil Law Court. So we wonder what judgment was there to be enforced. Even if there were a judgment pending, could it be legally enforced against LIBINCO who was not a party to the 1992 cancellation suit? Certainly not. Therefore, we find it highly irregular that Judge Kaba could have, on the strength of a mere letter written to him by one who was not and is not a party to a suit before the Civil Law Court, ordered the eviction of a third party who was also not and is not a party to a suit before the said court. This Court has held that "no one can be concluded by a judgment rendered in a suit to which he was not a party..." *Boye v. Nelson*, [1978] LRSC 33; 27 LLR 174, Syl.1 Further, it is universally held that a judgment rendered against one person or entity cannot or may not be enforced against another who was not a party to the action. 30 AM JUR 2nd, *Judgments*, § 3."
We fully agree with the ruling of the Chambers Justice because, as seen from the records before us, the judgment of the Civil Law Court entered in the cancellation petition on August 17, 1992 had been fully executed, and as such, there was no judgment involving the Slaughter House pending before the Civil Law Court at the time C. Y. K., Inc. requested said court to repossess the 2nd respondent, C. Y. K., Inc., of the premises on the 18th day of July 1999.
It is our view that no instruction was given by the Judge to the assistant clerk of court, Samuel A. Paasewe, to write a letter requesting the Ministry of Justice to repossess C. Y. K., Inc. This is because, firstly, C. Y. K., Inc. was not a party to the petition for cancellation proceedings filed in 1992 by the Republic of Liberia and Tropical Investment Corporation was not also a party to said action. Therefore, Judge Kaba could not have, based on a mere letter allegedly written to him by one who was not a party to a suit before the Civil Law Court, ordered the repossession of the **land** by a third party who was also not a party to the said suit.
Secondly, we hold that had the judge given such instruction to the Clerk to request the Ministry of Justice to assist the 2nd respondent, C. Y. K., Inc., in repossessing the property, the judge would have written on the face of the purported letter of request sent to the court by C. Y. K., Inc., or such order would have been recorded on the minutes of court. Thirdly, we see no returns on the records of the trial court as to the manner of service of the writ of possession which, if the alleged order of evicting the petitioner had been directed by the court, would have been issued and served on petitioner before the eviction was effected. But no returns were made simply because the act of the Ministry of Justice was not sanctioned by the court. And as such, no writ of possession was issued by the court and no sheriff was present during the alleged repossession of the 2nd respondent to make returns to the writ of possession.
Our law provides that the sheriffs and deputy sheriffs shall be ministerial officers of court and they shall carry out the orders, judgments and decrees of court and they shall serve all processes

and make returns thereto. Judiciary Law, Rev. Code 17:15.12. If indeed the statement of the respondents were true, that the Civil Law Court requested the 1st respondent, the Ministry of Justice, to assist the Civil Law Court in repossessing 2nd respondent C. Y. K., Inc. of the property, then it means that the sheriff of the court, whose function it is to serve and return precepts in such a case, would have been present along with police officers from the Ministry of Justice. But this was not the case and it explains the reason why no returns were made to the alleged repossession order of the Civil Law Court Judge. Therefore, the repossession of 2nd respondent in the property by 1st respondent was illegal and wrongful.

Regarding the issue as to whether or not prohibition will lie in this case, this Court says that the Ministry of Justice, which is an administrative agency of Government, lacks power to evict or repossess. In the case *Kaba and McCromsy v. Township of Gardnersville*, [1999] LRSC 22; 39 LLR 549 (1999) Syl. 1, the Supreme Court held that an administrative agency has only such power as have been conferred upon it by law and must act within the granted authority for an authorized purpose. The Supreme Court also held in the same case that a writ of prohibition will be directed to an administrative agency or officer that is usurping jurisdiction where the agency or officer exercises the power not granted by law.

Clearly, in the case before us, the Ministry of Justice was not authorized by statute to evict or repossess and neither was such authority conferred upon it by the Civil Law Court, as we have stated earlier. But even assuming, without admitting, that the Ministry of Justice was authorized by the Civil Law Court to repossess the 2nd respondent, C. Y. K., Inc., in the property, there is evidence (which 1st Respondent Ministry of Justice did not deny) that the so-called eviction and repossession of 2nd Respondent C. Y. K., Inc. in the property took place at about 10:00 p.m. in the night. This serious allegation in the petitioner's petition for a writ of prohibition, filed before the Chambers Justice, was never denied. Our law provides that allegations well pleaded and not denied are deemed admitted. *Horton v. Horton*, [1960] LRSC 39; 14 LLR 57 (1960); *Alpha v. Tucker*, [1964] LRSC 12; 15 LLR 561 (1964). We therefore conclude that 1st respondents Ministry of Justice and the Liberia National Police illegally and forcibly evicted petitioner at night, which action is in clear contravention to our statute which requires a writ of possession in such cases to be executed between the hours of sunrise and sunset. Civil Procedure Law, Rev. Code 1: 62.23.

We hold therefore that even if the 1st respondent, Ministry of Justice, was authorized to assist the court in evicting the petitioner, as claimed by the said 1st respondent Ministry of Justice, the time of eviction was quite contrary to our law, which rendered the action illegal and unwarranted. The Supreme Court has held in numerous cases that where the procedure adopted is illegal and unwarranted, prohibition will lie.

The 2nd respondent, in its brief and argument before us, contended that prohibition cannot lie to do an act already completed, in that the judgment of 1992 in the cancellation of the lease agreement entered into by the Government of Liberia and Liberia Investment Corporation (LIBINCO), had been fully enforced. The court says that LIBINCO, represented by its Managing Director, Kerkura B. Kpoto, Sr. and Tropical Investment Corporation, represented by its Managing Director, Kerkura B. Kpoto, Jr., are separate and distinct legal entities and persons. Thus, the judgment of 1992 rendered and enforced against LIBINCO, by and thru its Managing Director, Kerkura B. Kpoto, Sr., cannot under our law be concluded and enforced against the Tropical Investment Corporation represented by its Managing Director Kerkura B. Kpoto, Jr., who was never a party to the cancellation proceedings that ousted and evicted LIBINCO in 1992. In fact, Tropical Investment Corporation was not in existence in 1992 when the cancellation

proceedings were instituted.
The argument of the 2nd respondent that prohibition will not lie to undo the act completed in the judgment of 1992 is not legally tenable, as neither 2nd respondent, C.Y.K., Inc., nor Tropical Investment Corporation was a party to the 1992 cancellation proceedings. And even if the parties were involved and the judgment had been enforceable but was done illegally, this Court has held in a long line of cases that prohibition will lie not only to prevent whatever remains to be done, but gives complete relief by undoing what has been illegally done. See *Ayad v. Dennis et al.*[1974] LRSC 42; , 23 LLR 165 (1974); *JITCO v. Jabateh et al.*[1990] LRSC 5; , 36 LLR 695, Syl. 8 (1990); *Boye v. Nelson*, [1978] LRSC 33; 27 LLR 174 (1978), Syl. 3; *Fazzah Bros. v. Collins*, [1950] LRSC 1; 10 LLR 261 (1950), Syl. 1; *Scott v. The Job Security Corporation*, [1983] LRSC 128; 31 LLR 552 (1983), Syls. 1 & 2.
The 2nd respondent also argued that prohibition cannot be resorted to when adequate and ordinary remedies are available and suggested that petitioner should have filed an action in a trial court which will determine, after a hearing, which of the lease agreement should prevail in the instant case.
Our questions to 2nd respondent are: Why did 2nd respondent not bring an action against Kerkura Kpoto, Sr. when he allegedly illegally evicted the 2nd respondent, C. Y. K., Inc., in 1998 and put Petitioner Tropical Investment Corporation in possession of the Slaughter House? And why did the 2nd respondent not bring an action against the petitioner, Tropical Investment Corporation, to determine which of the lease agreement was valid? The 2nd respondent itself did not resort to court action but rather used the strong arms of 1st respondents, using questionable documents allegedly sent from the court to evict and oust the petitioner. The next question is what adequate remedy under the facts and circumstances did petitioner have other than prohibition? The answer is prohibition was the adequate and speedy remedy available to petitioner giving the facts and circumstances enumerated in this matter. In the case *Nasser et al. v. Minister of Justice, Commissioner of Immigration*[1976] LRSC 78; , 25 LLR 382 (1976), test at 392, Mr. Justice Pierre, speaking for the Court on prohibition, said: "There is no general rule of universal application by which the adequacy or inadequacy of a remedy can be ascertained, but the question is one to be determined on the facts of each particular case, and rests, in large part, in the discretion of the court." Justice Pierre further opined that "the mere existence and availability of another remedy is not, in itself, necessarily sufficient to warrant denial of the writ of prohibition; such other remedy must be plain, speedy and adequate in the circumstances of the particular case. The question for determination is not whether the other remedy is adequate generally, but whether, in view of the precise circumstances in which the petitioner for prohibition finds himself, the other remedy is adequate in the particular instance. 63 AM JUR 2nd, *Prohibition*, § 9 (1992)."
During argument before us the 1st respondent Ministry of Justice strenuously argued that the lease agreement between the petitioner and the Ministry of Agriculture is not valid because said agreement was not signed by the Minister of Finance and attested to by the Minister of Justice, and also because there was another agreement already in force and effect for the same premises. This Court says that if the petitioner's lease agreement with the Ministry of Agriculture is not valid for any reason, and 1st respondent Ministry of Justice wants to nullify said lease agreement, 1st respondent Ministry of Justice has a remedy available at law. But such remedy does not lie in the illegal, unwarranted, unilateral, and arbitrary eviction of the petitioner without authorization of the Court. Therefore, prohibition will lie to restrain the 1st respondent Ministry of Justice from performing a judicial function without authority to do so and will also undo what

has been illegally done. And we so hold.
Wherefore, and in view of the foregoing facts and the laws controlling in the instant case, it is the ruling of this Court that the petition for a writ of prohibition be and same is hereby granted and the peremptory writ ordered issued. The Clerk of this Court is hereby ordered to issue an order and place same in the hand of the Marshall of this Court to repossess the petitioner who was illegally ousted by the 1st respondents Ministry of Justice and the Liberia National Police. Costs are ruled against 2nd Respondent C. Y. K., Inc. And it is hereby so ordered.

Petition granted.

Bracewell et al v Massaquoi et al [1942] LRSC 6; 7 LLR 390 (1942) (20 February 1942)

POHLMAN J. BRACEWELL, Sheriff of Montserrado County, and H. LAFAYETTE HARMON, Appellants, v. AL-HAJ MASSAQUOI and NATHANIEL MASSAQUOI, Administrators of the Estate of the Late MOMOLU MASSAQUOI, Appellees.
APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued February 10, 1942. Decided February 20, 1942. 1. Any party against whom a judgment or decree is rendered
by an inferior court is entitled to an appeal as of right under the statute laws of this Republic. 2. An appeal when perfected operates
as a stay of execution and the sheriff is thereby enjoined from taking any further steps under any writ of execution or otherwise.

The mortgagee * initiated a proceeding in equity in the circuit court to correct an alleged error in a lot number in a mortgage
deed. The court decreed that the number be corrected and the appellees, the administrators of the mortgagor, appealed to the Supreme
Court. After the appeal had been perfected and pending review by the Supreme Court, the trial judge heard a bill in equity for the
foreclosure of the mortgage deed, decreed it foreclosed, and issued a bill of sale. Thereafter the sheriff, appellant, having sold
the land to H. Lafayette Harmon, co-appellant, executed a deed for the corrected lot number. The Commissioner of Probate refused
to admit the sheriff's deed to probate. On appeal to the Supreme Court from the refusal to probate the corrected deed,
denial of
probate affirmed. H. Lafayette Harmon

for appellant.

4. B. Ricks

for

appellee.

MR. JUSTICE TUBMAN delivered the opinion of the

Court.
* Ed. note: This case and the related cases are defective in that there are conflicting statements as to who instituted the said proceeding in equity and in what capacity.

Almost, if not entirely, unprecedented in the annals of judicial proceedings are the attending circumstances in which this case found its genesis. It appears from the record certified from the Circuit Court of the First Judicial Circuit to this Court that a mortgage deed was executed between the Massaquois, as mortgagor and mortgagee, for a town lot Number 226, situated in the City of Monrovia; but the description of the said lot mentioned in said deed of mortgage, beside the number, describes it as a different plot of **land** from that of the number aforesaid. The mortgagee, desiring to sell his mortgage to Frank E. Tolbert, discovered, according to the allegation of him, the mortgagee, that there was a mistake in the number, and consequently a bill in equity was filed by the mortgagee praying for a definitive decree in equity to have said alleged mistake appearing in the said deed of mortgage corrected. After a hearing on the matter, His Honor the Judge of the Circuit Court aforesaid decreed that there was a mistake in the number and that same should be corrected, to which decree the administrators of the mortgagor, said mortgagor having died in the interim, excepted and prayed an appeal from said final decree to this Court for the purpose of review. His honor the trial judge aforesaid approved the bill of exceptions and appeal bond, and a transcript of the record was sent forward in harmony with the statute of appeals to this appellate tribunal for review: While the said cause was docketed up here and pending review, his honor the trial judge sat and heard a bill in equity for the foreclosure of the said deed of mortgage, decreed it foreclosed, and issued a writ of sale 1 Acting upon the authority of this, the Sheriff of Montserrado County sold said piece of **land** to H. Lafayette Harmon, who he alleged was the highest bidder and executed a certificate to this effect, which reads as follows:

"REPUBLIC OF LIBERIA MONTSERRADO COUNTY.

"CERTIFICATE OF SALE "I, Pohlman J. Bracewell, Sheriff for the County of Montserrado, do hereby certify that on the loth day of August A. D. 1940, at the Court House in the City of Monrovia at [time omitted] o'clock p.m. pursuant to the order of Court and Notice of Sale hereto annexed, I sold to H. Lafayette Harmon, he being the highest bidder, the premises lot number two hundred and seventy-two (272) on Ashmun Street, in the City of Monrovia, described in said Notice of Sale; and I therefore certify that such sale was in all respects honestly, fairly and legally conducted to the best of my knowledge

and ability and the proceeds thereof will be disposed of, as follows, to wit: "The sale price and highest bid being $1680.00 £35o.
o.o. 31.6o 6.11.8 To pay cost of court " " Sheriff's collec21.17.6 tion @ 04%
105.0o IC IC mortgage against 321.10.10 debt 1 543.40
$1680.0 0 £350. 0. 0

Balance of debt $293.40 10 Jo Attorney fee 183.68 $477- 08-- X99. 7.10. "Sgd.
POHLMAN J. BRACEWELL,
Sheriff,
Mo. C.
"MONROVIA, LIBERIA,

August

20, 1940

Certified true copy (Sgd) CARNEY JOHNSON
Clerk of Court.

"True copy of the original.
(Sgd) H. LAF. HARMON."

The sheriff thereafter executed a sheriff's deed in favor of Mr. Harmon for lot
Number 272 instead of lot Number 226 which number 272 is the number that the bill in equity pending before us prayed to have inserted
in the deed. Since the matter was still sub judice, the sheriff's sale of the lot with the number already corrected would seem to
have anticipated and to have disregarded , what decision this Court would ultimately render in the premises. Thus the trial judge
enforced his decree for the correction of the number in said case, although his said decree had been appealed from, the appeal had
been perfected, and the case had been entered on the docket of the Supreme Court and was awaiting hearing here. When the said sheriff's
deed was offered for probate, it was objected to by the administrators of the estate of the late Momolu Massaquoi, mortgagor, on
grounds that there had been no lot Number 272 mortgaged by their intestate, but that lot Number 226 had been, and that, although
the said mortgagee had prayed for the change of the number from 226 to 272, said matter had not been decided by the appellate court.
His Honor the Commissioner of Probate thereupon ruled as follows: "On inspection of the pleadings and records filed in this matter
we find a copy of the certificate from the clerk of the Supreme Court dated September 9, 1940, to the effect that respondents, now
objectors, having completed their appeal to said Court, the said appeal seems to have grown out of exceptions taken to the ruling
of the Judge of the First Judicial Circuit Court, on a petition filed by one Frank E. Tolbert for change of number in a certain mortgage
deed, from 226 to 272, said case being on appeal as aforesaid it is obvious then, that this Court cannot, and will not assume jurisdiction
of it. The Court therefore refuses to admit said deed to probate, sus-

tains count one of objections,
overrules the Motion to dismiss objections and dismisses same with cost
against respondents. AND IT IS SO ORDERED. "GIVEN officially
and in open court this 8th day of October A.D. 1940. " (Sgd) N. H. GIBSON N.
H. Gibson Commissioner of Probates, Mo. Co." To this
ruling of the Commissioner of Probate, the Sheriff of Montserrado County and
H. Lafayette Harmon excepted and sued out an appeal
to this Court. In view of certain incidental proceedings contemplated by this
Court, the Court will, in fairness to all parties concerned,
refrain from making any expression concerning the propriety of the legal
steps taken by the trial judge and the parties to the foreclosure
proceedings. Instead, the Court will now proceed to decide whether or not His
Honor the Commissioner of Probate was legally correct
in refusing to admit to probate the sheriff's deed. Any party against whom a
judgment or decree is rendered by an inferior court
is entitled to an appeal as of right, under the statute laws of this Republic
: "Every person against whom any judgment is rendered,
shall be entitled to appeal from any decision or opinion of any court, except
such court of appeals." Stat. of Liberia (Old Blue Book) 41, ch. XX, § 1, 2
Hub. 1578.
An appeal, says the statute of appeal, shall serve as a supersedeas: "An
appeal when perfected operates as a stay of execution, and
the sheriff is thereby enjoined from taking any further steps under any writ
of execution, or otherwise." i Rev. Stat. § 427. With
the foregoing statute before his eyes and in his mind, we wonder how His
Honor the Judge of the Circuit Court for the First Judicial
Circuit could have en-

forced his judgment that had been appealed from, by bill of exceptions and
appeal
bond approved by him, to the Supreme Court. Not only does the statute law
forbid it, but so also do the common laws of America and
England which have been adopted by the Legislature of Liberia as the laws of
this country when they do not conflict with our statutes.
In support thereof, we cite the following: "When an appeal with a supersedeas
or stay has been taken the jurisdiction of the trial
court is suspended as to all matters necessarily involved in the appeal.
Accordingly, pending an appeal, the lower court, as a general
rule, has no power to allow amendments of the proceedings. For example,
pending an appeal from an order denying a motion to quash
an execution, the court has no power to allow an amendment of the execution.
So, also, pending an appeal the trial court has no jurisdiction
to entertain a bill to review the judgment, nor can the trial court set aside
the order appealed from. And when a judge has directed
a stay of proceedings, and an undertaking on appeal has been executed
pursuant to his direction, the lower court has no further control
over the matter, and cannot discharge the order staying proceedings after it
has been complied with. . . ." 2 R.C.L. Appeal and Error
§ 95, at 120 (1914) . "If an appeal or writ of error does not operate by
statute as a supersedeas or stay, and no supersedeas or

stay is granted by the court or obtained by giving a statutory bond or undertaking, a judgment or decree which is final and requires no further action in the court below may be enforced by execution or otherwise notwithstanding the pendency of the appeal or writ of error, unless it is vacated thereby. But the pendency of an appeal or writ of error prevents further action by the court below in enforcement of the judgment, order, or decree appealed from, in whole

or in part, so long as the appeal or proceeding in error is undisposed of; and, although the lower court may not be deprived of jurisdiction to such an extent as to prevent it from proceeding in collateral matters, or for the preservation of the fruits of the litigation, it cannot take such action as will be, in effect, an execution of its judgment or will destroy the subject of the appeal or place the funds involved where they will be beyond the control of the ultimate judgment or decree." 3 Corpus Juris Appeal and Error § 1375, at 1263 (1915).

Nor do we think that there is any merit in the contention of appellants that the parties in the case of foreclosure were not the same as in the bill in equity for the correction of the lot number, for the correction of the lot number was the real point in issue and the suit was as much one in rem as in personam. In this case His Honor the Judge of the Circuit Court by his decree in foreclosure has changed the number of the lot in said mortgage deed from number 226 to number 272 and has ordered the property sold, and the sheriff has sold the lot Number 272 and executed a sheriff's deed therefor to H. Lafayette Harmon without waiting for the decision of this Court to say whether or not the number should be changed, thereby either affecting adversely any judgment which the appellate court might enter contrary to the final decree of the said judge or forestalling any affirmative judgment that this Court may decide to enter. In our opinion, therefore, His Honor the Commissioner of Probate acted in complete harmony with law when he refused to admit the said sheriff's deed to probate for the reasons assigned in his ruling and quoted in a former part of this opinion, and we are further of the opinion that same should be affirmed and the appellants ruled to pay all costs ; and it is hereby so ordered.

Affirmed.

Sheriff v Pearson et al [1988] LRSC 65; 35 LLR 355 (1988) (29 July 1988)

ALHAJI MOMO SHERIFF, Informant, v. **HIS HONOUR J. HENRIC PEARSON,** Assigned Circuit Judge, December A. D. 1986 Term, Sixth Judicial Circuit, Montserrado County, **HIS HONOUR NAPOLEON B. THORPE,** Assigned Circuit Judge, Sixth Judicial Circuit, Montserrado County, June Term, A. D. 1987, and **SENESSEE CAREW,** Respondents.

INFORMATION PROCEEDINGS.
Heard: July 4. 1988. Decided: July 29, 1988.

1. The returns of the ministerial officers the court is presumed correct.

2. The mere allegation that a party was placed in possession of property only contradicts the contrary evidence but does not overcome it; in order to overcome such evidence, the party making the allegation must file with the pleading a sworn statement in support of the allegation.

3. An application based upon facts in a court of record should be in writing and be supported by an affidavit.

4. Every person is entitled to take full advantage of the law in defense of his right, but the law gives no protection to him who abuses his own rights.

5. He who is silent when he should speak assents.

6. The unreasonable delay by a party in seeking redress in a cause amounts to lashes, and a judgment resulting therefrom will not be disturbed, especially where the status quo cannot be restored.

Informant filed a bill of information before the Supreme Court alleging that the trial judge had improperly carried out the mandate of the Supreme Court, in that the trial court had placed the co-respondent in possession of three lots when in fact the co-respondent had sued for only one lot and the Supreme Court judgment had covered only one lot.

The information grew out of an action of ejectment instituted against the informant by Co-respondent Senessee Carew. A verdict was returned in favor of the co-respondent and judgment was rendered thereon against the informant. On appeal, the Supreme Court affirmed the judgment in a judgment without opinion and ordered enforcement thereof by the trial court.

When the trial court placed the co-respondent in possession of the subject premises, informant file a bill of information against the lower court.

The Supreme Court denied the information, holding firstly that the sheriff's returns were presumed correct unless shown to be otherwise. The informant, the Court said, had failed to show that the returns were incorrect, except to merely allege, without proof, that the returns were incorrect, or that in fact the co-respondent had been placed in possession of more **land** than had been sued for.

The Court held secondly that the informant was guilty of lashes, in that he had waited for more than one year and two months after the execution of the Supreme Court mandate to bring the information. The Court observed that during the long period of time, the co-respondent had entered various lease agreements and had received rents for the subject parcel of **land**. The Court noted that it would be prejudicial to the co-respondent to disturb his possession and the acts taken by him in consonance with the possession because of the delay by the informant in bringing the information. The Court therefore denied the information.

H. Varney G. Sherman and M Fahnbulleh Jones appeared for the informant. James G. Bull and Pearl Bull appeared for the respondents.

MR. CHIEF JUSTICE GBALAZEH delivered the opinion of the Court.

The facts culled from the file of this case reveal that Senessee Carew brought an action of ejectment against Alhaji Momo Larmie Sheriff, informant, in the Sixth Judicial Circuit Court, Montserrado County on December 3, 1981, to have informant ejected from lot No.58 located on Randall Street, Monrovia, Liberia. Co-respondent Carew obtained a verdict in his favor, awarding him title to lot No. 58, as well as general damages in the amount of $700,000.00.

On March 10, 1986, the trial judge rendered final judgment wherein he affirmed and confirmed the verdict of the empanelled jury. To this judgment, informant excepted and announced an appealed to this Court, sitting in it October Term, 1986.

On January, 23, 1987, this Court rendered a judgment without opinion confirming the trial court's judgment, and mandated the judge presiding therein to resume jurisdiction over the case and to enforce its judgment rendered on March 10, 1986. On February 18, 1987, His Honour J. Henric Pearson, the presiding judge, executed the said mandate of the Supreme Court. Pursuant to the said execution, the presiding judge, on February 19,1987, ordered the clerk of the said court to issue a writ of possession for Lot No. 58 and to place the same in the hands of the sheriff for Montserrado County to evict the informant from the subject premises and to place Co-respondent Senessee Carew in possession thereof. The sheriff having served the writ of possession, made his official returns that he had accordingly served the writ of possession, with the aid of a public **land** surveyor. The records further show that after Co-respondent Carew had been placed in possession of his property, without any objection, and thus being so possessed, he entered into a lease agreements with several tenants for Lot for the aforementioned lot No. 58, and accordingly received rentals from them. Several attempts were thereafter belatedly made by the informant to file a bill of information but all of them were later abandoned.

However, one year and t6wo months after the trial court's execution of the Supreme Court's mandate, informant finally filed this bill of information alleging, among other things, that Judge J. Henric Pearson had failed to properly carry out the Supreme Court's mandate, in that Co-respondent Carew was placed in possession of the M.I.C. Building and premises, namely, lot Nos. 55/56 and lot No. 58, the subject of the mandate.

Informant also alleged that Judge Pearson had failed to include in his orders that the sheriff be assisted by a public **land** surveyor, as contained in Judge Hall W. Badio's original judgment of March 10, 1986. In his returns, the co-respondent denied all the allegations contained in the bill of information and accused the informant of waiting too long to bring the bill of information. From the above, there are two issues raised by the information and the returns. They are:

1. Whether or not the informant waited too long to bring this information and thereby waived his rights to bring the said action?

2. Whether or not the trial judge correctly executed the mandate of the Supreme Court ordering that court to resume jurisdiction over the case and to enforce its judgment.

We shall discuss these in the reverse order. A perusal of the records shows that the writ of possession mentioned Lot No. 58 situated on Randall Street, Monrovia, Liberia. The writ was

apparently acknowledged by the informant or his authorized representative, who affixed his at the bottom of the certified copy of the writ. The sheriff said in his returns that the corespondent was placed in possession of his property with the assistance of a surveyor in keeping with the metes a bounds as instructed by Judge Badio's judgment. Informant in no way objected and/or excepted to any of these acts in any form or manner.

According to the well settled practice in this jurisdiction, "the returns of ministerial officers of the court are presumed correct. Perry and Azango v. Ammons, [1965] LRSC 11; 16 LLR 268 (1965); Eitner v. Sawyer, [1977] LRSC 47; 26 LLR 247 (1977). Informant's mere allegation that the co-respondent was placed in possession of Lot Nos. 55/56 only contradicts the contrary evidence, but does nothing to overcome it. In order to do so, informant needed to file, along with this information, a sworn statement in support of the said allegation.

This Court has held repeatedly that an application based upon facts in a court of record should be in writing and be supported by an affidavit. Yah River Logging Corporation v. United Logging Corporation, [1975] LRSC 4; 24 LLR 57 (1975). Hence, the presumption arising out of the sheriffs returns to the effect that the writ of possession was properly executed stands.

On the last issue, we say that informant is guilty of laches and waiver, for he supinely and conveniently waited one year and two months, during which time the co-respondent's position had changed substantially by the latter's leasing of lot No. 58 to tenants whose rental payments he had. already received before the filing of this information. "Every man is entitled to take full advantage of the law in defense of his right, but if he fails to do so, the law gives no protection to him who abuses his rights." Pongay v. Obey Korlubah, [1982] LRSC 9; 29 LLR 500 (1981).

It has also been held that he who is silent when he should speak assents. Clarke et al. v. Lewis[1929] LRSC 5; , 3 LLR 95 (1929); Vietor & Huber v. Thatcher, 2 LLR 80 (1912). The unreasonable delay of a party in seeking redress in a cause amounts to laches, and the judgment rendered under those circumstances will not be disturbed, especially where the status quo cannot be restored.

According to public policy, there must be an end to litigation. This Court has held that to require courts to consider and reconsider cases at the will of litigants would deprive the courts that stability which is necessary in the administration of justice. We believe that to grant this information will be prejudicial to Co-respondent Carew's interest. We therefore dismiss this information on the ground of unjustified delay.

This holding is in consonance with the basic principle of our law that a court may refuse equitable relief to a plaintiff who has unjustifiably delayed bringing an action to the detriment of a defendant although the period within which the action must be commenced. .. has not yet expired. Civil Procedure Law, Rev. Code 1: 2.4.

Wherefore and in view of the foregoing, the information is hereby denied. The Clerk of this Court is hereby ordered to send a mandate to the lower court to resume jurisdiction over the case and give effect to this judgment. Costs are disallowed. And it is hereby so ordered.

Information denied.

Dukuly v Jackson [1982] LRSC 46; 30 LLR 154 (1982) (8 July 1982)

ANSUMANA DUKULY, Appellant, *v.* **MORRIS JACKSON**, Appellee.

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

Heard: March 22, 1982. Decided: July 8, 1982.

1. A motion is an application to a court by one of the parties in a case in order to obtain some rule or order of court incidental to the main relief sought in the action or proceeding in which the motion is brought. It may be written or made verbally. However, when it is made on some matter of fact, it must be supported by an affidavit that such facts are true.

2. Because the use of motions in the legal practice is to prevent what would work injustice to either one of the contending parties in a suit, courts of justice ought to use great caution when receiving them.

3. A motion is not a pleading, in so far as it relates to the rigid rules of pleadings. However, the rule governing amendments as contemplated by the statute regulating forms of pleadings applies to motions also.

4. A pleading is considered withdrawn when the former of such pleading is abandoned, costs incurred paid, and an amended pleading substituted therefor.

5. All admissions made by a party are conclusive evidence against such party.

6. An amended pleading, which is complete in itself but does not refer to the former pleading as being part of it, supersedes the former pleading which is considered abandoned by the amendment. The former pleading is therefore no longer a part of the pleader's averments against his adversary.

7. When a motion is withdrawn and substituted with an amended motion, the court loses jurisdiction over the first motion.

8. Property used as security to a bond is considered to be sufficiently described to establish a lien on the bond where the description includes then lot number, the number of the house built on the lot, the name of the owner, the quantity of **land** and its value. This is especially the case where the community in which the property is located is a small community.

Appellant, against whom an action of damages had been instituted in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, by the appellee, had appealed to the Supreme Court from a verdict and judgment finding him liable to the appellee in the amount of $20,000.00. When the case was called for hearing by the Supreme Court, the Court was informed that a motion had been filed by the appellee to dismiss the appeal. An inspection of the records revealed that two motions were filed, an original motion, which was withdrawn and an amended motion filed in its stead. However, notwithstanding the withdrawal of the first motion and its replacement with an amended motion, the appellee requested the Court to make a determination on the former motion. The Court rejected the request, noting that once the motion had been withdrawn and replaced with an amended motion, the former motion ceased to be before the Court and that as such, the Court had lost jurisdiction over the said motion. The Court therefore held that it would hear and determined the amended motion and the resistance thereto.

In the amended motion, the appellee requested that the Court dismiss the appellant's appeal for reason that (a) the statement of property valuation attached to the bond referred to the bond as criminal appearance bond rather than a civil appeal bond; (b) that there was an attempt to change the wording of the bond from criminal appearance bond to civil appeal bond; (c) that taxes on the property had been paid through government rental deductions; and (d) that appellant had failed to place the required $3.00 revenue stamp on the resistance to the first motion.

The Court rejected all of the contentions of the appellee. The Court held, as to the contention that the appellant had failed to place the required $3.00 revenue stamp on the resistance to the original motion, that as the motion had been withdrawn, the contention no longer had any relevance to the determination of the amended motion. With regards to the contention that the statement of property valuation had on its face criminal appearance bond rather than civil appeal bond, the Court held that this allegation was not supported by the statement which showed otherwise than as alleged by the appellee.

Lastly, the Court rejected the appellee's contention that the property offered as security to the appeal bond was not sufficiently described to establish a lien on the bond. The Court held that the community in which the property was located was a small community and that the in such a case a description rendered the property easily identifiable. The Court recited the criteria which, when complied with, will be considered sufficient identification of the property. They included the lot number, the number of the house located on the property, the name of the owner of the property, the quantity of the **land** and the value of the **land**. Once these elements are met, the Court said, the property will be sufficiently described as to create a lien on the bond. The Court therefore denied the motion and ordered the case redocketed for hearing on the merits.

John A. Dennis appeared for appellant. *Wade Appleton* appeared for appellee.

MR. CHIEF JUSTICE GBALAZEH delivered the opinion of the Court.

Our review of the records of this case revealed that on the 5th of September, A. D. 1977, one Morris Jackson of the City of Monrovia, instituted an action of damages in the People's Sixth Judicial Circuit Court, Montserrado County, during its December Term, A. D. 1977, against one Ansumana Dukuly, also of the City of Monrovia.

Trial was had and a final judgment rendered on the 30th day of April, A. D. 1981, in which a sum of $20,000.00 was awarded in favour of plaintiff. The defendant excepted to the judgment and announced an appeal to this Court for review.

At the call of the case for hearing, the appellee gave notice of the filing of a motion to dismiss appellant's appeal. An inspect-ion of the case file disclosed that two motions to dismiss appellant's appeal had already been filed and resisted. The first motion was filed on October 15, 1981. In that motion, the appellee contended that the description of the property in the affidavit of sureties was insufficient to identify the subject property, and that the said accompanying affidavit of sureties to the bond omitted the metes and bounds of the property. Against the said motion, appellant filed a resistance challenging the legal sufficiency of the motion to dismiss appellant’s appeal, maintaining that his appeal bond had met the legal requirements prescribed by the statute. Appellant also contended that appellee's failure to except to appellant’s sureties within three days was tantamount to a waiver.

Subsequently, on the 4th of December, 1981, appellee filed an amended motion to dismiss appellant's appeal, stating as the grounds therefor that the property valuation certificate accompanying the bond referred to criminal appearance bond and not civil appeal bond; that there was an apparent attempt to change the words on the face of the bond from "criminal appearance bond" to "civil appeal bond"; that the taxes of said property had been paid through government rental deduction; and lastly, that the resistance to the first motion did not carry the required revenue stamp of $3.00.

Again, the appellant filed an amended resistance, contending that the first motion had not been withdrawn; that no costs had been paid as a condition precedent to the filing of an amended motion; and that as the appellee had filed to except to the sureties within three days of the service of the bond, as required by law, he had suffered a waiver. Appellant therefore prayed that the amended motion be denied.

Observing the two motions in the file, the Court asked appellee which one he desired to pursue for the consideration of the Court. He replied that he preferred that the Court considers the former. To this answer, appellant interposed objections on the ground that the former motion, filed on October 15, 1981, had been constructively withdrawn by appellee's own voluntary acts. The appellee argued, on the other hand, that the statutory requirements had not been complied with by appellee, in that there was no formal withdrawal of the first motion, and hence the

motion still stood. From the foregoing, the issues which this Court has been called upon to decide are:

1. Whether or not a motion is a pleading and when is it considered withdrawn?

2. Whether or not the overt acts of a party litigant infer compliance with the statutory requirements without a formal process?

3. Whether or not the appellant's appeal bond filed in this case is in anyway defective?

4. Whether or not the service by the appellant of the notice of the completion of the appeal on the appellee, and the filing thereof with the court within a period of less than sixty days, precluded the appellee from taking exceptions to the insufficiency of the surety on the bond?
In practice, a motion is an application to a court by one of the parties in a case in order to obtain some rule or order of court. It may be written but is often made verbally. When it is made on some matter of fact, it must be supported by an affidavit that such facts are true. *Davis v. Crow*, 2 LLR 309 (1918).

In the case *Harmon v. W. D. Woodin and Company, Limited*, 2 LLR 334 (1918), Mr. Justice Johnson, speaking for the Court, said that the use and object of motions in legal practice is to prevent what would work injustice to either one of the contending parties in a suit; therefore, courts of justice ought to use great caution when receiving them.

Our Civil Procedure Law, Rev. Code 1: 10.1, dealing with motions, provides:

"*1. Motion defined; when and how made*. A motion is a application for an order granting relief incidental to the main relief sought in the action or proceeding in which the motion is brought. A written motion is made when a notice of the motion is served. Unless made during a hearing or trial, a motion shall be in writing and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

2. Application by motion. Every application to the court for an order shall be made by motion." A long chain of judicial authorities in this jurisdiction clearly shows that a motion is not a pleading in so far as it does not relate to the rigid rules of pleadings. However, the rule governing amendments as contemplated by the statute regulating forms of pleadings applies to motions also. *Lamco J. V. Operating Company v. Verdier*, [1977] LRSC 1; 25 LLR 394 (1977).

In this jurisdiction, a pleading is considered withdrawn when the former of such pleading is abandoned, costs incurred paid and, and an amended pleading substituted therefor. Civil Procedure Law, Rev. Code 1: 9.10(1).

The appellant having raised before this Bench the issue of the non-filing of a notice of withdrawal as well as non-payment of cost, the Court is thus bound to pass upon same. During the arguments, counsel for appellant produced a letter addressed to him by counsel for appellee remitting a sum of ten dollars as return costs for withdrawing the former motion, thereby admitting before this Bench that payment of costs had been made by appellee and accepted by appellant after the attack on the motion. This Court acknowledges that imperative upon the refiling of pleadings, as with motions, is the payment of costs incurred by the respondent or appellant.

This was reportedly done by the remittance by appellee of a ten dollar note and the acceptance thereof by the appellant. Applying the legal principle that all admissions by a party are conclusive evidence against such party, the Court holds that the incurred costs in the case at bar was paid by appellee. Vide: Civil Procedure Law, Rev. Code 1: 25.8, under Admissions.

An amended pleading which is complete in itself, but does not refer to the former pleading as being part of it, supersedes the former pleading. The original pleading is thus considered abandoned by the amendment and it, therefore is no longer a part of the pleader's averments against his adversary. Accordingly, appellee cannot avail himself of the allegations contained in the superseded pleading. 41 AM. JUR, *Pleading*, 313.

Conclusively appearing from the records of this case is a substituted motion which, by its very title, "amended motion", amounts to withdrawal of the former motion. This Court, being competent to recognize and determine its own jurisdiction, even if not raised, is of the considered opinion that it has lost jurisdiction over the first motion filed on October 15, 1981. *King v. Williams*, 2 LLR 523 (1925). We therefore hold that appellee did comply with the provisions of

the statute on withdrawals and amendments. Vide: Civil Procedure Law, Rev. Code 1: 9.10(a) and (b).

Under the foregoing circumstances, we further hold that as a result of the overt acts of appellee in substituting the original motion with an amended motion and the payment of the costs thereof, the appellee is thus barred from submitting for the consideration of this Court his first motion, as he is now ruled to have rested his defense on his amended motion, filed on December 4, 1981. Therefore, the request of appellee's counsel to hear appellee's first motion, filed on October 15, 1981, which was withdrawn and substituted, cannot by any legal means be considered by this Court.

The amended motion to dismiss the appeal, which is now before us for consideration, indeed raises different issues from those contained in the former and abandoned motion. It states succinctly that: (1) the statement of property valuation accompanying the bond from the Ministry of Finance in favour of the appellant referred to a criminal appearance bond; (2) there was an attempt on the part of the appellant to change the words from "criminal appearance bond" to "civil appeal bond"; (3) the taxes for the property so offered as security had been paid through government rental deductions; and (4) the appellant had failed to place the required $3.00 revenue stamp on his resistance to appellee's first motion.

The amended resistance seriously attacked the amended motion on the grounds that: (1) the first motion had not been withdrawn; (2) no costs had been paid as condition precedent to the filing of an amended motion; (3) appellant's appeal bond met all the requirements of law; and (4) even granting that the bond was defective, the appellee having failed to except to the sureties within three days after the service of a notice of the filing of the appeal bond, as required by law, his inaction constituted a waiver, and he is deemed to have suffered from laches.

Appellant's contentions, relative to the non-filing of the notice of withdrawal and the non-payment of costs incurred, having been considered in this opinion, *supra,* we deem it a needless exercise to go through the same again. As to appellee's contention that the statement of property valuation in favour of appellant referred to a "criminal appearance bond" instead of a "civil appeal bond", the records certified to this Court failed to disclose this fact, as evidenced by the said statement of property valuation which appellee made profert of as his exhibit "B", and which we herein quote:

"REPUBLIC OF LIBERIA
MINISTRY OF FINANCE
MONROVIA, LIBERIA
REAL ESTATE TAX DIVISION

DATE : MAY 19, 1981
TO WHOM IT MAY CONCERN
STATEMENT OF PROPERTY VALUATION
LOT NO: LOCATION: VALUATION ACREAGE : PROPERTY OWNER
21-B HOUSE #64 , $72,100.00 1/8 SEKOU TRAWALEY
CAMP JOHNSON ROAD, MON. LIBERIA
(SEVENTY TWO THOUSAND ONE HUNDRED DOLLARS)
THIS IS TO CERTIFY THAT THE REAL ESTATE OF THE ABOVE-MENTIONED PERSON IS REGISTERED AND VALUED AS SHOWN ABOVE: TAXES THEREON ARE PAID THROUGH GOVERNMENT RENT REDUCTION.
APPEAL BOND IN FAVOUR OF: ANSUMANA DUKULY
CERTIFIED BY: (Signature not clear)
ACCOUNTS SUPERVISOR
SIGNED: (Signature not clear)
DIRECTOR R. E. T. D.
APPROVED: (Signature not clear) 5/19/ 81/
ASSISTANT MINISTER FOR REVENUES

In the absence of a showing that the statement of property valuation from the Finance Ministry in favour of appellant, annexed to his appeal bond, valued at $72,100.00, was made for appellant in a criminal case and not a civil one, this Court refuses to accept mere allegations without any support from the records.

As to appellee's contention that the appellant had failed to adhere to the stamp act by not carrying the required revenue stamp on the face of the resistance to the first motion, the Court says that this contention has no relevance since appellee's first motion was withdrawn and an amended motion filed and resisted, and this Court had lost jurisdiction over the former motion and resistance.

The appellant maintained that his appeal bond had met the legal requirements since, according to the statement of property valuation from the Ministry of Finance and the affidavit of sureties attached to the appeal bond, lot Number 21-B, located on Camp Johnson road, Monrovia, Liberia, with house #64, valued at $72,100.00, containing one-eighth of an acre, which was pledged as security in favour of appellant for his appeal bond which was in the penal sum of $30,000.00, was owned by Sekou Trawaley of Monrovia. In our opinion, the property offered by

appellant as security to his appeal bond was described sufficiently in the affidavit of sureties to identify the particular piece of property, since, by extrinsic factors, it can be made practically certain what property it was intended to cover.

The Court concedes appellant's contention on this point and says that in such a designated small community like "Camp Johnson Road", within the City of Monrovia, the description of any real property offered as security which includes the lot number, the number of the house built thereon, the name of the owner, the quantity of the **land** and the value thereof, does indeed sufficiently identify the property to clearly establish the lien on the bond. Civil Procedure Law, Rev. Code 1: 63.2(2) and (3).

Finally, counsel for appellant contended and maintained that even granting that the appellant's appeal bond was defective, which it is not, the appellee had waived the right to question the same and suffered the legal principle of laches. Appellant's counsel argued that the final judgment having been rendered on the 30th of April, 1981, the appeal bond filed on May 5, 1981 and the notice of the completion of the appeal, according to the sheriff's returns, served on both counsel on the 26th of May 1981, just twenty-six days after the rendition of final judgment, the appellee should have excepted to the alleged insufficiency of the bond within three days before the trial court lost jurisdiction over the subject matter. Civil Procedure Law, Rev. Code 1: 63.5 (1) and (2), read as follows:

"Exception to surety; allowance where no exception taken.

1. Exception. A party may except to the sufficiency of a surety by written notice of exceptions served upon the adverse party within three days after receipt of the notice of filing of the bond. Exceptions deemed by the court to have been taken unnecessarily, or for vexation or delay, may, upon notice, be set aside, with costs.

2. Allowance where no exception taken. Where no exception to sureties is taken within three days or where exceptions taken are set aside, the bond is allowed."

Taking recourse to the records in the instant case, we find that the appeal bond was dated May 2, 1981, and approved on May 2, 1981, by His Honour Jesse Banks, Jr., then presiding by assignment over the Circuit Court for the Sixth Judicial Circuit, Montserrado County, for the amount of $30,000.00. The notice of the completion of the appeal was issued May 25, 1981, served and returned served by the sheriff on the 26th day of May, 1981, notifying the appellee

that the appellant had perfected his appeal to this Honourable Court from the judgment of His Honour Jesse Banks, Jr. There is no notice of the filing of the appeal bond served on the appellee, as contended by appellant's counsel.

Under the laws extant in this jurisdiction, the service and filing of the notice of the completion of the appeal ends the last stage of the taking of the jurisdictional steps in the lower court. Vide: Civil Procedure Law, Rev. Code 1: 51.4(d). It is also the service and filling of the notice of the completion of the appeal that confers jurisdiction on the appellate court over the case. Vide: *Witherspoon v. Clarke*, [1960] LRSC 60; 14 LLR 194 (1960).

The law with respect to exceptions to a surety can be employed only so long as the trial court still has jurisdiction over the matter and not after all of the steps for completion of an appeal have been taken. Vide: *Jarboe v. Jarboe*, [1975] LRSC 30; 24 LLR 352 (1975).

We have referred to the laws applicable and have taken recourse to the records for our satisfaction as to the grounds for appellee's motion to dismiss. Regrettably, we have been unable to discover any fault with the appellant's affidavit of sureties or the statement of property valuation from the Ministry of Finance, as contended by appellee's counsel.
In view of the above, the appellee's amended motion to dismiss appellant's appeal is hereby denied for the want of legal and factual support or merit. The Clerk of this Court is hereby ordered to have this case redocketed for hearing on the merits. Costs are to abide final determination. And it is hereby so ordered.
Motion denied.

Shamag Corp. v Turkett [1965] LRSC 10; 16 LLR 257 (1965) (15 January 1965)

SHAMAG CORPORATION by its Agent, THOMAS P. CORONIS, Project Manager, Appellant, v. ANDREW J. TURKETT, Appellee.
APPEAL FROM THE CIRCUIT
COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued November 23, 24, 1964. Decided January 15, 1965. 1. 2. Special damages must be proved with particularity. In an action for damages for trespass to real property and conversion of personal property, the
trial court committed error in excluding questions on cross-examination of the plaintiff directed to establishing the ownership and
value of the personal property.

On appeal, a judgment on a verdict of a jury in an action for damages for trespass to real property
and conversion of personal property was reversed.
C. L. Simpson, Jr. and G. P. Conger-Thompson for appellant. Anthony Barclay and
T. Gyibli Collins for

appellee.
MR. JUSTICE MITCHELL

delivered the opinion of the

Court. The genesis of this case presents the
following picture of facts. Andrew J. Turkett, plaintiff below, now appellee, filed his action of damages for trespass against Shamag
Corporation, defendant below, now appellant, through his counsel, the Barclay and Witherspoon Law Firm of Monrovia, in the Circuit
Court of the Sixth Judicial Circuit, Montserrado County, sitting in its law division in the June, 1961 term of that court on April
1o, 1961. In his complaint the present appellee substantially alleged that he owns in fee simple and is in possession of
257

258

LIBERIAN LAW REPORTS

a certain piece of land, being half (72) of Lot Number 58, Block r on Bushrod Island, Monrovia. He complained
further that on or about the 17th day of November, 196o, appellant, through some of its employees, trespassed on his said property
and unlawfully and wrongfully seized, removed and carried away certain pieces of personal property, and converted the same to its
own use. Complaining further he alleged that in addition to the trespass aforesaid, defendant at the same time when the trespass
was committed, damaged him by removing from the basement of his building which is under construction on the aforesaid premises several
stones thereby further damaging plaintiff and delaying his building program. Pleadings in the case rested at the surrebutter; and
on the 9th day of May, 1962, the law issues were decided upon and the case ruled to trial by a jury on certain issues of fact. On
May 1, 1963, His Honor, Joseph P. Findley, being assigned to preside over the March term of the civil law court, empanelled a jury
to sit on the case; and after the hearing of the facts this was his charge to the jury: "Ladies and gentlemen of the jury, this is
a cause of damages for trespass and you have now sat for quite a few days hearing the evidence on both sides. "Plaintiff, Mr. Andrew
J. Turkett, had his witnesses take the witness stand and said to you that the defendant damaged Turkett by unlawfully entering upon
his lot or premises and removing therefrom 24 bags of cement valued at $26; and zoo plants valued at $14 and 18 iron pipes valued
at $45; as well as demolishing the walls which are the foundation of the house he was building, to the value of $1,000. Two witnesses,
French nationals, were brought to the stand by Mr. Turkett and they told you that they saw the Shamag trucks go on the premises and
remove these materials. Turkett also told you that the size

of this building was 32 x 24 and that since this trespass, he has been damaged in keeping with his action. "The defendants and their witnesses took the stand and witness Huffercamp told you that the things Turkett complained of as being illegally taken away from his premises were solely removed by Shamag because he, Turkett, stole them from the Company. Mr. Huffercamp told you that he came to know this from the record in his office; but since he did not bring said record, the law directs you to ignore what Mr. Huffercamp said on the stand; for under the best evidence rule it was incumbent upon the defendants to produce said records, especially so where the witness said it exists. "Then came witnesses Harold Collins, Philip Tarr and another person, Lloyd Washington. They told you that they and Turkett were employed by the Company and that Turkett instructed Collins to cut three bundles of steel rods which Collins cut, put in a corner, according to Collins, carried to the office, according to Tarr; and a few days thereafter these three bundles of steel rods were missing. Now, it is left to you to say whether these rods were cut and put in the corner, according to Collins, carried to the office; concluding that he did not tell you the number of steel rods in the bundles. You heard how all of them said that Turkett also stole sand from Shamag, not by taking said sand from Shamag's yard, but the Company's drivers dumping same into Turkett's yard. You are intelligent men and women and I put it to you to say whether or not this would be stealing sand from Shamag. "You heard the entire evidence on both sides and you also heard all of the witnesses for both plaintiff and defendant's answers on the stand. "Under the Liberian Law no place shall be searched nor any person seized on a criminal charge

or suspicion unless upon arrest lawfully issued upon probable cause, supported by oath or solemn affirmation. "Shamag, the defendant, submitted in this case that they had suspicion that Mr. Turkett stole their property; and under the law of Liberia they had no right to enter upon the premises and forceably take away their property, even to the extent of damaging his house by breaking down the basement. If you believe what plaintiff and his witnesses say about this damage done, then it comes to the common law that was read to the court from ihnerican Jurisprudence; the theory of same is simply saying: 'If A mistakenly takes out his property he may remove it therefrom without damage to B'--so that law is not applicable to this case. "Now, ladies and gentlemen of the jury, you are the judges of the facts and you heard the evidence in the case. You will retire to your room of deliberation and return a verdict according to the evidence in this case. If you find for the plaintiffs, you are to award him special damages of $1,104; and you are to further find for him general damages for this illegal entry and obstruction

of his building program and give him an amount based reasonably upon that. You will therefore retire to your room of deliberation and return a verdict accordingly." The empanelled jury retired and, acting in accordance with this directed charge, responsively returned a verdict in the following words : "We the petty jury to whom the case of Andrew J. Turkett, plaintiff, v. Shamag Corporation, defendant, action of damages for trespass, was submitted, after a careful examination of the evidence adduced at the trial of said cause, do unanimously agree that the plaintiff is lawfully entitled to the value of his materials, amount of $104; basement damages, $1,000;

and is entitled to $750 for trespass--total $1,854." From this verdict and the judgment affirming the same the defendant below now appellant, excepted and brought his appeal on a bill of exceptions containing 12 counts. After a thorough examination of all of the counts, we have concluded that Counts r, 10, I I, and 12 are of legal importance and should be couched herein for our consideration. They are as follows: Because, on the 22nd day of April, 1953, the following question was put to plaintiff after plaintiff had placed on record that the several articles of building materials which were now the subject of litigation had been purchased·by him from several business places in Monrovia, to wit: " 'Would you be good enough to mention for the benefit of the court and jury, the business places in Monrovia from which you made purchases of the articles listed in your complaint?' "This question was disallowed by the court on the ground that said question was irrelevant on cross-examination; to which defendant took exception. io. And also because, on the 1st day of May, 1963, Your Honor charged the petty jury in the case in manner as follows: " 'You will retire to your room of deliberation and return a verdict according to the evidence in this case. -If you find for plaintiff, you are to award him special damages of $1,104 and you are to further find for him general damages for this illegal entry and obstruction of his building program, restricting yourselves to the size of the building 32 x 24, and give him an amount based reasonably upon that; you will therefore retire to "

your room of deliberation and return a verdict accordingly. To which charge defendant took exception.'
1. And also because on May 2, 1963, the petty jury returned a verdict entitling plaintiff to recovery of the amount of $1,804, to which defendant took exceptions. it 12. And also because, on May 25, 1963, Your Honor rendered final judgment confirming the verdict of the petty jury to to which defendant took exceptions and announced an appeal to the Honorable Supreme Court of Liberia." When this case was called for hearing, the briefs on both sides being filed, the parties proceeded to argue their respective grounds on

the issues involved. It is noteworthy to mention in passing that the arguments were commendable and very interesting, both sides displaying frankness and aptitude and exemplifying their ability and understanding of the law. Many queries were propounded from the bench, and in particular to appellee's counsel with regard to his views on the legal soundness of Counts I and Io of appellant's bill of exceptions. Now to the case. There are two more phases of this case that have attracted our attention very closely, and in our opinion are deserving of our exploration in the broadest manner. The first is the charge of the trial judge delivered to the petty jury. This charge, in its all-embracing features, does summarize the evidence to an extent but leaves our minds in a state of quandary to know why, in his attempt to explore the records or the facts presented in the case to the jury, the trial judge would take the keen interest to expatiate on the testimony of plaintiff and his witnesses with regard to the entry on the premises and the removal of building materials by the defendant, but failed to refer also to that portion of defendant's evidence which showed that the truck or trucks in their employ had previously unauthorizedly taken the identical building materials oh the premises to the plain-

tiff; and why also the Court refused to refer to that portion of the evidence which proved that the plaintiff did give authority to the defendant to send on his premises and remove their property which had been loaned to him upon his request. To us, these seem to be missing links from the chain of evidence which this Court attempted to summarize. However, we shall proceed and attack this question later in this opinion. In the first place, it was irregular and illegal for the trial judge to have charged the jury to return a verdict awarding special damages in the sum of $1,104 and also general damages for the purported illegal entry upon the premises and obstructing plaintiff's building program; and such a charge in law appears to be nothing less than a novelty. Common-law writers, as well as our statutes, are very vocal on the question of special damages in that, where such damages are alleged and sought to be recovered, they must be proved. In this case, although it is a fact that the plaintiff laid in his complaint the cost of certain materials which he claimed to have been his personal property taken away from his premises by the defendant, yet according to the records which we have examined, he never established a bonafide right to the said materials, nor did he prove the value thereof,.and instead whilst on the witness stand said that the several articles of building materials enumerated in his complaint had been purchased by him from several business places in Monrovia; and when the plaintiff was asked to tell the court and jury the business places from which these articles

Phelps v Williams [1928] LRSC 14; 3 LLR 54 (1928) (2 May 1928)

R. M. PHELPS, Plaintiff-in-Error, v. E. W. WILLIAMS, Defendant-in-Error.
WRIT OF ERROR TO THE CIRCUIT COURT OF THE FIRST JUDICIAL
CIRCUIT, MONTSERRADO COUNTY.

Decided May 2, 1928. 1. Where a matter has been decided by the Supreme Court, it becomes res judicata
if there is a concurrence of the following conditions, viz. : Identity in the thing sued for ; identity of the cause of action; and
identity of persons and of parties to the action. 2. It does not matter whether or not the judgment is pleaded. Every court is bound
to take judicial cognizance of its own records ; and no evidence of any fact of which the court will take such notice need be given
by the party alleging its existence. 3. The decisions of this Court are binding upon all other courts within this Republic.

In action
of ejectment in the Circuit Court below, judgment was given for plaintiff, now defendant-in-error. This Court granted writ of error.
On motion to set aside proceedings in court below, judgment of Circuit Court reversed. R. E. Dixon for plaintiff-in-error. E. W.
Williams and G. H. Dimmerson for defendant-in-error.
MR. CHIEF JUSTICE JOHNSON delivered the opinion of the Court. This was an action
of ejectment brought in the Circuit Court of the First Judicial Circuit, Montserrado County by E. W. Williams, plaintiff in the court
below against R. M. Phelps, defendant in said action, for the recovery of two pieces of land in the settlement of Brewerville in
Montserrado County, numbered respectively one and twelve, which plaintiff claims defendant unlawfully detains from him. The case
was heard and determined in said Circuit Court at its February term, 1927, and re-

suited in a verdict
and judgment in favor of said plaintiff, whereupon defendant prayed for and obtained a writ of error from this Court assigning as
error, inter alia, that the matter being res judicata and recently decided by this Court, the court below should have refused jurisdiction
in the premises. Before the calling of the case for trial in this Court, counsel for plaintiff-in-error offered a motion praying
the Court to set aside the proceedings in the action in the court below, because: 1. This court having adjudged that the said pieces
of property were a part of the estate of H. R. Phelps deceased and that Leah H. Williams, formerly L. A. Phelps, had no title to
same, the subject became res judicata and as such no further action could be instituted for the recovery of said property by the
said L. A. Williams or her husband ; z. And also because the Supreme Court being the highest judicature of this Republic, its judgments

cannot be reversed or disturbed by the Circuit Courts; there being no appeal from the judgment of said Supreme Court, its rulings become final and conclusive against all persons. The history of the case is as follows: Sometime in the year 1912, one Henry R. Phelps died, leaving a widow, Leah A. Phelps, and one son, R. M. Phelps, plaintiff-inerror in this case. At the time of his death, he was possessed of certain pieces of property in said settlement, to wit: Lot No. 1 containing fifteen acres of land where his dwelling house was situated, and Lot No. 12, containing twenty-five acres of land. Subsequently, to wit, in the year of our Lord 1913, the said Leah A. Phelps, then married to said defendant-in-error, laid claim to said property and prayed the judge of the Monthly and Probate Court, Montserrado County, to strike same from the inventory of the estate of the said Henry R. Phelps. The Probate Court having failed or refused to strike said property from the inventory, the case was taken on appeal to this Court where it was decided that the above

mentioned pieces of property were the property of the said estate. Phelps v. Williams, 2 L.L.R. 621. Notwithstanding this ruling, the said Leah A. Williams continued to press her claim to said property. The matter was finally settled in 1923, at which time this Court gave judgment as follows : "That the judgment handed down at its November Term, A. D. 1923, is hereby reaffirmed and that the administrator is hereby ordered to allow R. M. Phelps ninety days to settle the claims of said estate, after which the administrator is to turn the property over to the said R. M. Phelps otherwise the said administrator will have full power to sell said property to settle the claims against said estate." In the month of May, 1924, plaintiff-in-error having filed a certificate from the administrator that the said plaintiff-in-error had settled in full the claims against the estate, he was, by order of this Court, placed in possession of the property hereinbefore mentioned. In the month of November, 1927, upon some irregular proceedings in an action of injunction brought by defendant-in-error against the said plaintiff-in-error, before Judge E. J. Worrell, Judge of the Circuit Court, First Judicial Circuit, Montserrado County by assignment, to restrain the said defendant from taking possession of said property, the latter was ousted from the premises and committed to prison for contempt. The matter having been brought up to this Court by a mandate, Judge Worrell admitted that he had acted erroneously, whereupon this Court vacated the proceedings in said Circuit Court, and ordered His Honor Nugent H. Gibson, Resident Judge of the First Judicial Circuit, to again put plaintiff-in-error in possession of the said premises. When the case at bar was called for hearing, the attention of counsel for defendant-in-error was called to the several judgments and rulings of this Court in favor of the said plaintiff-in-error whereupon he abandoned the case, saying that he had been misled by his client. We

deem it necessary, however, to give such a ruling as will put an end to these harassing actions which have been repeatedly brought by E. W. Williams and his wife Leah A. Williams against the said R. M. Phelps for the said pieces of property in contempt of the judgments and ruling of this Court. And just here we will premise that where a matter has been decided by this Court it becomes res judicata, if there is a concurrence of the following conditions, viz.: Identity in the thing sued for; identity of the cause of action; and identity of persons and of parties to the action. Such judgments are conclusive upon the parties, and no party can recover in a subsequent suit. It does not matter whether or not the judgment is pleaded. Every court is bound to take judicial cognizance of its own records; and no evidence of a fact of which the court will take such notice need be given by the party alleging its existence. The decisions of this Court are binding upon all other courts within this Republic. It is obvious from the above recital of facts that this case falls under the rule of res judicata. The proceedings in the court below were irregularly conducted. Oral evidence was admitted to prove facts which were matter of record. The court and jury were misled by the plaintiff in the case and his witnesses. The following question was put by a juryman to plaintiff who was called as a witness :--"Mr. Witness, by what authority did the defendant break into this house and detain it from you?" Answer : "He said that his lawyer told him to do so." Question : "Was it upon the decision of 'the Supreme Court?" Answer : "No." In view of the foregoing, we are of the opinion that the judgment of the court below should be reversed with costs against defendant-in-error ; and that a mandate be sent down to the Judge of the First Judicial Circuit ordering him to again put plaintiff-in-error in possession of said premises. And it is so ordered. Reversed.
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Wtherspoon v Brown [1952] LRSC 12; 11 LLR 177 (1952) (6 June 1952)

WILLIAM N. WITHERSPOON, Appellant, v. JOHN BROWN, Appellee.
APPEAL FROM THE THIRD JUDICIAL CIRCUIT, SINOE COUNTY.

Argued March 13, 17, 1952. Decided June 6, 1952. 1. An owner of real property abutting on a public street or highway has an easement of ingress and egress subject only to public convenience and to eminent domain. 2. The easement of ingress and egress of an owner of real property abutting on a public street or highway is an interest in real property which not even the sovereign may take without compensation, and which equity will protect by injunction against private obstruction. 3. It is against public policy for the Commissioner of a Commonwealth District or members of the National Legislature to appear as attorneys on behalf of a trespasser upon public property.

Plaintiff, appellant herein, instituted an action in the court below seeking an injunction prohibiting the defendant, appellee herein, from obstructing a public street in the Commonwealth District of Greenville by erection of a house, and alleging the incursion by the defendant upon an easement of access. On appeal to this Court from a decree denying the injunction, reversed and injunction granted.
W. N. Witherspoon, appellant, pro se. Richard 4. Henries for appellee.
MR. JUSTICE REEVES

delivered the opinion of the Court.

William N. Witherspoon instituted an action of injunction against John Brown in the Circuit Court of the Third Judicial Circuit, Sinoe County, alleging that the principal street in Greenville is Johnson Street, since, on this street, are situated nearly all the business houses, as well as leading government offices ; and that, at the end of said Johnson Street, bordering the official landing of the

Government of Liberia, where Johnson Street intercepts Commerce Street, which is only a cross street, plaintiff owns lots numbers 395 and 396, and as such, uses the said government landing adjoining his two lots for landing and taking off cargo. Witherspoon further alleged that Brown obstructed Johnson Street at the place where it intercepts Commerce Street by building a house thereupon. Accordingly, the complaint herein was supported by an affidavit that reads, in part, as follows : "The above named defendant is erecting a house in the most prominent street in the City of Greenville, Sinoe County, known as Johnson Street, which part of which street the plaintiff uses, since his two city lots, numbers 395 and 396, border said Johnson Street thereat, and this act of the said defendant in building said house of his in said street has obstructed said public highway and affected the plaintiff in his use of his said two lots which are his business premises, and he uses said street in getting to and from his said lots with goods either by boats, pedestrians, or otherwise, whereby the plaintiff has suffered a particular damage not suffered by the public generally, which acts of the defendant are prejudicial to the rights of the plaintiff." To this complaint defendant filed an answer denying the right of plaintiff to recover; admitting the erection of said building on said Johnson Street; but asserting that it is not situated on any wharf and does not obstruct vehicular or other transportation on said Johnson Street; and that the building on lot number 396 is leased to the government and used as a government clinic, not for any private business; so that no damage is done to the private premises of plaintiff, nor is he in any way inconvenienced in their enjoyment. Defendant also contended that, since an injunction is ordinarily preventive, and will not be granted to cor-

rect a wrong already done, or to restore to a party rights of which he has been deprived, plaintiff was guilty of laches ; for if construction of the building would have interfered with enjoyment of his premises, he should have enjoined defendant before completion of the structure ; and it would surely be inequitable to order defendant to take down a building already completed. Also that, even if an injunction would lie, plaintiff is not the proper party; but, since the building in question is erected on a public highway, the proper party would be the Republic of Liberia or the municipal authorities. Also that the Commonwealth District of the City of Greenville, upon application of the said defendant, granted him permission to build on a portion of Johnson Street not in use by the public, where Johnson and Commerce Streets intersect, with a view to beautification, increment of revenues, and encouragement of trade, industry and commerce among the citizens of said Commonwealth District. In conclusion, defendant's answer alleged that the injunction of the plaintiff had occasioned the defendant much inconvenience ; that he had lost many of his employees; and that his business had been suspended with much loss to him. Wherefore defendant prayed that the injunction be dissolved ; that he be given an opportunity to effectuate his project; and that plaintiff be ordered to pay all costs. Appellant Witherspoon, then plaintiff, in his reply to the defendant's answer, denied that said answer was sufficient because defendant's counsel, Jonathan A. Monger, who filed said answer, is the Commissioner for the Commonwealth District of the City of Greenville, Sinoe County, Republic of Liberia by commission of His Excellency, President Tubman, and is therefore estopped by public policy from representing the defendant in these proceedings. Also that the first five counts of the answer are incon-

sistent with each other in that, although the first count denies the truthfulness of the complaint, yet the second, third, fourth and fifth counts attempt to plead confession and avoidance, which can only be correctly done if one confesses before he avoids, which the defendant has not done, thereby rendering said answer insufficient in law. Also that the fifth count of the defendant's answer is badly pleaded in that it alleges that the Commonwealth District of the City of Greenville gave the defendant permission to build his house in the public street; yet the defendant failed to adduce any permit granted by the Commonwealth District of the City of Greenville so to build. Also that, even if the Commonwealth District of the City of Greenville, had given permission to the defendant so to build, and even if the said permission had been adduced herein, yet said permission would have been illegal, since no such right was given to said Commonwealth District by its charter, granted by the National Legislature of Liberia; nor could said Commonwealth assume such a right by its ordinances, which are dependent upon enabling acts of the National Legislature. Also that the defendant has suffered no injury from the instant application for an injunction because the defendant was and is a trespasser who erected a house on land not his and at his own risk. Also that an injunction can be issued even after a defendant has changed

the condition of a plaintiff's property; and such a defendant can be compelled to undo what he has wrongfully done. Also that the plaintiff is now building a whaleboat on said premises, and hauls his boat timbers to where his carpenters are building said boat, and is using said wharf for other purposes of business, whereby the defendant particularly damaged the plaintiff. This concluded the pleadings. On May z9th, 1951, the case was called, parties present.
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The plaintiff thereafter recorded the following objections : "Jonathan A. Monger is Commissioner of the Commonwealth District of the City of Greenville, Sinoe County, and this case concerns and is diverse to the interest of the said Commonwealth and the Republic of Liberia, in that one of the public tracts of the said Commonwealth District of the City of Greenville has been trespassed upon, and ingress and egress has been obstructed on said highway by the defendant's erecting a house in said highway. The said Commissioner Monger was sworn to defend the interest of said Commonwealth. For him now to be allowed to represent the defendant against the interest of the very Commonwealth whose interest he has sworn to protect, would be a breach of public policy. Counsellor Joseph R. Crayton is a Senator, and Lawrence L. Mitchell is a Representative, currently, of the Republic of Liberia. The Commonwealth District of the City of Greenville is a corporation aggregate, which was created by the Legislature for political reasons, and which is a part of the domain of the Republic of Liberia. Members of the Legislature are prohibited by law from opposing the Republic. Green v. Brumskine, 2 L.L.R. ." 202 (1915) The defendant recorded the following resistance to the plaintiff's objections : "In equity no legal technicalities are raised since it is the ultimate object that 'he who comes to equity must come with clean hands.' The objection raised by plaintiff is a legal objection, and not one that should be raised in equity; therefore this defendant will surely not be given the rights that should be accorded him in equity. "The Commissioner of the Commonwealth District was the one who granted the permission for the building to be erected ; therefore no other person is better able to represent the defendant than he who grants

permission for a lease or otherwise ; and he is bound to support and defend the grantee in the enjoyment of his right. In this case there is no enactment which prohibits building on public highways. Hence, public policy will not prevent any member of the Legislature from appearing as counsel in this case of law. On the other hand, public policy prohibits plaintiff from bringing proceedings against a property to which he has no legal title." Plaintiff and defendant at this stage opened and closed arguments respectively and submitted. Thereafter, the court ruled as follows : "There is no action between plaintiff and the Commonwealth District of the City of Greenville. This action is an action of injunction

to secure alleged rights in and to a highway adjoining plaintiff's premises. This portion of the highway, it is alleged, was leased to defendant John Brown by the Commonwealth District of the City of Greenville through its Commissioner. The right of the Commonwealth District to do so is contested. The attorneys objected to upon public policy are representing the defendant, and hence, indirectly, the Commonwealth District of Greenville. It is also the duty of a lessor to warrant and defend his lessee in the enjoyment of the premises leased to him. The court therefore is of the opinion that the attorneys-at-law thus objected to, do not fall under the law governing public policy. The objections of plaintiff are therefore overruled. And it is so ordered." To which ruling plaintiff excepted.
Counsel for plaintiff and for defendant then argued the issues of law as submitted, whereupon the court made the following ruling:
"The ruling given when Jonathan A. Monger appeared to represent the defendant in this case is sustained. The first count of the plaintiff's reply is therefore overruled.

"The second count of plaintiff's reply attacks defendant's answer as being inconsistent in that Count `I' denies the truthfulness of the complaint, yet the other counts admit its truthfulness. Defendant seeks further to avoid by charging that the plaintiff is guilty of laches without first admitting the truth of the facts stated in the complaint as well as the ability of the plaintiff to sue. The answer further seeks to avoid by stating that the plaintiff is not the proper person to institute this action. "If the plaintiff is charged with laches, then the logical inference would be that he did have a right of action but did not bring his action within the proper time. Laches is a plea in bar; and in order to be effective it must be affirmatively pleaded ; and an affirmative plea must confess before avoiding. This has not been done in this case. Also, the answer of the defendant is contradictory, evasive, and unintelligible. "Further, although defendant has alleged that plaintiff leased the building referred to, defendant has not adduced a copy of said lease agreement. The answer of the defendant is therefore dismissed and the case ruled to trial upon the facts stated in the complaint of the plaintiff and a bare denial of the defendant. And it is so ordered." Defendant took no exception to this ruling as such. Witnesses for the plaintiff and defendant were called and qualified ; and arguments on both sides were heard. The court then issued the following decree : "The genesis of this case is as follows :
John Brown, the defendant, erected a shop in the middle of the portion of Johnson Street that abuts lots numbers 395 and 396, owned by William N. Witherspoon, the plaintiff, near the point where said Johnson Street and Commerce Street intersect, and near a wharf alleged to be the official landing wharf of Sinoe County. The plaintiff, William N. Witherspoon, feeling that the

defendant was wrong, and that the law gives the said plaintiff the right in and to that portion of the street that abuts his premises, instituted this action of injunction against the defendant. The court, in disposing of the pleadings, dismissed the answer of the defendant, who had to go to trial on a bare denial of the facts stated in the complaint. Although the defendant's answer was dismissed, and he was ruled to trial on a bare denial, yet the plaintiff, in order to recover, is compelled to prove his case by a preponderance of evidence. Let us first see if the law gives the plaintiff the right to that portion of the street which abuts his premises. On that score we find the following in Ruling Case Law:

`Regardless of whether the fee of the street or highway is in the abutting owners or in the public, such an owner has a special easement therein for the purpose of ingress and egress, which is property as much as the abutting lot itself, and which cannot be taken away or materially impaired or interfered with even under legislative authority without compensation to him therefor. So, in many jurisdictions, he is entitled to compensation where this right is taken away or materially interfered with by the municipality as a result of improving the street or highway, and interference therein may constitute special damage which will support an action by the abutting owner for damages or for an injunction.' 13 R.C.L. 142, Highways, § 125. "Again: `A building or other similar structure erected on or extending into a street or highway is a nuisance, and in the absence of legislative authority, a municipality has no right to authorize private individuals to construct or maintain such a structure there.' 13 R.C.L. 196, Highways, § 169. "From the above it is obvious that the law gives

owners of land abutting a street a particular right therein, which right cannot be taken away by municipal authorities. Let us go further and see whether, although the plaintiff is vested with such a right, he can recover upon the strength of that right. `As in other cases of public nuisances, a private individual has no right of action, either at law or in equity, because of the obstruction of street or highway, unless he suffers some peculiar or special injury not common to the general public. The reason of the rule is that if an individual is interfered with in the use of the highway in the same manner as the other members of the community, his injury is merged in that of the public. Otherwise, it is declared, suits would be multiplied intolerably. It has also been said that the rule springs from the principle that the law affords no private remedy for anything but a private wrong. . . 13 R.C.L. 227, Highways, § 192. "Now let us seek further to find out what constitutes special injury. `No general rule can be laid down for determining whether or not special injury has resulted from an obstruction. The question must rather be determined from the particular facts and circumstances of each case. To warrant relief in any case, the fact that the complainant is damaged by the interference with his right or easement must, of course be shown,

and his damages must also result directly from the obstruction, and not as a secondary consequence thereof. . . . The character of a property owner's injury does not necessarily depend on the location of his property with respect to the obstruction. So it has been held that special injury is neither necessarily negatived by the distance of the complainant's property from the obstruction, nor conclusively established by proximity, though there

are some divergences of views in this connection.' 13 R.C.L. 229, Highways, § 193. "From the foregoing it appears that, in order to ascertain whether special injury has resulted from an obstruction, the question must be determined from the particular facts and circumstances of each case. Now let us refer to facts in this case. The plaintiff took the stand as a witness in his own behalf and said, inter alia: 'I may here state to the court that my lot, number 395, commences from the very intersection of Johnson and Commerce Streets, the very spot on which the defendant has erected his said house in the centre of the street, and said lot number 395 runs down and terminates at the border of the Sinoe River which is the official landing of the government. At this point lot number 395 adjoins lot number 396, which also runs on the border of the said Sinoe River which is the continuation of the official landing.' "Richard P. Greene, the only witness produced by the plaintiff besides himself, whilst testifying in plaintiff's behalf, said, inter alia: 'There is a wharf there at the end of Johnson Street wherefrom many merchants used to ship. At the time my brother was wharfinger, 1889 or thereabouts, lots numbers 395 and 396 touched the water-edge of Johnson Street.' From the evidence of the plaintiff it has been shown that lot number 395 commences from the intersection of Johnson and Commerce Streets and runs down and terminates at the border of the Sinoe River; and at that point adjoins lot number 396, which also runs on the border of the said Sinoe River. "Now if plaintiff's two lots, numbers 395 and 396 border the Sinoe River, it is evident that that portion of the Sinoe River which his said two lots border affords him ingress and egress to and from his premises by way of the river; and his house being situated on lot number 395 at the intersection of Johnson and Corn-

merce Streets affords him ingress and egress to and from his premises by way of Commerce Street; Johnson Street in which the house of defendant is erected intersecting Commerce Street which is in front of the plaintiff's premises. "The question then arises : from the testimony of the plaintiff which, to a certain extent is corroborated by witness Richard P. Greene, has the plaintiff suffered special injury not common to the the general public? "Plaintiff, in his complaint, avers : 'That at the said end of said Johnson Street bordering the said official landing of the government of Liberia as aforesaid, where this

Johnson Street intercepts Commerce Street, which is only a cross street, plaintiff owns lots numbers 395 and 396, and uses the said government landing adjoining his two lots, as his house on said lot number 395 is a business premises for landing and taking off cargo and other articles therefrom and thereto. That the said defendant has obstructed said public highway at the place where it intercepts Commerce Street on to the water-edge of said Johnson Street, by building a house in said street, and, by said act of the defendant, the plaintiff has suffered a particular damage not suffered by the public generally, which acts of the defendant are prejudicial to the rights of the plaintiff.' "It is from the above that plaintiff seeks relief. Let us then see whether under the facts and circumstances prevailing in this case, he is entitled to relief. "We quote hereunder from Ruling Case Law: `So, one does not suffer special damages by the obstruction of streets which are not adjacent to his property and does not afford the only means of access thereto, or by an obstruction on a street which intersects that in front of his property, where his only grievance consists in not having free and unobstructed access to his premises on that particular

street in one direction and all of the other streets remain open and unobstructed, or where there is an intersecting cross street between plaintiff's property and the obstruction which provides ample means of egress to other streets.' 13 R.C.L. 229-3o, Highways,§ 195. "It is therefore the holding of this court that, from the facts and circumstances surrounding this case, the plaintiff has not suffered special injury ; and the injunction is therefore dissolved and the parties placed in their status quo ante. All costs to be paid by the plaintiff. And it is so ordered." Plaintiff Witherspoon excepted to the above decree and prayed an appeal to this Court. We shall proceed to discuss the case recounted herein according to the principles of law which apply. In doing so, it first becomes necessary that we consider the question of public policy as raised against three of appellee's counsel. Appellant Witherspoon, then plaintiff, pleaded that Jonathan A. Monger, counsel for the defendant, was barred by public policy from representing defendant John Brown, now appellee, because said Jonathan A. Monger was Commissioner for the Commonwealth District of the City of Greenville, to which plea he added the names of Counsellor J. R. Crayton and Attorney Lawrence L. Mitchell--they being members of the National Legislature of Liberia. The interest involved was a trespass on the public highway by the erection of a house in Johnson Street in said Commonwealth District, a corporation created by the Legislature of the Republic of Liberia. Witherspoon contended that Crayton and Mitchell, as members of the Legislature, were barred from representing adverse interests. Appellee, however, on his part, contended that, inasmuch as he had contracted with the authorities of the Commonwealth District of the City of Greenville, Sinoe

191

be determined by its constitutions, laws, and judicial decisions, and that they will not resort to other sources of information ; but this rule has been criticized, and a broader rule announced." so C.J. 857-59, Public, § 61. Sometimes such public policy is declared by constitution, sometimes by statute, sometimes by judicial decision. More often, however, it abides only in the customs and conventions of the people--in their clear conviction of what is naturally and inherently just and right between man and man. Appellant contended that he, as plaintiff below, had suffered a particular damage not suffered by the public generally in that, even before the year 1899, the then owner of the lots in question, under whom appellant now claims as privy, had used Johnson Street as a means of ingress and egress, especially where his said lots abut same. Appellee, however, contended that, inasmuch as appellant has been shown to have sufficient space to permit ingress to and egress from his premises both by land and by water, it is plain that no special injury has been done to appellant, and that, this being true, the trial judge had no alternative but to dissolve the injunction, no special injury having been done to appellant. Therefore appellee contended that, appellant not having sustained any special injury or damage, and his access to the street and to the river not having been cut off, an action of injunction would not lie. U.pon the above issues as raised in appellant's and appellee's briefs, we will place our compass to ascertain where the needle of said compass will direct us. It being a conceded fact that appellant Witherspoon's lots, numbers 395 and 396, which he owns in fee, abut Johnson Street, where the building was erected by defendant, the question to be considered is : What was the extent of the easement to which appellant was entitled on said street for the purpose of ingress and egress from said lots? We quote the following from Ruling Case Law:

190

LIBERIAN LAW REPORTS

build his house in Johnson Street. The defendant therefore cannot be considered anything but a trespasser in the unauthorized erection of said building in Johnson Street; and it was therefore against public policy for the Commissioner of said Commonwealth District, and the two members of the National Legislature, to represent him. As summarized in Corpus Juris: "The term 'public policy,' being of such vague and uncertain meaning, and of such variable quantity, has frequently been said not to be susceptible of exact or precise definition ; and some courts have said that no exact or precise definition has ever been given or can be found. Nevertheless, with respect to the administration of the law, the courts have frequently quoted and often approved of the statement that public policy is that principle of the law which holds that 'no one' can lawfully do that which has a tendency to be injurious to the public or against the public good ; that rule of law which declares that no one can lawfully do that which tends to injure the public, or is detrimental to the public good ; the principle under which freedom of contract or

private dealing is restricted by law for the good of the community. 'Public policy' has been said to be synonymous with 'policy of the law,' and also has been defined as 'the public good.' In a less technical sense, especially with respect to legislative actions, 'public policy' may be and often is nothing more than expediency, political expediency, or the policy upon which governmental affairs are conducted for the time being; public sentiment. In a judicial sense, public policy does not mean simply sound policy, or good policy, but it means the policy of a state established for the public weal either by law, by courts or by general consent. "The term has been said to mean the law of the state as found declared in its constitution, its statutory enactments, and its judicial records, some courts going so far as to say that the public policy of a state must

County, for the space on which he built his house, and inasmuch as nothing was being done that was injurious to the public or against the public good, it was no breach of public policy for the said Commissioner and members of the National Legislature to represent his interest. The lower court apparently was under the impression that the defendant, now appellee, had obtained a permission or lease from the Commonwealth District of the City of Greenville, Sinoe County, to erect said building, in ruling that "the portion of the highway in the City of Greenville was leased to defendant John Brown by the Commonwealth District of the City of Greenville through its Commissioner. . . . The attorneys objected to upon grounds of public policy are representing the defendant, and hence indirectly the Commonwealth District of Greenville. It is also the duty of a lessor to warrant and defend his lessee in the enjoyment of the demised premises. Therefore the attorneys thus objected to do not fall under the law governing public policy." This impression was apparently due to an oversight by the lower court. Plaintiff Witherspoon, now appellant, had pleaded in his reply that defendant's answer was badly pleaded in that it alleged that the Commonwealth District of the City of Greenville, upon application of the defendant, gave him permission to build this house of his in the public street in Greenville, yet said defendant failed to adduce with his pleadings the application of the defendant and the permission granted him by the Commonwealth District of the City of Greenville to so build, which would have given the plaintiff a notice in keeping with the requirements of the law. From this it can be clearly seen that the trial judge erred in predicating his ruling upon mere allegations unsupported by proof. Moreover the defendant did not attempt to prove by any of his seven witnesses, including himself, that he had applied and received permission from the Commissioner of the Commonwealth District to

"Regardless of whether the fee of the street or highway is in the abutting owners or in the public, such an owner has a special easement therein

for purposes of ingress and egress, which is property as much as the abutting lot itself, and which cannot be taken away or materially impaired or interfered with even under legislative authority without compensation to him therefor. So, in many jurisdictions, he is entitled to compensation where this right is taken away or materially interfered with by the municipality as a result of improving the street or highway, and interference therein may constitute special damage which will support an action by the abutting owner for damages or for an injunction. This easement extends to the full width of the street. It is subordinate, however, to the public convenience, of which the public authorities having control of the streets are the judges, and is subject to such reasonable use of the street, not inconsistent with its maintenance as a public highway, as may be necessary for the public good and convenience, and does not seriously impair it. It follows as a consequence of the existence of this easement that an abutting owner has a right to construct a driveway or other suitable approach in front of his premises, from his land to the travelled part of the highway, if done in such a way as not to interfere with the rights of the public, especially if he owns the fee." 13 R.C.L. 142-44, Highways, § 125. The easement owned by appellant Witherspoon extended the full width of Johnson Street and was only subordinate to the public convenience, of which the public authorities having control of the streets are the judges. The encroachment made thereon by appellee's unauthorized erection of a building constitutes a public nuisance. "Any unauthorized obstruction or encroachment upon a street or highway per se constitutes a public nuisance, even though it does not actually operate as

an obstruction to travel or work a positive inconvenience to anyone. And, a fortiori, the same is true of anything which interferes unreasonably and unnecessarily with its use by the public, or which detracts from the safety of travelers thereon. It follows that such an obstruction may be a nuisance, though it occupies a part of the street only, and sufficient space still remains to accommodate public travel, or though it is outside of the travelled or worked part of the way, or even though it is in fact a thing of public convenience or benefit." 13 R.C.L. 186, 187, Highways, § 16o. In further proof that appellant Witherspoon suffered special damages, we quote as follows from Ruling Case Law:

"It is generally held that one whose means of ingress to and egress from his property is completely cut off by an obstruction suffers a special injury, different from that suffered by the public at large, as, for example, where the obstructed way affords the only means of getitng to market with the products of his adjoining farm. It is not material whether access is completely cut off from every point, or whether the obstruction merely cuts off the means of reaching particular places with which it is necessary or advantageous for the plaintiff to communicate. A distinction has often been drawn between an obstruction which

is adjacent to the plaintiff's property and one which is located at a distance, though the injury inflicted may be the same. It is held that a recovery may be had
in the former case, but not in the latter unless the distant obstruction is such as to prevent all ingress and egress to and from
the property. . . . Many courts, however, have adopted the rule that a property owner is specially injured by an obstruction which
materially interferes with or substantially impairs his right of access, at least if the value of his

property is thereby depreciated, the impeding of traffic on the street being deemed to be a property injury. This is often held
to be true even though the obstruction is at some distance from such property, and the means of ingress and egress is not completely
cut off. Under this rule, it is immaterial that an obstruction in the street on which his property abuts is in another block." 13
R.C.L. 231-33, Highways, § 125. In further clarifying this point, we quote from Dantzer v. Indianapolis Union R. Co., 141 Ind. 604, 34 L.R.A. 769, 770 (1894) "Though the obstructions complained of are remote from the lines of their property and do not encroach upon the street
immediately in front of their property, and while they have ways of ingress and egress to and from their building and lots to and
from the same directions formerly existing, it is contended that the appellants, by virtue of their ownership of said property, have
a property right in the streets at the points of obstruction; that the right to use the streets for access to their building and
lots is a property right not confined to the immediate front of their lots, and not dependent upon any ownership of the fee in the
street in front of, or remote from, their lots; and that any destruction or impairment of that right is an injury for which they
have a remedy. The appellee concedes that under said constitutional guaranty, and under the common law, even in the absence of their
guaranty, there is a remedy for an injury to one's property. It is conceded, also, that the appellants held, in addition to their
property in the soil of their lots, a property right in the street,--that is to say, the appendent right of access, or easement of
access, in front of their lots; but it is maintained that under the facts in this case no legal injury exists, no property right
of the appellants has been invaded, and if any injury has been suffered, it is damnum absque injuria.

At least two cases in this state have defined the extent of that appendent right of access. In Haynes v. Thomas, 7 Ind. 38, it is said : 'These decisions establish a principle that besides the right of way which the public has of passage over a street
in a town or city, there is a private right which passes to the purchaser of a lot upon the street, and as appertinent to it, which
he holds by implied covenant that the street in front of his lot shall forever be kept opened to its full width.' In the case of

Tate v. Ohio and M. R. Co., 7 Ind. 479, the court quotes the above from the case of Haynes v. Thomas, and says in application of the principle to the facts of the case,
that the person, whether natural or artificial, causing the obstruction, is liable to the owners of the adjoining lots for the injury.
It is thus carefully limited to those owning lots fronting on the street at the point of obstruction. That is the case made in the
record." It is needless to make any further citation to elucidate the well settled principle that the protection of the rights of
owners of property fronting public streets is enforceable through the equitable powers of the courts. This Court is therefore of
the considered opinion that the lower court erred in holding: "that from the facts and circumstances surrounding this case the plaintiff
has not suffered special injury, and the injunction is therefore dissolved and the parties placed in their status quo ante." From
what has been said herein, it is the opinion of this Court that appellant did sustain special injury by appellee's erecting said
building in Johnson Street abutting appellant's said lots. The injunction is therefore granted with costs against appellee. And it
is hereby so ordered. Reversed and injunction granted.

Karpeh et al v Kaba et al [2000] LRSC 27; 40 LLR 256 (2000) (21 December 2000)

THE INTESTATE ESTATE OF THE LATE JOSIAH S. KARPEH, thru its Administrator, HOWARD S. KARPEH, and AUGUSTUS S. KARPEH, Informants, *v.* JUDGE YUSSIF D. KABA and CHARLIE D. JACKSON, Respondents.

INFORMATION PROCEEDINGS

Heard: November 30, 2000. Decided: December 21, 2000.

1. Decisions of the Supreme Court are absolute and final, and a trial judge proceeds improperly in executing the Court's mandate if after the determination of the case by the Supreme Court the judge appoints an arbitration board to demarcate anew **land** already decided upon and affirmed by the Supreme Court.
2. A party in whose favour a judgment is rendered in an action of ejectment is entitled to a writ of possession to recover the property from a defendant against whom a judgment is rendered.
3. If a judge or any judicial officer attempts to execute a mandate of the Supreme Court in an improper manner, the correct remedy is by a bill of information to the Court.

4. Where the information brought emanates from a mandate of the Supreme Court, the bill of information is cognizable before and must be filed in the Supreme Court and not the lower court.

5. The decisions and mandates of the Supreme Court should always be strictly enforced by judges of subordinate courts for the promotion and administration of justice, and for the preservation of the authority, integrity, and dignity of the Supreme Court.

In an action of ejectment commenced by the Josiah S. Karpeh, deceased, judgment was rendered against the co-respondent Charlie D. Jackson. An appeal taken from the said judgment was subsequently withdrawn and judgment without opinion entered by the Supreme Court ordering the trial court to resume jurisdiction over the matter and place the plaintiff therein in possession of the premises, subject of the ejectment action. On information filed before the lower court by the co-respondent herein that the informants herein had encroached upon his premises which were not involved in the ejectment action, the trial judge ordered a surveyor to demarcate the premises, to oust the informants therefrom, and to place Co-respondent Jackson in possession thereof, if the survey showed that the informants had in fact encroached on the property of the co-respondent. From this action of the trial judge, the informant filed a bill of information in the Supreme Court.

The Supreme Court determined that the trial judge had acted improperly in appointing a board of arbitration to demarcate the premises and to issue a writ of possession in favour of the defendant in the ejectment case after the matter had already been previously decided by the trial court and affirmed by the Supreme Court. The Court also noted that where a trial judge in executing the mandate of the Supreme Court proceeds improperly, the proper remedy is Information before the Supreme Court, not the trial court, as was done in the instant case by the co-respondent, and upon which the trial court had issued the writ of possession ousting the informants from the premises. The Court observed that lower courts were obligated to strictly enforce its decisions and mandates for the promotion of administration of justice and to preserve its authority, integrity and dignity. As to the action by the trial court, the Supreme Court held that in ejectment, writs of possession are issued in favor of the plaintiff not the defendant, as was done by the judge, and it opined that such action violated the mandate of the appellate court. Having determined that the trial judge had proceeded im-properly in executing its mandate, the Supreme Court reversed the judgment of the lower court, ordered the reinstatement of the previous judgment of that court, and directed that the informants be put back in possession of their premises, with the proviso that the co-respondent's premises, which did not form a part of the disputed parcel of **land**, be preserved to him.

Roger Martin of the Martin Law Offices appeared for the informant. *Jamesetta E. Howard* of the Cooper & Togbah Law Firm appeared for the respondents.

MR. JUSTICE SACKOR delivered the opinion of the Court.

These information proceedings emanate from the enforce-ment of this Court's mandate of February 18, 1994 in favor of informant, plaintiff in an action of ejectment in the trial court. The facts in this case, as gathered from the certified records forwarded to this Court, reveal that the late Josiah S. Karpeh instituted an action of ejectment against Charlie D. Jackson in the Civil Law Court, Sixth Judicial Circuit Court, Montserrado County, during its March Term, A. D. 1977, to recover one (1) lot, situated and lying within Central Monrovia. He annexed a title deed to his complaint. Pleadings in the case progressed to the filing of an answer and rested with the filing of a reply.

The case was tried by an empaneled jury, which having retired to its room of deliberation, returned a unanimous ver-dict in favor of the informant. Whereupon, the co-respondent filed a motion for a new trial, which was resisted, heard and denied. On the 15th day of December, A. D. 1978, Her Honour Emma Shannon-Walser, then presiding by assignment over the trial court, rendered final judgment, confirming the verdict of the jury. This Court deems it necessary to hereunder quote the relevant portion of the trial judge's final judgment for the benefit of this opinion.

"It is hereby adjudged that the verdict of the empaneled jury be and the same is hereby ordered affirmed and confirmed; and that the plaintiff be placed in possession of the property covered by the deed pleaded and offered into evidence. This shall be done with the assistance of a competent surveyor. The clerk of court is hereby instructed to issue a writ of possession in accordance with this judgment and place same in the hands of the sheriff for service. Cost is ruled against the defendant. AND IT IS HEREBY SO ORDERED.

Given under my hand and seal in open court this 15th day of Dec., A. D. 1978.
Emma Shannon-Walser,
Assigned Judge Presiding, signed."

Co-respondent Charlie D. Jackson, defendant in the trial court, excepted to this judgment and announced an appeal to this Court of last resort. At the call of the case during the October Term, A. D. 1993 of this Court, the co-respondent made an application for the withdrawal of his appeal, to which application, Mr. Karpeh interposed no objection. Whereupon, the Supreme Court rendered a “judgment without opinion” on the 18th day of February, A. D. 1994, granting appellant's application withdrawing his appeal and commanded the trial court to give effect to the judgment. The records do not show that the co-informant, the intestate estate of the deceased plaintiff in the court below, has been placed in possession of the subject property pursuant to the mandate of this Honourable Court. The records reveal, however, that the defendant in the ejectment action, Charlie D. Jackson, filed a nine-count bill of information on May 21, 1999 in the trial court, before His Honour Wynston O. Henries, Resident Circuit Court Judge, presiding over the March Term, A. D. 1999, of the court. In the information, the defendant informed the trial court that the plaintiff therein had taken possession of not only the zinc shack on the lot he had claimed in his compliant, but also that the estate had taken possession of his entire lots with houses thereon. The defendant prayed the trial court for a competent surveyor to survey the property and to repossess him of his property which was not the subject of ejectment action. The plaintiff therein filed a seven-count returns to the bill of information, pleading the principle of *res judicata* and the supremacy of the mandate of this Honourable Court. The plaintiff also informed the trial court that the defendant had never purchased a separate 1½ lots from the

Republic of Liberia other than the 1½ lots with a zinc shack constructed thereon and legally owned by the late Josiah S. Karpeh, which was subsequently leased to Co-respondent Jackson as evidenced by the copy of a lease agreement and flag receipts indicating payment of real estate taxes.

On the 19th day of July, A. D.1999, His Honour Yussif D. Kaba, assigned circuit judge of the Civil Law Court, Sixth Judicial Circuit, Montserrado County, granted the defendant's information and ordered a surveyor to proceed to the subject property along with the sheriff of the trial court to demarcate said property and place the defendant in possession thereof if survey showed that the plaintiff therein had encroached on the property of the defendant. The trial judge also ordered that the plaintiff be evicted from the subject property and ordered that the defendant be placed in possession thereof.
Thereafter, the plaintiff filed a bill of information before this Court on the 21st day of May 1999, contending among other things, that he was evicted from the subject property by the lower court upon a writ of possession issued in favour of Co-respondent Charlie D. Jackson against whom judgment had been rendered in the court below. The informant also con-tended that the judgment of Judge Emma Shannon-Walser was reviewed and modified by Judge Yussif Kaba when, contrary to the judgment of Judge Shannon-Walser and the mandate of this Honourable Court, he ordered the eviction of the inform-ants from the premises. The informants further argued that the mandate of the Supreme Court was absolute and final and that the setting up of a board of arbitration subsequent to the mandate was illegal and unlawful. The information filed in the trial court, they said, should have been denied by Judge Kaba. Additionally, the informants asserted that the information filed by Co-respondent Jackson in the court below was cognizable before the Supreme Court since it emanated from the mandate of the Supreme Court. The informants therefore prayed this Honourable Court to grant the information and to order the presiding judge of the Sixth Judicial Circuit Court to resume jurisdiction over the case and repossess him of the premises in keeping with the judgment of Judge Shannon-Walser and the judgment without opinion of this Honourable Court.

Co-respondent Jackson, in his returns to the information, basically contended that the informant did not only occupy the disputed lot, but had moved beyond the one and one-half lots and occupied his premises situated on his half lot. He also contended that there had been no survey conducted and that no writ of possession had been issued to evict Josiah S. Karpeh. Co-respondent Jackson stated further that he had filed a bill of information before the lower court requesting that the court orders the demarcation of the property with the aid of competent surveyors so as to place him in possession of the property which was not a part of the final judgment in the ejectment case. The respondents argued that the ruling of Judge Kaba was therefore in conformity with the final judgment of his predecessor and the Supreme Court mandate. Hence, they prayed this Honourable Court to deny the informant's bill of information.
The decisive issue for the determination of this case is whether or not the trial judge improperly executed the mandate of the Supreme Court. The answer to this question is in the affirmative. We observe from the records that the trial judge, upon the information of Co-respondent Jackson, set up a board of arbitration to demarcate and determine the property rights of the parties to this litigation and issued a writ of possession in favour of Co-respondent Charlie D. Jackson against whom a final judgment had been rendered and confirmed by this Honourable Court.
The Supreme Court decision is absolute and final; hence, the trial judge, in executing the

mandate of this Court, improperly proceeded to appoint a board of arbitration after the case had been determined by the trial court and confirmed by the Supreme Court. Civil Procedure Law, Rev. Code 1:51.2, 1 LCLR, page 249.
It is the recognized principle of law, practice and procedure in this jurisdiction that a party in whose favour a judgment is rendered in an action of ejectment is entitled to a writ of possession to recover the property from a defendant against whom a judgment is rendered. In the case at bar, the records reveal that the trial court issued a writ of possession in favour of the defendant against whom final judgment had been rendered, thereby evicting and ousting the plaintiff from the disputed property.

This Court has held that if a judge or any judicial officer attempts to execute a mandate of the Supreme Court in an improper manner, the correct remedy is by a bill of information to the Court". *Raymond International Liberia Ltd. v. Dennis*, 24 LLR 131, Syl. 6 (1976); *Massaquoi-Fahnbulleh et al. v. Urey*[1977] LRSC 5; , 25 LLR 432, Syl. 1 (1977); *Barbour-Tarpeh v. Dennis et al.[1977] LRSC 11;* , 25 LLR 468, Syl. 1 (1977). This Court holds that the bill of information filed by Co-respondent Jackson in the court below was not cognizable before the trial court, but before the Supreme Court because said information emanates from the mandate of this Honorable Court. The assertion by Co-respondent Jackson that the information was filed in the trial court upon the advice of the Chief Justice is not supported by the records. It is therefore untenable.
The decisions and mandates of the Supreme Court should always be strictly enforced by judges of our subordinate courts, for the promotion and the administration of justice, and for the preservation of the authority, integrity, and dignity of the Supreme Court. The board of arbitration cannot determine the property rights of the parties litigant in this case subsequent to the mandate of the Supreme Court. A writ of possession should have been issued to place the plaintiff in possession of the premises, subject of the ejectment action, with the aid of a competent surveyor in accordance with the judgment of the trial court, confirmed by this Court. Wherefore, and in view of the foregoing, it is the considered opinion of this Honourable Court that the judgment of the trial court setting up the board of arbitration dispossessing the informant of his property is hereby reversed. The informant is hereby ordered repossessed of his one lot only and no more, and Co-respondent Charlie D. Jackson is also ordered put in possession of his 0.4 lot. The Clerk of this Court is hereby ordered to send a mandate to the court below commanding the presiding judge to resume jurisdiction over the case and enforce the judgment of Judge Emma Shannon-Walser, as well as the judgment without opinion of this Honourable Court. Costs are disallowed. And it is hereby so ordered.

Information granted; judgment reversed.

Harris et al v Layweah et al [1999] LRSC 24; 39 LLR 571 (1999) (4 June 1999)

JACOB P. HARRIS et al., Informants, v. **JOHN M. LAYWEAH et al.**, Respondents.

BILL OF INFORMATION

Heard: May 5, 1999 Decided: June 4, 1999

1. Where a judge of a lower court attempts to execute, in a wrong manner, the mandate of the Supreme Court, the proper procedure to bring the matter to the attention of the Supreme Court is by a bill of information.

2. A disobedience or an attempt to prevent the execution of a lawful order, judgment or mandate of the Supreme Court is such an interference with, or attempt to obstruct the due administration of justice as to constitute contempt.

3. The Supreme Court cannot interpret and clarify its mandate by a bill of information; the proper procedure is to move the Court for re-argument.

4. A party against whom a judgment is rendered by the Supreme Court has a remedy, within three (3) days, to file a petition for re-argument where it appears that some palpable mistake as to a point of law or fact has been inadvertently made by the Court.

The Supreme Court was called upon to hear and determine two bills of information arising from the execution of a mandate of the Court. The mandate commanded the judge presiding in the trial court to evict Jerry Y. Koffa and the Fiamah Swamp Development Association, and their tenants from the premises they unceremoniously occupied, and place Jacob P. Harris, *et. al* in possession of said premises pending the determination of the certiorari proceedings. The Supreme Court's mandate was read in the court below and the court issued a writ of possession placing Jacob P. Harris, et. al in possession of the property. According to the Sheriffs returns, the occupants of the premises resisted and obstructed the possession of Jacob P. Harris, *et. al.*

In the first bill of information, Jerry Y. Koffa and the Fiamah Swamp Development Association alleged among other things that co-respondents Jacob P. Harris, *et. al* had alleged in their previous information that the informants herein had illegally seized their five homes and placed therein new occupants during the April 6, 1996 crisis in Monrovia. The informants also contended that the co-respondent judge had ordered issued a writ of possession for the entire three acres in dispute. Lastly, the informants requested the Supreme Court for clarification and interpretation of its judgment in order to enforce same without prejudice to innocent party litigants.

The second bill of information was filed by Jacob P. Harris. The informant alleged that Jerry Y. Koffa and the Fiamah Swamp Development Association obstructed the enforcement of the Supreme Court's mandate for which he had filed a bill of information which was heard but never decided. Informant Harris also contended that the Judge Advocate General of the Armed Forces of Liberia and other personnel of the Ministry of National Defense aided in obstructing the execution of the Court's mandate. The Court consolidated the two bills of information.

After close examination, the Supreme Court *denied* the information of Jerry Y. Koffa and the Fiamah Swamp Development Association, reasoning among other things that the interpretation of the Court's mandate is not by a bill of information, but by a motion for re-argument, and that the trial court did not enforce the mandate of the Supreme Court in an improper manner as alleged by informants. With respect to the second bill of information filed by Jacob P. Harris, the Court upon review of the records, found that Jerry Y. Koffa, the Fiamah Development Association and the Ministry of Defense clearly obstructed the enforcement of the Court's mandate, and that the act of the Ministry of Defense is not only contemptuous, but is a gross violation of the separation of powers as enshrined in the Constitution, prohibiting one branch of government from performing the functions of another branch of government. Accordingly, the Court *granted* the second bill of information and ordered the enforcement of its mandate by the trial court without obstruction.

M Kron Yangbe of the Cooper and Togbah Law Firm appeared for petitioners/respondents/informants. *F. Richard MacFarland* of the MacFarland Law Firm appeared for respondents/informants.

MR. JUSTICE MORRIS delivered the opinion of the Court.

It is the practice and procedure in our jurisdiction that "where a judge of a lower court attempts to execute in a wrong manner the mandate of the Supreme Court, the proper procedure to bring the matter to the attention of the Supreme Court is by a bill of information. " *Tarplah et al. v. Dennis et. al.[1977] LRSC 11; ,* 25 LLR 468, 470 (1977).

A disobedience or an attempt to prevent the execution of a lawful order, judgment or mandate of this Honourable Court is such an interference with, or an attempt to obstruct, the due

administration of justice as to constitute a contempt. For reliance, see *Smith v. Stubblefield et al.[1964] LRSC 15;* , 15 LLR 582 (1964).

These information proceedings present two issues or questions to be resolved by this Court. They are:

(1) whether or not the mandate of this Court of July 22, 1997 was executed by the trial judge in an improper manner; and

(2) whether or not the aforesaid mandate was obstructed by the respondents Jerry Y. Koffa and the Fiamah Swamp Development Association and Col. John M. Laweah et al. of the Ministry of National Defense.

These information proceedings before this Court emanate from its mandate of July 22, 1997, commanding the judge presiding in the Trial court to evict Jerry Y. Koffa and the Fiamah Swamp Development Association by and through its Chairman, Jerry Y. Koffa, and their tenants from the premises they unceremoniously occupied and place Jacob P. Harris, et. al., in possession of said premises pending the determination of the certiorari proceedings. The mandate of this Court was read in the court below, whereupon the trial court issued a writ of possession placing Jacob P. Harris, et al., in possession of the property pursuant to the aforesaid mandate. The sheriff's returns thereof shows that the occupants of the premises resisted and obstructed the possession of Jacob P. Harris, *et al.* The two bills of information were ordered consolidated by this Court.

The records in this case show that Jerry Y. Koffa and the Fiamah Swamp Development Association by and through its Chairman, Jerry Y. Koffa, filed an eight count bill of information to this Court on the 15th day of August A.D. 1997, counts 1, 6, and 8 of which this Court deems relevant for the determination of this case. In count one (1) of their bill of information, the informants alleged, among other things, that co-respondents Jacob P. Harris, et.al . alleged in their previous information that the informants herein illegally seized their respective five (5) homes and placed therein new occupants during their absence due to the April 6, 1996 crisis. The informants in count six (6) of their information contend that co-respondent Judge Varnie D. Cooper however ordered to be issued a writ of possession for the entire three (3) acres in question. The informants requested this Honourable Court in count eight of their bill of information for clarification and interpretation of its judgment in order to enforce same without prejudice to innocent party litigants.

Jacob P. Harris, *et.al.*, filed an eleven-count returns on December 22, 1997, counts 2, 4, 5, and 6 of which this Court deems worthy for the determination of this case. The respondents contend in count two (2) of their returns that the interpretation of this Court's mandate is not by a bill of information, but by a motion for re-argument filed within three days as of the rendition of judgement. We are in full agreement with the contention of the respondents in the first information herein that this court can not interpret and clarify its mandate by a bill of information. A party against whom a judgement is rendered by this Court has a remedy within three (3) days to file a petition for re-argument where it appears that some palpable mistake as to the point of law or fact has been inadvertently made by this Court. For reliance, see Revised Rules of Court, Rule IX, Parts 1 &7 2: Re-argument.

In count 4 of the returns, the respondents also contend that the five (5) houses unceremoniously possessed by the informants in their absence, are located in the area in dispute, and that the only accurate method to identify the area and the houses is by description of the subject property by metes and bounds in making the location of the property on the ground an easy exercise. In short, the respondents maintain that it is within the description appearing in the writ of possession that the five (5) houses are situated which co-respondent Jacob P. Harris identified and pointed out to the sheriff as being those houses from which he, Jacob P. Harris, and his family were evicted in their absence by the informants. In count (5) of their returns, the respondents substantially issued the writ of possession describing the area on which the five (5) houses are situated. This Court says that the trial judge properly ordered issued the writ of possession of the property by description of the area on which the five (5) houses, unceremoniously seized and occupied by the informants, are situated and located. The trial court could not award respondents the possession of the property without a description thereof by metes and bounds. It is not contended by the informants that the five (5) houses are not located on the three (3) acres of **land** as contained in the writ of possession. The records in this case also revealed that the Harrises in the action of ejectment claimed more than three (3) acres of **land**. Therefore, it is the holding of this Court that the trial judge did not enforce the mandate of this Court in an improper manner as alleged by Jerry Y. Koffa and the Fiamah Development Association by and through its Chairman, Jerry Y. Koffa. The first bill of information filed by Jerry Y. Koffa and his association is thereby denied.

The records in this case also indicate that Jacob P. Harris filed a five-count bill of information. The informant basically alleges that Jerry Y. Koffa and the Fiamah Development Association obstructed the enforcement of this Court's mandate for which he filed a bill of information before this Court which was heard but never decided. Informant also contends that the Judge Advocate General of the Armed Forces of Liberia, upon the complaint of co-respondents Moses Henlee and Johnson Mehn by and through Esther Biyie, placed them in possession of two houses belonging to the informant subsequent to an investigation conducted by the Judge Advocate General. In count three (3) thereof, informant contends that he notified the Judge Advocate

General of the Armed Forces of Liberia, prior to the rendition of his final ruling, claiming ownership of the subject property, informing him not to interfere with the matter, and of the pendency of the litigation involving the premises before the Supreme Court of Liberia.

In count five of respondents' returns, respondents deny and challenge that they ever violently obstructed the mandate of this Court, but contend that the mandate was obstructed by another mandate of this Court ordering the judge to halt the enforcement of its former mandate predicated upon a motion for re-argument filed affecting the first mandate. A recourse to the sheriff's returns of August 13, 1997 clearly shows that the occupants of the 1st house resisted the possession order and threatened the ministerial officers of the trial court, thereby obstructing the execution of this Court's mandate of July 22, 1997. Further inspection of the records in this case also reveals that the Judge Advocate General of the Armed Forces of Liberia observed during his investigation the pendency of a **land** dispute in court between informant Jacob Harris and the Fiamah Development Association, but however placed Co-respondents Mehn and Menlee in possession of two houses as owners thereof without prejudice to Mr. Harris to pursue his **land** case to court to evict illegal tenants therefrom. The act of the Ministry of National Defense is not only contemptuous, but it is also a gross violation of the separation of powers as enshrined in our Constitution prohibiting one branch of Government from performing the functions of another branch of Government. For reliance, see LIB. CONST., Art. 3 (1986). The Ministry of National Defense has the sole right to discipline its military personnel for a misconduct, and it is the judicial function of the courts to determine the property rights and interests of party litigants in our jurisdiction. Thus, the conduct of the Ministry of National Defense indeed is an obstruction of this Court's mandate. This Court is also in agreement with the contention of the informant that the conduct of the Ministry of National Defense deprives him and his family of their property without a due process of law.

The records in this case are devoid of any evidence showing the filing of a motion for re-argument and a mandate from this court to halt its former mandate as alleged by counsel for respondents herein. It is an elementary principle of law, practice and procedure in our jurisdiction that the granting of the petition for re-argument suspends the enforcement of this Court's mandate unless such petition is determined. In point of fact, this Court usually does not send a mandate to its subordinate courts subsequent to the granting of a petition for re-argument. Hence, the averment of respondents that this Court's mandate of July 22, 1997 was halted by another mandate upon granting a petition for re-argument, is misleading and untenable. Jerry Y. Koffa and the Fiamah Development Association and the Ministry of Defense clearly obstructed the enforcement of this Court's mandate. This Court had held in a long line of cases that the obstruction and disobedience to its mandates, orders or instructions, is contemptuous. For reliance, see: *Alpha v. Tucker, [1964] LRSC 12; 15* LLR 561(1962); *In re Moore*, 2 LLR 97, 101 (1913); 17 C. J. S., *Contempt, §* 12. We however purge the contemnors of court with strong warning to desist from further interfering with the execution of this Court's mandate.

Wherefore and in view of the foregoing, it is the considered opinion of this Court that the information of Jerry Y. Koffa and the Fiamah Development Association is denied; the information of Jacob P. Harris is granted, and the mandate of this Court of July 22, 1997 is hereby ordered enforced without any obstruction thereto. The Clerk of this Court is hereby ordered to send a mandate to the trial court informing the Judge presiding therein to resume jurisdiction and enforce this Court's mandate consistent with this Opinion. Costs against respondents. And it is hereby so ordered.

Information of Jerry Y Koffa and the Fiamah Development Association denied Information of Jacob P. Harris granted

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Pratt v Philip et al [1950] LRSC 7; 10 LLR 325 (1950) (8 June 1950)

CAROLINE PRATT for her Husband JACOB 0. PRATT, Deceased, Plaintiff-in-Error, v. JAMES T. PHILLIPS and His Honor EDWARD J. SUMMERVILLE, presiding at the September Term, 1944 of the Civil Law Court, Sixth Judicial Circuit, Montserrado County, Defendants-in-Error.
WRIT
OF ERROR TO THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued March 13-14, 1950. Decided June 8, 1950.
An action of ejectment involves questions of both law and fact, which under the statutes must be tried by a jury under the direction of the court.

James T. Phillips, defendant-in-error herein, successfully sued Jacob 0. Pratt, whose widow has been substituted for him as plaintiff-in-error, herein, in ejectment in the lower court. On appeal to this Court, in a per curiam decision we reversed the court below and remanded the case with instructions to order the parties to replead and, if it should seem that there had been an encroachment, to order a survey. Pratt v. Phillips, [1941] LRSC 15; 7 L.L.R. 276 (undated). After the legal issues were disposed of in the lower court, the case was ruled to trial upon the data that would be submitted after the survey. The trial judge disposed of the case without a jury, and rendered judgment in favor of James T. Phillips. Jacob 0. Pratt was denied an alternative writ of error by the Justice in chambers. On appeal to this Court en banc, the petition for the writ was granted. Pratt v. Phillips, [1947] LRSC 25; 9 L.L.R. 4.46 (1947). Upon hearing of the writ of error in this Court, judgment of the lower court reversed and remanded. R. A. Henries for plaintiff-in-error. wood for defendant-in-error. R. F. D. Small-

MR. JUSTICE REEVES

delivered the opinion of the

Court.
Since the institution, trial and appeal in 1939 of the case at bar, the Court has rendered four opinions, including the present.
Pratt v. Phillips, [1941] LRSC 8; 7 L.L.R. 218 (94.i)[1941] LRSC 15; , 7 L.L.R. 276 (undated)[1947] LRSC 25; , 9 L.L.R. 446 (1947). This should not be surprising, for the Constitution declares that: "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. "No person shall be deprived of life, liberty,
property or privilege, but by judgment of his peers, or the law of the land." Const. Lib. art. I, §§ 3, 8, z Hub. 8 53· So imperative
are these declarations of the organic law of this country that the Court realizes its duty, regardless of the number of opinions
rendered in any one case, always to adjudicate and determine issues presented on appeals. In this appeal, Caroline Pratt, widow of
the late Jacob 0. Pratt, plaintiff-in-error, moved the Court at the October term, 1949 to be substituted in place of her late husband
as plaintiff-in-error, which permission was granted. The records in the ejectment action having been sent forward in keeping with
the writ of error previously prayed for and granted[1947] LRSC 25; , 9 L.L.R. 446 (1947), the case was called for hearing at this term of the Court. Counsel for plaintiff-in-error and defendant-in-error, having
filed their briefs, argued ably the law issues therein contained, to which the Court listened attentively.

Mr. Justice Russell, now Chief Justice, in speaking for the Court at the October term, 1947, when the writ of error was granted,
said inter alia: "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 a 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 plaintiffin-error 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 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 principle 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 (r9r5) . "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. . . r Bouvier, Law Dictionary Contempt 651 (Rawle's 3d rev. 1914). "Inasmuch as the court had inherent power to enforce its order, we cannot accept the alleged refusal of plaintiff-in-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 trespassor [sic] 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, 1 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 facts the statutes 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, 1 L.L.R. 79 (1875)." 9 L.L.R. 450. This Court thus handed down its opinion expressing a denunciation of the procedure of the lower court during the original trial, it being in derogation of the statute law : "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. We conclude that it is needless for us to say anything further on the question; and, the majority of us being in agreement, reverse the judgment of the court below and remand the cause with orders that a trial by jury be had in keeping with law. Costs are ruled against defendantin-error; and it is hereby so ordered. Our colleague Mr. Justice Shannon, who was not present during the hearing of the case, agrees with our conclusions because of his familiarity with the case during its previous hearings. Our colleague Mr. Justice Barclay does not agree with this opinion and our conclusions in this case. Reversed.

Trinity v Hoff et al [1969] LRSC 35; 19 LLR 358 (1969) (13 June 1969)

J. B. TRINITY, Informant, v. HENRY HOFF, et al., Respondents.
BILL OF INFORMATION TO HAVE RESPONDENTS ADJUDGED IN CONTEMPT OF THE SUPREME COURT.

Argued March 20, 1969. Decided June 13, 1969. 1. Any person with knowledge of the decisions and mandates of the Supreme Court, who, directly or indirectly, disturbs, disobeys or disregards them, or, in any manner aids acts contemptuous of the Supreme Court, is guilty of contempt of the Court.

Relator brought a bill of information against the defendants in a suit to quiet, and remove cloud against, title, in which he had prevailed in the lower court and had been affirmed in the Supreme Court, whereby defendants were ordered to cease molestation of the plaintiff's free enjoyment of his rights in the property. Plaintiff complained that a building was being constructed on his property and the boundary markers had been removed, new ones differing from the re-survey ordered by the Supreme Court, having been placed thereon. The bill was sustained and one of the defendants, Capehart, adjudged in contempt of the Supreme Court and fined $50.00. Richards and Bernard for the informant. Weeks for respondents. Alfred L.

MR. JUSTICE ROBERTS delivered the opinion of the court. Mr. J. B. Trinity, Sr., filed a bill in equity to quiet, and remove cloud against title, naming Elizabeth Jackson, et al., as administrator and administratrix of the estate of Z. A. Jackson, concerning a thirty-six acre tract of land, designated as block numbers 2 and 3, situated in an area known as Jacksonville Oldfield. The case was

heard, determined, and a decree rendered in favor of plaintiff in the court below. The defendants took exceptions and perfected an appeal to this Court. During the March 1968 Term of this Court, the appeal was heard and the decree of the trial court affirmed. Concluding the opinion therein, Mr. Justice Mitchell, speaking for the Court, emphasized the following: "That plaintiff is not to be further molested in the free enjoyment of his vested right in the property by any person whomsoever, and that the court below in the enforcement of its decree will send a public land surveyor on the spot for a double checking of metes and bounds according to plaintiff's deed. Expense for such services to be borne by the plaintiff. Costs in these proceedings are hereby ruled against appellants." On May 16, 1968, Mr. J. B. Trinity filed a bill of information, alleging contempt of court, on the ground that in defiance of the opinion of this Court handed down in the case and the execution of the mandate thereof, Mr. Henry Hoff deliberately entered upon the property, commenced construction thereon, selling a portion of the property and removing the landmarks planted by the sheriff. Respondent Hoff replied to the information, denying the allegations contained in the bill, stressing that since the final determination of the matter by this Court he has never entered the premises, neither had he knowledge of a building being erected and a portion of the land sold. The Court thereupon appointed the marshal of the Supreme Court, General John C. A. Gibson, and the sheriff of the Circuit Court, Mr. James W. Brown, to conduct an on-the-spot investigation, to ascertain whether contempt was apparent and by whom committed. To this assignment, the marshal made the following report: "May it please Your Honors : "In obedience to your orders contained in a letter

of today's date, I immediately proceeded with Mr. J. B. Trinity and the Sheriff of Montserrado County, to Paynesville, where Mr. Trinity's property is situated, and upon our arrival on the spot the Sheriff explained that in keeping with the writ of possession, he had the property re-surveyed, had put in new markers and turned the property over to Mr. Trinity. That much to his surprise, he was later informed that some unknown person or persons had gone on the premises, removed the markers which he, the Sheriff, had planted there, re-surveyed and cut the property up into lots, with new markers planted thereon designating other persons' property. This explanation I found to be correct, after inspecting the premises. The Sheriff also pointed out to me where he had planted the markers of Mr. Trinity's boundaries, but, upon very close examination, I did not observe the original markers which the

Sheriff said he had planted there. As I stated, there has been a resurvey of the property, new markers planted thereon designating several lots with initials thereon. "Mr. Trinity's caretaker also explained that one Mr. Capehart was a regular visitor on the premises, carrying cement and directing the construction of a concrete building. I made it a point of duty to go on the spot where the building is being erected and found this information to be true and correct. I also saw bags of cement stored on Mr. Trinity's premises in one of his farm houses ; there are also a line of soap trees on the premises designating a dividing line of Mr. Trinity's and someone else's property. "Nowhere on the premises can be seen any of the markers which the Sheriff said he planted thereon after he had had the premises re-surveyed and turned over to Mr. Trinity. Monrovia, June 13, 1968." From the report of the marshal, there is no indication of the implication of Mr. Hoff; hence, he is absolved of

contempt of this Court. Mr. Capehart, one of the defendants in the court below, had full knowledge of the decision of this Court. He was also present when the writ of possession was executed by the sheriff, and, in resentment, flagrantly disregarded the mandate of this Court, which constitutes contempt of Court by him. Anyone who has knowledge of decisions and mandates of this Court and directly or indirectly, disturbs, disobeys and disregards them, or in any manner aids acts contemptuous of this Court, is guilty of contempt of Court. Mr. Capehart is hereby adjudged guilty of contempt of Court, and fined in the sum of $5o.00. The clerk of this Court is hereby ordered to send a mandate to the court below informing it to enforce this judgment. And it is hereby so ordered. Information sustained against defendant Capehart, adjudged in contempt of the Supreme Court.

Pratt v Phillips [1941] LRSC 15; 7 LLR 276 (1941) (3 May 1941)

JACOB 0. PRATT, Appellant, v. JAMES T. PHILLIPS, Appellee.
[Undated.]

PER CURIAM.

According to the pleadings certified to this Court, which we have found both unscientifically prepared and woefully lacking in definiteness, it would appear that plaintiff, now appellee, alleges having acquired title to one hundred acres of land, ten of which defendant, now appellant, detains from him. In order the better to clarify the issues and to decide them as accurately as possible, it is here adjudged that the judgment of the court below be, and the same is, hereby reversed and the case remanded with instructions: (1) To order the parties to replead; and

(2) Should an issue of fact thereafter emerge tending to show that either party has encroached upon the property of the other, to order a survey by one or more surveyors, as the necessity of having one or more shall to the trial court seem expedient, the survey to be paid for by both parties through the officers of court; and the costs of the proceedings up to this point shall be borne by each party himself; and all other costs shall abide final judgment of said court. Reversed.

Karnley et al v Brown et al [1976] LRSC 18; 24 LLR 574 (1976) (2 January 1976)

HIBIBU KARNLEY, et al., Appellants, v. CIXON BROWN, et al., Appellees. JUDGMENT WITHOUT OPINION.

Decided January 2, 1976.

Richard
Diggs for appellants.

Peter Amos George

for appellees. When this case was called, Counsellor Richard Diggs appeared for the appellants and Counsellor Peter Amos George appeared for the appellees. During argument it was discovered that part of the arbitration documents that should have been in the record were missing, and that counsel were referring to documents dehors the record. The Court thereupon inquired of counsel on both sides if in the circumstances a fair judgment could be rendered, whereupon both sides agreed that the case be remanded. It is, therefore, adjudged that the case should be and is hereby remanded to the Sixth Judicial Circuit Court, with instructions that (a) the judge will resume jurisdiction and appoint a board of arbitrators composed of three surveyors ; one to be appointed by each of the parties, and one by the court. That this board will proceed to the area in which the land is located, and there in the presence of all of the parties concerned conduct a survey of the land in dispute, and write a report to be passed upon by the court; (b) that because of its having long pended, the case will be given priority over all matters now pending on the docket in that circuit. And the Clerk of this Court is ordered to send a man574

Williams v Banks et al [1988] LRSC 102; 35 LLR 693 (1988) (29 December 1988)

SAMUEL WILLIAMS, Informant, v. **HIS HONOUR JESSE H. BANKS JR.,** Presiding Judge, Sixth Judicial Circuit Court, Montserrado County, **MARY JACKSON LANGLEY,** and **JOSEPH JACKSON,** Respondents.

INFORMATION PROCEEDINGS.

Heard: December 8, 1988. Decided: December 29,1988.

1. In an action of ejectment, a party not brought under the jurisdiction of a court may not be held in contempt in regards to possession of the real property involved in the ejectment action.

The Supreme Court had reversed and remanded an action of ejectment, with directions to the trial court to proceed in accordance with its opinion. During that process, the trial judge ordered the arrest of informant herein on contempt charges. Informant filed a bill of information before the Supreme Court indicating that he was not a party to the original ejectment suit but, nonetheless the trial judge had ordered the sheriff, without precepts, to demolish his house. There was no responsive pleading to the bill of information and no one appeared for respondents. In view of the circumstances apparent in the record before it, the Supreme Court vacated the entire proceedings, holding that the informant had not been properly brought under the jurisdiction of the court and, furthermore, the defendant in the original ejectment action had been dead for forty eight years prior to the current action. Information granted.

F. N. Toppor appeared for informant. No one appeared for respondents.

MR. JUSTICE AZANGO delivered the opinion of the Court.

According to the records before us, this Court on the 29th day of July, A. D. 1981 in the case Ware v. Jackson and Jackson-Langley, [1981] LRSC 13; 29 LLR 133 (1981), we decided that the judgment of the trial court in an action of ejectment should be and the same was reversed and remanded to the court of origin with strict instructions that the resident or assigned judge presiding therein, resumes jurisdiction over the case, beginning with the hearing and disposition of the issues of law raised in the pleadings, and make a comprehensive and consistent ruling thereon, so as to embrace every material issue involved in this case without prejudice to either party.

According to records, on Monday, October 28, 1985, the case was called and representations were made as of record. Counsellor Francis Y. S. Garlawolo, representing the defendant, made the following record:

"At this stage, counsellor Francis Y. S. Garlawolo, says that from careful perusal of the records of this case, it has creditably discovered that the mandate of the Honourable Supreme Court of Liberia, rendered on the 29t h day of July A. D. 1981, mandated this Honourable court, inter alia, `that the judgment of the court below should and the same is hereby reversed and remanded to the court of origin with strict instruction that the assigned judge presiding therein resumes jurisdiction over the case beginning with the hearing and disposition of the issues of law raised in the pleadings anew. From thence up to and including the present time, no law issue in this case has been disposed of. The so called ruling on law issues cleverly alluded to by counsel for plaintiff was the basis of the remedial process upon which this case was remanded by the Honourable the Supreme Court of Liberia. Wherefore and in view of the foregoing, counsel for defendant requests the court to disband the jury, based upon the misrepresentation of plaintiff counsel, since law issues must be disposed of prior to trial of facts. For reliance, counsel for defendant cites the opinion of the Honourable Supreme Court of Liberia given during the March Term, A. D. 1981, as well as the mandate dated July 29, 1981, of which we request the court to take cognizance. And respectfully submits."

To this submission, plaintiffs counsel requested the court below to deny the application on the ground that:
"Said application was made merely to further delay and baffle justice. A recourse to the court's file will show that the law issues were disposed of in keeping with the mandate, as well as the opinion cited and thereafter, a board of arbitration was set up by this august body comprising of three (3) arbitrators - one designated by the plaintiff, one by the defendant, while the court appointed the third person as chairman. The application should further be denied because after the appointment of the board of arbitration, the arbitrators performed their duty and made a written report in the presence of the parties, with counsellor S. Edward Carlor representing the plaintiff, and Judge Tulay representing the defendant. After the arbitration report, His Honour J. Henric Pearson, then assigned judge, ruled the report of the arbitration to jury trial, as evidenced by the court's record and the minutes of court presided over by Judge J. Henric Pearson. The plaintiff, therefore, requests your honour, to summon the clerk of court to produce the original records before court for verification. Plaintiff, therefore, requests your honor to deny the application and the case be proceeded with, especially so where at the outset of the trial, the plaintiff has prayed for a writ of subpoena duces tecum to produce the record of the arbitration by the clerk of court, as well as the deed offered in evidence and submit."

Whereupon, the Court made the following ruling:
"The court: Following the information given to the court and the application made therein by

counsel for defendant, and the resistance made thereto by counsel for plaintiff, the court, in order to examine the situation, ordered the filing clerk to produce the court's file containing all of the records in this case. Seemingly, this is a gigantic task because for more than half an hour the office of the filing clerk has not been able to produce the court's file containing the documents/records made mention of in the information and application made by counsel for defendant.

Wherefore and in view of the foregoing, the empanelled jury, not having heard any evidence in the case, is hereby ordered disbanded and discharged until such time when the court is able to determine the facts relating to the information given by counsel for defendant, and weigh same against the resistance made by counsel for plaintiff.

The filing clerk is hereby ordered to produce the said records by Wednesday, October 30, 1985 at the hour of 2:30 p.m., and if this cannot be done, then it must be reflected upon the record of court. And so ordered. Matter suspended."

The records further show that on Monday, February 24, 1986, the case Jackson and Jackson-Langley v. Ware, an action of ejectment, was called for final judgment. Plaintiff was represented by counsellor S. Edward Carlor. Because of the absence of counsellor Garlawolo, counsel for the defendant, counsellor Supuwood was appointed to take the ruling of court's final judgment. Whereupon, His Honour Hall W. Badio, Sr. assigned circuit judge presiding, on the 24 th day of February, 1986, recorded the following final judgment:

"COURT'S FINAL JUDGMENT
Plaintiff instituted an action of ejectment against the defendant in these proceedings on June 2, 1979. Defendant answered and to that answer a reply was filed and served on the defendant on June 26, 1979.

The case was called for hearing during this term of court on Tuesday, February 18, 1986, during the 44 th day's sitting of this court. A jury was empaneled and the matter heard ex parte.

On February 17, 1986, an assignment was prepared and served on both parties, and their respective counsel acknowledged that assignment. Regrettably, Counsellor Garlawolo, counsel for defendant, failed to appear, therefore plaintiffs lawyer requested the court to apply the

relevant rule of law and proceed with the hearing of the case. The request was granted and the plaintiff was required to proceed with the presentation of her side of the issue after the defendant was called at the door three (3) times and he refused to answer.

Plaintiff established with the preponderance of evidence that the thirty (30) acres of **land** involved are her property which she inherited from her father.

The jury was charged and after deliberation, they brought a verdict of liable against the defendant and awarded the plaintiff general damages of Six Thousand ($6,000.00) Dollars.

Because the verdict is in conformity with the evidence adduced at the trial, it is hereby confirmed and affirmed and the defendant is hereby adjudged liable. The plaintiff is also entitled to the possession and the complete ownership of the thirty (30) acres of **land** involved.

The clerk of this court is hereby ordered to prepare a bill of costs to be served on the defendant and also to prepare a writ of possession which will include the im-mediate metes and bounds of the property involved, and serve same on the defendant, thus placing plaintiff in possession of said property. The sheriff is hereby ordered also to request the assistance of a surveyor to help by identifying the corners of said **land**. And it is hereby so ordered.

GIVEN UNDER OUR HAND IN OPEN COURT
THIS 25TH DAY OF FEBRUARY A. D. 1986.
SGD. HALL W. BADIO, SR HALL W. BADIO SR,
ASSIGNED CIRCUIT JUDGE
PRESIDING"

There are no records before us indicating that exceptions were taken to this ruling of Judge Badio and an appeal announced to the Supreme Court of Liberia for a review of the trial. It must therefore be concluded that Josiah Ware conceded the regularities of the trial and that no error were committed by the trial judge to warrant our review. On the other hand, and what seems to us very strange is the fact that, according to records on the 13th day of April, A. D. 1988, a writ of arrest was commanded by His Honour Jessie Banks, Jr., growing out of the case Langley et al. v. Williams, in an action of ejectment, to have informant Samuel Williams brought before the civil law court without the least delay in order to answer to the charge of contempt. Samuel

Williams, who apparently played no part in the proceedings discussed, supra, flew to this forum on a bill of information stating:

"1. That although your humble informant was never a party to the ejectment case, he was arrested on an alleged charge of contempt of court, and was forthwith imprisoned and was still in jail when co-respondent Judge Banks Jr. ordered the sheriff and bailiff orally, without precept, to break down the house of informant.

2. That it is noteworthy that the alleged defendant, Josiah Ware, died November, 1931 and the writ of summons was issued in June 1979, together with the complaint, hence, no writ of summons was served on decedent Ware prior to his death in 1931 to enable decedent privies to defend his interest in the court of law.

3. That even if decedent Ware had executed a mortgage in favor of Laron F. Jackson for One Hundred and Fifty ($150.00) Dollars for twenty five (25) acres of **land** payable within four (4) years certain, said alleged mortgage was and is still unavailable to Jackson's heirs and legal representatives which is indicative of laches and waiver. For how can a suit be successfully maintained on said mortgage after the mortgage had been completely satisfied as reflected by the lengthy period of acquiescence. The legal representatives of Jackson are barred by statute from recovery from decedent Ware.

4. That the mandate of this Honourable Court, remanding the case to the court below with strict instructions to resume jurisdiction and proceed, beginning with disposition of issues of law raised in the pleadings, has never been read. See both notices of assignment and the mandate hereto attached to form part hereof See also the minutes of court for October 1985 hereto annexed to form a cogent part of this information.

5. That there is no information or application filed or made before Co-respondent Judge Banks, Jr. and no copy of any such information or application served on informant respecting possession of the property subject of ejectment suit to give informant due notice as required by law. Hence there was nothing before His Honour Jesse Banks, Jr. which served as the basis of his authority to order the sheriff of the court below to break down the house of the informant

6. That where an interested party properly and regularly failed and neglected to assert his right he is estopped from recovery, and is further estopped from asserting title to real property when he has failed to act as the property was being acquired by another, knowing that his rights were being invaded. That Aaron F. Jackson knowingly and of his own will neglected to avail himself of the benefit of the law, either to assert or establish his claim. Thus, the doctrine of estoppel will operate against him and his heirs.

7. That since defendant Ware died November 19, 1931, the writ of summons issued against him in June 1979 could not have been served against decedent in his grave. Hence, the court below had no jurisdiction over the person of Josiah Ware; consequently decedent Ware's privies cannot defend his interests in any suit at law. It follows that a writ of possession cannot be served against Ware's privies and heirs at law since the judgment is void ab initio.

Therefore and in view of the foregoing, your humble informant prays this Honourable Court to vacate or remand this case or order since defendant died forty eight (48) years ago, and since appellee Josiah Ware had never been under the jurisdiction of this court nor the trial court, especially so since the mandate of this Honourable Court had not been carried out fully, and to grant unto your humble informant any and all further remedy in the premises."
Recourse to the records reveal that there is no responsive pleading to this bill of information. The information was however assigned for hearing. No one appeared for respondents, neither did we have any showing that the motion for continuance was ever filed to claim our attention. The case however, was ordered assigned for hearing. The returns of the sheriff shows that respondents did not participate in the hearing of this bill of information, neither did they file a brief.

In view of the extenuating circumstances, and from records before us, we are of the considered opinion that the prayer of informant to the effect that he was never brought under the jurisdiction of this Court and that defendant died about forty-eight (48) years ago, the judgment against him should be vacated, the said prayer is hereby granted and the entire proceedings vacated to all intents and purposes. The Clerk of this Court is ordered to send a mandate to the court below to resume jurisdiction and vacate the entire proceedings. And it is hereby so ordered. Costs are disallowed.

Information granted.

Pratt v Phillips [1941] LRSC 8; 7 LLR 218 (1941) (21 February 1941)

JACOB 0. PRATT, Appellant, v. JAMES T. PHILLIPS, Appellee.
MOTION TO ADVANCE CAUSE ON THE TRIAL DOCKET.

Argued February 3, 1941.
Decided February 21, 1941. 1. Except as permitted by the Rules of the Supreme Court, cases will be heard in the order in which they appear on the docket. 2. The question of damages suffered by delay in the trial of an action of ejectment is a matter for redress by due process of law.

On motion by appellee in action of ejectment to advance the cause on the trial docket, motion denied.

B.
G. Freeman for appellant.
Court.

1A. B. Ricks for appellee.

MR. JUSTICE DOSSEN delivered the opinion of the

James T. Phillips,
the appellee in this cause, through himself and his counsel made and filed a motion before us moving us to advance his cause on the trial docket so that same might be tried other than in the order in which it has been placed on the trial docket of the present term of Court. The appellee supports his motion with the following reasons, to wit: " ( ) That he was plaintiff in the court below in this action of Ejectment against the appellant who was defendant in the court below, and that said appellant detains ten (1o) acres

of **land belonging to said plaintiff now appellee. "(2) That he has been and is still being damaged by the detention of his land**."
When the said motion was called for hearing at this

bar, appellee cited as his only authority Ross v. C.P.A.°. [citation missing], where a similar motion was made for advancement because appellee, a foreigner, was due to go out of the country on leave and his return to Liberia was problematical. Obviously, as pointed out to him during said argument at this bar, the two cases are not parallel. It also was pointed out to appellant's counsel that the rule of Court providing for the advancement of causes on the trial docket did not include any of the reasons assigned by him in his motion now under review. Under rule of this Court it is permissible for any counsellor living out of Montserrado County, who may be the legal representative of a party to any cause pending in this Court, to move for advancement of his cause. Rev. Rules, S. Ct., Rule III, § 3. It is obvious that the intent of the rule is to facilitate the disposition of causes docketed in this Court that may be represented by counsellors from parts of the Republic other than Montserrado County where the seat of the Court is situated, as the same rule prescribes that all causes shall

be taken up and disposed of as they appear on the trial docket and are reached. In this case it has not been shown that appellee is about to leave the Republic and that his return is problematical or that his counsel is domiciled outside of Montserrado County. The question of damages which appellee or any other party may suffer by a delay in the trial of a cause is a matter for redress by due process of law which is available to any party who may feel himself injured. Although said rule provides that cases involving certain public interests may, under some circumstances, be heard out of their proper sequence, yet it is manifestly improper for us to give any preference whatever to the causes of one pair of private suitors over any other except as the rule of this Court permits. Moreover, the phraseology of the motion carries a subtle suggestion that appellee will have his judgment

affirmed by this Court. This Court cannot allow this implication to go unchallenged. Because of the circumstances hereinabove explained, no legal reason having been shown by said motion why said cause should be advanced on the trial docket, we are of the opinion that the said motion should be denied, with costs thereof against the mover of said motion; and it is hereby so ordered.
Motion denied.

Intestate Estate of Lewis v Metzger et al [1997] LRSC 9; 38 LLR 404 (1997) (22 July 1997)

THE INTESTATE ESTATE OF THE LATE JOHN N. LEWIS, represented by DEBORAH B. TEQUAH and JOSEPH N. LEWIS, Informant, v. **WILLIAM B. METZGER**, Assigned Judge, Sixth Judicial Circuit, Montserrado County, September Term, A. D. 1996, **MOHAMMED JALLOH** and **THE HEIRS OF THE LATE SOLOMON B. MENSAH**, represented by EDWIN D. WALKER and HANNAH A. HOLDER, Respondents.

INFORMATION PROCEEDINGS

Heard: June 2, 1997. Decided: July 22, 1997.

1. An administrator of an estate is a person to whom letters of administration has been granted by a court of competent jurisdiction to administer the estate of a decedent who died intestate; and the letters of administration is a formal document issued by the probate court appointing one as administrator of an estate.

2. The authority to act for an intestate estate is only exercisable by one duly qualified and legally appointed to carry out functions prescribed by the court. It is not assumed and must *be* clearly and specifically authorized.

3. The court has the responsibility to ensure that the property of a decedent is protected and whenever it is required to be disposed of, that disposition must be in accordance with law.

4. The protection of intestacy is fundamental to the court and the activities of administrators are to be monitored and supervised by the probate court at all times.

5. Any fraudulent action against an intestacy, and specifically by imposters, should not prejudice the intestacy.

6. In order for a party to be concluded by a judgment in a suit, he must have been made a party to such suit.

7. The posing of any person as representative of an intestacy is tantamount to deception.

These information proceedings were instituted by the administrators and administratrix of the intestate estate of the late John N. Lewis, claiming that although the estate was never made a party to the suit in the trial court, yet the trial court, in attempting to enforce the judgment of the Supreme Court had ordered the ejectment of the estate 'from premises owned by the estate as well as the ejectment and ouster of persons occupying property under authority of the estate. The records in the case revealed that Co-respondent Mohammed Jalloh instituted an action of summary proceedings to recover possession of real property which he claimed title to. In the action, he moved the court to join the intestate estate of the late John N. Lewis as a party-defendant. The returns filed to the motion indicated that the parties named had no objections to being joined as defendants to the action. Judgment in the proceedings was entered in favour of the complainant, from which an appeal was take but not perfected. The Supreme Court therefore dismissed the appeal in a judgment without opinion and ordered the trial court to resume jurisdiction over the case and enforce its judgment. In enforcing the judgment, the trial court ordered the ejectment of the intestate estate from the premises as well as persons occupying the same under authority of the estate.

It was the above action by the trial court that caused the informant to file a bill of information before the Supreme Court, contending that the intestate estate was never made a party to the suit in the trial court and that the property of the estate did not fall within the area claimed by the complainant in the summary proceedings.

The Supreme Court granted the information, noting that at the time the summary proceedings were instituted, the individuals named and posing as administrators and administratrix of the intestate estate of the late John N. Lewis had not been appointed to such positions and therefore could not have represented or consented to represent the estate. The Court, observing that the individuals purporting to represent the intestate estate were not appointed to such positions until after the summary proceedings had been determined, and noting its long standing position that a person not made a party to a suit could not be bound by the judgment, opined that the estate was

not legally bound by the judgment. The Court therefore ordered that the proceedings be commenced anew and proper service effected on the representative of the estate so that it is adequately represented.

The Court frowned on the individuals posing as administrators and administratrix of the estate at a time when they had not yet been appointed to such positions and fined each of them for their involvement in the proceedings at the trial court, which the Court characterized as deceptive. Given the foregoing, the Court granted the information.

Roger K Martin of the Martin Law Firm appeared for the informant. *Moses K Yangbe* appeared for the respondents.

MR. JUSTICE GAUSI delivered the opinion of the Court.

Informant in these proceedings, the intestate estate of the late John N. Lewis, is represented by Joseph N. Lewis, and Deborah Tequah, who were joined as co-respondents in the summary proceedings to recover possession of real property in-the court below upon motion by Petitioner Mohammed D. Jalloh, now co-respondent, in this bill of information.

Mohammed Jalloh, petitioner/co-respondent, instituted summary proceedings in the Civil Law Court for the Sixth judicial Circuit, Montserrado County, at its June 1995 term, to recover possession of real property against Charles F. Jrateh, Sr. and Charles F. Jrateh, Jr., to oust, eject, and evict them from a certain parcel of **land** in Monrovia.

In their responsive pleadings, the Jratehs, respondents in the summary proceedings, proferted a title deed signed by E. Kofa Benson, Deborah B. Tequah, and Joseph N. Lewis, administrators and administratrix of the late Manneh Lewis. Subsequently, Solomon B. Mensah, heir of the grantors of Petitioner/Co-respondent Mohammed S. Jalloh, filed a motion to intervene in the summary proceedings to recover possession of real property. Thereafter, Petitioner/Co-respondent Jalloh filed a motion to add the intestate estates of John N. Lewis, Sr. and Jr. and Albert Tarpolee as co-respondents.

The basis of the motion to add is found in counts 2 and 3 of said motion. Firstly, the petitioner/co-respondent stated that the amended answer filed on July 20, 1997 by Co-respondents Charles F. Jrateh Sr. and Jr. alleged that they (the Jratehs) had acquired the **land** from the intestate estate of John N. Lewis, Jr. Secondly, petitioner/co-respondent contended that in order to obtain complete relief and to avoid a multiplicity of actions, persons who ought to be joined as parties to an action for complete relief to be accorded shall be joined and, as such, he found it necessary to have the intestate estate of the late John N. Lewis joined as co-respondent.

On August 10, 1994, Joseph N. Lewis, E. Kofa Benson and Deborah Tequah filed returns to the motion to add, by and thru the Atlantic Law Chambers. In count three (3) of the returns, the respondents, purporting to represent the estate of John N. Lewis, Jr., interposed no objection to having the estate become a party to the action.

The two motions referred to above were disposed of by the court and subsequently the law issues raised in the pleadings were also passed upon by the trial court. According to the petitioner/co-respondent's brief, the case was ruled to trial by jury upon consent of both parties. After submission of the case, following the production of evidence and entertainment of arguments, the jury was instructed by the trial judge. The jury returned a verdict in favor of petitioner/co-respondent. A motion for new trial was filed by co-respondents/informants, the same was resisted, arguments *pro et con* had, and a ruling made by the court in favor of petitioner/co-respondent, and denying the motion for new trial.

The co-respondents/informants thereafter filed an approved bill of exceptions within the statutory period of ten days. It appears that the co-respondents/informants did not complete the other statutory steps for perfecting the appeal, i.e., filing of an approved appeal bond and service and filing of a notice of completion of the appeal. Thus, a motion to dismiss the appeal was filed. Following the filing of the motion, a judgment without opinion was rendered by this Court in its March Term, A. D. 1995. A mandate issued pursuant to the judgment was sent to the court below, and the court resumed jurisdiction to enforce its judgment.

Co-respondents/informants, the Intestate Estate of the late John N. Lewis, Jr., fled to this Court by this bill of information, complaining in count three thereof as follows:

"...contrary to the said judgment without opinion and against the above stated principle of law, His Honour William B. Metzger, instead of confining and restricting the implementation of said judgment without opinion of non-title holders, has ordered the Intestate Estate of the late John N. Lewis, Jr. evicted together with all grantees of said intestate estate contrary to law, for which this information will lie. A review of the records disclosed that the judgment without opinion granted the motion to dismiss the appeal based upon the applicable laws and the Clerk of this Court was ordered to send a mandate to the court below to resume jurisdiction and enforce its judgment. Also, the order from the Civil Law Court, Sixth Judicial Circuit, signed by the assistant clerk of that court, upon the orders His Honour William B. Metzger, Sr. has reference to the report of the sheriff that 'one Mr. Kamara and others are trying to encroach and enter upon the parcel of **land** already decided by the Honourable Supreme Court without regards to the mandate given...' The order warned all persons concerned to desist and stop any work on the said premises."

The informants contended that the judge acted contrary to this Court's mandate based upon the above. We think not. We are however concerned that the disputed property appears also to include the intestacy, and because of this concern, we must be clear in determining whether the intestate estate of John N. Lewis was properly brought under the jurisdiction of the court. Co-respondents/informants strenuously contended before this Court, both in their brief and oral argument, that the intestate estate of the late John N. Lewis, Jr. was not made a party to the summary proceedings to recover possession of real property, and that as such, the enforcement of the judgment should not extend to said intestacy. The Court notes that the informants raised several other issues, including the office of summary proceedings to recover possession of real property, but those issues should have been raised on a regular appeal had the appeal been perfected in keeping with law.

The Court is therefore reluctant to entertain those issues as they could encourage a discussion of the merits of the case as if an appeal is pending before this Court. As this is a bill of information, the Court will focus on the relevant issue of whether the informants were made parties to the proceedings in the court below, and if not, should the judgment be enforced against the intestate estate?

In traversing the above issue in his brief, the petitioner/corespondent maintained that a motion to add the intestate estate was filed in the court below and that, with no objections, the court granted the motion and the intestate estate, represented by E. Kofa Benson, Deborah B. Tequah, and Joseph N. Lewis were joined as co-respondents. Also; in count 2 of his brief, the petitioner/co-respondent stated that Charles D. F. Jrateh Sr. and Charles D. F. Jrateh, Jr., respondents below, were summoned and they filed a joint answer with an administrator's deed from the administrators and administratrix of the estate of the late John N. Lewis, in persons of E. Kofa Benson, Deborah B. Tequah, and Joseph N. Lewis. On the contrary, co-respondents/ informants contended that the intestate estate was not made a party to the proceedings in the trial court because the persons named as administrators and administratrix were representing the intestate estate of Manneh Lewis and not, John N. Lewis. In other words, E. Kofa Benson, Deborah B. Tequah and Joseph N. Lewis were not the administrators and administratrix of John N. Lewis at the time the summary proceedings to recover possession of real property was being litigated.

In resolving the issue presented, a few observations should be made. Firstly, the respondents in the summary proceedings to recover possession of real property proferted an administrator's deed from E. Kofa Benson, Deborah B. Tequah, and Joseph N. Lewis, administrators and administratrix of the intestate estate of Manneh Lewis and not John N. Lewis. The Court wonders why these persons were joined as administrators and administratrix of the intestate estate of John N. Lewis in the court below.

Secondly, the returns filed by Atlantic Law Chambers carried the heading: 'RESPONDENTS' JOSEPH N. LEWIS, E. K. BENSON AND DEBORAH TEQUAH OF THE ESTATE OF THE LATE JOHN N. LEWIS, JR., RETURNS TO PETITIONER'S MOTION TO ADD RESPONDENTS AS CO-RESPONDENTS"

The reference to "Joseph N. Lewis, E. K. Benson and Deborah Tequah of the estate of the late John N. Lewis again leaves the Court wondering what the Atlantiic Law Chambers represented by a J. N. Blidi meant, i.e. whether by the phrase "of the intestate estate of the late John N. Lewis Jr.," the attorney meant that the persons named therein were administrators and administratrix of the intestate estate of the late John N. Lewis Jr. The word "of' in its usage means proceeding, composed of, or relating to. It is associated with, or connected with, usually in some causal relation, efficient, material, or formal. It is equivalent to after, at, or belonging to, in possession of. BLACK LAW DICTIONARY 1080 (6thed).

As used in the phrase above, we think it inferably implies <u>in possession of</u> that is, the intestate estate is in possession of those persons so named. This does not in our view confer authority on those persons as administrators and administratrix at the time the case was litigated in the court below.

What a lawyer! The legal profession is a noble one. The law and practice are not learned by guesses; they are not acquired by a sudden stroke of luck, but by toiling day and night, reading, thinking, and writing; writing concisely and precisely.

A lawyer whose writing is so vague and ambiguous creates legal troubles for his clients. Such clients may become legally injured. Hence, we believe that in all of his work, the lawyer must take the time to say precisely what he means, not only for the person reading in good faith to understand, but equally so that the person reading in bad faith cannot misunderstand.

These observations are necessary because, as already noted from the informants' contention, they were not administrators and administratrix of the intestate estate of the late John N. Lewis, Jr. at the time the summary proceedings to recover possession of real property was instituted, and even up to the time judgment was rendered in the court below.

An administrator of an estate is a person to whom letters of administration has been granted by a court of competent jurisdiction to administer the estate of the decedent who died intestate. Decedents Estates Law, Rev. Code 8: 101.11(b). It is a formal document issued by the probate court appointing one as an administrator of an estate. Thus, the authority to act for an intestacy is only exercised by one duly qualified and legally appointed to carry out functions prescribed by the court. It is not assumed; it must be clearly and specifically authorized. If not, many would pose themselves as administrators and administratrices, and capriciously dispose of intestate estates. In those cases, the souls of the dead would be restless, for imposters would be feasting and enriching themselves at the expense of their intestate estates.

What is puzzling from the foregoing is that count three (3) of the "returns" filed by the Atlantic Law Chambers for corespondents/informants interposed no objections to its clients being joined as parties. Two of the persons, Deborah B. Tequah and Joseph N. Lewis, who were co-respondents below, are now the informants in these proceedings. We must therefore ask whether the action of the attorney was authorized? That is, did those persons whom he claimed to have represented agree to be joined as administrators and administratrix of the Intestate Estate of John N. Lewis?

Ordinarily, the court may not question the authority of an attorney who represents a party. However, the matter here involves an intestate estate which has been affected by the judgment of the court below. Thus, this Court must be satisfied that the intestate estate was made a party and was adequately represented in the summary proceedings to recover possession of real property. It is the responsibility of the Court to ensure that the property of a decedent is protected, and that whenever it is to be disposed of in any manner, such disposition must be in accordance with law. The protection of intestacy is so fundamental to the Court that the activities of an administrator must be monitored and supervised by the probate court at all times. In the case *Caulcrik v. Lewis,* [1973] LRSC 32; 22 LLR 37 (1973), text at page 43, this Court, speaking through Mr. Justice Henries, said:

"In the administration of a decedent's estate, a sale of real property can be legally made by virtue of an express order of the probate court... 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."

While in that case the issue was the sale of real property by the administrator, we think that the protection of the decedent's property was the essential element. Any fraudulent action, as in this case, against an intestacy and especially by imposters, should not prejudice the intestacy.

Additionally, in order for a party to be concluded by judgment in a suit, he must have been made a party. *Mokoh Boys v. Nelson,* [1978] LRSC 33; 27 LLR 174; *Tubman v. Murdoch,* [1934] LRSC 26; 4 LLR 179. It is further puzzling to the Court the role played by E. Kofa Benson, Deborah B. Tequah, and Joseph N. Lewis when they submitted to the jurisdiction of the court below as representatives of the intestate estate of the late John N. Lewis, Jr. and participated in the trial as such. It is inconceivable how these persons held themselves out as representatives of the intestate estate when they were not so authorized.

The Court takes note of clerk's certificate dated May 27, 1997, from the probate court that Joseph N. Lewis, Deborah B. Tequah and Patrick Lewis were appointed administrators and administratrix of the intestate estate of the late John N. Lewis on December 17, 1996; that is, after the conclusion of the summary proceedings in the court below. Clearly, the action of E. Kofa Benson, Deborah B. Tequah, and Joseph N. Lewis, in posing as representatives of the intestate estate, amounted to deception. This deception has been exposed by the same Deborah Tequah and Joseph N Lewis, who filed this bill of information, by and thru the Martin Law Firm. They admitted in the brief filed by their lawyer that they were not administrators and administratrix of the intestate estate of the late John N. Lewis at the time they appeared in the court below.

Therefore, this Court frowns on the dishonest conduct of the said E. Kofa Benson, Deborah Tequah, and Joseph N. Lewis. This is most reprehensible. Consequently, each of them is fined L$1000.00, to be paid into the government's revenue, Ministry of Finance, and official flag receipts exhibited by them within 48 hours from the date this opinion is delivered in open Court.

In consideration of these irregularities and the particular circumstances of this case, we hold that it is in the interest of justice to remand the case to the court below for a new trial with instruction that Joseph N. Lewis, Deborah Tequah and Patrick Lewis, appointed by the probate court on December 17, 1996, as administrators/administratrix of the intestate estate of the late John N. Lewis, be given an opportunity to plead and adequately represent the interest of the intestate estate.

Accordingly, the Clerk of this Court is ordered to send a mandate to the court below ordering it to resume jurisdiction and expeditiously try said case. The mandate of this Court, growing out of its judgment without opinion during the March A. D. 1995 Term, directing the court below to resume jurisdiction and enforce its judgment, hereby excludes the intestate estate of the late John N. Lewis. Costs to abide final determination of this case. And it is hereby so ordered.

Information granted; informants fined for deception.

Thorne et al v Thomson [1930] LRSC 8; 3 LLR 193 (1930) (15 May 1930)

ALETHA THORNE, FRANCIS 0. THORNE, JR., and MARY DENT, only legal surviving heirs of FRANCIS 0. THORNE, SR., deceased, of Harper City, Petitioners, v. OTILLIA D. B. THOMSON, Respondent.
APPEAL FROM THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT, MARYLAND COUNTY.

Decided May 15, 1930. 1. 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, and the powers of these courts are not sufficient to afford a complete remedy or the modes of proceeding are inadequate to the purpose. 2. Courts of equity administer to the ends of justice by (1) restraining the assertion of doubtful rights in a manner productive of irreparable damage, or (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. 3. Title to land by adverse enjoyment owes its origin to and is predicated upon the statute of limitations, 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.

In an action to quiet title, judgment was given for petitioners in the Circuit Court. On writ of error, this Court remanded to the Circuit Court for trial de novo. On appeal to this Court after second trial and judgment for petitioners, affirmed.
Brownell and Dixon for petitioners. clay for respondent. Barclay & Bar-

MR. CHIEF
JUSTICE JOHNSON delivered the opinion of the Court.

This was a bill in equity entered in the Equity Division of the Circuit Court of the Fourth Judicial Circuit, Maryland County, by Aletha Thorne, Francis 0. Thorne, Jr., and Mary L. Dent, who claim to be the only legal heirs of Francis 0. Thorne, Sr., late of the City of Harper, in said County, petitioners, against Otillia D. B. Thomson, respondent, to quiet title to lot No. 5 situated in said City. The history of the case is substantially as follows : The said town lot No. 5 was originally the property of George S. Woods, the father of respondent. After the death of the said George S. Woods, his widow, Mary L. Woods, administratrix of his estate, became the wife of the said Francis 0. Thorne,

Sr., and in the year 1883 together with one James M. Thomson, her co-administrator, sold said lot under an order of sale issued by the Monthly and Probate Court of Maryland County, to the said Francis 0. Thorne, Sr., who erected thereon a concrete building, in which he lived for more than twenty-five years. During this time he paid the taxes assessed on said lot, which taxes petitioners continued to pay until the year 1929. Sometime after the death of the said Francis 0. Thorne, Sr., his son Francis 0. Thorne, Jr., one of the petitioners, permitted Otillia D. B. Thomson, the respondent in the case, to live in said building, she being his half-sister. The respondent having thereby access to all papers, deeds and assets of the estate of the said Francis 0. Thorne, Sr., took them into her possession. When subsequently petitioners applied to said respondent for the original and administrator's deed for said lot No. 5, the respondent failed to surrender them to said petitioners, fraudulently setting up an adverse claim to said lot. Meanwhile the respondent leased the premises to A. Woermann of Cape Palmas. This case was heard at the May term 1925 of said court, His Honor E. J. S. Worrell, Judge presiding over said court by assignment, when a decree was rendered in favor of said petitioners. The judge decreed inter alia after hearing the evidence which clearly established the

title of the said Francis 0. Thorne, Jr., to the property in dispute that the deed for said lot in the possession of respondent be cancelled and her claim to said premises declared void ; that a new deed be awarded petitioners and the right, interest and emolument accruing from said premises be enjoyed by the said petitioners; and that respondent pay all costs of this action. Respondent procured the issuance of a writ of error and brought the case to this Court for review and final determination at the November term 1925, but owing to diminution in the records and other causes, this Court remanded the case to the said Circuit Court for trial de novo.

When the case was called for hearing at the February term of the said court it was proven that respondent by her fraudulent acts and deeds had caused to be extracted from the records, certain important documents, to wit: The original bill in equity and the written instruments marked from "A" to "M," one of which missing documents was the administrator's deed given by J. M. Thomson and Mary L. Thorne, administrator and administratrix of the estate of J. S. Woods to F. 0. Thorne, Sr. At the November term 1929, it was ordered that the rent from said premises be sequestered until the final determination of the case and that such portion of the records as could be found be forwarded to this Court for review. Judge E. J. S. Worrell, who presided over the trial of the case and at the investigation of the case at the May term 1925 of the said Circuit Court, and the rehearing of the case at the February term of said court, has forwarded a copy of his decree and the oral evidence in the case together with copies of depositions taken with reference to the fraudulent acts of respondent and certain officers of the court.

When the case was called for the re-hearing at this term of court, counsellor for petitioners submitted his brief and prayed the Court that in view of the clear, cogent and abundant evidence adduced at the trial of this case and

the decree of the court below rendered May 30, 1925, that the title of said complainants be confirmed and said decree affirmed, and the rents accruing from said premises be turned over to the heirs of F. 0. Thorne, Sr. Before arriving at a conclusion we deem it necessary to make the following observations : 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 ( ) 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. 1890), 207, 208. A careful study of the case at bar leads us to the conclusion that the circumstance of the case fall under the rule thus presented. The confidence reposed in respondent by Francis 0. Thorne, Jr., who placed her in possession of the premises in dispute out of sympathy for her; the fraudulent conduct of respondent in taking possession of the title deeds of said premises and refusing to surrender them on demand to petitioners ; the fraudulent acts of respondent in procuring the extraction of certain documents from the record, all point to the fact that the petitioners are entitled to equitable relief. But aside from these facts the undisputed possession of the premises by petitioners and privies for more than

twenty-five years clearly established their title to said lot. In Page and Page v. Harland and King, i L.L.R. 463 (1906) , this Court quoted with approval the following quotation from Tyler, Ejectment and Adverse Enjoyment:

" '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.) " In this and a number of other cases, this Court laid down the rule that undisputed possession of land for twenty years under color of right extinguished the claim of the former owner and quiets the possession of the actual occupant. We have, however, shown that Francis 0. Thorne, Sr., had an administrator's deed for said lot. In view of the foregoing, in order to put an end to this long standing litigation, we are of the opinion that the decree of Judge Worrell rendered at the May term of said court, 1925, be affirmed, that is to say, that the deed in the possession of respondent be cancelled and that her claim to said premises is void ; that a new deed be awarded petitioners and the right, interest and emoluments accruing from said premises be enjoyed by them; that the rents sequestered by orders of this Court be paid over to said petitioners and that respondent pay all costs of this suit. And it is hereby so ordered. Affirmed.

Gbartoe et al v Washington [2002] LRSC 11; 41 LLR 117 (2002) (5 June 2002)

JOSEPH GBARTOE, DUNBAR GBARTOE and WANNIE CHEA, Appellants, *v.* **WASHINGTON DOE,** Appellee.

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

Heard: March 21, 2002. Decided: June 5, 2002.

1. A trial court may refuse to render a declaratory judgment where such judgment will not terminate the uncertainty or controversy giving rise to the proceedings.
2. The sole object of a declaratory judgment is to declare rights, status, and other legal relations, whether or not further relief is or could be claimed.
3. A declaratory judgment is not a possessory action to oust a party from premises and place another party in possession of disputed property.
4. A declaratory judgment is one which simply declares the rights of the parties or exercises the opinion of the court on a question of law without ordering anything to be done, and the action is distinguished from other actions in that it does not seek execution or performance from the defendant or opposing party.

5. The Legislature has prescribed adequate remedy of ejectment to a person who is the rightful owner of real property and who is entitled to the possession thereof, where title is in dispute, or summary proceedings to recover posses-sion of real property when title to the said property is not in dispute.
6. It is erroneous and irregular for a trial judge to declare the rights of the parties over a piece of real property and to subsequently order the execution of his declaration in a declaratory judgment proceeding.
7. A party plaintiff to an ejectment suit may also demand from the defendant damages for the wrongful withholding or detention of the property or the possession thereof.

In a declaratory judgment proceeding commenced by the appellee, wherein he alleged that the appellants were illegally occupying and withholding property owned by the appellee' s late mother and over which the appellee held letters of administration, the trial court entered judgment in favour of the appellee, ordered the appellants ousted from the disputed premises, and determined that the said appellants pay to the appellee L$45,600.00 for rent for the withholding of the premises and L$5,000.00 for legal fees. The Court rejected the contention of the appellants that the declaratory judgment proceedings were dismissible since the appellee had failed to pay the accrued costs in a previous proceeding for cancellation relating the same subject property.

On appeal, the Supreme Court reversed the judgment of the trial court, holding, firstly, that declaratory judgment proceedings were not possessory in nature, and that the sole design of such proceedings was to declare the rights of the parties rather than to oust one party from property in dispute and place the other party in possession thereof. The Court opined that the appropriate remedy, which the legislature had prescribed, was an action of ejectment, where title to the property is in dispute, or summary proceedings to recover possession of real property, where title to the property is not in dispute. In each of such cases, the Court noted that the plaintiff may demand damages for the wrongful withholding of the property. The Court therefore held that it was error for the trial judge to order execution on the declaration made by him.

The Court also ruled that declaratory judgment was appropriate only where it would completely terminate the controversy and not leave anything to be determined with respect to the controversy. In the instant case, it said, the declaratory judgment did not have the effect of determining whether the property referred to by the appellee belonged to appellee's late mother or whether it was part of a lease property which was separate and distinct from the property claimed by the appellee, and particularly, the Court noted, since the Chambers Justice, in a prohibition proceeding had ordered that the appellants be repossessed of the property pending a determination as to title. The Court therefore *reversed* the judgment of the lower court, noting that the appellee could bring ejectment action if he feels that the appellants were encroaching on the property of the estate.

J. D. Baryougar Junius of Legal Clinic appeared for the appellants. *Charles K. Williams* of Dugbor Law Firm appeared for the appellee.

MR. JUSTICE JANGABA delivered the opinion of the Court.

The brief history of this case is as follows: On October 1, 1982, a lease agreement was entered into and executed by and between Wannie Chea, as lessor, and Joseph Gbartoe, as lessee, for a parcel of **land** located in Old Kru Town, now "Power Plant", West Point, for a period of twenty (20) years certain, commencing from October 1, 1982, up to and including October 1, 2002. Clause four (4) of the said lease agreement provide that the lessee should build thereon. We hereunder quote clause four (4) of the lease agreement for the benefit of this Court.

"4. And the said lessee hereby covenants with lessor that lessee will, within a reasonable time, erect a concrete building upon said **land**, of modern style and construct-ion, the entire costs of which shall be borne by the lessee."

The appellee herein, Washington Doe, obtained letters of administration on April 3, 1992 to administer the affairs of the Intestate Estate of the late Madam Wleh Blidee, located in West Point. On August 14, 1992, the appellee, Washington Doe, by and thru his legal counsel, Counsellor Theophilus C. Gould, wrote Mr. James Ketter a letter informing him that the mentioned lease agreement had expired and requested him to vacate the subject property. An action of summary proceed-ings to recover possession of real property was instituted against Mr. Ketter, and Appellee Doe was placed in possession of the disputed property in September, 1992. Co-appellant Joseph Gbartoe, upon returning to Monrovia, having been away for a period, instituted an action of sum-mary proceedings against Appellee Doe to recover possession of real property in the court of Justice of the Peace B. S. Tamba. A judgement was rendered in favor of Joseph Gbartoe, and Appellee Doe was evicted upon the strength of the lease which had been between Wannie Chea and Co-appellant Gbartoe. A motion to rescind judgment was filed by Appellee Washington Doe, the assignment of which prompted Co-appellant Joseph Gbartoe to file summary proceedings against the justice of the peace in the Sixth Judicial Circuit Court, Montserrado County.

A three-count bill of information was filed on May 5, 1997 by Appellee Doe informing and requesting the lower court to set aside the summary proceedings and conduct a "full scale investigation" since title to the property was in dispute. On July 4, 1997, the trial court entered a judgment against Co-appellant Gbartoe, dismissed the summary proceedings commenced by him, and mandated the justice of the peace to repossess Appellee Doe of the property, without a hearing of the appellee's bill of information which was pending before the trial court or the motion to rescind judgment which was pending before the justice of the peace.

A writ of prohibition was sought from the Supreme Court and accordingly granted on the 4th day of November, A. D. 1997 by Mr. Justice Wright, presiding in chambers during the October, A. D. 1997 Term of this Court. The basis for his ruling is hereunder quoted for the benefit of this opinion:

"Prohibition is hereby granted and the peremptory writ is ordered issued, the execution of the trial court mandate is restrained and declared null and void, and the petitioner is ordered repossessed of the lease premises pending the determination of title as requested by Co-respondent Doe in his three-count bill of information of May 5, 1997, and a subsequent hearing of the motion to rescind judgment filed by the co-respondent which is presently pending before

Justice of the Peace Tamba undetermined"
On November 28, 1997, the appellee filed a petition for cancellation of lease agreement for fraud, which was resisted on December 8, 1997. On December 10, 1997, Appellee Doe filed a notice of voluntary discontinuance of his cancellation proceedings. "Shortly thereafter, on December 15, 1997, Appellant Doe filed a five-count petition for declaratory judgment, counts 2 and 3 of which we hereunder quote for the benefit of this opinion:

"2. And also because petitioner says and avers that the defendants without any right whatsoever, are occupying and without any legal right withholding the property despite of the fact that said property is the bona fide property of the late Wleh Blidee"

> 3. Petitioner says further that the lease agreement existing between Joseph Gbartoe and Wannie Chea does not refer to the property of the late Wleh Blidee and cannot therefore entitle the defendant to occupy any premises of the late Wleh Blidee. Petitioner says that the late Wleh Blidee has never transferred any right of ownership of the property to any person or persons."

In count 4 of the petition, the appellee demanded the payment of rents for the illegal withholding of the property. He also prayed the trial court to declare his right to the property, to award him rents growing out of the wrongful occupation of the premises, and to have appellants pay L$5,000.00 as legal fees.
In their returns, the appellants denied the averments of the petition for declaratory judgment and prayed that the appel-lee's petition be dismissed because of his failure to pay the accrued costs in the cancellation proceeding, which was with-drawn prior to filing the declaratory judgment petition. In response thereto, the appellee filed a reply, upon which pleadings in this case rested.
On the 3rd day of June, A. D. 1999, His Honour Joseph W. Andrews, Assigned Circuit Court judge presiding over the March, A. D. 1999 Term of the Sixth Judicial Circuit Court for Montserrado County, rendered judgment in the case, the relevant portion of which we hereunder quote for the benefit of the opinion.

"COURT'S RULING: This court says that in keeping with Section 43.1 of the Civil Procedure Law, 1 LCLR, it does have the power to declare rights, status and other legal relations, whether or not further relief is or could be claimed. In the opinion of the court and from the evidence adduced at the trial court, the court is convinced that the property in question is the bona fide property of Wleh Blidee, the mother of Washington Doe, the petitioner in this case and the administrator of said property."

JUDGEMENT

"Therefore, it is the judgment of this court that the respondent Joseph Gbartoe, Dunbar Gbartoe and Wannie Chea be evicted and ousted from the house now the subject of these proceedings, and to pay all costs and expenses made by the petitioner, including the rent withheld for the past eight (8) years in the amount of L$45,600.00 at the rate of L$5,700.00, per annum, together with the payment of L$5,000.000, being the amount paid by petitioner to petitioner's counsel for legal services. The clerk of court is hereby ordered to issue a writ of possession and same place in the hands of the sheriff to be served on the respondents for the execution of this judgment."
The appellants argued before this Court that the trial judge erred when he entertained and granted

the petition for declaratory judgment since the appellee had failed to pay the accrued costs associated with the cancellation proceedings prior to filing the petition for declaratory judgment. The appellants also contended that a declaratory judgment must be based on the suit but that the court may refuse to render or enter the declaratory judgment where such judgment, if rendered on a lease agreement, would not terminate the uncertainty or controversy giving rise to the proceedings. The appellant therefore requested this Court to set aside the declaratory judgment rendered by the trial court.

The appellee, for his part, contended and argued that Joseph Gbartoe and Dunbar Gbartoe were the tenants of the late Wleh Blidee during her lifetime and that they lived in the identical house, subject of this litigation, but noted that they had refused to pay rent to him after the demise of his mother, claiming that they had a lease agreement with one Wannie Chea, whom they said was the owner of the house. The appellee also contended that the property was owned by his late mother by virtue of the title deed of his mother, and that the appellants were illegally occupying the house without any document. In addition, the appellee averred that the appellants had failed to present any title deed to show that the land upon which the house in question was constructed was owned by any person other than Wleh Blidi, the mother of the appellee. The appellee further contended that the declaration on the rights of parties over a piece of real property requires the presentation of a title deed to the court for the property, and that it is only upon the strength of the said title deed that ownership can be legally declared in an action of declaratory judgment. He therefore prayed this Court to confirm the judgment of the trial court.

The paramount issues for determination of this case are:

1. Whether or not a petition for declaration judgment is a possessory action or could be used to evict the appellants and place the appellee in possession of the disputed property?
2. Whether or not a declaratory judgment can be granted when the controversy which is the subject of the litigation will not be terminated?

The above stated issues will be decided in the reverse order. With regard to the issue of whether or not a declaratory judgment can be granted when the controversy which is the subject of the litigation will not be terminated, this Court ob-serves from count 1 of the appellee's petition for declaratory judgment that the house which the appellants now occupy is a part of the estate of the late Wleh Blidee which is admini-stered by the appellee as administrator. Count 2 of the petition alleged that the appellants were occupying and withholding the premises of his late mother without any legal right. In count 3 of the petition, the appellee conceded the existence of a lease agreement entered into and executed by and between Wannie Chea, as lessor, and Joseph Gbartoe, as lessee, and also that said lease did not refer to the property of the Late Wleh Blidee. The averments contained in count 3 of the appellee's petition for declaratory judgment showed that there were two separate and distinct premises, namely: A house of the late Wleh Blidee, administered by the appellee, and which he alleged the appellants were presently occupying, and another property, owned by Wannie Chea, which was leased to the appellants in 1982 for a period of twenty (20) years. The Court also observed that clause 4 of the said lease, conceded by the appellee, provides that the lessee shall erect a concrete building on the parcel of land at his own expense.

As stated earlier, Mr. Justice Wright granted the writ of prohibition upon the strength of the lease agreement between Wannie Chea, as lessor, and Joseph Gbartoe, as lessee, and ordered that the lessee be repossessed of his leased property pending the determination of the issue of title, as requested by Appellee Doe in his three-count bill of information of May 5, 1997, and also the

determination of the motion to rescind judgment filed by the appellee before Justice of the Peace Tamba, and which was still pending, undetermined. We are taken aback as to how the trial judge declared the appellee's right and ownership to the leased premises that the Chambers Justice had ordered the lessee to be repossessed of, when indeed and in truth the lease agreement did not refer to the Intestate Estate of the late Wleh Blidee, a fact clearly admitted by the appellee in count 3 of his petition. We deduce from count 3 of the appellee's petition that the leased property does not include the Intestate Estate of the late Wleh Blidee. We hold accordingly that there still exists uncertainty as to whether the appellants are in possession of the property owned by the late Wleh Blidee. Our statute clearly provides that a trial court may refuse to render a declaratory judgment where such judgment will not terminate the uncertainty or contro-versy giving rise to the proceedings. Civil Procedure Law, Rev. Code 1:43.5.

The next and final issue for our determination is whether or not a petition for declaratory judgment is a possessory action or could be used to evict the appellants and place the appellee in possession of the disputed property? The answer to this question is no. The final judgment of the trial judge, ren-dered on June 3, 1999, ordered the eviction of the appellants from the leased property and the placing of the appellee in possession of the premises. We would like to remark that it is the Legislature that has the authority to provide a remedy for any relief sought by a party litigant in this jurisdiction. The sole object of a declaratory judgment is to declare rights, statuses, and other legal relations, whether or not further relief is or could be claimed. A declaratory judgment is not a possessory action to oust a party from premises and place another party in possession of disputed property. Civil Procedure Law, Rev. Code 1:43.1. It is also a universal princi-ple of Law that "[a] declaratory judgment is one which simply declares the rights of the parties or expresses the opinion of the court on a question of law without ordering anything to be done, and the action is distinguished from other actions in that it does not seek execution or performance from the defendant or opposing party." 26 C. J. S., *Declaratory Judgment*, § 1.

In the case at bar, the trial judge did not only declare the rights of the parties to the property, but he also ordered the execution of his declaration to the effect that the appellants should be evicted from their leased property and that the appellee should be placed in possession of the said premises. The Legislature has prescribed an adequate remedy to a party who is the rightful owner of real property and who is entitled to the possession thereof against another party who is wrong-fully and illegally withholding the possession of such disputed property. Such adequate remedy in this jurisdiction is either an action of ejectment, when title is in dispute, or summary proceedings to recover possession of real property, when title of said property is not disputed by the parties. This Court holds that it was erroneous and irregular for the trial judge to declare the rights of the parties over a piece of real property and to subsequently order the execution of his declaration in a declaratory judgment proceeding.

An action of ejectment can be instituted by a party right-fully entitled to the possession of real property against another party who is wrongfully withholding possession thereof. Such remedy is sought when title to the said property and the right to possession are in dispute. Civil Procedure Law, Rev. Code 1:62.1. The statute also provides that the plaintiff in such action can also demand damages for wrongful detention of the property and the possession thereof. *Id.* section 62.3. We hold therefore that the proper action which should have been brought by the appellee for the wrongful withholding of his mother's property, other than the leased property owned by Wannie Chea, was an action of ejectment instead of declara-tory judgment proceeding.

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 informing the judge presiding therein to resume jurisdiction over the case and give effect to this opinion. Costs are ruled against the appellee. And it is hereby so ordered.

Judgment reversed.

Talery et al v Wesley [1971] LRSC 34; 20 LLR 314 (1971) (27 January 1971)

GERTRUDE TALERY and MARVINA COOPER, by and through her husband, MOMOLU S. COOPER, Appellants, v. ABRAHAM T. WESLEY, Appellee.
MOTION
TO DISMISS APPEAL FROM THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued March 30, 1971. Decided May 27, 1971.
1. The Supreme Court will not recognize any person as counsel for a party, who has not obtained a lawyer's license, as required.

In an action of ejectment, the defendants appealed from the judgment entered against him. The appellee moved to dismiss the appeal,
on the ground that the appeal bond was defective. The appellants opposed the motion, contending that counsel subscribing the motion
papers had no standing in Court, having failed to obtain his lawyer's license for 1970. The Supreme Court sustained the argument
and denied the motion to dismiss the appeal.
Momolu Cooper

for appellants.

A. Lorenzo Weeks

for appellee. MR. Court.
JUSTICE SIMPSON

delivered the opinion of the

This case originated in the Sixth Judicial Circuit Court, Montserrado County during the June Term,
1969, when Abraham T. Wesley filed an action of ejectment against Gertrude Talery and Marvina Cooper, by and thru her husband, Momolu
S. Cooper. The complaint substantially alleged that on September 16, 1964, plaintiff bought, from the Republic of Liberia, a portion
of land containing twelve acres, situated at Fendell, in Louisiana, a part of Montserrado County. The complaint continued by averring
that irrespective of plaintiff's source of title, the defendants were continuing

to unlawfully deny
plaintiff the aforesaid twelve acres of land, to his damage. In the
circumstances, plaintiff prayed for $3,500.00 in damages, and
the return of his property to him by the eviction of the defendants
therefrom. The case was subsequently assigned and bulletined
for hearing before this Court. When the case was called, the Court noted that
a motion to dismiss, containing two cogent counts,
had been filed by the appellee, through his subscribing counsel. Count one of
the motion contended that the appeal bond was seriously
defective in that it had attached thereto no affidavit in verification of the
fact that the sureties named thereon had not only signed
the bond but that they also had properties to cover the amount stated
therein. Count two, in further attacking the bond, contended
that it was totally defective, for it violated another statutory provision in
that no certificate from the Revenue Service was attached
thereto showing that there was no lien on the property of the sureties and
that it was unencumbered. Counsel for appellants produced
evidence to show that at the time of subscribing his signature to the motion
to dismiss, March 6, 1970, and for the residue of the
year, counsellor A. Lorenzo Weeks, of counsel to Badio and Weeks, had not, in
fact, procured a license, permitting him to subscribe
his signature to the motion. In the circumstances, the motion constituted a
legal nullity for it had not been subscribed by a counsellor
to whom this Court gave legal cognizance, since he had failed and neglected
to obtain from the Government a license to permit him
to practice law. Upon inquiry by the bench, counsellor Weeks was forced to
concede that he had not obtained a lawyer's license for
the year 1970. In view of the fact that counsel who signed the motion was not
legally clothed to do so, this Court must deny the
motion. Costs to abide final determination of the case.
Motion to dismiss appeal denied.

Blackie v Dempster [1979] LRSC 22; 28 LLR 148 (1979) (15 June 1979)

SOLOMON BLACKIE, Appellant, *v.* **S. K. DEMPSTER**, Appellee.

JUDGMENT WITHOUT OPINION

Decided: June 15, 1979.

When this case was called, Counsellor J. Dossen Richard appeared for the appellant. Counsellor John Dennis -- replacing Counsellor Samuel E. H. Pelham, who had been suspended from practice -- appeared for the appellee.
The certified record from the trial court shows that appeal from the judgment against the defendant/appellant was regularly taken and completed, and the said record has disclosed the following facts:

1. On the strength of a Public **Land** Sale Deed executed on the 6th of July, 1976, in favour of the appellee, S. K. Dempster, as plaintiff, brought action of ejectment against the appellant, claiming his illegal and wrongful withholding of one fourth of an acre of said property without any color of right. The deed marked exhibit "A" was produced with the complaint and made a part thereof.

2. The defendant, now appellant, appeared and filed an answer in which he denied the plaintiff's right to recover and contended that the property in dispute "had been already alienated to Augusta B. Padmore as more fully appears by Quit Claim Deed from Bill M. Maurice and W. S. Diggs to A. B. Padmore on the 22nd of May, 19-6. No copy of this Quit Claim Deed was annexed to his answer, and no document vesting title in him was proffered.

Upon trial of the case the following question was asked the defendant:

Ques: "Mr. Witness, please tell the court and jury what is your line of defense for illegally and wrongfully occupying plaintiff's premises. Do you have any deed for the said parcel of **land** ?

Ans: No. I do not have a deed."

4. In the brief filed and argued by appellee's counsel, it is contended that although the complaint was filed on the 17th day of January, 1977, the defendant's answer was not filed until the 1st day of February, 1977, beyond the 10 days required by statute for this responsive pleading. The record bears out this fact. Accordingly, the judge dismissed the complaint at hearing of the law issues, and the jury tried the case with the defendant on a bare denial of the facts. For reliance, 1 LCL Revised p.106 sec. 9.2. The jury found for the plaintiff and the defendant appealed.
Our law provides that "deeds and other writings 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" 1 LCL Revised p.204 sec. 25:16.
After studying the record certified to us from the court of origin, in view of the law controlling as cited herein above, and also after hearing argument of counsel on both sides, it is adjudged that the judgment of the trial court should be and the same is hereby affirmed with costs against the appellant. The Clerk of this Court is ordered to send a mandate down to the court below commanding the judge presiding therein to resume jurisdiction over the case and enforce the judgment. And it is so ordered.

NOTE: Mrs. Justice Brooks-Randolph being absent when this case was heard did not take part, hence has not signed this judgment.

Morris v Jackson et al [1969] LRSC 30; 19 LLR 311 (1969) (13 June 1969)

ADELAIDE E. MORRIS, Appellant, v. ELIZA JACKSON, EDITH HERRON, and REGINALD JACKSON, Administrators of the Estate of Z. A. JACKSON, Appellees.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued April 30, 1969. Decided June 13, 1969. 1. An interest in an estate in intestacy cannot be conveyed by a single heir when there are more than one, without the consent of all the heirs, unless by an order of a court. 2. By virtue of the recording statutes, the failure to record title to an interest in real property within four months of the execution of the instrument of conveyance, renders such conveyance void against an innocent purchaser for value who subsequently duly records an instrument conveying an interest in the property. 3. A court sitting in equity ought not consider relief where there is an adequate remedy at law.

Petitioner brought a bill in equity to remove cloud on and quiet title to a sixty-acre tract included in the inventory of an intestate estate by the administrators. Petitioner claimed title by descent, after purchase of the tract from one of the three predecessor administrators, by warranty deed signed by him and his wife, without proof of conveyance to him by the other administrators, and with no witness attesting to his mark on the deed.
The deed was not probated until some thirty years after its execution. The circuit court denied the petition and an appeal was taken from the judgment. Judgment affirmed.
The Garber law firm for appellant. Samuel

B. Cole

for appellees.
MR. JUSTICE ROBERTS

delivered the opinion of the
311

court.

312

Adelaide Morris, of the City of Monrovia, filed a bill in equity in the Sixth Judicial Circuit Court, Montserrado County, praying the court to remove cloud on and quiet title to a parcel of property consisting of sixty acres, situated in an area now known as Paynesville, formerly called Jacksonville Oldfield. In her complaint Miss Morris alleged that the land which she acquired from her ancestor, J. J. Morris, was included in the inventory of the estate of Z. A. Jackson, by the respondents, Eliza Jackson, Edith Herron, and Reginald Jackson, administrators of the estate. The case was filed during the June 1965 Term, and the respondents were cited to appear for trial on October 22, 1966. Judge John A. Dennis, who presided, denied petitioner's prayer for relief in the bill on the ground that the petitioner's remedy was adequate at law. It is from this decree the petitioner appealed to this Court. A synopsis of the contention is as follows : J. J. Morris, the grandfather of Adelaide Morris, during his lifetime purchased a piece of property, the sixtyacre tract of land in controversy, from Robert Jackson and his wife, which he died seized of. Prior to his death, he executed a will, conveying the property to his son, Joseph L. Morris, the father of Adelaide Morris. John L. Morris bequeathed a life estate therein to his wife, upon her death the fee to appellant Adelaide Morris. His wife, Maude Amelia Morris, in consonance with the provisions of the will of her husband, devised this piece of property to Adelade Morris. She now claims this property as hers. The appellees do not actually dispute the foregoing but maintain her possession is illegal, for the reason that they are the surviving legal heirs of Z. A. Jackson, which they establish thus: Z. A. Jackson died in 1918, leaving surviving his widow, two brothers, Robert H. Jackson and Samuel Jackson, and a sister, Eliza Jane Jackson. He died possessed of real property, including a ninety-six

acre tract of land located in the Settlement of Paynesville, Montserrado County. After his death, no will having been made by him, the Probate and Monthly Court appointed administrators for the estate, issuing them letters of administration. With this authority, they sold thirty-six acres of this tract, leaving a balance of sixty acres. There being no record in the Probate Court showing that the estate was ever closed before the death of the administrators, the appellants applied to the Probate Court of Montserrado County for letters of administration. The application was granted. In the course of acting thereunder, the present suit was begun. What we consider germane in the case is whether Adelaide Morris had legal title from which a cloud should be removed. It is well established that Z. A. Jackson died in 1918, leaving behind two brothers, Robert H. Jackson and Samuel Jackson, and a sister, Eliza Jane Jackson. We gather from the record that J. J. Morris, grandfather of appellant, purchased this piece of property from Robert H. Jackson, one of the surviving heirs of Z. A. Jackson, in 1922. This is also evidenced by the deed made profert

and marked exhibit "A," claiming that this piece of property was a portion of the estate of his brother, Z. A. Jackson. It is this conveyance from Robert H. Jackson to J. J. Morris that has descended to Adelaide Morris. A look at the deed just referred to, shows that the conveyance was made by Robert H. Jackson and his wife, Jane, heirs of Z. A. Jackson. The record shows that both Samuel Jackson and Eliza Jane Jackson were living during the date of the sale of this property by Robert H. Jackson. Although there is a variance with respect to the date of the death of Samuel Jackson, it is conclusive that he died after the conveyance of the property to J. J. Morris. It is puzzling how Robert Jackson and his wife could part with this property as heirs of Z. A. Jackson to the complete exclusion of Samuel Jackson and Eliza Jackson, the other two collateral heirs.

The deed proferted by the petitioners was not signed nor executed by the administrators of the estate of Z. A. Jackson. Nor could Robert Jackson have legally conveyed it, not being the only legal surviving heir. The deed should have been signed by the three surviving heirs, in the absence of proof of the conveyance of the land to Robert Jackson by the other administrators. The manner in which Robert H. Jackson could have legally conveyed the whole parcel remains unexplained by the petitioner. An unexplained coadministrator, B. J. K. Anderson, also appears in the record. There is no indication of a conveyance by the coadministrators to Robert H. Jackson, who could not have conveyed, of course, to himself. Yet the deed under which petitioner claims is a warranty deed. An interest in an estate in intestacy cannot be conveyed by a single heir where there is more than one heir, except by the consent and agreement of all of the heirs, unless by order of the court. Moreover, appellees offered evidence not denied by appellant, to the effect that Robert H. Jackson was illiterate. One Capehard testified : "Q. In an answer on cross-examination yesterday, you said that the deed was false or forged. Please explain for the benefit of the court what do you mean by this expression? "A. By that I mean that it was not his signature, because my grandfather could not write. "Q. By your last answer on re-direct, we assume that you have seen your grandfather write, or have done correspondence with him to know his handwriting and signature? "A. No. Because he never wrote any letter nor could he read or write." Succeeding this witness on the stand was A. Dundo Ware:

"Q. Please say if you were personally acquainted with the late Robert H. Jackson? "A. I was personally acquainted with Robert H. Jackson who was married to my cousin, Mrs. J. D. Watson. "Q. Please tell all you know about his literary qualification, if you can? "A. Mr. Robert Jackson was not a lettered man. He was only a successful trader." On cross-examination, the same witness : "Q. You have said that R. H. Jackson was a businessman; can you say

to any degree of certainty that during his business operations he did not have any literary qualification? "A. Yes. He did not have any literary qualification. "Q. I suggest that you were in his business operations and had to do all his literary work; not so? "A. I was not. I was never employed in his business, but many times in his lifetime he called me to prepare his letters for him. "Q. And from that you arrived at your deduction that he was not literarily qualified, not so? "A. Not because of the preparation of his letters, but we all lived together in one County, and as I have aforesaid, he married in my family." This testimony tending to invalidate the signature appearing on the deed was not rebutted by petitioner. A person who is incapable of writing and signing his name, should make his mark in the presence of attesting witnesses. The signature appearing on the deed lacks this requirement. What seems very odd, and has a tendency to support the charge of appellee, is that J. J. Morris is said to have purchased this piece of property on March io, 1922. A look at the endorsement on the deed discloses that the instrument was never probated and registered until May 2,

1952, about two months short of thirty years after the purchase day. While we are loath to give acceptance to this unpleasant accusation, yet we are irresistibly led to ponder why a man of accomplishment and high repute would fail to meet a requirement of the law. Our Property Law provides, 1956 Code, tit. 29, § z : "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. "In order to be valid and probatable, a deed, mortgage or other instrument shall be witnessed by at least two witnesses." For failure to probate and register, section 6 of the same title, provides : "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." This Court has said in Smith v. Faulkner, [1946] LRSC 5; 9 L.L.R. 161 (1946), that in legal parlance laches is not merely delay but delay that works a disadvantage to another. Quoting from 10 R.C.L., Equity, § 143, this opinion explains that lapse of time has a tendency to obscure evidence and often makes it impossible to discover the truth and when one, knowing his rights, takes no steps to enforce them, delay becomes inequitable, and should work an estoppel against

the assertion of the right when a court sees negligence on one side and injury therefrom on
the other side. The Court denied the petition, relying on the foregoing, as well as the reason that "in this Country the Probate
Court has sole jurisdiction of estates, whether intestate or testate, and a court sitting in equity ought not to interfere where
there is an adequate remedy at law." Therefore, the decree of the court below is affirmed with costs against 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.

Coleman et al v RL [1914] LRSC 1; 2 LLR 139 (1914) (9 January 1914)

WILLIAM M. COLEMAN and **ANNA E. COLEMAN**, Appellants, v. **REPUBLIC OF LIBERIA**, Appellee.

ARGUED DEcumma 22, 1913. DECIDED JANUARY 9, 1914.

Dossen, C. J., and McCants-Stewart, J.

There being no statute making uttering a forged instrument a criminal offense, a judgment punishing therefor is a nullity, if the indictment allege that the offense is against the statute law in such case made and provided.

Mr. Justice McCants-Stewart delivered the opinion of the court:

Forgery—Appeal from Judgment. This is an appeal from a final judgment of the Circuit Court of the first judicial circuit imposing upon each of the appellants a fine of one hundred dollars and imprisonment in chains with hard labor in the county jail for three months and requiring them to make restitution to the full value of the actual damage sustained by said forgery, which said judgment was based upon the verdict of a jury finding the appellants guilty of uttering a forged instrument.

The material facts in the case are as follows : An indictment was returned by the grand jury at the June term (A.D. 1912) of the Circuit Court of the first judicial circuit charging one Charles A. Redd with forging the following paper, namely:

"Brewerville, April 28th, 1910.
In my sound mind and good senses after death this forming a part of my Will and Testament that I have this day willed and bequeathed unto one Anna Coleman of the settlement of Brewerville and County of Montserrado and Republic of Liberia, Willietta, her and her heirs one town lot on the corner with two houses thereupon, one (20) twenty-acre block of **land** in Mango town, Virginia with coffee thereupon this **land** is on the road leading to Brewerville's waterside and two (2) town lots with no improvement on them whatever excepting a few hills of coffee trees and three (3) heads of cattles, namely, (1) one bull and (2) two heifers and one (1) old treading machine and (1) one small iron cart, that is a wheel cart these lots that I am speaking abut with no improvement one is fronting Mr. Harmon Saunders and the other one is adjoining Dr. Wm. Coleman these lots are in the settlement of Brewerville.

I herewith now set my hand and sign this 28th day of April, 1910.
L. S. W. B. Gant.
Stamp 50 cts.
Witnesses :
J. T. Banks his Henry Richardson X
Mark
Gilbert Dean his X
Mark"

The indictment further charged that the above named appellants did unlawfully and feloniously procure, counsel, command and advise the aforesaid Charles A. Hedd to forge the instrument aforesaid.

The final count of the indictment further charged that the above named appellants did alter and utter the aforesaid instrument for probate well knowing the same to be forged, and concluded with the words, "contrary to the statute law, in such cases made and provided."

The jury after a lengthy trial rendered the following verdict, which was duly recorded :

"Petit Jury Room.
Monrovia, September 13, 1912.

We, the petit jurors, to whom was submitted the case Republic v. Charles A. Hedd, Mr. and Mrs. W. M. Coleman, have unanimously agreed that Mr. C. A. Hedd is not guilty. But Mr. William Coleman and Mrs. Anna Coleman are guilty of uttering the purported will, and are therefore guilty.

J. E. Padmore, Foreman.
W. M. R. Richards, Secretary."

Counsel for appellants gave notice of motion for a new trial, but no such motion was made, appellants confining themselves to a motion in arrest of judgment, which motion was overruled. Whereupon appellants after the rendition of final judgment, presented and were allowed a bill of exceptions in which issues of law alone are raised, and they now come here asking for a reversal of said final judgment, basing their appeal upon certain issues of law, the only one necessary to be considered being the following: That there is no statute making uttering a criminal offense.

In order to punish for a crime, the crime must be distinctly defined. Laws which create crimes ought to be so explicit that all men subject to their penalties may know what acts it is their duty to avoid. *(U. S. v. Brewer,* 139 II. S. 278.)

The doctrine is fundamental in English and American law that before a man can be punished his case must be plainly and unmistakably within the law. It follows, therefore, a *priori,* that where there is no statute making uttering a forged instrument a criminal offense, a judgment punishing therefor is a nullity, if the indictment alleges that the offense is against the statute *law* in such cases made and provided.

The Legislature at its A. D. 1899-1900 session passed a criminal code defining crimes and misdemeanors and providing the punishment therefor. The preamble to the Code is, as follows:

"It is enacted that from and after the passage of this Act, all crimes and misdemeanors committed in this Republic of which any person is found guilty upon due trial, or who in open court upon arraignment shall confess guilty of commission of said crime or misdemeanor, shall be sentenced and punished as is hereinafter provided.

"It is the sole intent of this Act to name or define, or both name and define, the various crimes and misdemeanors and to prescribe their appropriate punishment."

Counsellor Arthur Barclay, on behalf of the appellants pointed out that said Code, while defining forgery and prescribing the punishment therefor, does not contain any provision with reference to the concatenated common law offense of uttering a forged instrument, and he argued with an earnestness which indicated deep conviction that our Criminal Code excludes all prosecutions for common law offenses. He contended that such was the intention of the Legislature, as under the old practice allowing prosecutions for common law offenses there had grown up a criminal system as to the punishments inflicted which was not based upon constitutional or statutory law but upon the personal ideas and often the personal feelings or whims of the judges, because when convictions were had under prosecution for common law offenses there were no books at hand showing what punishments should be inflicted, and the judges did as they pleased. Counsellor Barclay further argued that public sentiment revolted against a situation of this kind, and the bar taking advantage of it secured the enactment of the present Code with the sole intent to name and define the various crimes and misdemeanors for which prosecutions could be carried on in the Republic, and to prescribe the appropriate punishment therefor. Counsel contended that the language of the preamble to the Code showed that its provisions were intended by the Legislature to exclude all prosecutions for crimes and misdemeanors not therein enumerated.

Interesting as was this argument, it is not necessary for us to pass at this time upon the point involved therein, as the prosecution in the case at bar was not brought under the common law, the indictment distinctly charging appellants with violating the statute made and provided; and as there is no statute defining the common law offense of uttering a forged instrument, this prosecution must fail.

The trial court erred in denying defendants' motion in arrest of judgment, and its final judgment was a nullity, the same being based upon no statute law whatever as the indictment charged.

The responsibility is upon this court to see that justice is done to all whether the Republic comes here with its mighty power or whether it be the humblest and poorest individual in the land;

and while we shall not reverse any judgment on the ground of any technicality, yet, where the liberty of the citizen is involved, it is the duty of this court to see that it is not taken away unless by the law of the **land**. Even if a crime should be committed, the proceedings to punish it should strictly conform to constitutional and statutory requirements; and in a case like the one at bar, this court can not uphold a judgment punishing a party for an act which is not made a criminal offense by any statutory enactment, where the indictment charged the violation of statutes made and provided.

It seems, therefore, perfectly clear that the judgment of the trial court should be reversed and set aside; and it is so ordered.

Arthur Barclay, for appellants.

Thos. W. Haynes, Attorney General, for appellee.

[Mr. Justice Johnson, being disqualified, took no part in the consideration or decision of this case.]

Mends-Cole v Deshield et al [1961] LRSC 32; 14 LLR 521 (1961) (15 December 1961)

J. J. MENDS-COLE, Appellant, v. W. 0. DESHIELD, et al., Appellees.
APPEAL FROM THE MONTHLY AND PROBATE COURT OF MONTSERRADO COUNTY.

Argued November 9, 1961. Decided December 15, 1961. Failure of an appellant to appear when a case is called for hearing before the Supreme Court is ground for dismissal.

On appeal from a ruling of the Commissioner of Probate denying objectives to the probation and registration of deeds to real property, appeal dismissed. No appearance for appellant. 0. Natty B. Davis for appellees. MR. Court. JUSTICE HARRIS

delivered the opinion of the

There seems to have been some **land** dispute between J. J. Mends-Cole, for himself, Maude

Fagans-Freeman, by and through her husband George M. Freeman, and Mabel Fagans-Hill, by and through her husband, Samuel D. Hill, surviving heirs of the late Edmund Chavers, of the City of Monrovia, and W. 0. Deshield, James R. Deshield and Henrietta Williams-Banguri, heirs of the late John Chavers of the City of Monrovia; whereupon the aforesaid J. J. Mends-Cole addressed the following letter to the clerk of the Monthly and Probate Court, of Moritserrado County, under date of June 27, 196o. "DEAR MADAM: "Please take note and spread upon the records of the monthly and probate court that the heirs of Edmund Chavers, Montserrado County, have objections to the probation and registration of deeds or other instru-

ments affecting and relating to real property lying and situated in Sinkor, Monrovia, Montserrado County, from the heirs of John Chavers (Deshield) and the caveators will file their objections thereto after they have been notified in keeping with law. "Very truly yours, [Sgd.] J. J. MENDS-COLE." On July 5, 196o, the clerk of the monthly and probate court addressed a letter to the said J. J. Mends-Cole, which letter, in its body, reads as follows : "Please be informed that instruments (warranty deed from James H. Deshield to Emma A. Cooper, Lot Number 35 (Chavers estate) Block 13-1, Lot Number 12, situated at Sinkor, Monrovia, and warranty deed from James H. Deshield to Cecelia A. Dennis, Lot Number 35 (Chavers Estate) Block 13-1, Lot Number 13, situated at Sinkor, Monrovia) have been presented to this court for probation. In keeping with your caveat filed in this court, you will therefore file your said objections to the probation and registration of the instruments within ten days from the date of this notice." Upon the receipt of the information of the clerk of the monthly and probate court that deeds had been offered for probation and registration affecting the said land, objections to their probation and registration were promptly filed by the said Mends-Cole for himself and rest of the caveators. The proceedings rested with the surrejoinder of the objectants, and the case, having been assigned for trial of the law, was heard on October 26, 196o. A ruling was handed down on November 4, 196o, by the commissioner of probate, denying the objections, and admitting the said deeds to probation and registration. To this ruling, the objectants excepted and announced an appeal to the Supreme Court at its March, 196o, term. Notice to all parties concerned was issued on November 7, 1961, informing them that the case was assigned for

trial on the following day. The said notice of assignment was served and returned by the marshal of this Court as well as acknowledged by counsel for both parties; but quite strangely, when the case was called for trial, counsel for the respondents-appellees appeared, but neither the appellants nor their counsel appeared; whereupon counsel for the appellees invoked Part 6 of Rule IV of the Revised Rules of

the Supreme Court, which reads, in part, as follows :
"Dismissal for failure of counsel or party to appear--

When a case which has
been bulletined is reached for argument and neither party appears, it may be dismissed at the cost of the appellant. If the appellant
fails to appear when the case is called for hearing, the Court may, on motion of appellee or on its own motion, dismiss the appeal." There are indeed some interesting legal issues projected in the pleadings which we earnestly desired to have argued before us ; but we are prohibited on
account of the appellants' non-appearance and the invocation of the rule just above quoted. We, therefore, have no alternative but
to dismiss the appeal with costs against the appellants. And it is so ordered. Appeal dismissed.

Mensah et al v Wilson [1994] LRSC 38; 37 LLR 656 (1994) (23 September 1994)

DAVID D. MENSAH et al., Appellants, v**. FRANCES WILSON**, by and thru Her Attorney-In-Fact, FRANCES WILSON-HOFF, Appellee.

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

Heard: April 4, 1994. Decided: September 23, 1994.

1. A trial court cannot rule a case to trial on a bare denial after dismissing the answer on one point only, without ruling on all the issues on law raised by the pleadings.

2. In real property cases, a default judgment should not be granted upon only one assignment issued for the hearing. If on the first assignment, neither the defendant nor his counsel appears, the Court should at least make another assignment.

3. The granting of an application for default judgment does not preclude the plaintiff from proving his/her case.

4. 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.

5. A court can only affirm and confirm a verdict which awards a sum certain when said sum certain has been pleaded and testified to at the trial by plaintiff and his/her witnesses.

6. Even when a defendant has defaulted in a case, the plaintiff must establish proof of his claim before judgment can be rendered thereon.

7. Issues not raised in pleadings may not properly be raised on the trial of a case.

8. Where an issue is not raised in the complaint, it ought not to be raised during the trial, for the fundamental purpose of pleadings is to provide notice to the parties of issues which are to be raised on trial.

Appellee in these proceedings instituted an action of ejectment against appellant in the Civil Law Court of the Sixth Judicial Court, Montserrado County. When the case was called for trial, after the disposition of law issues, neither appellant nor his counsel appeared, even though as per the returns of the sheriff, a notice of assignment was duly served upon them. In light of appellant's absence, appellee prayed the court for default judgment which was granted. A jury was empaneled, the case heard and a verdict returned in favor of appellee. Subsequently appellant filed a motion for a new trial which was resisted, heard and denied, to which appellant noted their exceptions and appealed to the Supreme Court.

The Supreme Court held that a trial court cannot rule a case to trial on a bare denial after dismissing the answer on one point only, without ruling on all issues of law raised by the pleadings. The Court also held that judges should not be too hasty in granting default judgment in cases involving real property, especially upon one notice of assignment. In the instant case the court opined that the trial court should have at least made another assignment and then proceed with the case if appellant failed to appear. The Court further observed that even though appellee was granted default judgment, he failed to establish the facts constituting his claim.

Accordingly, the Supreme Court *reversed the* judgment of the trial court, and remanded the case for a new trial commencing with the pleadings.

Snonsio E. Nigba, in association with *Moses Yangbe,* appeared for appellants. *Stephen B. Dunbar,* Jr., in association with *Joseph P. Findley,* appeared for appellee.

MR. JUSTICE MORRIS delivered the opinion of the Court.

This is an ejectment action instituted by Frances C. Wilson, by and thru her attorney-in-fact, Frances Wilson-Hoff of the City of Monrovia, Liberia as plaintiff against David Mensah, Jr., Dr. Karbo, Edward Bestman, Charles Boley and Frank Moses Duo of the City of Monrovia, Liberia, as defendants. Pleadings progressed to reply, and at the disposition of law issues, the entire answer was dismissed and defendants placed on bare denial. Hearing of the case was assigned on the 30th of January 1985 for January 31, 1985. There is a copy of a letter in the file which indicates that the defendants's counsel received the notice of assignment at 7:30 p.m. on the 30th of January, 1985. The letter further indicates that the counsel was engaged in a case previously assigned for that same day and therefore was unable to get in touch with his clients that evening. Hence neither the counsel nor any of his clients appeared for the trial. At the call of the case, counsel for plaintiff asked for default judgment which was granted. The sheriff was instructed to call the defendants three times at the door, and that upon their failure to answer, the plaintiff would proceed with the trial to establish her case. Accordingly, the defendants were called three times at the door, but did not appear; therefore the plaintiff proceeded with the trial. A jury was empaneled, the case heard, and a verdict returned awarding the plaintiff the total sum of One Hundred Fourteen Thousand Two Hundred Forty-Five Dollars ($114,245.00) as rent, and the defendants ordered evicted from the premises. The motion for a new trial was filed, heard and denied. Hence, this appeal before us on a five-count bill of exceptions.

With reference to count one of the bill of exceptions, this Court, in the case *Claratown Engineer Inc., et al., v. Tucker[1974] LRSC 48; ,* 23 LLR 211(1974), held that:

"A trial court cannot rule a case to trial on a bare denial after dismissing the answer on one point only without ruling on all the issues of law raised by the pleadings."

With regards to count two, there is no indication that the letter requesting for postponement of the trial from January 31, 1985 to February 4, 1985 was received by the judge on the 31' of January, 1985, prior to the hearing. However, the court wishes to observe that this is a real property case and that there was only one assignment issued for the hearing. If the defendants or their counsel failed to appear, the Court should have at least made another assignment, since the suit involved a real property that is in dispute, and that upon their failure so to appear at the second assignment, the court may then proceed.

Referable to counts four and five, we herewith quote the contention raised by the appellants therein: "And further that Your Honour also committed prejudicial and reversible error when you affirmed and confirmed the verdict of the trial jury returned against defendants because said verdict is manifestly against the law and the evidence adduced by plaintiff on the trial, in that although there is no allegation in plaintiff's complaint of any residence by any of the defendants herein and there was no convincing proof of any rent due by any of the defendants, yet the jury awarded the amount of $114,245.00 (One Hundred Fourteen Thousand, Two Hundred and Forty-Five Dollars) as rent due and Your Honour erroneously confirmed and affirmed said verdict, to which final judgment defendants excepted."

Count Five of the bill of exceptions reads thus:

"5. And also defendants submit further that the final judgment rendered against them by Your Honour is excessive, illegal, erroneous and prejudicial because it is not supported by any scintilla of evidence during the trial, neither was there any prayer or allegation in plaintiff's complaint for rent due; nor does the plaintiff have any legal title to the property claimed by her because plaintiff's grantor's title to the property before conveyance was never alleged nor proven, to which final judgment defendants excepted and appealed."

We also quote plaintiffs three count complaint:

PLAINTIFF'S COMPLAINT "Frances C. Wilson, by and thru her Attorney-In-Fact, Frances Wilson-Hoff, plaintiff in the above entitled cause of action complains of the defendants as follows, to wit:

1.That Frances Wilson-Hoff holds a power of attorney from Frances C. Wilson nominating and appointing her attorney-in-fact as will more fully appear from photocopy of the said power of attorney hereto attached and marked exhibit "A" to form a cogent part of this complaint.

2. And plaintiff further complains that at the commencement of this action she is the owner in fee simple and is entitled to the possession, use and occupancy of a certain parcel of **land** known as block No. 1, situated, lying and being in Old Congo Town, Montserrado County, Republic of Liberia with the following descriptions:

"COMMENCING at the Southeastern corner of S.D. George's adjoining Eastern Block marked by a concrete monument and running parallel with it, North 45 degrees West 247.5 feet thence running North 45 degrees East 198 feet; thence running North 53 degrees East West 170 feet; thence running South 53 degrees East 415 feet parallel with a 25 foot alley the point of beginning and contains 3.30 acres of **land** and no more."
covered by warranty deed from Edward J. Gabbidon to Frances C. Wilson dated November 2, 1963 as will more fully appear from photocopy of the said warranty deed hereto attached and marked Exhibit "B" to form a cogent part of this complaint.

3. And plaintiff further complains that the said defendants, well knowing the premises, against the will and consent of the plaintiff is illegally occupying, detaining and withholding from plaintiff said parcel of **land** to plaintiff's great inconvenience, injury and damage."

The answer to this complaint denied the claim of the complaint. The defendants claimed, among many other things, that they have lived notoriously for twenty-two years on the **land** and as a result the plaintiff was statutorily barred. The Court dismissed the entire answer on the ground of inconsistency in that in pleading the statute of limitations, the party must first agree and then states its reason. With reference to the defendants not paying rent, the plaintiff attached carbon copies of letter written to each of them demanding the payment marked as exhibit "A-1 to A-5" to form part of the reply and promised to prove same at the trial as appeared in count four of the reply.

At the trial, after the court had granted the applicant's application for default judgment, the plaintiff testified to the deed and power of attorney marked as "P/1 and P/3". The only statement regarding the amount awarded by the jury came by way of a direct question to the plaintiff when the plaintiff was asked:

"Q. Please say if you know how much rent is due you by the defendants?

A. The amount is One Hundred Fourteen Thousand, Two Hundred Forty-Five Dollars."

The counsel for plaintiff then rested with the usual reservation. The second witness of the plaintiff, J. Quiah, as there were only two witnesses, including the plaintiff herself, in an answer to the jury's question said the following:

"Q. Mr. Witness, you earlier stated in your testimony that the tenants paid rent to you, I would like to know as to whether they paid per month or year?"

A. They paid monthly."

Q. Mr. witness, you collected rent from the defendants as you said. Did you issued receipts to them?"

A. Yes, I do."

Q. Can you tell the court and jury the amount collected by you per year?"

A. I do not know the exact amount."

Jury rests with the witness."

Under our procedure hoary with age, the granting of an application for default judgment does not preclude the plaintiff from proving his/her case. Our statute on the point declares:

"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." Civil Procedure Law, Rev. Code 1:42.6.

In the instant case, the amount was never alleged in the complaint so as to give the defendants due and timely notice of what was intended to be proved against them, to the amount due and for the period beside the amount stated by the plaintiff in answer to question on the direct. Besides, according to the exhibit attached to the reply "A/1 to A/5" which are copies of letters addressed to each of the defendants, the court observed the following:

1. Letter to David Mensah, Jr., dated November 26, 1981 indicates One Thousand Forty ($1,040.) Dollars for rent due from October 1979 to November 1981.

2. To Dr. Karbo, dated November 26, 1981, indicates an amount of One Thousand ($1,000.00) Dollars as rent from November 1979 to November 1981.

3. To Mr. Edward Bestman, dated November 26, 1981 indicates Five Hundred and Fifty ($550.00) Dollars for rent from February 1980 to November 1981.

4. Mr. Charles Boley, dated November 26, 1981 indicates Seven Hundred Twenty ($720.00) Dollars for rent from December 1979 to November 1981.

5. Mr. Frank Moses Due, dated November 26, 1981, indicates Nine Hundred Forty-Five ($945.00) Dollars as rent for March 1980 to March 1981.

The total of these amounts according to the different letters would be:

David Mensah, Jr. ---------- $1,040.00
Dr. Karbo---------- -$1,000.00
Mr. Edward Bestman ----------$550.00
Mr. Charles Boley---------- $720.00
Mr. Frank Moses Due---------- -$945.00
TOTAL ----------$4,255.00

which is far less than the One Hundred Fourteen Thousand, Two Hundred Forty-Five ($114,245.00) Dollars. Therefore, beside the answer to the question as to the amount of rent which the plaintiff claimed was $114,245.00; there is no proof of how this amount was arrived at. The court is therefore amazed as to why such arbitrary amount will be affirmed by a court of justice, especially so when neither the period which the rent covers nor the amount per month or year is stated. Besides, the letters written to defendants were not ever introduced at the trial nor admitted into evidence. The question is how did the jury or the court arrive at such a sum? Is it merely by the answer of the plaintiff to a question on the direct without any confirming witness or evidence that the court confirmed and affirmed? A court of justice can only affirm and confirm a verdict which awards a sum certain when said sum certain has been pleaded and testified to at the trial by plaintiff and his/her witnesses. This court has held that:

"Even when a defendant has defaulted in a case, the plaintiff must establish proof of his claim before judgment can be rendered thereon." *Baky v. George et al.*, 27 LLR 80 (1973).

Secondly, "Issues not raised in pleadings may not properly be raised on the trial of a case." *Shaheen v. Compagnie Francaise De L 'Afrique Occidentale*, 13 LLR 278 (1958). Therefore, there being no rental issue raised in the complaint, it ought not to have been raised on the trial, for the fundamental purpose of pleadings is to provide notice to the parties of issues which are to be raised on trial.

In view of the foregoing, and the laws cited above, the judgment of the lower court is hereby reversed and the case remanded for new trial commencing with the pleadings. Costs are to abide final determination. 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 it is hereby so ordered.

Judgement reversed, case remanded for new trial.

Johnson-Maxwell v Mitchell et al [1988] LRSC 90; 35 LLR 609 (1988) (29 December 1988)

VICTORIA JOHNSON- MAXWELL, Administratrix of the Interstate Estate of the Late GENEVA JOHNSON, Appellant, v. **EDGAR MITCHELL,** Executor of the Testate Estate of the Late THOMAS WOLLSEY PHILIPS**,** and **JOHN BISHOP**, Appellee.

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

Heard: November 14, 1988 Decided: December 29, 1988

1. A complaint must be certain, intelligent and unambiguous so as to give the adverse party an opportunity to intelligently and legally respond to the complaint.

2. An uncertain, unintelligent and ambiguous complaint will be dismissed.

3. The Supreme Court has the authority to reverse, amend, affirm, remand or give such judgment as the trial court should have given.

4. A notice of assignment informs litigants of what the court intends to do or what matters the court intends to entertain. It states on its face whether the case is assigned for jury trial or for the rendition of ruling or judgment.

5. A judge may sua sponte or upon the request of any party litigant order the assignment of any case, unless prohibited by law.

6. Application by a party litigant for assignment is predicated upon a pending motion or hearing on the merits before the court.

7. An interlocutory ruling is subject to noting of an exception, or remedial process upon timely noting of an exception.

8. A court may correct its records or judgment during term time.

9. A court may alter its judgment anytime before it is entered or, if it is entered, before it is made final.

10. Correction or alteration of judgment may not be done without notice to party litigants.

11. No hearing should be had unless the notice of assignment has been issued and served on each party litigant or his/her counsel or the parties are otherwise duly notified.

12. A lack of notice of the time and place of a hearing presents a statutory ground for setting aside a judgment or an arbitration award.

Appellant, administratrix of the intestate estate of the late Geneva Johnson, filed an action captioned "action to remove cloud and quiet title" against co-appellee, executor of the testate of the late Thomas Wollsey Philips. After disposition of the law issues, the trial judge ruled the case to trial by jury, then later rescinded his ruling, and dismissed the petition without prejudice to appellant. Appellant excepted to the ruling, and announced and perfected an appeal to the Supreme Court. In its review, the Court focused on the issue of the recission of the judge's order initially ruling the case to trial, the question of the adequacy of notice of the judge's decision to rescind the initial order, and whether the action brought by appellant was cognizable in the jurisdiction and, finally, whether appellant's deed conformed to the law controlling such instruments. The Supreme Court held that appellant's deed contained ambiguities and, moreover, that her complaint was uncertain and ambiguous. Accordingly, the decision of the trial judge was sustained in that regard. The Court also found that the notice of assignment conveyed sufficient information to the parties to meet the standards for such notices and, finally, that the court had the authority to rescind its order to proceed to trial during term time. The Court therefore affirmed the judgment.

Parlee Kweekeh and Theophilus Gould for appellant. M Fahnbulleh. Jones for appellee.

MR. JUSTICE JUNIUS delivered the opinion of the Court

Appellant Victoria Johnson Maxwell, administratrix of the intestate estate of the late Geneva Johnson-Duff, filed a petition before the Sixth Judicial Circuit Court of Montserrado County captioned: "Action to Remove Cloud and Quiet Title" against Edgar Mitchell, executor of the estate of the late Thomas Wollsey Philips and John Bishop. To this petition defendant/ appellee filed an answer. At the conclusion of the hearing of this case, the trial judge ruled the case to trial by jury and later rescinded his ruling and dismissed the petition. It is from the ruling of the trial judge that petitioner/appellant excepted and announced an appeal to this Honourable Court by filing a bill of exceptions containing seven counts.

Petitioner/appellant filed a brief which was argued, and in which she has asked that the following questions be addressed:

A. Whether or not a judge may vacate, rescind or amend its ruling without prior notice to a party litigant?

B. Whether or not a party litigant may request assignment for the amendment of a judge's ruling to which such party failed to except or file an application?

C. Whether or not an action to remove cloud and quiet title is cognizable in our jurisdiction?

D. Whether or not the absence of a recital of consideration in a deed is a material defect to make it unenforceable or void?

E. Whether or not the inadequacy or uncertainty of the description of parcel of **land** as contained in a deed is an absolute and sole issue of law that a judge may dispose of without submitting it to the jury?

Respondent/appellee also, after filing and arguing their brief, asked us to answer the below questions:

1. Whether or not the court or judge sitting in term time has a right to rescind or modify or amend any ruling or judgment made by him during the term he is sitting with notice to the parties?

2. Whether a notice of assignment issued upon orders of the judge for an amendment of the ruling constitutes a notice to the parties as contemplated by law?

3. Can cloud be removed and title quieted at the instance of a party whose deed or title does not conform to the law controlling the validity of deeds or title?

We will consider answer to the questions in the reversed order:

Can cloud be removed and title quieted at the instance of a party whose deed or title does not conform to the law controlling the validity of deeds or title?

The records show that appellant filed this action to remove cloud and quiet title. From the type of action it seems that appellant's intention was to stop some type of harassment on the part of appellee. "Cloud", as we know, is an appearance of dimness or under suspicion. Black's Law Dictionary, 4 th edition, at page 32, defines "Cloud on Title" as;

"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 shown by extrinsic proof to

be invalid or inapplicable to the estate in question. A conveyance, mortgage, judgment, tax, levy, etc., may all, in proper cases, constitute a cloud on title. The remedy for removing a cloud on title is usually the means of an action to quiet title."

"Quiet Title Action" is defined as:"[a] proceeding to establish the plaintiffs title to **land** by bringing into court an adverse claimant and there compelling him either to establish his claim or be forever after estopped from asserting it." BLACK'S LAW DICTIONARY 1124 (5 th ed).

Therefore, in filing an action to remove cloud and quiet title, there are certain criteria which the instrument, such as deed, must conform to. These include the name of the grantor, the name of the grantee, the consideration or value paid, location of the **land**, the description of the property, quantity, and the signatures of the grantor and attesting witnesses. The deed presented by appellant in the instant case has on its face some ambiguities, even though it is not being contested against another deed. We have held that a "deed is the best evidence to settle a dispute over the title to real estate. Therefore, it was proper to reject the assessment list from the internal revenue office offered as evidence to prove title to real property." Railey and Montgomery v. Clarke, [1950] LRSC 8; 10 LLR 330 (1950). It is noted that appellee attached a photocopy of a deed to their answer, but the legal maxim is "he who comes to equity must come with clean hands."

It is a settled principle of law that a complaint must be certain, intelligent, and unambiguous so as to give the adverse party an opportunity to intelligently and legally traverse the complaint. Therefore, where a complaint is uncertain, unintelligible and ambiguous, it will be dismissed. Appellant's complaint is uncertain and ambiguous for it does not state that portion of the fifty acres of **land**, more or less, for which she seeks to remove cloud and quiet title against defendant/appellee. The trial judge was therefore correct when he dismissed the complaint for being uncertain and unintelligible and, therefore, defective.

In speaking of the standard for legal pleadings, we have said:

"Whilst it is true that in the consideration of legal pleadings certain of the issues presented are more forceful, impressive, and well taken than the others, nevertheless, before there can be a favorable ruling on such issues it must be established that the pleader submitting such issues has so surrounded his pleadings with the safeguards of the law that a counter attack will not succeed in breaking down the otherwise legal force and effect such pleadings would have; and it is

because of this that there are series of pleadings to be gone through where the necessity occurs." Clarke v. Snyder, [1945] LRSC 16; 9 LLR 111, 115 (1945).

Further:

"An answer of a defendant, however well and ably it is framed and presented, must crumble before a reply that effectively attacks a legal defect therein found, and so also must a complaint fall before an answer that successfully attacks its legal sufficiency." Ibid., at 115.

This Court has the authority to reverse, amend, affirm, remand or give such judgment as the trial court should have given. Townsend v. Cooper [1951] LRSC 16; 11 LLR 52 (1951)The trial judge elected to dismiss the complaint without prejudice to the plaintiff, thereby giving the plaintiff an opportunity to re-file his action. The only instrument which the plaintiff is relying on is the quit claim deed executed on the 12th day of December 1950 and probated on the 3rd day of February 1954, which contains no consideration, is void of a location, and the metes and bounds are uncertain and ambiguous,(i.e. "fifty (50) acres more or less)." Defendant/ appellee maintains that in keeping with the facts and the law controlling, the petition ofthe plaintiff/appellant to remove cloud and quiet title based on this deed should be dismissed and the plaintiff/appellant forever barred from bringing any action both in law and equity with this deed as the basis for her action. Since the deed is not contested against another deed, the ruling of trial judge is correct.

Under our law, a notice of assignment constitutes what the court intends to do or will entertain; that is to say, the notice of assignment states on its face whether the case is assigned for deposition of issues, motion, jury trial, continuation of jury trial or for the rendition of ruling or judgment. In the instant case, the notice of assignment issued and served on the parties expressly stated on its face "amendment of court's ruling," and therefore the parties had sufficient notice that the court had elected to rescind, alter, modify or amend its ruling. Therefore, the objections of the plaintiff/appellant are untenable in law. Hence the court was correct when it overruled the objections and rescinded or amended its ruling dismissing the complaint without prejudice.

The practice in this jurisdiction is that a judge may sua sponte, or upon request of any party litigant, orders the assignment of any case, unless otherwise prohibited by law. But an application by a party litigant for assignment is predicated upon a pending motion or hearing on the merits (trial) before the court. When the judgment of October 7, 1987 was rendered it was indeed an interlocutory judgment, as it ruled the case to trial. Such a ruling is subject to noting of

an exception or remedial process upon timely noting of exception. But neither plaintiff nor defendant noted an exception to avail himself of the remedy at law; and thus, no party applied to court by motion to modify the said ruling as required by law.

It is a settled principle of law that a court may correct its records or judgment during term time. A court may alter its judgment anytime 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. Cardinal principles of notice to all parties affected have been firmly adhered to under our jurisdiction by courts, quasi-judicial agencies, tribunals, boards and arbitrators. The practice and laws in this jurisdiction dictate that no hearing should be had unless the notice of assignment has been issued and served on party litigants or their counsels, or the parties are otherwise duly notified. A lack of notice of the time and place of a hearing is a statutory ground for setting aside a judgment or an arbitration award.

Wherefore and in view of the foregoing, it is the opinion of this Court that the judgment appealed from be and same is hereby affirmed. The Clerk of this Court is hereby ordered to send a mandate to the court below to resume jurisdiction and enforce its judgment. Costs disallowed. And it is hereby so ordered.

Judgment affirmed.

Green et al v Turner [1895] LRSC 4; 1 LLR 276 (1895) (1 January 1895)

Z. T. GREEN, **SAMUEL GRAY**, and his wife **ANNA S. GRAY**, Appellants, vs. **B. J. TURNER**, Appellee.

[January Term, A. D. 1895.]

Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.

Injunction.

1. An answer filed within ten days after notice of the filing of the complaint is within the statute; it is the time the notice was served, and not when the complaint was filed, that governs the answer in this respect.

2. In injunctions the court cannot decide issue involving the validity of title, such being a mixed question which by statute is triable by a jury under the directions of the court.

This is an appeal case in an action of injunction brought up to this court from the Court of Quarter Sessions, Sinoe County, sitting in equity, by appellants (defendants below) upon a bill of exceptions.

Before coming to a judgment in this case, the court will proceed to notice the points in the bill of exceptions to which its attention has been carefully given, and will dispose of them as they stand in their order. The first point to be considered and disposed of is set forth thus: "Your Honor's ruling out defendants' sufficient answer, which was in keeping with the statute laws of the Republic of Liberia in injunction, because the sheriff did not serve the notice on the plaintiff until one day after the expiration of the ten days which the statute law of Liberia allows for the filing of answers."

After carefully reviewing the record in the case the court finds that the answer was filed within the time allowed by statute; and it is not prescribed by statute that the "answer" must be filed within ten days after the filing of the "complaint," but within ten days after notice has been given of the filing of the complaint. (Lib. Stat. Bk. i, Chap. 5, sec. 5.) Therefore, it is the opinion of this court that the judge below erred in ruling out defendants' (now appellants') answer.

The second exception under consideration is, the objection of appellants to the first part of the decree of the judge below, in which the judge said that because the parties claimed titles to the **land** in question by deeds produced in evidence, which were given by the Republic of Liberia, he would not consider the validity of titles, or the matter of quiet enjoyment, which is collateral.

On this point it is the opinion of this court that the judge below did not err in refusing to consider and decide the titles, for such a decree would be deciding a mixed question of law and fact, which cannot be tried and determined in equity; for the statutes declare that "all questions of law and fact must be tried by jury, assisted by the court."

The third point is appellants' exception to the last part of the decree of the judge below, in that he said that "the court has carefully and thoroughly digested the laws bearing on this action, and it appearing to the court that there are sufficient grounds, therefore the court adjudges that the defendants be forever enjoined and prohibited from intermeddling or annoying and harassing the said plaintiff in the cultivation of his twenty acres farm **land**, situated on Po River, and being number thirty-three, formerly styled number thirty-six, unless otherwise determined by law, and that the plaintiff recover from the defendants all legal costs in this action."

The opinion of the court on this point is that the judge below erred ; for in the first part of the decree the judge said that he could not consider the question of validity of titles, or the matter of quiet enjoyment, which is collateral, both parties claiming said **land** under deeds from the Republic of Liberia. This court is at a loss to know by what parity of legal reasoning did the judge decree that the defendants, now appellants, be forever enjoined and prohibited from intermeddling, or annoying and harassing said plaintiff in the cultivation of his twenty acres of farm **land** situated on Po River, and bearing number thirty-three, formerly styled number thirty-six.

And this court further says that the judge below erred in said decree by enjoining a perpetual injunction on defendants, now appellants, which, in the opinion of this court, is virtually deciding the validity of titles.

In this equity case the irregularity of the proceedings of the court below are so much opposed to equity and good conscience as to lead this court to the following determination: This court adjudges that the decree of the court below is hereby reversed and the injunction dissolved, and that appellants recover all costs in this appeal case from appellee. The clerk is hereby commanded to issue a mandate to the court from whence this case came, informing it of this decree.

Foday Kamara Butchery v Pupo et al [1989] LRSC 6; 36 LLR 181 (1989) (14 July 1989)

FODAY KAMARA BUTCHERY, represented by its Proprietor, FODAY KAMARA, Petitioner/Appellee, v**. HIS HONOUR FRANCIS N. PUPO, Sr.,** Judge, Debt Court, Montserrado County, **WILLIAM A. SLOCUM**, Sheriff, Debt Court, Montserrado County, and **THE LIBERIA BANK for DEVELOPMENT AND INVESTMENT (LBDI)**, by and thru its President, DAVID K. VINTON, Respondents/ Appellants.

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE GRANTING THE PETITION FOR A WRIT OF PROHIBITION.

Heard: April 3, 1989. Decided: July 14, 1989.

1. Real property which is mortgaged shall not be sold pursuant to an execution issued upon a judgment recovered for all or part of the mortgage debt... The mortgaged realty can only be reached by foreclosure proceeding.

2. Where the debt is evidenced by both a promissory note and the mortgage agreement, the two instruments being separate agreements in law, the mortgagee may elect to recover the debt by suing on the promissory note in an action of debt; but the judgment obtained therefrom cannot be satisfied by execution against the mortgaged property.

3. At an execution sale, the sheriff is required to file a notice of that sale in the office of the clerk of the probate court of that circuit and placard same in conspicuous places for the benefit of the public, including service upon the judgment debtor.

4. Legal technicalities should be avoided in judicial proceedings, if possible; but the courts cannot ignore in a case applicable requirements made mandatory by statute and precedent.

5. An execution shall specify the date of the judgment, the court in which it was entered, the amount of the judgment, and the amount due thereon.

6.A writ of prohibition not only prevents whatever remains to be done by the court against which the writ is directed, but gives complete relief by undoing what has been illegally or erroneously done.

In an action of debt by attachment, the Debt Court for Montserrado County, on application of the plaintiff entered judgment by default against the defendant, permitted the plaintiff to present its evidence, and rendered final judgment against the defendant based on the said evidence. Subsequently, a writ of execution was issued, commanding the seizure and sale of the lands, goods and chattels of Foday Kamara Butchery until the sum of $22,395.33 was realized; and that if said sum could not be realized, or if the sheriff could not find any goods, lands and chattels to be seized and sold, he should have the body of Foday Kamara arrested and brought before the court to be dealt with according to law. Prior to the service of the writ of execution, the defendant filed a motion to vacate the said writ. He later withdrew the motion, and instead filed a motion for relief from judgment, alleging that at the time of the issuance of the writ of execution on June 20, 1984, the total amount owed the plaintiff in the court below was $7,108.33, and that the court inadvertently issued the writ in the amount of $22,395.33 without considering earlier payments made to the bank.

While the said motion was pending, the defendant's properties, both real and personal, were auctioned at a public sale on August 2, 1984 by the sheriff of the Debt Court for Montserrado County. The sale was allegedly done contrary to law.

The defendant in the court below, now petitioner/appellee applied to the Justice in Chambers and obtained a writ of prohibition against the co-respondent judge of the debt court to restrain him from proceeding further with the said execution. The petitioner applied for the writ of prohibition on the grounds that there was no publication of notice for the sale in the newspapers; that the auctioned property was mortgaged property, which the law forbids from sale by execution; that contrary to the provisions of the law there was no filing of the notice of execution with the clerk of the probate court; that the writ of execution itself was outside the requirements of the law, in that it failed to specify the date of the judgment, the amount involved in the judgment, a description of the mortgaged property, and it contained no caution against its sale; that only half the auctioned price of $21,100.00 was paid, contrary to law; and finally, that the co-respondent judge, being without legal authority to issue a writ of execution for the sale of mortgaged real property, the sheriff consequently had no title and/or possession to sell the property involved to anyone.

The petition having been granted and the peremptory writ of prohibition issued, the respondents appealed there-from to the Supreme Court for a final determination. Following arguments *pro et con,* the Court affirmed the ruling of the Chambers Justice and ruled appellants to costs.

George E. Henries and *Elijah Garnet* for the petitioner/ appellee. *Joseph Williamson* and *Joseph Findley* for respondents/ appellants.

MR. CHIEF JUSTICE GBALAZEH delivered the opinion of the Court.

On June 6, 1985, the Justice in Chambers ruled granting the peremptory writ of prohibition to the petitioner/appellee and ordered the writ issued: "restraining the respondent judge from further going into the case out of which this proceeding had grown; and the issuance and service of the writ of execution and the sale of the property, subject of this proceeding, are hereby declared a legal nullity and invalid. The Clerk of this Court should send a mandate to the lower court ordering the presiding judge to execute this mandate and repossess petitioner of his property. Costs against respondents."

It is from this ruling in Chambers that the respondents appealed to the full bench for a final review. We have accordingly reviewed the records and heard arguments on both sides.

We gather that respondents/appellants filed an action of debt by attachment against the petitioner/appellee in the Debt Court for Montserrado County. Judgment by default was rendered against appellee on May 15, 1984, in the amount of $19,924.42 (Nineteen Thousand Nine Hundred Twenty Four Dollars and Forty Two Cents). A writ of execution was prayed for and issued against the appellee which reads as follows:

"REPUBLIC OF LIBERIA, TO WILLIAM A. SLOCUM, ESQSHERIFF, DEBT COURT FOR MONTSERRADO COUNTY, GREETINGS:

YOU ARE HEREBY COMMANDED to seize and expose for sale the lands, goods and chattels of Foday Kamara Butchery, defendant, and if the sum realized therefrom be not sufficient then seize his real property until you shall have raised the sum of $22,395.33, and if you cannot find

any lands, goods and chattels of the said defendant, you are hereby commanded to arrest his body and bring him/her before any judge of competent jurisdiction to be dealt with according to the law unless he will pay the said sum of money or show property to seize and sell for the same. And upon receiving from said sale, or otherwise, said sum of money, you are further commanded to pay over to the above named plaintiff the sum of money necessary to satisfy the judgment therein; and reserve unto yourself the said cost and expenses and you will make known to this Honorable Court at the next term thereof to be held on the 12th day of June, A. D. 1984, your doings and proceedings under this Court's orders. AND HAVE YOU THERE THIS WRIT. GIVEN under my hand and Seal of this Honorable Court, this 1st day of June, A. D. 1984.
Sgd. Peter T. Nma
CLERK, DEBT COURT
FOR MONTSERRADO COUNTY"

The appellee then filed a motion to vacate the said writ of execution, but he later withdrew the said motion to vacate, and instead filed another motion for relief from judgment alleging that at the time of the issuance of the writ of execution on June 20, 1984, the total amount then due the co-respondent bank was $7,108.53, and that the court inadvertently issued the writ in the amount of $22,395.33 without considering earlier payments to the bank.

Notwithstanding the pendency of the said motion for relief from judgment, petitioner/appellee's property, both real and personal, were auctioned at a public sale by the Sheriff of the Debt Court for Montserrado County on August 2, 1984, allegedly contrary to law. Hence, appellee petitioned the Justice in Chambers for a writ of prohibition against the co-respondent/ appellant Debt Court Judge to restrain him from proceeding further with the said execution. The Chambers Justice granted the writ and ruled as quoted herein *supra.*

Petitioner/appellee had sought the writ of prohibition on the grounds that there was no publication of a notice for the sale in the newspapers; that the auctioned property was a mortgaged property which the law forbids from sale by execution; that contrary to the provisions of the law there was no filing of the notice of execution with the clerk of the probate court; the writ of execution was itself outside the requirements of the statutes in that it failed to specify the date of the judgment, the amount involved in the judgment, a description of the mortgaged property and it contained no caution against its sale; that only half the auction price of $20,100.00 was paid contrary to law; and finally, that the co-appellant judge being without legal authority to issue a writ of execution for the sale of mortgaged real property, the sheriff consequently had no title and/or possession to sell the property involved herein to anyone.

On the other hand, respondents/appellants contended that the writ of prohibition was applied for about six (6) days after the issuance of the sheriffs deed for the property in question; that as such, the petition was belated and ineffectual, and should therefore be denied; that it was without the office of the writ of prohibition to seek to correct alleged irregularities since the writ is only intended to prevent acts and therefore not appropriate in this case, the act of execution having already been completed *in toto.* They charged that the petitioner was guilty of waiver, since the issue of "mortgaged property" was never raised in the trial court, either in the answer to the

action of debt or in the motion to vacate the execution, and that as the judge never passed on the issue in the lower court, the Justice in Chambers also could not pass on same without himself raising an issue that was not a part of the records certified to this Court. They maintained that the trial judge had observed all the known rules and that petitioner had failed to say which rules or statutory requirements the judge had ignored in acting as he did. For these additional reasons, they said, the writ of prohibition is ineffectual in this case, especially since prohibition cannot lie where the lower court had neither exceeded its jurisdiction nor proceeded by wrong rules.

Finally, respondents/appellants contended that the failure of the sheriff to have filed a copy of the notice of execution or sale with the clerk of the probate court or any other person for that matter is no justification for invalidating the sale and thereby divesting an innocent *bona fide* purchaser for value, who did not have prior notice of the defects in the sale. Respondents/appellants therefore prayed this Court to reverse the ruling of the Justice in Chambers and instruct that the sale and other acts of the lower court not be disturbed as same were in harmony with the law.

From all the foregoing facts and circumstances of this appeal it is our conviction that the following issues need our determination:

1. Whether or not the mortgage of real property for the payment of debt is an alternative to foreclosure or can the mortgagee sue in an action of debt and have the mortgaged property sold at a public auction in satisfaction of the judgment?

2. Whether or not a sheriff at the sale of real property from an execution is mandatorily required to file a notice of execution with the clerk of the probate court?

3. Whether or not the writ of execution issued by the trial court conformed to the requirements of statute in this jurisdiction?

4. Whether or not the trial judge proceeded contrary to the statute and known rules?

5. Whether or not the trial judge had jurisdiction to issue the writ of execution against the mortgaged property, and therefore, the sheriff had title or possession thereby and hence, the sale of the real property to Edith Dennis, Corespondent, was in fact valid and legal in law?

6. Whether or not prohibition can undo a wrong?

Starting with the issue of whether or not the auction sale of the real property in this case, based on a writ of execution, violated the statute on the sale of mortgaged property in Liberia, we quote the relevant statute on the sale of mortgaged property in an execution:

"2. Real property which is mortgaged shall not be sold pursuant to an execution issued upon a judgment recovered for all or part of the mortgage debt." Civil Procedure Law, Rev. Code 1: 44.43.

The foregoing statute clarifies that as long as a real property has been mortgaged, it shall not be sold to satisfy an execution upon a judgment for all or a part of the mortgage debt. The statute is

so explicit that it provides us the answer without further explanations. The contention of appellants is that they had the option to proceed against the mortgagor (appellee) either in an action of debt or in foreclosure proceedings. But the statute cited above is unambiguous and gives no such option to a mortgagee. The appellants have cited *Tucker v. Brownell*, [1975] LRSC 28; 24 LLR 333 (1975), in support of their contention that the mortgagee for debt has an alternative cause of action apart from foreclosure in order to recover the debt obtained under a mortgage agreement. Indeed, this Court held in that case that mortgages executed to cover payment of a debt do not of themselves preclude the creditors from disregarding the mortgage contract and suing to recover the debt only. Notwithstanding, that case is distinguished from the case under review for several reasons. In the case of *Tucker v. Brownell*, this Court noted that foreclosure proceedings were first pursued and later discontinued, and that thereafter an action of debt was pursued.

It was also observed in that case that there was a promissory note to pay the debt, but while the note referred to the mortgage there was nothing else in the record of the case on the said mortgage agreement. This Court therefore held that in such cases where a note subsists between the mortgagor and the mortgagee, the latter can ignore the mortgage agreement and sue on the bare note instead of pursuing foreclosure proceeding. In its rationale this Court emphasized that the note evidenced the indebtedness, while the mortgage agreement served as security for payment. The mortgagee, it said, could therefore sue on the note or foreclose the mortgage since the two formed two separate agreements in law.

We are entirely in agreement with the holding in *Tucker v. Brownell*, but we wish to clarify herein that where the mortgagee decides to sue on the note in an action of debt and obtains judgment and a writ of execution is issued against the mortgagor, he cannot reach the mortgaged realty in order to fulfill the requirements of the writ of execution. The mortgaged realty can only be reached by foreclosure proceeding. In the case under review, while mortgagee had right to an option to sue in an action of debt, the writ of execution could not thereafter reach the mortgaged realty in order to satisfy any portion of the judgment in the action of debt to recover the mortgaged debt. Civil Procedure Law, Rev. Code 1: 44.43(2).

The next issue is whether or not the sheriff at an execution sale is mandatorily required to file a notice of that sale in the office of the clerk of the probate court of that circuit and placard same in prominent places for the benefit of the public, including service upon the judgment debtor. The statute provides that the sheriff shall post a notice of the execution on the property and also on the door of the courthouse of the circuit where the property is located and in two other conspicuous places in the circuit. He shall also file a notice of the execution with reference to such real property in the office of the clerk of the probate court of the county where the property is located. The filing of such notice shall have the same effect as the filing of a notice of pendency." Civil Procedure Law, Rev. Code 1:44.42.

We hold that the foregoing regulations of the statute on the levying upon real property was followed by the sheriff in this case and we consider same a serious error since it is a mandatory requirement of the statute which cannot be handled otherwise. The appellants referred to those provisions as mere technicalities which should be wholly ignored. We do not, however, support this argument of appellants because this Court has held in the past that while "legal technicalities

should be avoided in judicial proceedings, if possible, ... the courts cannot ignore in a case applicable requirements made mandatory by statute and precedent." (Our emphasis). See *Holmen et al. v. Montgomery[1974] LRSC 19; ,* 23 LLR 19 (1974). We are still in agreement with the holding in the Holmes case, and we hold that the sheriff seriously violated the statute.

We next consider whether or not the writ of execution in this case conformed to the statutory requirements for the form of a writ of execution in this jurisdiction. The statute is plain on this matter and provide that "[a]n execution shall specify the date of the judgment, the court in which it was entered, the amount of the judgment, and the amount due thereon. Where one or more persons against whom the judgment was recovered are not judgment debtors, or are deceased, the execution shall also specify each judgment debtor not deceased and direct that only property, in which such judgment debtor has an interest, or debts owed to him, be levied upon or sold thereunder. Where the judgment was recovered for all or part of a mortgage debt, the execution shall also describe the mortgaged property, specify the book and page where the mortgage is recorded, and direct that no part of the mortgaged property be levied upon or sold thereunder." (Emphasis ours). Civil Procedure Law, Rev. Code 1: 44.39(1).

The writ of execution affecting this matter has been fully quoted *supra,* and it clearly shows that the requirements of the statute was not met. Moreover, the sale was not going to be carried out even if the writ had conformed to the requirements of the statute for execution or levy upon mortgaged property, since the writ of execution had failed to describe the property as the statute requires or to state the amount of the judgment and the amount due thereon. More seriously, it failed to describe the mortgaged property and to give the book and page in which the mortgage deed was recorded. Above all, however, it failed to direct, as the statute requires, that no part of the mortgaged property be levied upon or sold under the execution. Hence, the writ of execution was a nullity and therefore void.

We will also see whether or not the trial judge had proceeded contrary to the statute and the known rules. This is a simple issue since the irregularities outlined above were all perpetrated under the eyes of the trial judge, and they obviously show that the judge completely ignored the provisions of the law on the disposition and sale of mortgaged property. The trial judge was entirely in error and had proceeded contrary to the statute on the sale of mortgaged property. Indeed, we are of the opinion that the acts of the judge caused the errors of the sheriff.

In resolving the fifth issue, we are of the further opinion that the trial judge was without jurisdiction when he ordered the sheriff to levy upon the mortgaged property and to sell it by public auction under execution, instead of conducting foreclosure proceedings as the law requires. Hence, the sheriff was without the necessary legal authority of possession and/or title to the mortgaged property in order to offer the mortgaged property for a public sale as in other ordinary cases. The sheriffs sale therefore failed to convey legal title to the real property and likewise the purchaser acquired none at all.

Finally, we conclude this opinion by considering whether or not the writ of prohibition was the proper remedy available to the petitioner/appellee in this matter. The respondents/appellants contended that even though irregularities may have been committed by the trial court, the proceedings there had been completed and nothing remained to be done. Since, according to

them, the writ of prohibition merely prevents acts intended to be done, it is ineffective as a remedy where nothing remains to be done in the matter. Contrary to this contention, this Court has ample authorities on the writ can be issued. For instance, in *Fazzah Brothers v. Collins and Central Industries, Ltd.*, *[1950] LRSC 1; 10* LLR 261 (1950), we held that "a writ of prohibition not only prevents whatever remains to be done by the court against which the writ is directed, but gives complete relief by undoing what has been done."

This Court also held as recently as 1974 that the writ of prohibition is designed to prevent what remains to be done as well as to undo what has illegally been done. *Ayad v. Dennis et al.[1974] LRSC 42;* , 23 LLR 165 (1974). Prohibition will lie to prevent execution of a judicial order after a final determination in the absence or excess of jurisdiction. *Holt et al. v. Nimely[1965] LRSC 41;* , 17 LLR 128 (1965).

In view of the above, the ruling of the Chambers Justice is hereby affirmed and the Clerk of this Court is ordered to send a mandate to the court below to that effect. Costs ruled against the respondents/appellants. And it is hereby so ordered.

Petition granted.

Davies v Darweh [1932] LRSC 12; 3 LLR 357 (1932) (1 January 1932)

THOMAS DAVIES, Plaintiff-in-Error, v. KEGBEH DARWEH, Defendant-in-Error.
WRIT OF ERROR TO THE CIRCUIT COURT OF THE FIRST JUDICIAL
CIRCUIT, MONTSERRADO COUNTY.

[Undated.] 1. In an action for a writ of injunction, the court may lack jurisdiction if the return
after service of the writ is not in the form required by statute. 2. Issues involving the validity of title cannot be decided in
injunction proceedings but should be tried in an action of law by a jury under direction of the court.

The defendant-in-error, plaintiff
in the court below, filed an action against the plaintiff-in-error, defendant in the court below, in the Circuit Court of the First
Judicial Circuit, Montserrado County, requesting the issuance of a writ of injunction. An injunction was granted, and the defendant
brought the case to this Court for review by writ of error. Proceedings quashed for lack of jurisdiction with permission to the parties
to proceed in an action at law. Costs awarded against defendant-in-error.
C. L. Simpson for plaintiff-in-error. N. H. Gibson

for
defendant-in-error. MR. JUSTICE GRIGSBY delivered the opinion of the Court.
The history of this case shows that on the 13th day of
July, 1929, Kegbeh Darweh, defendant-in-error, plaintiff in the court below, filed an action of injunction against the plaintiff-in-error,

defendant in the court below, requesting His Honor Aaron J. George, resident Judge for the First Judicial Circuit, Montserrado County,
to order the issuance of a writ of injunction directed to the plaintiff-in-error, the defendant in the court below, commanding him
to abstain from operating on a certain tract of land situated in the settlement of New Georgia,

County
of Montserrado, to which defendant-in-error, plaintiff in the court below, asserted title. Thomas Davies, plaintiff-in-error in the
above entitled cause, being dissatisfied with the several rulings and final judgment in the court below, entered against him in favor
of defendant-in-error on the 8th day of October, 1931, comes forward to this Judicature by writ of error. Count one of the assignment
of errors shows that the judge of the court below ordered the issuance of a writ of injunction, which was accordingly issued on the
2oth day of July, 1929; and that from returns made by one Jacob Davies, Constable for Montserrado County, the writ of injunction
was served on the loth day of July, 1929, although plaintiff-in-error denies the service of the writ of injunction on him. An inspection
of the original writ of injunction found in the records shows that the returns thereto are in words as follows : "On the loth day
of July 1929 I served the within writ of Injunction on the within named Defendant and now submit same to this court dated this 2oth
day of July A.D. 1929. "[Sgd.] JACOB DAVIES
Constable, Mo. Co."

This Court here remarks that the fundamental rule of practice and pleading is that of giving notice to the opposite parties of what is intended to be proven, as it alone enables the court to exercise
jurisdiction over the parties or subject matter for litigation. The aforementioned return of Jacob Davies, Constable for Montserrado
County, does not conform to the requirements of the statute specifying the form for return after service of a writ of injunction.
2 Rev. Stat. 403. Hence the court below lacked jurisdiction. The second point raised in the assignment of errors is that on the 11th
day of February, 1930, without the knowledge of plaintiff-in-error concerning the matter of

land in
dispute in consequence of the action of injunction, the judge of said court submitted the same to arbitration and they subsequently
filed an award and the judge accordingly gave judgment in favor of defendant-in-error and a writ of possession was issued on the
24th day of September, 1931, putting defendant-in-error in possession of certain land owned by plaintiff-in-error. It appears from
the complaint and answer that both the plaintiff-in-error and defendant-in-error assert ownership to the said parcel of land, two acres situated on the water front

of Stockton Creek in the settlement of New Georgia in the County of Montserrado. Therefore this Court fails to see that under the circumstances in fairness to the parties an equitable relief could be granted before the question of title was first disposed of.
And it was error in the judge to have ordered the issuance of a writ of possession in the absence of prima facie evidence of title to it to decide which of the parties should have instituted an action of ejectment. By injunction proceedings the court cannot decide issues involving the validity of title, such being a question which by statute is triable by jury under the direction of the court.
Its object and purpose is to preserve and keep things in the same state or condition and restrain an act which if committed would be contrary to equity and good conscience. It is, however, a rule well established and always to be considered by the court that an injunction should not be granted when it will operate inequitably or contrary to the real justice of the case. This Court being without jurisdiction in the absence of the proper returns to the writ of injunction, the proceedings are therefore vacated and quashed and the parties are at liberty to proceed to law. Cost against defendant-in-error. Proceedings quashed.

Nyepon v Reeves et al [1973] LRSC 3; 21 LLR 406 (1973) (1 February 1973)

OSWALD NYEPON, Informant, v. THOMAS REEVES, JAMES N. DOE, and JAMES M. T. KANDAKAI, Circuit Court Judge presiding over the March 1972 Term of the Sixth Judicial Circuit, Montserrado County, Respondents.
BILL OF INFORMATION TO PUNISH FOR CONTEMPT OF COURT.

Argued
November 30, 1972. Decided February 1, 1973. 1. Withdrawal of an appeal implies acceptance by appellant of the judgment he had protested against by the announcement of an appeal therefrom. 2. Except when the Republic of Liberia is a party, no official of the Ministry of Justice has legal authority to take part in, or interfere with, a civil matter, whether the matter be pending before the courts or not, in order to preserve the constitutionally prescribed principle of the separation of powers in the governmental structure.
3. Any court, acting within its proper jurisdiction and the limits of its authority, must be obeyed, not only by parties but by all in contact with the court, especially the lawyers. 4. The Supreme Court shall enforce obedience to orders of all the courts, and most especially its own orders, without regard to whether the enforcement is against parties, lawyers, or judges.

An appeal was announced from a judgment entered in ejectment proceedings, but the appeal subsequently was withdrawn. The appellant conveyed the property at issue to another during the pendency of the appeal. After the appeal had been withdrawn the Supreme Court ordered the lower court to enforce its judgment, but the sheriff was unable to remove the occupant, who was supported by the respondent judge

when he ordered the occupant not to be removed, in spite of the writ of possession issued by the lower court pursuant to the Supreme Court's mandate. Subsequently, after the Justice in chambers had referred to the full bench the bill of information presented to him, a letter was received by the informant requesting him to appear at the Ministry of Justice for a conference concerning the property which had been at issue in the ejectment proceedings. The unsuccessful
406

407

litigant, the purchaser of the property who had refused to vacate the premises and the circuit court judge who had apparently countermanded the Supreme Court's mandate and the writ of possession duly issued by the circuit court, were charged by the informant with contempt of court. The Supreme Court adjudged the respondents and their counsel to be in contempt of court and they were fined accordingly.

M. Kron Yangbe for informant.

A. Lorenzo Weeks for respondents. M. M. Perry and

MR. CHIEF JUSTICE PIERRE delivered the opinion of the Court. These proceedings were filed in the Supreme Court and argued before the Court sitting en banco, on November 30, 1972. Information for contempt had originally been filed in the chambers of Mr. Justice Horace, the Justice now presiding in chambers, and he had heard and ruled to effectuate enforcement of the Supreme Court's mandate in the ejectment suit, out of which these information proceedings have grown.

But because of defiance shown to the Court's mandate, as well as to the ruling in chambers ordering enforcement thereof, and also because of the attempt on the part of appellant James N. Doe to circumvent the enforcement of the aforesaid mandate, the Justice rescinded his ruling and sent the matter foreward to be handled by the Court en banco. The bill of information, in its fifteen counts, alleged that respondent Doe has by devious means sought to circumvent a final judgment in ejectment entered against him on March I I, 1966, from which he appealed. The appeal, however, was withdrawn by him in the March 1972 Term, at which time the Supreme Court ordered the lower court to enforce its judgment. The bill alleges that said respondent sought to frustrate the judgment by

408

a sale of the land during pendency of the appeal and by the judicial intervention of the respondent judge on May 20, 1972. Justice Horace's part in the judicial proceedings has been set forth in the first paragraph of this opinion. The facts set forth in this bill of information show that co-respondent James N. Doe appealed from the judgment of the Sixth Judicial Circuit in an ejectment action to the Supreme Court. For reasons not stated he voluntarily withdrew his appeal before the appeal could be heard. This act of withdrawal on his part prevented

the Supreme Court from hearing the case and perhaps determining rightful ownership of the property. He is, therefore, bound by the judgment of the trial court in respect to that court's finding as to who was the rightful owner of the property at issue. In a similar case decided November 24, during the present term of Court, it was held that "withdrawal of appeal deprives the withdrawing party from raising any issues in respect to the judgment from which he has appealed. By his voluntary withdrawal he waived all rights which he might have gained by the appeal, and he thereby accepts the judgment which by announcement of appeal he had rejected." Cooper v. Dunbar, [1972] LRSC 43; 21 LLR 295. Before withdrawing his appeal and thereby waiving all rights to challenge the judgment in the ejectment action with respect to ownership of Lot No. 7, respondent James N. Doe had already sold the lot to co-respondent Thomas Reeves, while the appealed case was still pending before the Supreme Court. Thomas Reeves had thus been drawn into the maelstrom of irregularity and contempt of court, perhaps unwittingly, but under the principle of caveat emptor this would be no excuse, since it was his duty to have investigated the title before he sought to acquire ownership. But we shall say more about Thomas Reeves later.

As muddled as the circumstances were at that point, James N. Doe and Thomas Reeves sought to further complicate the matter by appealing to the Ministry of Justice in the Executive branch for relief against enforcement of the judgment of the trial court, as well as against the Supreme Court mandate. Count 15 of the bill of information states that on November 14, 1972, Mr. Justice Horace rescinded his ruling in chambers and sent the matter to be heard by the bench en banco. So even though the matter was pending before the Supreme Court, yet the next day, November 15, 1972, the Solicitor General wrote to Mr. Nyepan, the informant. "Dear Mr. Nyepan : "Please call at the Ministry of Justice on Friday, the 17th instant at the hour of 10:30 A.M. I would like to have an interview with you. This is in connection with the land matter between you and Mr. Thomas Reeves. "Please be kind enough to be present. "Very truly yours, ROLAND BARNES, Solicitor General."

The implication of the Ministry of Justice attempting to officially interview one of the parties in connection with a civil matter pending before the Supreme Court not only infringes upon the text, the spirit, and the intent of the Constitution, Article I, Section i4th, but it also violates the statute in respect to the duties of the Solicitor General or, for that matter, any other official in the Ministry of Justice. See the Judiciary Law, 1956 Code 13 :151, 152, 154. Except where the Republic of Liberia is a party, no official of the Ministry of Justice has legal authority to take part in, or interfere with a civil matter, whether the matter be pending before the courts or not. Normally, one would have attributed such an act to ignorance,

but James N. Doe is a practicing counsellor of the Supreme Court bar, and he cannot claim ignorance

of the division of powers of our Government under the Constitution as contained in Article I, Section r4th. We must, therefore, have to interpret this act of referring the matter to the Solicitor General, while it was still pending in the Supreme Court, as a deliberate attempt to perpetuuate the contempt he had already committed by his sale of the lot while the matter was still pending before the courts. Perhaps Mr. Thomas Reeves might have been excused for what he had done up to the point where he purchased the lot from James Doe. One could easily excuse him for not having known any better. But when the Sixth Judicial Circuit Court, upon authority of a mandate from the Supreme Court, sought to enforce the judgment of the trial court, Thomas Reeves not only refused to vacate the premises as the writ of possession commanded, but he threatened to resist the court's order to remove him. Indeed, his appeal to the Ministry of Justice is an indication of the extent to which he was prepared to go to defy the court's order. Perhaps it might be relevant to this opinion to quote a portion of the certificate of the surveyor who was ordered by the court to locate Lot No. 7. "This is to certify that on the 27th day of May, 1972, the undersigned surveyed for Oswald M. Nyepan Lot No. M19-7 in keeping with the Sinkor layout as per deed from Angela Dennis Brown to said Oswald Nyepan. . . . One Thomas Reeves is presently occupying the said Lot No. 7. "Dated this 29th day of May, 1972. "LAWRENCE K. GBUIE, Government Surveyor, Ministry of Lands and Mines."

There seems to be no doubt, therefore, that the lot now occupied by Mr. Thomas Reeves is indeed Lot No. 7, the subject of the ejectment suit pending in the Sixth Judicial Circuit Court and which, according to the judgment of

that court ordered by the Supreme Court to be enforced, is the lawful property of informant. The return of the sheriff inscribed on the back of the writ of possession issued out of the Sixth Judicial Circuit Court is also set forth. "On the loth day of May, 1972, the deputy sheriff, Samuel E. Moore, served the within writ of possession on the within named defendant, and reports that the defendant refused to receive a copy of the writ, and that the defendant says that he has sold the property herein described to someone else, and has nothing to do with it. And those on the land refuse to move. And I now make this as my official return to the office of the clerk of court. "Dated this 3oth day of May, 1972. "P. Edward Nelson, II, Sheriff for Montserrado County."

The return shows that Thomas Reeves did indeed refuse to obey the order for him to remove himself from the property. The Justice in chambers had been lenient with his previous disobedience when on November 3, 1972, he heard the contempt proceedings referred to in count to of the bill of information. It must be remembered that the defendant referred to in the return of the sheriff is James N. Doe who sold to Thomas Reeves. Thus, it can be seen that there must have been some understanding between James Doe and Thomas Reeves, not only to perpetrate the sale of the lot while the case was pending, but also to defy and threaten the rightful owner and to disregard the orders of the court. The ethics of the profession require that a lawyer should "maintain toward the courts a respectful attitude, not only toward the judge temporarily presiding, but for the purpose of maintaining the supreme importance of this judicial office." Rule 1, Code of Moral and Professional Ethics. The Justice in chambers, in the proper discharge of his duties, ordered that the trial court en-

force the mandate of the Supreme Court, concluding the litigation involving the property. To this end Judge Walser summoned the parties and their counsel to appear before her. Counts I 1 and 12 of the bill of information recite the contemptuous disregard with which these orders were attended by counsellors Alfred Weeks and M. M. Perry, for not only did they fail and refuse to attend themselves, but they also failed to have their clients obey the court's call. How can a lawyer in response to a court summons, while in his law office, "send word by a court Bailiff to a Judge that he is ill and therefore could not come," as alleged in count 12 of the bill? If he was well enough to be in his office, then certainly it would seem that he was also well enough to have attended upon the court's call, if he had any intention of obeying the command of Rule i of the Code, supra. We would like to emphasize that these allegations against the two counsellors have not been denied by them. Perhaps it might be necessary that we here again emphasize the importance of obeying a court order. Any court acting within proper jurisdiction and within the limits of its authority, must be obeyed not only by the parties concerned in litigation, but by all who come in contact with the particular court. But over and above what the parties and/or the public may do, lawyers should never allow themselves to be accused of refusing, disobeying, or disregarding a court order of summons, because of their special relationship to the courts. In In Re Simpson, [1961] LRSC 23; 14 LLR 429 (1961), this Court laid down this rule in the most definite terms. A lawyer who defies or disobeys a court order not only displays contempt for the court issuing the order, but shows contempt for the judicial system of which the particular court is a part. In the circumstances, the Supreme Court cannot ignore the affront, and in order to preserve the dignity and authority of the courts of the country must punish for contempt in every such case.

Co-respondent Judge Kandakai, in his effort to excuse himself from blame and from the several charges made against him in the bill of information, filed returns. He has denied therein the several charges made against him in the bill of information. He admitted, however, that he did preside over the enforcement of the Supreme Court's mandate, and he sought to justify himself in count four of his returns. "We did not, as we do not now regard the execution of the order of the Supreme Court as a judicial act. Rather, in our opinion it is a ministerial duty, and as a ministerial duty it falls under the category of mandatory duty required of an inferior court judge, in the performance of which is no room left for the discretion, hence the charge of recusation does not and should not lie. On the basis of this belief, we feel the need to recuse ourselves did not arise." It is unfortunate that the learned judge did not see fit to go further in his explanation, and explain his reason for refusing to carry out the provisions of the Supreme Court's mandate ordering that Thomas Reeves should be evicted from the property, which allegation against the Judge is contained in count five of the bill of information. "Every disobedience of a court's order constitutes contempt; and it is as much the duty of the inferior courts to demand and compel obedience of their orders as a first step to upholding the dignity of the judiciary and the authority of the courts of Liberia, as it is the responsibility of the Supreme Court to see that said dignity and authority are preserved." Int. Trust Co. v. W eah[1964] LRSC 13; , 15 LLR 568, 575 (1964). Such was the pronouncement of this Court in respect to disobedience of orders issued out of the Probate Court for Montserrado County. The Court still holds itself responsible to enforce obedience to orders of all courts within the Republic, and most especially will we enforce obedience of our own orders; and it makes no difference

whether such obedience is enforced against parties, lawyers, or judges. Judges who flagrantly and intentionally disobey orders of superior courts thereby render themselves not only, censurable for such disobedience, but by such disobedience raise doubt as to their fitness to continue as judges of courts in Liberia. We regard the acts of the respondents in this case as highly contemptuous, and to purge them of contempt, we have taken the following action: I. Counsellors and co-respondents M. M. Perry and A. Lorenzo Weeks are each fined in the sum of One Hundred dollars; 2. Judge and co-respondent James M. Kandakai is also fined in the sum of Two Hundred dollars; 3. Co-respondents James N. Doe and Thomas Reeves are fined in the sum of Five Hundred dollars each. These several amounts are to be paid into the Bureau of Revenues, and official revenue receipts exhibited by the Marshal in our Chambers on or before February 28, 1973, as evidence that our orders have been obeyed. Failing which, they are all and severally to be committed to jail until the said amounts are paid. It is also our order that the Supreme Court's mandate handed down on May 19, 1972, commanding the enforcement of the circuit court's judgment, should again be sent to the judge now presiding in the Sixth Judicial Circuit for immediate enforcement. Costs of these

proceedings are ruled against the respondents. It is so ordered. Contempt adjudged.

Shannon v Bull [1984] LRSC 4; 31 LLR 726 (1984) (9 February 1984)

LISCHEN WADE SHANNON, Appellant, v. **JAMES G. BULL, SR.,** Appellee.

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

Heard: January 12, 1984. Decided: February 9, 1984.

1. There is only one form of action. Accordingly, the distinction between actions at law and suits in equity, and the forms of those actions and suits heretofore existing are abolished.

2. The test of the sufficiency of a complaint or petition is whether the facts alleged therein are admitted or proved.

3. In determining whether a petition discloses a cause of action, the court must look to the body of the petition and the averments of facts, and not to the prayer for relief.

4. The sufficiency of the complaint is not determined from a single isolated allegation but must be tested in the light of all the averments pleaded.

5. The grounds for partition of realty and personal properties are separate, and to sustain a petition for the partition of properties does not depend upon promise and agreement reached by the parties; consequently, averments to that effect are mere surplusage which do not vitiate.

6. Surplusage is deemed not to vitiate a pleading and ordinarily will be disregarded notwithstanding the absence of a motion to strike, unless it has the effect of confusing the issue. Surplusage will also not affect the other allegations in the pleadings which are material and are properly pleaded.

7. A conveyance to husband and wife creates a tenancy by the entirety with a right of survivorship; however, when an absolute divorce is obtained, the tenancy by the entirety is automatically converted to a tenancy in common with no right of survivorship.

8. In a divorce case, the failure of a court to award the successful wife one-third of the real and personal properties of her husband does not divest the divorced wife of her right to a cause of action for a judicial partition.

9. Where a division of properties cannot voluntarily be made, the proper remedy is a petition for a judicial partition.

10. The existence or non-existence of a cause of action vested in the petition is mixed law and facts which require production of evidence.

11. A bill of exceptions is not required to be in any particular form.

Appellant Lischen Wade Shannon, formerly Lischen Shannon-Bull, and Appellee James G. Bull, Sr., were lawfully married, and during the period of their coverture, they acquired, in fee simple, possessed and owned jointly real and personal properties as tenants by the entirety. The marriage was subsequently dissolved and a decree of court issued to that effect. Subsequently, the appellant filed a petition in the Civil Law Court praying for the partitioning of the real property which she and the appellee held jointly in fee.

The trial court ruled that by virtue of the dissolution of the marriage, the parties no longer held in common any real or personal properties as any such rights should have been asserted prior to the issuance of the final decree of divorce. The trial court therefore dismissed the action. It is from this ruling that the appellant appealed to the Supreme Court for a review of the matter. On review, the Supreme Court reversed the judgment of the trial court, reasoning that the basis for the dismissal was erroneous in that the fact that the appellant had received her statutory share of the appellee's property at the time of their divorce did not deprive her of her right to her portion of the property jointly acquired and owned by them during the marriage. The Court noted also that the fact that at the time of the divorce the trial court had failed to partitioned the property jointly owned by the appellant and appellee did not amount to a waiver and did not preclude appellant from seeking her share of such property in a separate suit. The Court observed that the joint property was owned by the appellant and appellee in fee simple was owned in their own right, and therefore the one-third or the appellee's property given to appellant, as prescribed by statute, did not affect the appellants vested right to her share of the joint property.

S. Raymond Horace appeared for the appellant. Joseph Williamson and James G. Bull, Sr., appeared for the appellee.

MR JUSTICE YANGBE delivered the opinion of the Court.

The gist of the petition constituting the cause of action are as follows:

1. That appellant and appellee were lawfully married and during the period of the coverture they both acquired, in fee simple, possessed and owned jointly real and personal properties, described in the petition. However, subsequently, the marriage was dissolved by decree of court.

2. Appellee agreed and promised to issue the quit claim deeds in favour of appellant, conveying the several pieces of real property described in the petition.

3. That as a divorce settlement, appellee had promised and agreed to pay appellant $11,000.00.

4.Appellant prayed for a decree ordering the appellee to issue in her favour quit claim deeds for the realty, partition the premises jointly owned, possessed and award appellant the $11,000.00 including her personal furniture listed in the petition.

Several dilatory defenses were asserted in the answer, to which a reply was filed and the pleadings rested thereat. Later, the lower court rendered a ruling during the disposition of the issues of law in which the court abated the entire action. It is from that ruling appellant appealed to this forum for review.

In the answer, the appellee contended that the averments in the petition are not suited for an application to partition real property, rather they are suited in an action for specific performance of a contract, since appellant stated an alleged agreement and promise made by appellee to convey to appellant certain real and personal properties and the payment of $11,000.00 as divorce settlement. It is also contended in the answer that since appellant alleged that there was a marriage and a divorce, the court should have awarded appellant in the final judgement one-third of the property of the husband now appellee and after the divorce the former wife of appellee, now appellant, had no longer any cause of action vested in her to recover any real or personal properties of her former husband, the appellee. These contentions in the answer were the sole reasons on which the lower court dismissed the entire case in these words, inter alia:

"Partitioning, under common law, is the sharing of the rights encroached in an article or property. In the instant case, the petitioner and the respondent by virtue of the dissolution of marriage no longer hold in common any property, real or personal, and an action of partitioning is not applicable, if the respondent had concluded a contract and/or agreement to settle certain acts upon the dissolution of their marriage, a redress for failure to comply therewith will not find a remedy in an application for partitioning, but rather a performance of an act concluded by the parties, and therefore specific performance."

Prior to the passage of the Civil Procedure Law, Rev. Code 1, where the averments in the complaint were not suitable to the form of action chosen, the complaint or petition was a fit subject for dismissal. Jantzen v. Coleman, 2 LLR208 (1915). However, at present, "there is only one form of civil action. The distinction between actions at law and suits in equity, and the forms of those actions and suits heretofore existing are abolished." "The provision of this title shall be construed to promote the just, speedy and inexpensive determination of every action." Civil Procedtire Law, Rev. Code 1: 1.3 and 1.4.

Under the common law, we quote the following:

"It has been declared that the sufficiency of each complaint considered must be determined from the fact conditions therein set out. Where forms of action have been abolished, matters of substance have been said to be, in the main, the same as at common law.

With respect to substance, the test of the sufficiency of a declaration, complaint, or petition is whether, if the facts alleged therein are admitted or proved, plaintiff would be entitled to recovery against defendant, or, from any point of view, or on any theory, is entitled to relief. If such a right is shown, the pleading will be held sufficient, even though the ground of recovery assigned in the complaint is insufficient . . . .This is true, even though the cause of action arising from the facts set forth is not the cause of action which plaintiff intended to state. . .even though the pleading contains a demand for relief to which plaintiff is not entitled, because the

sufficiency of the pleading must be determined from the substance thereof rather than by the legal verbiage to be found therein.

Neither is it necessary, under code provision abolishing forms of action, that plaintiff's pleading state facts bringing the cause under any particular form of action at common law, but it is sufficient if it states facts which entitle him to some or any relief, either legal or equitable, although it has also been considered that a complaint does not comply with the statutory requirement that it shall contain a plain statement of the facts constituting the cause of action where it is impossible to tell from the facts pleaded whether plaintiff was attempting to state a cause of action in equity or at law.

It is necessary that the allegations should be sufficient to show to the court that a good cause of action actually exists, and, if such allegations go no further than to show that such a cause of action might exist, the pleading is insufficient. So also, if plaintiff alleges two states of the case, in one of which defendant is liable, and in the other of which defendant is not liable, the pleading is bad.

The question of sufficiency must be determined from the allegations of the pleading alone, and not from any theory of plaintiff, and regardless of any evidence which may be introduced in support of the pleading, or of the arguments made on the trial or on appeal, or of any extraneous matters. In determining whether a petition discloses a cause of action, the court must look at the body of the petition and the averments of fact, and not to the prayer for relief.

The sufficiency of the complaint is not to be determined from a single isolated allegation, but it must be tested in the light of all the averments which are well pleaded.

" We will now address ourselves to what are the requirements of the statute. Where a petition is filed to partition real property, the essential allegations in such a case are as follows:

"When several persons hold and are in possession of any **land** or premises as joint tenants, or as tenants in common, one or more of them having estates of inheritance, or for life or lives, or for years, any one or more of such persons may apply for partition of such lands or premises or for a sale of such premises if it appears that partition cannot be made without great injury to the interests of the owners." Property Law, 1956 Code 28: 80.

The petition for partition in this case contains the pertinent allegations in conformity with the requirements of the statute we have just quoted above. With respect to the averments of the alleged agreement and the promise of appellee to convey the said property to appellant, and appellee's alleged refusal so to do, the same are mere surplusage. In 71 C.J.S., Pleadings, § 36, it is recorded thus:

"Surplusage, stickily speaking, consists in the allegation of matter so wholly foreign and irrelevant that no allegation whatever on the subject is necessary. In actual practice, the term has been applied to all immaterial matters and matter which is unnecessary to either the substance or the form of the pleading, that is, to allegations of fact beyond what are necessary to constitute a

statement of a cause of action or defense, the test being whether such matter could be stricken and still leave a good pleading.

Allegations necessary for recovery may not be rejected as surplusage. Whether or not an allegation is surplusage depends on the pleading and not on the proof. If the allegation is one of an issuable fact necessary to the claim set forth in the pleading, it does not become surplusage because of the failure to prove it.

Surplusage is deemed not to vitiate a pleading, and, according to the judicial decisions on the question, ordinarily will be disregarded notwithstanding the absence of a motion to strike unless it has the effect of confusing the issue. Likewise, surplusage will not affect other allegations in the pleading which are material and are properly pleaded.

It has been held, however, that unnecessary or immaterial matter cannot be rejected as surplusage where it describes or limits matter which is material. So, where an allegation of a complaint, although superfluous, shows that plaintiff has no cause of action, it cannot be rejected, but will vitiate the complaint." The grounds for partitioning of realty and personal properties are separate and to sustain a petition for partition does not depend upon a promise and agreement reached between the parties; consequently, averments to that effect are mere surplusage which do not vitiate.

"Whenever persons interested in **land** as owners and cotenants cannot, by consent and agreement among themselves, make a division thereof, that is, have a voluntary partition, any one or more of them may apply for a partition by judicial proceedings - a compulsory partition - which takes place without regard to the wishes of one or more of the owners. If, however, **land** has already been divided under a voluntary partition, a judicial partition cannot be had without first establishing the invalidity of and setting aside the voluntary partition."

Reverting to the defense that appellant cannot maintain a separate action for partition after appellant had obtained a final divorce decree against appellee, in that under the Domestic Relations Law, a wife who is a successful party in an action of divorce is entitled to recover one-third of her divorced husband's personal property outright and one-third of his real property for life, and that since the court did not award the wife such property in the court's final decree for divorce, appellant had waived such cause of action against the appellee, appellee cited for reliance Domestic Relations Law, Rev. Code 9: 8.7. That law reads thus:

"When a wife as plaintiff prevails in an action to obtain a divorce, the court in the final judgement shall award her not less than one-fifth nor more than one-third of the defendant husband's personal property outright and not less than one-fifth nor more than one-third of his real property for life. Upon the wife's death, so much of the real property so awarded her shall descend to her children begotten by the defendant husband. If the wife dies leaving no such children her surviving, such property shall revert to the defendant husband, or in the event of his prior death, it shall descend in accordance with the provision with regard thereto, if any, contained in his last will or in default thereof to his distributors in accordance with the statute of descent and distribution"

It is noteworthy that the property now the subject of this petition was allegedly acquired in fee simple by appellant and appellee jointly during their marriage and not the property exclusively owned by the former husband now appellee. Therefore, whether the court awarded the appellant one-third of the real and personal properties of her then husband in the final decree of divorce is not relevant and does not affect appellant's alleged vested rights in the real and personal properties thus jointly purchased by the parties during coverture. Hence, the Domestic Relations Law, Rev. Code 9:8.7, relied upon by appellee and quoted supra, is not applicable in this case.

With reference to the effect of the divorce on the property allegedly acquired and jointly owned by the then couple, a conveyance to husband and wife creates a tenancy by the entirety with a right of survivorship, however, when an absolute divorce is obtained, the tenancy of the entirety is automatically converted to a tenancy in common with no right of survivorship. In re the estate of Lloyd K Whisnant[1975] LRSC 24; , 24 LLR 298 (1975). And where a division of the properties cannot voluntarily be made, the proper remedy is a petition for a judicial partition as in this case. In view of the categorical denial in the answer, certainly the existence or non-existence of a cause of action vested in the petition is mixed law and facts which requires production of evidence, which was not done in this case as the case was dismissed upon issues of law.

In the bill of exceptions, appellant has charged the trial judge with not having passed upon all the issues of law and for not doing so in a reversed order.

A careful study of the ruling of the judge shows that the court did pass upon all the issues of law by implication when he dismissed the entire action mainly predicated upon counts 1 and 9 of the answer. Whilst it is true that the opinions of this Court direct that the judge should commence disposition of issues of law in a reverse order, in our opinion, the failure so to commence does not constitute a reversible error as long as the mandate of the statute has been fully met by deciding all the issues of law before trial of facts.

With respect to the contention of the appellee concerning the bill of exceptions not being properly framed in law to warrant its entertainment by this Court, this Court held in Cole v. Williams, [1949] LRSC 17; 10 LLR 191 (1949), that a bill of exceptions is not required to be in any particular form. The points we have considered and passed upon above are the only issues which we deem important for our decision in this case.

Therefore, considering the circumstances and the above citations of law, the ruling of the lower court which dismissed the action is reversed, and the Clerk of this Court is instructed to send a mandate to the lower court to resume jurisdiction over this matter immediately and proceed with the case, first with the disposition of the issues of law anew and then to the trial of the facts. Costs are disallowed. And it is so ordered.

Judgment reversed; case remanded

Wahab v Adorkor [1954] LRSC 30; 12 LLR 152 (1954) (10 December 1954)

SAMUEL A. WAHAB, Appellant, v. ZARIAH J. ADORKOR, by and through her Husband, K. J. ADORKOR, Appellee.
APPEAL FROM THE CIRCUIT COURT
OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued March 16, 17, 1954. Decided December 10, 1954. 1. A complaint in an action
of injunction must be personally verified by the plaintiff. 2. An action of injunction may be dismissed by the trial court without
motion of the defendant.

On appeal from a judgment of the court below dismissing an injunction action, judgment affirmed. William
N. Witherspoon for appellant. Cooper for appellee. Momolu S.

MR. JUSTICE SHANNON delivered the opinion of the Court. Appellant, plaintiff below, leased a parcel of land in Monrovia from appellee, defendant below, for a period of ten years. Appellant was never
in default in the payment of the rent, but had paid six to seven years' rents in advance. Nevertheless, appellee sought to evict
him from the premises. Appellant then instituted an action of injunction to restrain and enjoin appellee from evicting him. In answering
the complaint in injunction, appellee did not deny having leased the premises in question to appellant for ten years, neither did
she deny having received the rent payments in advance for about seven years ; but she pleaded, as a reason for evicting appellant,
that she, as well as other persons, had observed that appellant was

seeking to burn down the premises,
and that, on one occasion, appellant had matches, kerosene and old rags in readiness to set said premises on fire. The answer also
alleged that appellant was losing his mind. We are unable to pass upon these factual submissions. They were never gone into by the
court below because the trial court sustained Count "4" of defendant-appellee's answer wherein she attacked the sufficiency of plaintiffappellant's
complaint on the ground that the supporting affidavit was defective in that it was sworn to upon the oath of counsel for plaintiff,
whereas, defendant contended, it should have been sworn to by the plaintiff himself. We deem it necessary to quote the said plea
of the defendant : "And also because defendant says that the complaint is further defective for the want of a supporting affidavit
as provided for in the 37th section, Chapter i 1, of the Old Blue Book which mandatorily states that a complaint in an action of

Injunction must be supported or verified by the oath of the plaintiff himself . . . said complaint not being supported by plaintiff's own oath, but that of William N. Witherspoon, Counsellor at Law, renders the complaint fatally defective. Wherefore defendant prays the dismissal of this case with costs against the plaintiff." Replying to this plea of the defendant, plaintiff countered by submitting that said plea is not sufficient in law to warrant the dismissal of the action in that the statute laws of Liberia do not make it mandatory or imperative for the plaintiff himself to make the affidavit or sign the oath to his complaint; but same can be legally done by the attorney of said plaintiff, or by an authorized agent, as can be seen from the language of said statute. Plaintiff further attacked the answer on the ground that it was not backed by a motion for the dissolution of the injunction, which alone would have warranted the trial judge in taking any action in respect thereto; and, plain-

tiff having failed so to move, the court was without authority to dissolve said injunction. Concerning the allegedly defective affidavit our statute says : "An action of injunction shall be commenced by a writ of injunction, to obtain which the plaintiff must file his complaint verified by his own oath, and file such other evidence as the Court or Judge may require ; " Rev. Stat., sec. 339. (Emphasis supplied.) Whilst it is true generally that, where a party is required under the law to make an affidavit to any pleading, his attorney or agent may do so for him, yet this is not the case where there is an express and mandatory statutory provision that the party must make the oath himself ; and this finds support in common law as follows : "The verification of a bill for injunction, when required, is usually, in the case of an individual plaintiff, made by the party himself." 28 AM. JuR. 782 Injunctions § 272. And where, in face of such mandatory provision of the statute a person other than the plaintiff takes the oath, such an affidavit is considered defective and insufficient. The provisions of the statutes in this respect are both forceful and mandatory, not in the least to be considered discretionary, and should therefore have been followed, since it is crystal clear that it was never intended for an attorney to take the affidavit to a bill or complaint in injunction instead of the party himself, with his own oath; and this has been expressly decided in Blacklidge v. Blacklidge, 1 L.L.R. 371, 374 (I90I). In that case the same issue was raised, and even though the affiant was one of the plaintiffs, just because he did not sign for "himself and the other plaintiffs," the plea of insufficiency was sustained, the action dismissed and the injunction dissolved. A fortiori such a plea is to be sustained where the affiant is not a party. The trial Judge, therefore, correctly ruled on this point and his ruling is sustained.

As to the ruling of the Judge in dissolving the injunction in the absence of a motion for dissolution, we are of the opinion that, although there are provisions in our statutes, both in the Old Blue Book and the Revised Statutes, for the filing of a motion for dissolution after having previously filed an answer, yet these provisions are discretionary and not mandatory. The obvious purpose of the filing of a motion for dissolution of injunction is to curtail a lengthy campaign of filing pleadings and, injunction being an extraordinary proceeding, to bring same to a close without undue delay. We do not agree that, although an answer is filed and verified, duly praying the dissolution of an injunction, the trial Judge would be powerless to enter the pleadings, dispose of them, and eventually dissolve the injunction, merely because no formal and independent motion to that effect was made. To entertain this view would simply mean that the said Judge would not be able to pass upon the pleadings at any time simply for lack of a motion for dissolution; hence the discretionary and not mandatory aspect of the provisions of the statutes respecting same. We quote from the Old Blue Book: "An injunction shall not be dissolved, unless the defendant appear and file a sufficient answer to the complaint, verified by oath, it shall not be dissolved merely because he denies knowledge of the facts alleged in the complaint and puts the plaintiff upon the proof thereof." 1841 Digest, pt. 2, tit. II, ch. t, sec. 41; 2 Hub. 1534. 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 dissolve the injunction if sufficient grounds are shown in said verified answer to support same. The decree of the trial Judge dissolving the injunction is affirmed with costs against appellant and it is hereby so ordered. Affirme d .

Sawan v Cooper et al [1999] LRSC 27; 39 LLR 598 (1999) (2 July 1999)

ALFRED SAWAN, Petitioner, v**. HIS HONOUR VARNEY D. COOPER**, Presiding Judge, Civil Law Court, Sixth Judicial Circuit, Montserrado County, June Term, A. D. 1997, the Sheriff and all those working under his authority, the Clerk and Asst. Clerk of said Court, and **JENNEH KIAZOE TOLBERT**, thru her husband, JESSE TOLBERT, thru MALISSA DARN, Respondents.

APPEAL FROM RULING OF THE CHAMBERS JUSTICE GRANTING THE PETITION FOR ISSUANCE OF A WRIT OF PROHIBITION.

Heard: March 24, 1999. Decided: July 2, 1999.

1. A party cannot be concluded by a judgment without having his a day in court; and prohibition will lie to prohibit the unlawful act of a trial court and to undo what has already been unlawfully done.

2. The object of the letters of administration is to enable the administrator sue on behalf of the estate and defend suits against the estate as well as to administer its affairs, but such Letters of Administration do not constitute a title to the decedent's estate.

3. The writ of prohibition only extends to prohibit an inferior court from assuming jurisdiction not legally vested in it and cannot be sought and granted as a substitute for an appeal.

These proceedings emanate from an action of ejectment instituted by Madam Jenneh Kiazoe-Tolbert, in the Civil Law Court of the Sixth Judicial Circuit, Montserrado county against defendant, Peter Dahn. Defendant failed to file an answer and a default judgment was entered against him. Subsequently, defendant filed a bill of information before the presiding judge, contending that he had not been served with a notice of assignment for the hearing of the case. The information was heard and denied, whereupon defendant along with those listed on the writ of possession, applied to the Chambers Justice for a writ of prohibition. The Chambers Justice denied the prohibition with modification that those whose names were included on the writ of possession without being summoned should be excluded, except defendant who was duly summoned. Defendant took no appeal from this ruling, and was accordingly evicted.

Subsequently, one Alfred Sawan, claiming to be the administrator of the intestate estate of the late Moses Dahn, filed a bill of information and applied for a writ of prohibition, alleging among other things that the final judgment in the ejectment proceedings could not be legally enforced against him and the intestate estate since neither him nor the intestate estate was brought under the jurisdiction of the court, and that prohibition will lie to halt the enforcement of the judgment, he not having had his day in court. The information was denied and the alternative writ of prohibition granted, to which the respondents excepted and appealed to the Supreme Court *en banc.*

The Supreme Court upon review of the records held that the judge did not deny the petitioner his day in court, and that the alleged irregularities complained of could only be corrected by way of a regular appeal, writ of error or certiorari, and not by writ of prohibition. Accordingly, the Court *reversed* the ruling of the Chambers Justice and *denied* the petition for prohibition without prejudice.

Pei Edwin Gausi and Roland Dahn of the Law Chambers of Gausi & Partners appeared for petitioner. *Roger K Martin, Sr.,* of the Martin Law Firm appeared for respondents.

MR. JUSTICE JANGABA delivered the opinion of the Court.

This case is on appeal before this Honourable Court emanating from the ruling made by our distinguished colleague, Mr. Justice John Nathaniel Morris, Associate Justice presiding in Chambers during the October Term, A. D. 1997, granting the petition for a writ of prohibition filed by petitioner Alfred Sawan.

The records reveals that during the June, Term A. D. 1997 of the Civil Law Court, Sixth Judicial Circuit for Montserrado County, an action of ejectment was filed by Madam Jenneh Kiazoe-Tolbert through her husband, Jesse Tolbert, against Mr. Peter Dahn. A judgment of default was entered against Peter Dahn because of his failure to file an answer. When the writ of possession and bill of costs were served on him, he filed a bill of information before the presiding judge contending that he was not served with notice of assignment for the hearing. This information was heard and denied, to which ruling an exception was noted. Subsequently, Peter Dahn and others who were included on the writ of possession fled to the Chambers of this Honourable Court to prohibit the enforcement of the judgment against Peter Dahn and others whose names did not appear on the writ of summons for want of jurisdiction. The Chambers Justice denied the prohibition with modification that those whose names were included on the writ of possession without being summoned should be excluded except defendant Peter Dahn who has duly summoned. No appeal was taken from this ruling and Peter Dahn was finally evicted and Jenneh Kiazoe-Tolbert was placed in possession.

The facts further reveal that subsequently on January 20, 1998 and March 9, 1998, an alternative writ of prohibition and bill of information were filed respectively and served on Malissa Dahn, attorney-in-fact for Jenneh Kiazoe-Tolbert, by Alfred Sawan of the City of Monrovia. During the hearing, both petitions and returns were consolidated. The information was denied and the

alternative writ of prohibition granted. The respondents excepted and appealed to this Court *en bane* for a final determination.

The petitioner substantially claims *inter alia* to be the administrator of the intestate estate of Moses Dahn and that the final judgment in the ejectment proceedings could not be legally enforced against him and the intestate estate since neither him nor the intestate estate was brought under the jurisdiction of the court. Therefore he having not had his day in court, prohibition will lie to halt the enforcement against him.

The respondents in traversing petitioner's contention, argued that the petitioner was not a party in the court below and could not proceed to the Supreme Court for the first time on a remedial writ of prohibition, raising issues which the Supreme Court does not exercise original jurisdiction to determine. Furthermore, petitioner cannot speak of not having his day in court because both him and the intestate estate of the late Moses Dahn were not parties/defendants in the action of ejectment. Respondent also denied that the judge proceeded by a wrong rule and in fact the enforcement of possession proceedings in favour of respondent is complete. Consequently, prohibition can not lie to restrain the court below from enforcing its judgment.

The cardinal issues for determination of this case in our review are as follows:

1. Was the trial judge aware of the existence of the intestate estate of the late Moses Dahn when the action of ejectment was filed and final judgment thereof rendered against Peter Dahn, thereby denying the said estate its day in court?

2. Whether or not prohibition will lie under the facts and circumstances in the instance case.

The germane issue before this Court to be resolved is the trial court's jurisdiction over the intestate estate of the late Moses Dahn in the action of ejectment instituted by Jenneh Kiazole-Tolbert by and thru her husband, Jesse Tolbert, against Peter Dahn. This Court is mindful of the Decedents Estate Law that an intestate estate, as in the instant case, can only sue and be sued by and through its administrator or administratrix. This brings us to the question of whether or not the trial judge was aware of the existence of the intestate estate of the late Moses Dahn when the action of ejectment was filed and final judgment rendered in favor of plaintiff and against Peter

Dahn. In other words, did the trial judge deny the aforesaid estate its day in court notwithstanding his awareness of the existence thereof?

A recourse to the records reveals that the plaintiff filed her action of ejectment on May 20, 1997, claiming ownership of a **land** in Sinkor with three buildings thereon which she alleged Peter Dahn entered into and occupied without any color of right. There was no responsive pleading filed even though Peter Dahn acknowledged the service of a writ of summons. The plaintiff obtained default judgment from the trial court. Peter Dahn, by and through his counsel, Counsellor Roland Dahn, filed a bill of information before the lower court acknowledging the service of the summons but contended that he was not served with the notice of assignment for hearing of this case. The informant requested the trial court to halt the eviction exercise and conduct a proper trial in order to profert evidence of his claim to the aforesaid property. This information was denied and there was no appeal taken. The trial court was never informed by counsel for the defendant in the court below and one of counsels for petitioner herein that Peter Dahn entered and occupied the intestate estate of the late Moses Dahn. It is indeed clear from the records that the trial Judge had no knowledge of the existence of an intestate estate of the late Moses Dahn as of the institution of the ejectment suit and the rendition of his final judgment as well as the denial of the bill of information. It was therefore the obligation of defendant's counsel to have informed the trial judge in his bill of information that the property occupied by Peter Dahn was the intestate estate of the late Moses Dahn, and that the said estate should be excluded from the judgment of the trial court since it was not brought under the jurisdiction of the court. The learned counsel should have appealed from the ruling denying his bill of information for appellate review by this Court with relevant document to substantiate the claim of his client. We note with regret that defendant Peter Dahn, through his counsel, failed to seek a redress from this court.

It is interesting to note herein that the petitioner obtained letters of administration from the Probate Court for Montserrado County to be the administrator of the intestate estate of the late Moses Dahn on September 5, 1997 and a clerk's certificate on September 29, 1997 subsequent to the final judgment of the trial judge on June 24 1997, two months some weeks after rendition of the final judgment and the eviction of Peter Dahn. The alleged intestate estate of the late Moses Dahn has its personal representative as of September 5, 1997 upon his appointment by the probate court after rendition of the final judgment and subsequent eviction and ousting of Peter Dahn from the subject property. We therefore wonder how could the trial judge acquire jurisdiction over the aforesaid estate without knowledge of its existence and personal representative at the time of trial and rendition of judgment in affording the said estate its day in court. The records in this case are also devoid of any evidence indicating that the intestate estate, by and thru its administrator, ever filed a motion for relief from judgment in the trial court, proferting his documentary evidence establishing his claim to the property in question. This Court therefore holds that the judge did not deny the petitioner his day in court under the given facts and circumstances in this case.

As to the issue whether or not prohibition will lie under the facts and circumstances in the instant case, this Court answers this question in the negative. During the argument of this case before us, petitioner strongly argues that he was denied his day in court by the trial court and should therefore be excluded from its judgment. The petitioner cited this Court to its decision in *Boye v. Nelson,* [1978] LRSC 33; 27 LLR 174 (1978), wherein this Court held that a party cannot be concluded by a judgment without having a day in court and that prohibition will lie to prohibit the unlawful act of a trial court as well as undoing what has already been unlawfully done. In the *Boye* case, one James W. Sims brought an action of ejectment against R. Henri Gibson, grantor of Mokoh Boye, who purchased a **land** from her grantor in 1967 and built thereon a house in which she lived for several years. Gibson withdrew his answer and a judgment was rendered against him and a writ of possession issued for his eviction from the subject property. The sheriff, however, attempted to evict petitioner Boye from the **land** which she owned by purchase without being made a party to that suit. She sought the aid of prohibition from this Court proferting her title deed in establishing the ownership of the property she acquired from Defendant Gibson. The Chambers Justice granted the writ of prohibition and the respondents appealed. This Court on appeal affirmed the ruling of the Chambers Justice on grounds that petitioner did not have her day in court and could not be bound by the judgment of the trial court.

In the instant case, the petitioner alleges to be administrator of the intestate estate, but he did not file said petition in his representative capacity as administrator of said estate. He also proferted a copy of his letters of administration appointing him as the personal representative of the estate without annexing any documentary evidence establishing the ownership of the subject property by the late Moses Dahn. The petitioner cannot only allege the ownership of the property by the decedent whose property he claims to be the administrator thereof without a title deed in the name of the deceased. The object of the letters of administration is to sue and defend suits against the estate as well as to administer its affairs, but such letters of administration does not constitute a title to the decedent's estate. The facts and circumstances in the *Boye* case and the case at bar are not analogous.

The collateral issue of importance raised and argued by counsel of petitioner before this Court is that the trial judge committed a reversible error when he failed to set aside the verdict of the trial jury, in that, the said jury rendered two verdicts contrary to law which the trial judge confirmed in his judgment. The counsel for respondents strongly argued that prohibition will not lie as a substitute for a regular appeal. This Court observes from the records in this case that Peter Dahn, defendant in the action of ejectment in the trial court, did not take an appeal from the judgment of the trial court as well as the ruling of the Chambers Justice ordering the trial judge to exclude from the writ of possession, those whose names were not included in the writ of summons except Peter Dahn. The petitioner herein basically contends that he was not made a party defendant in the ejectment suit, and should therefore be excluded from its judgment. We are taken aback by petitioner requesting this Court to reverse the judgment of the trail court for confirming the

verdict of the jury, and at the same time contending in his petition that he never had his day in court. In other words, petitioner contends that the trial court did not acquire jurisdiction over him. This case is not before us on appeal by Peter Dahn for our review and final determination of the ejectment suit. Hence, we cannot review the final judgment of the trial court in this remedial process. The alleged irregularities committed by the trial court can be reviewed and corrected by this Court on a regular appeal, writ of error or certiorari, for the writ of prohibition only extends to prohibit an inferior court from assuming jurisdiction not legally vested in it and cannot be sought and granted as a substitute for an appeal as in the instant case. *Fazzah v. National Economy, et. al[1943] LRSC 2; ,* 8 LLR 85, 89-90 (1943). The contention of petitioner is therefore not sustained.

This Court is therefore reluctant to disturb the judgment of the court below and declines to grant a writ of prohibition under the given facts and circumstances in this case. The writ of prohibition is therefore denied without prejudice to the petitioner to establish the decedent's title to the subject property in the court below.

Wherefore and in view of the foregoing, it is the considered opinion of this Court that the ruling of the Chambers Justice is reversed, and the petition is denied without prejudice to the petitioner in seeking redress in the court below. The Clerk of this Court is hereby ordered to send a mandate to the court below commanding the judge therein to resume jurisdiction and enforce its judgment in the ejectment action. Costs are disallowed. And it is hereby so ordered.

Petition denied

Baky v Nah [1970] LRSC 35; 20 LLR 38 (1970) (11 June 1970)

SOLOMON BAKY, Appellant, v. NICHOLAS NAH, Appellee.
MOTION TO DISMISS APPEAL FROM THE DEBT COURT, MONTSERRADO COUNTY.

Argued April
16, 1970. Decided June 11, 1970. 1. An appeal bond is defective when not accompanied by an affidavit of the sureties complying with the provisions of Civil Procedure Law, L. 1963-64, ch. III, §6302(3), and is further defective when not accompanied by a certificate from the Bureau of Internal Revenue, required under paragraph four of the same section, rendering the appeal, therefore, subject to dismissal.

A motion was brought to dismiss the appeal, on the grounds that the appeal bond was insufficient, lacking an affidavit

of the sureties thereon and a certificate from the Bureau of Internal Revenue certifying ownership of the realty pledged and its assessed valuation free of encumbrances. The appeal was dismissed. No appearance for appellant. for appellees. MR. Court. JUSTICE WADSWORTH

The Dunbar law firm

delivered the opinion of the

When the above-entitled cause of action was called for hearing, having been assigned and bulletined, the Court's attention was called to a motion filed by appellee for the dismissal of the appeal, alleging the appeal bond was defective in that the sureties failed to submit an affidavit and there was no certificate, certifying ownership of the land, by the Bureau of Internal Revenues. Appellant filed no resistence to appellee's motion to dismiss his appeal. It appears that the appeal bond is defective in that no affidavit accompanies it as required by our new Civil Procedure Law, 1963-64, ch. III, § 6302(3), and is fur38

ther defective under paragraph four thereof, requiring a certificate from the Bureau of Internal Revenues, attesting to ownership and assessed valuation of the land. In view of the foregoing, appellee's motion is hereby granted and the appeal dismissed, with costs against appellant. And it is hereby so ordered. Motion to dismiss appeal granted.

Cassel v Cummings [1951] LRSC 4; 10 LLR 409 (1951) (2 February 1951)

CLARA A. CASSELL, President, Woman's Auxiliary Society of Trinity Memorial Church, Inc., Monrovia, by and through W. DAVIES JONES, Rector; C. L. SIMPSON, Senior Warden; NETE SIE BROWNELL, Junior Warden; C. G. BRYANT ; JACOB BROWNE ; S. R. HORACE ; CLARA A. CASSELL; and ANTHONY BARCLAY, Vestry, Petitioners, v. JACOB CUMMINGS and HIS HONOR CHARLES T. 0. KING, Presiding Circuit Judge of the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, Respondents. CERTIORARI TO THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued November 23, 27, 1950. Decided February 2, 1951. 1. The judgment of the judge must always correspond with the verdict of the jury in all substantial particulars. 2. A judgment in an action of ejectment which omitted an award of damages

granted by the verdict of the jury is subject to correction on order of the appellate court.

Petitioners, plaintiffs below, instituted an action of ejectment against respondent Cummings, defendant below. The jury returned a verdict in favor of plaintiff and, in addition, awarded damages. The judgment of the judge omitted the damages. Plaintiffs brought this petition for certiorari to this Court to have the judgment corrected. Petition granted and lower court ordered to correct judgment.
Nete Sie Brownell for petitioners. for himself. Jacob Cummings

MR. JUSTICE SHANNON delivered the opinion of the Court.

This matter began in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, when Clara A. Cassell, President of the Woman's Auxiliary of Trinity Memorial Church, Inc., Monrovia, by and through W. Davies-Jones, rector, C. L. Simpson, senior warden, Nete Sie Brownell, junior warden, C. G. Bryant, Jacob Browne, S. Raymond Horace, Clara A. Cassell and Anthony Barclay, vestry, as plaintiffs, now petitioners-in-certiorari, instituted an action of ejectment against Jacob Cummings, defendant, one of the respondents, for the recovery of two parcels of land situated in the City of Monrovia. The pleadings in this cause went as far as the reply of the plaintiffs, and when the cause was assigned for hearing before His Honor Judge C. T. 0. King, then resident judge in said circuit, despite the service of repeated notices of said assignment, the said defendant did not appear. Therefore the trial judge proceeded to hear the issues of law raised in the pleadings and ruled the case to trial. The trial upon this ruling proceeded a day or two after the ruling of the trial judge aforesaid but the defendant still had not made an appearance. The trial resulted in a verdict in favor of the plaintiffs as follows : "We, the petit jury, to whom the case Clara A. Cassell, President of Woman's Auxiliary, Trinity Church, Monrovia, et al. plaintiffs versus Jacob Cummings, defendant, action of ejectment was submitted, after hearing the evidence adduced at the trial do unanimously agree that the said plaintiffs are entitled to recover from defendant the pieces of property mentioned in their complaint being lots Nos. 212 and 7 situated in the City of Monrovia and that the defendant shall pay to plaintiffs as damages the amount of Six hundred and fifty dollars." It appears from the records certified to us that at the time of the rendition of this verdict the defendant came into court, and without any record of his exceptions to the

verdict, "asked leave of court to grant

him a new trial because he was not notified that the case was to be taken up neither did the bulletin show, and for that reason he asked for a new trial." However, since it appeared from queries put to the said defendant by the trial judge that he admitted that he had been given notice of the assignment and hearing of the cause, the application for a new trial was denied and the trial judge rendered and entered the following judgment on the verdict : "The above entitled cause having been tried at the present term of this Court before me and the jury; and the verdict of the jury having been found for the above-named plaintiffs as follows :
"'Petit Jury Room September 22, 1949.

" 'We, the petit jury, to whom the case Clara A. Cassell, President of Woman's Auxiliary, Trinity Church, Monrovia, et al. plaintiffs versus Jacob Cummings, defendant, action of ejectment was submitted, after hearing the evidence adduced at the trial do unanimously agree that the said plaintiffs are entitled to recover from defendant the pieces of property mentioned in their complaint being lots Nos. 212 and 7 situated in the City of Monrovia and that the defendant shall pay to plaintiffs as damages the amount of Six hundred and fifty dollars.' "It is therefore adjudged : That said plaintiffs shall recover against the defendant the lands mentioned in their complaint and their costs in this action. Costs against defendant. And it is so ordered. · "Given in open court this 4th day of October, A. D. 1949. "[Sgd.] CHARLES T. 0. KING Resident & Assigned Judge."

The defendant excepted to this final judgment of the trial court and prayed an appeal to this Court which

appeal was never processed or completed. The reason for this is apparent from a careful study of the verdict and the final judgment, but not otherwise. It would appear that, notwithstanding the jury had in its verdict, in addition to awarding plaintiffs the lands sued for, awarded them damages in the sum of six hundred and fifty dollars, the latter award, although it had not been attacked by the defendant, was deleted from the final judgment of the trial court without an assignment of legal reasons therefor. In fact, no reason at all was assigned. It seems, and it is so stated in the petition for a writ of certiorari, that the plaintiffs, knowing that no positions had been taken on the record against the award by the jury, did not notice the omission of damages by the trial judge. It was not until the defendant had failed to process his appeal, of which he had given notice, and in their efforts to enforce the judgment, which they were satisfied was fully in accord with the verdict, that plaintiffs learned of this deletion. They then attempted by certiorari to have this glaring, and, as they submit, flagrant, and mischievous error corrected. In deciding this case, we must resolve the following: (I) Whether or not the trial judge has the right to set aside any award made by a jury in its verdict without an application therefor and a day

assigned for the hearing of said application to afford the opposing side an opportunity to resist it if it so elects, and (2) If the question above can be resolved in the affirmative, whether or not it will be proper on the part of the judge and fair, and not prejudicial to the other party to make this deletion without giving full, open, and ample notice of same so as to afford the plaintiffs an opportunity to contest same. Our statute with respect to the proper grounds for setting aside a verdict and ordering a new trial states the following:

"The court may set aside the verdict or decision of the jury, and order a new trial, whenever it shall be proved that the jury or any of them have received a bribe, or have conversed otherwise than openly in the presence of the court, with any party to the suit, or agent of such party, on the subject of the trial, after being affirmed ; or if any juryman was related to either of the parties, or to the wife of either of the parties, as father, son or brother, or had himself any pecuniary interest in the cause, or if the verdict shall be manifestly against the evidence, the law, or the legal instructions of the court, or if the debt or damages found by the jury; be greatly too much or too little, when compared with the evidence in the case." Stat. of Liberia (Old Blue Book), ch. VII, § 16, 2 Hub. 1544 The statute then describes the procedure after the verdict of the jury is set aside. But in this case the verdict was not set aside, which act might have been better understood and more pardonable and excusable. Instead, we find unexplained deletion in the judgment of the award by the jury of six hundred fifty dollars damages. We frown upon this act of the trial judge since, from every indication, it was planned, intended, and done with the ostensible purpose of prejudicing the petitioners, plaintiffs below, and depriving them of the benefit of the jury's verdict. There is no law to support this. The judgment of a judge must always correspond with the verdict of the jury. "The practice of amending verdicts in matters 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 have expressed their meaning in an informal manner. The court has no power to supply substantial omissions 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. After the amendment the verdict must be not merely what the judge thinks it ought to have been, but what the jury intended it to be. Their actual intent, and not his notion of what they ought to have intended,

is the thing to be expressed and worked out by the amendment." (27 R.C.L. page 887, section 62). "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 the verdict, decision, or findings 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. 1169 (1924). It is obvious, therefore, from the foregoing that the trial judge was undeniably wrong in deleting from his judgment the award of six hundred and fifty dollars in the verdict as damages in favor of the petitioners, plaintiffs below, and his act in so doing savors of an intention to prejudice the rights and interest of plaintiffs, now petitioners. This conclusion is reinforced by his unwillingness to record expressly his disallowance of the damages awarded. Since the trial judge had no right to set aside this award in this manner, it is not necessary to pass upon the second issue. In view of the foregoing, it is our opinion, and we so direct, that the petition of the petitioners, plaintiffs below, be granted and the prayer therein contained be ordered, to wit, that the clerk of this Court shall forthwith send a mandate to the judge of the trial court commanding him to insert in the judgment in said case as rendered and

entered by His Honor Charles T. 0. King the amount of six hundred and fifty dollars as damages awarded petitioners, plaintiffs below, by verdict of the petit jury and to proceed to the enforcement of same with as little delay as is possible. Costs of these proceedings are against the respondent Jacob Cummings, and it is hereby so ordered.
Judgment ordered corrected.

Railey et al v Clarke [1950] LRSC 8; 10 LLR 330 (1950) (8 June 1950)

A. R. RAILEY and C. A. MONTGOMERY, Purported Executors of the Estate of the Late C. A. SMITH, Appellants, v. JOHN W. CLARKE, Adopted Son of the Late C. A. SMITH, Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT. SINOE COUNTY.

Argued March 13, 23, 28, 1950. Decided June 8, 1950. 1. The provisions of our statutes governing the commencement of actions are not intended to be applied to proceeding for the probate and/or contest of wills, since proceedings of this nature are not civil actions as such but are judicial inquiries to ascertain whether the instrument before the court is genuine. 2. Attesting witnesses to a will may testify

at the proving of a will as to the mental capacity of the testator at the time of the execution of the will. 3. A deed is the best evidence to settle a dispute over the title to real estate. Therefore, it was proper to reject the assessment list from the internal revenue office offered as evidence to prove title to real property. 4. The date is not a material part of a will. Therefore a will with no date or an incorrect date may be held valid. 5. Testator's signature cannot precede the final clause appointing the executors in a will. 6. Where testator did not declare to attesting witnesses that the document was his will, where said witnesses did not sign in testator's presence, where one witness' name was signed by someone else, and where the said witnesses were not permitted to scan the document they signed, said will was not properly executed and should not be admitted into probate. 7. If one or all of the witnesses sign before the testator affixes his signature, the will is void.

Appellants offered a will for probate. Appellee objected to the probate of said will. After a trial, the will was rejected. On appeal to this Court, judgment affirmed.

T. G. Collins
for appellants. pellee.

R. A. Henries for ap-

MR. JUSTICE DAVIS delivered the opinion of the Court.

In the settlement of Lexington, Sinoe County, Republic of Liberia, there lived a gentleman by name of Charles A. Smith, who, during the evening tide of his natural life, is alleged to have executed a last will and testament, which document after his demise was offered for probate. An adopted son of his, namely John W. Clarke, the abovenamed appellee, interposed objections to the probate of said instrument, which gave birth to these proceedings. The pleadings in the case progressed as far as the surrejoinder of the objector; and, in harmony with the provisions of our statutes controlling contested wills, the case was transferred from the Probate Division of the Third Judicial Circuit to that of the law division of said court to be tried by a jury. Accordingly, trial was had and a verdict returned by a petit jury in favor of objector, and, of course, rejecting the will. Respondents in the court below, now appellants, dissatisfied with the said verdict and the final judgment rendered thereon, have fled hither for a review and possible reversal of said judgment, submitting as a basis of their appeal a bill of exceptions embodying nine counts, four of which we deem it necessary to pass upon in this decision, namely, counts one, two, seven, and eight. Inasmuch as we are in full accord with the ruling of the trial judge in respect to counts four, five, and six, we shall not, in commenting on said ruling later in this opinion, refer to and pass upon same. We now quote hereunder count one of appellants' bill of exceptions: "Because at the call of the case

respondents offered a plea of jurisdiction consisting of (6) six counts, see sheet i of r3th day session of court." Recourse to the minutes of the trial court discloses the following as the plea of jurisdiction just referred to: (1) "That all legal proceedings according to the Liberian Statutes are termed actions, and their · method of commencing is mandatorily set out in said statutes; a departure from which must oc-

casion a discharge of any defendant or respondent in the case." (2) "And also because the method by which actions are commenced and defendants brought into court is by means of a Writ or writs [of] summons, which can only be issued upon the written directions of the party or his agent." (3) "And also because the only document the clerk of this court issued, and which according to law is an act done ultra vires, is a notice, which is an instrument foreign to our Liberian Statutes in bringing defendants or respondents into court." (4) "And also because since said notice is an illegal document, the return of the Sheriff who made same is also illegal." (5) "And also because in Liberia there are only two actions which are not ordinarily commenced by writ of summons, namely INJUNCTION AND REPLEVIN." (6) "And also because jurisdiction over parties is defined by law, and since our law has definitely described the method by which only defendants or respondents as in this case can be legally brought before court, which has not been done, respondents pray that they be discharged, the Will remain undisturbed as though no objections had been filed, and thereby order it probated according to law." Although the determination of the foregoing issues by this appellate court does not in our opinion extend as far as the actual merits or final determination of the case, as will be seen later in this opinion, yet, since it is the inescapable duty of this Court of dernier ressort to settle the practice in the courts below and also to interpret the provisions of our statutes when necessary, we shall now once and for all consider and settle these issues.

The said issues are in substance as follows : (r) That the trial court had no jurisdiction over respondent because in the filing of his objections objector did not follow the provisions of our statutes with respect to the commencement of actions, which provisions require the plaintiff to file a written direction and cause a writ of summons to be issued against the defendant by means of which he is brought before court; and (2) That under our statutes injunction and replevin are the only actions in which the ordinary mode of filing a written direction and obtaining a writ of summons against defendant upon said written direction is not followed. In passing upon said issues, we have to state that this contention of respondents, now appellants, would seem plausible at first blush; but when the law controlling the probate of wills is referred to, read, and carefully digested, the fallacy of this proposition becomes apparent, and the contention

untenable and void of legal merit. In our opinion jurisdiction is acquired by the trial court over the executors of a will as soon as the will is presented to court by either them or their agents, with or without a formal petition asking for the probate of said will; and where objections are filed contesting the validity of said will and protesting against its admission to probate, said objections assume the character and nature of an answer to the petition or request already submitted by the executors, either directly or through their agents, and who by said act have already submitted to the jurisdiction of the court. Hence no written direction or writ of summons is necessary in such a case. Moreover, in the opinion of this Court, the provisions of our statutes governing the commencement of actions are not intended to be applied to proceedings for the probate and/or contest of a will, since proceedings of this nature are not civil actions as

such, but are judicial inquiries to ascertain whether the instrument before the court offered for probate is the last will and testament of the deceased. We are in perfect agreement, therefore, with the trial judge when he denied respondents', now appellants', request to dismiss the objections on this ground, and he committed no error in so doing. Furthermore, our Revised Statutes in sections 1268 and 1272 fully conferred jurisdiction upon the court below to try and determine said cause, and the moment the said respondents, executors of the said will, caused same to be submitted to court for probate, they then and there submitted themselves to the jurisdiction of the court and therefore could not thereafter legally attack the court's jurisdiction over their person. We do not hesitate in pronouncing their contention void and of no legal efficacy. Count seven of appellants' bill is an exception taken to the trial judge's charge to the empanelled jury on the ground that the judge in his said charge expatiated on the mental abnormality of the testator at the time of the execution of the will as brought out in evidence by some of the attesting witnesses, which respondents felt was improper since insanity on the part of testator had neither been proved nor testified to by expert witnesses. A careful study of this exception and the applicable law brings us to the conclusion that the law not only requires the attesting witness to a will to sign his name and witness the signing by the testator, but also imposes an additional and greater responsibility on said attesting witness; for, by law, attesting witnesses are expected and required in addition to signing the will also to observe the mental capacity of the testator when called upon by him to attest his will, and said witnesses should be satisfied that testator is mentally capable of executing the document they are being called upon to sign as attesting witnesses. Said witnesses may therefore testify at the proving of the will, when called upon, to the mental capacity of the

testator at the time of the execution and signing of the will. In support of this view we have the following rule laid down in Corpus Juris: "It is a rule of very general application that witnesses attest not only the due execution of the will by the testator but also his mental capacity to make a valid will at the time of the execution thereof." 68 C.J. 673 (1 934). " 'The legislature, in requiring three subscribing witnesses to a will, did not contemplate the mere formality of signing their names. An idiot might do this. These witnesses are placed around the testator to ascertain and judge of his capacity.' Chase v. Lincoln, 3 Mass. 236, 237." Id., n. 23. In view of the foregoing rule of law, we are of the opinion that the trial judge did not err in reviewing or commenting upon the testimony of the attesting witnesses in his charge to the jury with respect to testator's mental capacity. With reference to the trial judge's ruling on the question of the evidence offered by respondents to prove title in C. A. Smith, the testator, to the parcel of land willed by said testator to J. W. Clarke, appellee, namely, the assessment list from the office of internal revenue, we are in full accord with the ruling of the judge rejecting said document. We uphold and emphasize his ruling in effect, that where a dispute arises over title to real estate, a deed is the best evidence to settle said dispute or to · prove in whom title to said property is legally vested. Moreover, hoary with age is the principle that in contests of this nature a party recovers, or, as in this case, succeeds, upon the strength of his own title, and not upon the weakness of his adversary's. Therefore it appears to us that the only proper course for appellants to have taken was to have produced the deed for the property which they contend was testator's property, and if the original had been lost or destroyed a copy should have been ob-

tained from either the registrar's office or from the archives at the Department of State. Failing to do this, the trial judge was correct in rejecting the assessment list offered by them to prove title, for the court could not be expected to do for them that which they had neglected and failed to do for themselves. Having thus considered and passed upon the several exceptions contained in appellants' bill and brought hither for review, we shall now consider the points presented in the briefs by both parties. Upon such points submitted by appellants they seek a reversal of the judgment of the court below, and appellee, an affirmation of said judgment. In an effort to secure from this Court a ruling affirming the judgment of the court of origin which rejected the will, appellee has submitted in his brief the following points for our consideration : (I) That the signature of attesting witness M. C. Cooper was forged to the will. Therefore the signature on said will is not genuine. Moreover, that witnesses Thomas Birch said he signed "some sort of paper," but did not know whether it was Mr. Smith's will or not. That Governor Birch signed the document without knowing what it was. That such procedure, being contrary to law, makes the will invalid. That the testator's signature precedes the final clause of the will

nominating the executors. Therefore, the will should not be admitted to probate. That from the evidence adduced at the trial, the attesting witnesses did not sign the will in the presence of the testator, and vice versa. Appellee contends this is necessary to make a will valid ; and (4) That the way in which the will was written indicates that testator could not at the time of the execu-

tion of the will have been of sound mind and disposing memory which is an indispensable factor in the making of a valid will. Therefore appellee contends the will should not be admitted to probate. For example : ( ) devising one-fifth of an acre of **land to Allen Walter without stating where the land** is. (2) After bequeathing plates to his wife, to Jean Scott one pitcher and four tumblers, in the same will he declares, "that all of the pots, dishes, tumblers etc" shall remain in the house. (3) At the top of the will appears the date April 8, 1947, and at the bottom appears June 5, 1947. (4) Devising property not belonging to him to his adopted son. Before passing upon and deciding these points, we shall recite those urged by appellants in their brief and seek to disclose their respective merits and demerits, and thereby decide whether the judgment should be affirmed or reversed.

"1. That as to legal requisite and validity, a Will is held to be valid without date, or even with a wrong date; and that it is immaterial where the testator's name is placed, it being sufficient if written in the Will." This count obviously is intended to answer or controvert count two and a portion of count four of appellee's contention above. Regarding the question of whether a will is invalid because of two different dates appearing upon the face thereof, we are of the opinion that this is not sufficient to invalidate a will because, according to the weight of modern legal authority, the date is not an essential part or requisite of a will, and, unless expressly required by a statute of the particular locality, it may be omitted without rendering the will invalid. This view finds full support in Cyclopedia of Law and Procedure: "The date not being a material part of a will, a will may therefore

be held to be valid, although it has no date or a wrong one, unless a statute provides otherwise." 40 Id. 1o98 (1912). The foregoing rule is also sanctioned by American Jurisprudence: "A will is presumed to have been executed on the day of its date. A date, however, is not an essential of a valid will, except, in some jurisdictions, in the case of holographic wills, and an erroneous date will not vitiate the instrument. If it is necessary to ascertain the date of an ordinary will in order to determine which of two or more instruments is the last will of the testator, the date may be established by extrinsic evidence." 57 Id. 188 (1948) Annot. 1916E L.R.A. 501. The next issue is whether the testator's signature appearing on the will before the clause nominating and appointing the executors

renders said will invalid. Recourse to the law controlling the execution of wills discloses the following as the prevailing rule, and by application of this rule we intend to settle and decide the said issue. In American Jurisprudence we have the following: "According to one line of authorities, a will signed at the end of the dispositive portion thereof is signed at the end within the meaning of the statute, notwithstanding that following the signature there is a clause appointing an executor, or relieving the executor of the necessity of furnishing a bond. The theory of such view is that the appointment of the executor is not essential to the validity of a will, and accordingly should not be deemed to affect or determine the end of the instrument. According to other cases, a will is not signed at the end within the meaning of the statute where a clause appointing executors follows the signature. The theory of such authorities is that while the appointment of an executor is not absolutely essential to the validity of a will, it is nevertheless a

part of the will where it is included in the instrument." Id. at 215. In Corpus Juris we have the following rule on the point "In some jurisdictions it is held that a will is signed at the end within the statutory requirement although such signature is followed by a clause appointing an executor, and the ground assigned for this rule is that, under the applicable statutes, the appointment of an executor by the will is not essential to its validity, and that in these circumstances the portion of the paper preceding the signature constitutes a complete will. But this doctrine has been denied in other jurisdictions, where it is held that when a will is written with a final clause appointing an executor and the signature precedes such clause, the will is not signed at the end thereof, especially where the subscribing witnesses signed at the actual end of the will. The reason assigned is that the appointment of an executor is a material and integral part of the will. . . ." 68 C. J. 665 (1934) , section 300. In Ruling Case Law we find the rule stated in more definite language : "A will is not invalidated by the fact that it contains words written by the testator after his signature, where the words do not dispose of any part of the estate and are not testamentary in character. But it has been held that there must not be any words placed below the signature at the time of execution and intended as a part of the will. Thus the testator's signature cannot precede a final clause appointing executors, and a will so signed is not properly executed, and should not be admitted to probate. . . ." 28 R.C.L. 121 (1921). By virtue of the foregoing citation one easily concludes that testator's signature preceding the final clause appointing the executors in the said will is neither favored nor sanctioned by law. There are cases in which a ma-

terial part of the intention of the testator centers

in the selection of persons to execute his testamentary purpose where important trusts are created on behalf of natural persons or where important charitable institutions are founded, or other large and far-reaching designs are shaped, and the administration and execution of them committed to the executors of the will who are not named until the concluding clause of the will. This clause, which is a material and integral part of the will, must precede the signature of the testator. Appellee's position, therefore, in this respect is well taken and entitled to favorable consideration. Coming now to the four contentions of appellee in his brief, we deem it necessary first to turn to the records and review the evidence given by these attesting witnesses before applying the law in the premises. In the minutes certified to this Court by the court of origin is recorded the following statement of attesting witness Margaret C. Cooper : "Q. Miss Witness, what is your name and where do you live? "A. My name is Margaret C. Cooper, and I live in the Settlement of Lexington, Sinoe County. "Q. Miss Wittness, the court observes from the face of this document the name of one M. C. Cooper, as a witness to this document, which is styled, 'The Last Will & Testament of the late C. A. Smith, Testator.' Please tell this court whether or not you are the M. C. Cooper. "A. I am the M. C. Cooper. "Q. As a witness to this document, please give the court to know whether or not you signed this document now in my hand. "A. I did not sign the document. "Q. Your name appearing upon its face makes the court . . . [believe] that you signed it as an attesting witness. Since you say that you did not

sign it, please explain to the court the reason why you say you did not sign it. "A. The reason why I say I did not sign it is this : The late C. A. Smith called one Governor Birch, but the manner in which he called the said Governor Birch caused me to think that there was some dispute. The testator then called me while he was on his piazza and I was at my home. He said, 'Margaret Mayson, come and sign my will.' When I got to his home, he told me that was his will but as I saw the person who was writing it, my courage fell. Governor Birch was then holding a pen and he, Governor Birch, then said to one Alexander Railey who was then writing the will, to read the same in order that they may know what they were signing, and Mr. Railey replied : 'No.' At this time, Governor Birch took the pen and signed, after which C. A. Smith, the testator, asked him to sign for me, and I walked down the stairs, and Mr. Governor Birch signed my name on said will. This is what I know. "Q. Since you say that you did not sign the will yourself, but that C. A. Smith, deceased, asked Governor Birch to sign for you, was the signing of the will by Governor Birch for himself and for you done in the presence of the testator? "A. At this time the Testator was on the other side of the piazza. "Q. Did he, the testator, on requesting you to sign the document, explain to you that it was his last will and testament and exhibit same to you so that you might be enabled to identify it when presented in court? "A. The testator did not, for if he had done that, I would have signed it. "Q. Then, Miss Witness, can you now upon your oath

identify this document as being the last will and testament of the late C. A. Smith, which Governor Birch signed for you? "A. No, I cannot, for nobody can say that I ever saw the paper that Governor Birch signed for me. "Q. Miss Witness, can you write? "A. I can sign my name. "Q. Being able to sign your name for yourself, why did Governor Birch then sign for you? "A. As soon as the late C. A. Smith came on the other side of the piazza and asked Governor Birch whether he had signed, and he replied that he had, he then said that he should sign for me, without making any further reference to me. "Q. So then, Miss Witness, did Governor Birch sign that document in your presence or before you arrived? "A. He signed before I got there, and he was trying to read the paper, but Mr. Alexander Railey, who was then writing the will, refused. After Governor Birch returned home, I asked him what was the contents of the Will and he replied that he tried to read it for himself and me. Alexander Railey refused, as such, he was not able to know the contents." Attesting witness Thomas Birch testified as follows : "Q. Mr. Witness, what is your name and where do you live? "A. My name is Thomas Birch. I live at Kaetu-sohn, Juarzohn District, Sinoe County. "Q. The court observes upon the face of this document purporting to be the last will and testament of the late C. A. Smith of Lexington, Sinoe County, deceased, the name of one Thomas Birch as an attesting witness to same. Please say, if you are the Thomas Birch. "A. I am the Thomas Birch.

"Q. Were you ever called by the late C. A. Smith, to attest his will as a witness and did you do such, attest it? "A. Yes, he called me at one time to sign some sort of paper, and I signed it, but I did not know what sort of paper it was. "Q. You said . . . C. A. Smith, deceased, did at some time call you to sign some sort of paper, but you did not know what sort of a paper it was. Did he or did he not tell you what sort of a paper it was? "A. He did not tell me what sort of paper he wanted me to sign. "Q. The court observes here the name of Thomas Birch with his cross mark. As such, please say whether you are or not. "A. I cannot write. "Q. Then, Mr. Witness, please tell the court who attached your signature [name] on this document? "A. It was B. A. Railey, Jr. "Q. Did not this B. A. Railey, Jr., who attached your name to this document, tell you what sort of paper he required you to attach your name to? "A. He did not tell me what sort of paper it was. "Q. Mr. Witness, you not being able to write and read, did the said B. A. Railey, Jr., open it to your view that you might be enabled to know it when seen again by you? "A. The paper was lying on the table and the said Mr. B. A. Railey, Jr., asked me to sign, when I told him to sign for me. "Q. Was the testator himself there at the table with him where he called you to sign the document which you signed? "A. He was at one end or corner of his piazza. "Q. Did he himself, the testator, sign the paper, which

B. A. Railey asked you to sign, in your presence? "A. He did not sign same in my presence. "Q. Mr. Witness, he, the testator, not signing the paper in your presence, did he the testator tell you or explain to you that the paper which you were asked to sign as an attesting witness was his will? "A. He did not. "Q. As an attesting witness, then, can you say whether this document held in my hand on which your name appears as attesting witness is the will of the late C. A. Smith? "A. I don't know. Attesting witness Governor Birch testified as follows : "Q. Mr. Witness, what is your name and where do you live? "A. My name is Governor Birch. I live in the Settlement of Lexington, Sinoe County. "Q. Mr. Witness, the name of one Governor B. Birch appears upon the face of this document purporting itself to be the last will and testament of the late C. A. Smith, of Lexington, Sinoe County. Will you please tell the court whether or not you are the G. B. Birch? "A. Yes. I am. "Q. As an attesting witness to this document, the testator of same being now interred, you are called upon by the court to prove this document as being the last will and testament of the late C. A. Smith, which it purports itself to be. You will please, then, give to the court all information within your knowledge concerning the document and how it was signed by the Testator and the attesting witnesses. "A. I was called one day by the late C. A. Smith to sign a paper. When I went upstairs in his house, he was on his front piazza upstairs. Mr. B. A. Railey, Absolom Railey were on the side piazza

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at the table. I then walked to the table. Mr. B. A. Railey handed me a pen, and I asked him to allow me to see what I was about to sign, and he replied, 'No.' At that time the late C. A. Smith was still on the front part of the piazza. Mr. B. A. Railey then started turning over the document until he got to the last sheet where he required me to sign. When I looked at that part of the document which he gave me to sign, I saw nothing to sign, for the said C. A. Smith who had called me to sign the said document had not attached his signature to the same. I then inquired of Mr. B. A. Railey whether I should still sign the paper and he replied, 'Yes.' I then took up the pen and signed. I then asked him again whether he had refused allowing me to see the paper, neither did he agree to read the paper to me. Then I held the pen in my hand, at which time the said late Honorable C. A. Smith came around that end of the piazza where we were, and said to me that I should sign for Margaret Cooper, and I signed her name to said document. He did not ask as to whether the said Margaret Cooper could sign or not, or as to whether I should not put her cross mark to her name. After this we walked downstairs. You have said, Mr. Witness, that on being called by the late Honorable C. A. Smith,

testator, to sign a paper, you went and met him on the front piazza and met B. A. Railey and A. A. Railey, Sr., on the side piazza at the table where the document which you were called over to sign was. The paper on being presented to you by Mr. B. A. Railey for your signature, you say, was rolled back, that you saw no part of it but the concluding part where you were requested to attach your signature. Not seeing, as you said, the

name of the testator thereto, you desired to be given the privilege of reading the paper or of having it explained to you before attaching your signature thereto. Did Mr. B. A. Railey explain to you what sort of a paper it was before attaching your signature thereto? "A. No. You said further that after you had attached your signature to the document, the testator walked around to the side piazza where the document was and requested you to attach the name of Margaret Mayson-Cooper thereto, which you did. Did he [the testator], on requiring you to attach the name of Margaret Mayson-Cooper to the document, explain to you what sort of paper it was he was requiring you to attach her name to? "A. No. You being one who can read and write, can you then upon your oath say to this court and jury that this is the document you attached your name to? "A. If I should see the document, I would be able to tell better. "Q. Please then, Mr. Witness, take this document which I now hold in my hand and say upon your oath to the court and jury whether it is the document you signed on that day or not. [Document handed to witness for scrutiny.] "A. I have signed so many documents for the said C. A. Smith, until I cannot say that this is the correct document or not." From the foregoing testimony of attesting witnesses Margaret Cooper, Thomas Birch, and Governor Birch, it is evident that the will in question was not properly and regularly executed. According to their evidence, the document was never declared to them by the testator as his last will. Further, the testimony of some of these

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attesting witnesses discloses that when they signed the purported will or, in the case of Margaret C. Cooper, when her name was placed on the will by Governor Birch, it was not done in testator's presence and testator had not signed the document at the time. Moreover, Thomas Birch stated that although he signed a certain paper, he did not know what the character or nature of the paper was. To use his own language, "I did not know what sort of paper it was." Obviously this was because of the testator's failure to declare or publish to the said witness that the said document he was being called upon to sign was his, the testator's, last will and testament, as well as because of Mr. Railey's refusal to permit either to read or even scan the paper he was being required to sign. All of these irregular circumstances tend, in the opinion of this Court, to indicate something unusual and something sinister, and in a great measure demonstrate that

the testator either was mentally unbalanced or that some undue influence was being wielded over him which caused him to be tossed from the regular orderly course authorized by law for the execution of wills. Throughout the judicial history of all countries, from ancient times and up to the present, because of the sacred aspect and character of wills which are the last wishes and intentions declared by mortal man for the execution by his fellows after his flight is taken from time into eternity, a time when he can neither explain nor speak upon what is said to have been written as his desire, the law has guardedly placed around the execution of said documents certain safety walls, to penetrate or enter which certain definite requirements must of necessity be met. For instance, on the question of whether or not the testator should sign the will before the attesting witnesses, we have the following rule in Corpus Juris: "In England the rule is settled by a long line of decisions, among which is a decision of the house of lords, that to give validity to the will the signing by

the testator must precede in point of time the signing by the witnesses, and that, if one or all of the witnesses sign before the testator affixes his signature, the will is void. This rule admits of no exceptions or qualifications whatever, and has been followed in Canada, and also in many American states, the view being taken that the attestation of witnesses is 'of a past transaction,' and that, until the signature of the testatator has been affixed to the will, there is nothing to attest, and that, for some period, longer or shorter, as the case may be, those signatures certify what is not true." 68 C.J. 659 (1934). On the question of publication of the will and the testator declaring same in the presence of the attesting witnesses to be his last will and testament, we have the following from Corpus Juris: "There is a sufficient publication where the testator declares in the presence of the witnesses that the instrument is his will, where he declares the instrument is his will in the presence of witnesses and asks them to sign it as witnesses, where he states to the witnesses that he has written out a paper so that his matters could be attended to in case of anything happening to him, where he replies in the affirmative to a question asked him as to whether the instrument is his will, where he requests persons present to witness his will, where he replies in the affirmative to a question as to whether he wants persons present to witness his will, where he acquiesces in the statements or request of another acting in his behalf, where he makes a scroll or seal after his signature to the will in the presence of the witnesses, where he requests witnesses to sign the will and takes steps to have the will deposited with the county judge, or where a testator unable to speak at all, or only with difficulty, communicates by signs or by words, to some unintelligible, that the paper being executed is a will. So, where the witness was re-

quested to sign the instrument at the testator's instance, and the instrument bore
on its face evidences of a testamentary intent and was read to the testator in the presence of the witnesses, there was a sufficient
publication. The writing of the will by a witness at the request of the testator, and embodying therein the disposition the testator
desired to make of his property and the signing of the will by the testator, was a sufficient publication. But there is no publication
where there is no word or act by the testator recognizing the instrument as a last will, or where the testator purposely withholds
from the witnesses the fact that the document signed was a will." 68 C.J. 692 (1934) In view, therefore, of the testimony given by
the attesting witnesses and expatiated upon, supra, and of the law cited in this opinion, we are of the considered opinion that the
trial judge was correct and acted in harmony with the law in upholding the verdict of the petit jury in this case; and we therefore
affirm the judgment rendered by him in the court below rejecting the said will with costs against the appellants; and it is hereby
so ordered. Afflrmed.

United Methodist Church v Cooper et al [2001] LRSC 11; 40 LLR 449 (2001) (6 July 2001)

THE UNITED METHODIST CHURCH (INTERVENOR), by and thru its Real Estate Coordinator, MR. ERIC JOHNSON, and CONSOLIDATED AFRICAN TRADING CORPORATION, Plaintiffs-In-Error, v. HIS HONOUR VARNIE D. COOPER, SR., Assigned Judge, Sixth Judicial Circuit, Montserrado County, COUNSELLOR FRANCIS GARLAWOLO, and FLORENCE ANDERSON DAYRELL, Administratrix of the Intestate Estate of the late BENJAMIN J. K. ANDERSON, Defendants-In-Error.

PETITION FOR A WRIT OF ERROR AGAINST THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: May 9, 2001. Decided: July 6, 2001.

1. The establishment of a priority of a claim to title is a material element in an action of ejectment. Hence, a plaintiff in an ejectment action is required to furnish clear and convincing proof of title.

2. In this jurisdiction, both parties to an ejectment suit are required to establish their claim of title to the disputed property, especially since the primary object of an ejectment suit is to test the

strength of the titles of the parties and to award possession of the property to the party whose claim of title is so strong as to effectively negate his adversary's right to recover.

3. Nothing tends greater to disturb tranquility, and to hinder industry and improvements in communities than the insecurity of property, personal or real, to prevent which courts of justice are established.

4. A person cannot be deprived of his property unless by a judgment of his peers.

5. The granting of an application for summary judgment is unnecessary when both parties claim title to the same property in litigation since there is a factor or issue that warrants a trial by jury to establish true ownership of the property.

6. A circuit court judge is precluded from granting summary judgment in a case which has already been ruled to trial by jury by his predecessor circuit court judge of concurrent jurisdiction.

7. A judge of concurrent jurisdiction is without the legal authority and therefore cannot review, modify, or interfere with the judgment or judicial acts of his colleague, who is his peer, except for the Supreme Court.

8. A party against whom judgment has been taken, who has for good reason failed to make a timely announcement of an appeal from such judgment may, within six months after its rendition, file with the Clerk of the Supreme Court an application for leave for a review by the Supreme Court by writ of error.

9. Due process of law is that law which hears before it condemns; which proceeds upon inquiry and renders judgment only after trial.

10. Ejectment is amongst the peculiar trials wherein the court may not only assist but may direct the jury in coming to the conclusions warranted by law and the facts in the case.

11. Ejectment proceedings involve mixed questions of law and fact and are to be tried by a jury under the direction of the court.

12. Only a jury can decide the issues joined by the parties to an ejectment suit, and anything done contrary to this constitutes error on the part of the judge.

13. A judge has no authority to render judgment immediately after the reading of a mandate of the Supreme Court; he must instead resume jurisdiction over the case, and thereafter proceed in keeping with law.

14. When a judge receives a mandate from the Supreme Court, he has a legal duty to order the issuance of a notice of assignment to be served on the parties for the reading of the mandate,

after which he assumes jurisdiction over the case. He must then issue a new assignment for any further action, and he commits error in proceeding to render judgment immediately following the reading of the Supreme Court's mandate.

15. The Supreme Court may pass on only those issues it deems meritorious, worthy of notice, and germane to the legal determination of the case; it need not pass on every issue raised in the bill of exceptions or in the briefs filed.

The co-plaintiff-in-error, Consolidated African Trading Corporation sued out an action of ejectment against the co-defendant-in-error, Adelaide Florence Anderson-Dayrell, administratrix of the Intestate Estate of the late Benjamin K. Anderson, to evict and eject the estate from premises claimed by the said co-plaintiff-in-error by virtue of a lease from Co-plaintiff-in-error United Methodist Church. Co-plaintiff-in-error United Methodist Church, as lessor of Consolidated African Trading Corporation and asserting ownership to the property in question, filed a motion to intervene, which was granted, giving it permission to intervene and defend the claim of Consolidated African Trading Corporation.

The first trial judge who dealt with the case set up a Board of Arbitration to survey, demarcate, and determines the property claimed by the co-plaintiff-error, United Methodist Church. The Board of Arbitration disagreed and therefore prepared two separate reports: a majority report and a minority report.

Thereafter, the second trial judge, who assumed jurisdiction of the court after the Board of Arbitration had been set up, and who had assigned the matter for hearing of the minority report, ruled the case to a trial by jury, including the majority and minority reports of the Board of Arbitration, as per the application made by counsel for co-defendant-in-error Adelaide Florence Anderson-Dayrell.

Thereafter, the case was assigned by the third trial judge, the co-defendant-in-error herein, for trial without a jury. A petition for a writ of prohibition, intended to prevent the trial was denied by the Justice in Chambers following a conference, the ground stated therefor being that prohibition was inappropriate and that the plaintiffs-in-error should have proceeded by error. The Chambers Justice therefore sent a mandate to the trial court to resume jurisdiction over the case and proceed with the hearing thereof. The co-defendant judge assigned the case for the reading of the mandate, but proceeded immediately following the said reading, at which the plaintiffs-in-error and their counsel were absent, to entertain a motion for summary judgment made by Co-defendant-in-error Anderson-Dayrell and to, thereupon, enter judgment declaring that the property in dispute belonged to the said co-defendant-in-error. It was from this ruling that the plaintiffs-in-error sought review by the Supreme Court, since the trial court had not allowed the court-appointed counsel to note exceptions and take an appeal from the ruling.

The Supreme Court reversed the ruling of the trial court, holding that as the case had already been ruled to trial by a prior circuit court judge of concurrent jurisdiction, the co-defendant-in-error judge could not proceed to entertain a motion for summary judgment. The Court opined that in so acting the trial judge had reviewed and reversed the previous ruling of his predecessor,

which he did not have the authority to do. The Court noted that such action was vested only in the Supreme Court.

The Court held further that the trial judge was in error in proceeding with the trial of the case when in fact the case had been assigned only for reading of the Supreme Court's mandate. The Court observed that when a mandate is send to the trial court, it has the duty, firstly, to assign the case for reading of the mandate, and that after the reading of the mandate the court should proceed only to assume jurisdiction over the case. The Court noted that in order for the trial court to proceed any further with the case, a new notice of assignment should have been issued and served on the parties. To do otherwise was a reversible error by the trial court.

Finally, the Court ruled that in actions of ejectment, which generally contain mixed issues of law and fact, a judge cannot proceed to dispose of the same without the aid of a jury, and that therefore the co-defendant-in-error judge should have submitted the case to a jury for trial. The Court observed that because property is important, a failure to have the matter tried by a jury deprives the parties of the right of due process, which is a trial by the peers of the parties. Hence, it said, the judge committed a reversible error in granting the motion for summary judgment. Accordingly, the Court reversed the ruling of the trial judge and ordered that the case be tried anew, this time by a jury.

Joseph N. Nagbe of the Freeman Legal Consultancy, in association with Pei Edwin Gausi of the Gausi and Partners Law Chambers, appeared for the plaintiffs-in-error. Francis Y. S. Garlawolo appeared for the defendants-in-error.

MR. JUSTICE MORRIS delivered the opinion of the Court.

On the 12th day of December, A. D. 2000, the United Methodist Church, of the Liberia Annual Conference, and the Consolidated African Trading Corporation (herein referred to and called plaintiffs-in-error), filed an application for a writ of error in which they averred that the Consolidated African Trading Corporation, co-plaintiff-in-error, had filed an action of ejectment in 1985 against Adelaide Florence Anderson-Dayrell, co-defendant-in-error, and purported administratrix of the Intestate Estate of the late Benjamin K. Anderson and Varnie Weah; and further, that the United Methodist Church, co-plaintiff-in-error, had filed a motion to intervene in the action of ejectment, in its capacity as lessor of the Consolidated African Trading Corporation, herein called CATCO.

The plaintiffs-in-error maintained that as a consequence of their application and the intervention of the United Methodist Church, the Civil Law Court appointed a Board of Arbitration of three (3) licensed surveyors, two of whom submitted a majority report which established the fact that the property in question, which was adversely claimed by the co-defendant-in-error, Adelaide Florence Anderson-Dayrell, administratrix for the Intestate Estate of the late Benjamin K. Anderson, was indeed the bonafide property of the United Methodist Church. In addition to the

majority report, there was also a minority report filed by Surveyor Arah Kamara in favor of the co-defendant-in-error. The plaintiffs-in-error filed objections, which were resisted by Co-defendant-in-error Adelaide Florence Anderson-Dayrell. The objections remained pending before the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, R. L. undetermined.

The plaintiffs-in-error contended in their application that while the action of ejectment filed by the Consolidated African Trading Corporation against Adelaide Florence Anderson-Dayrell was still pending before the Civil Law Court, Sixth Judicial Circuit, Montserrado County, Adelaide Florence Anderson-Dayrell (who had substituted her late mother as party defendant), with prior and full knowledge of the pendency of the case, filed another action of ejectment against the United Methodist Church, also in the Civil Law Court. This subsequent and second action was dismissed by the court on the legal principle of lis pendis, in that the action of ejectment filed by CATCO against Adelaide Florence Anderson-Dayrell in 1985 was still pending before the Civil Law Court between the same parties and for the same subject property. For reliance, see Civil procedure Law, Rev. Code 1: I 1.2(1)(d), 1 LCLR 117, 118 (1973).

The certified records of this case transmitted to us revealed the following additional facts:

1. That in 1985, His Honour Judge Jesse Banks had disposed of the law issues in this matter and ruled the case to trial by jury on the complaint, count 2 of the answer, and counts 3 and 4 of the reply;

2. That on July 12, 2000, a notice of assignment was issued for the hearing of the minority report under the gavel of His Honour Judge Emmanuel Kollie, then assigned and presiding over the Circuit Court for the Sixth Judicial Circuit, and that on July 14, 2000, co-counsel, Counselor Joseph Nagbe, who had received and signed the notice of assignment for the plaintiffs-in-error, did not appear for the hearing of the minority report due to ill health. At the call of the case, and upon application made by Counsel-lor Francis Y. S. Garlawolo, for the co-defendant-in-error, the presiding judge, His Honour Emmanuel Kollie, ruled both the majority and minority reports to trial by jury. The counsel for plaintiffs-in-error contended that Judge Kollie committed a reversible error in ruling as he did because the notice of assignment was issued for hearing of the minority report only and not the majority report. Further, they said, the presiding judge had ignored the letter of excuse sent to him regarding the illness of Counsellor Joseph Nagbe, and proceeded to hear the case in his absence on July 14, 2001; and

3. That by implication of law, the notice of waiver of a jury trial filed by the co-defendant-in-error on June 28, A. D. 2000, had no further legal effect by virtue of the fact that the ruling of Judge Emmanuel Kollie on July 14, 2000 had directed that both the minority report and the majority report were to be submitted to a trial by jury.

Notwithstanding the various rulings referred to, supra, and the legal implication thereof, the co-defendant-in-error judge, His Honour Varnie D. Cooper, on the 3rd day of November, A. D. 2000, ordered the issuance of a notice of assignment for trial of the action of ejectment on Saturday, November 4, A. D. 2000, at 11:00 a. m. without a trial by jury, thereby setting aside the respective rulings of his predecessors of concurrent jurisdiction. The plaintiffs-in-error contended that the action of the co-defendant-in-error judge ipso facto constituted a reversible error. Upon receipt of the notice of assignment for trial of the case without a jury on November 4, 2000, one of the counsels for the plaintiffs-in-error, Counsellor Joseph N. Nagbe, wrote the co-defendant-in-error judge, His Honour Varnie D. Cooper, on November 3, 2000, informing him of the absence of Counsellor Pei Edwin Gausi from the bailiwick of the Republic of Liberia, and stating that the case file was not available. Counsellor Nagbe therefore requested a continuance of the trial to a later date to enable him to produce copies of the case file from the court's records. The co-defendant-in-error judge, His Honour Varnie D. Cooper, denied the request and ruled that the entire action of ejectment be stricken from the court's docket. As a result of the co-defendant-in-error judge's ruling of November 4, A. D. 2000, the plaintiffs-in-error filed a petition for writ of prohibition to undo the alleged illegal act of Judge Cooper in striking from the court's docket the entire action of ejectment filed by the Consolidated African Trading Corporation.

Following the filing of the petition for a writ of prohibition, a conference was held in the Chambers of our distinguished colleague, Mr. Justice Karmo G. Soko Sackor Sr., who advised counsel for plaintiffs-in-error to proceed by way of an application for a writ of error to enable the Court en banc to review the case in its entirety. Accordingly, the Chambers Justice mandated the co-defendant-in-error judge to resume jurisdiction over the case and to proceed according to law. Thereafter, an assignment was duly issued and served on the parties for the reading of the mandate on the 30th day of November, A. D. 2000. However, due to the engagement of Counsellor Joseph N. Nagbe at the Supreme Court of Liberia on November 30, A. D. 2000, he could not be present at the Civil Law Court to attend the reading of the mandate. He therefore informed the co-defendant-in-error judge, His Honour Varnie D. Cooper, who accordingly assured the Counsellor that he would appoint another counsel to attend the reading of the mandate. Judge Cooper accordingly appointed Attorney Joseph Jallah to attend the reading of the mandate on behalf of the plaintiffs-in-error. Surprisingly and strangely, however, the co-defendant judge, after reading the mandate, proceeded to give a final judgment on the entire action of ejectment which had been pending before the Civil Law Court since 1985, although he had ordered said case stricken from the court's docket in a previous ruling without any trial whatsoever. In the ruling, Judge Cooper declared that the property to which the United Methodist Church had held a long-standing possessory title and had physically occupied for over seventy (70) years, now belonged to the co-defendant-in-error, the Intestate Estate of the late Benjamin J. K. Anderson, represented by its administratrix, Adelaide Florence Anderson-Dayrell. Subsequent to this erroneous and arbitrary ruling of the co-defendant-in-error judge, counsel for co-defendant-in-error, Counsellor Francis Y. S. Garlawolo, wrote to the tenants of the co-plaintiff-in-error, the United Methodist Church, informing them that the **land** dispute or controversy between the United Methodist Church and the Intestate Estate of the late Benjamin J. K. Anderson had been finally decided by the Civil Law Court in favor of the Intestate Estate of the

late Benjamin J. K. Anderson, meaning that Adelaide Florence Anderson-Dayrell could now take possession of the property. What is even more astonishing to this Honourable Court is that after the pronouncement of the final judgment in this case by the co-defendant-in-error judge, His Honour Varnie D. Cooper, the court appointed counsel, Attorney Joseph Jallah, attempted to except to the ruling and announce an appeal therefrom, but the same was denied by Judge Cooper, which was contrary to law. The plaintiffs-in-error contended that in addition to the errors committed by Judge Cooper, mentioned supra, he also denied the said plaintiffs-in-error the right to appeal for the reason already stated. Hence, this writ of error before the Full Bench.

After carefully reviewing the briefs filed and listening to the legal arguments made by counsel for both parties before this Honourable Court, we deem the following as the basic contentions of the plaintiffs-in-error:

a. That the co-defendant-in-error judge, His Honour Varnie D. Cooper, did not conduct any trial, whether by a jury or without a jury, in the action of ejectment; yet, he decided the case in favor of the co-defendant-in-error by confer-ring ownership of title to the realty in controversy;

b. That in 1985, His Honour Judge Jesse Banks had disposed of the law issues and ruled the case to trial by jury, yet, the co-defendant-in-error judge, His Honour Varnie D. Cooper, without any regards for the laws of the **land**, on Saturday, November 4, 2000, tried the action of ejectment without conducting a jury trial, as had been mandated by his predecessor, thereby setting aside the respective rulings of his predecessors of concurrent jurisdiction, contrary to law. This action by the co-defendant-in-error judge constituted a reversible error.

c. That on the 30th day of November, A. D. 2000, following the issuance and service of an assignment, which was served and returned served, for reading of the Supreme Court's mandate, but after reading the mandate, the co-defendant-in-error judge, His Honour Varney D. Cooper, proceeded to give final judgment in the ejectment suit without a jury, and further prevented the court-appointed counsel from taking exceptions to the said final judgment and appealing therefrom, contrary to law. They main-tained that error will lie in the instant case, considering the facts and circumstances narrated herein.

On the other hand, counsel for the defendants-in-error contended in his brief and strenuously argued before this Honourable Court as follows, to wit:

1. That the co-defendant-in-error judge, His Honour Varnie D. Cooper, did not deny the court appointed counsel the right of appeal and to take exceptions to the final ruling, but instead, that it was the counsel himself that neglected to perform his statutory duties devolved or imposed upon him by virtue of his designation by the court to take the ruling on behalf of the plaintiffs-in-error; and

2. That the affidavit annexed to the petition for the writ of error was purportedly venued before the Honourable Supreme Court of Liberia, instead of a justice of the peace court, as mandatorily required by law.

After a careful perusal of the certified records transmitted to us, we deem the below listed points to be germane and, hence, to constitute the issues for the determination of this case:

1. Whether or not the trial judge committed a reversible error when he granted the submission for summary judgment after the case had been ruled to a jury trial by his predecessors?

2. Whether or not the petition for a writ of error would lie, predicated upon the facts and circumstances in this case?

With respect to the first issue, which is whether the trial judge committed an error when he granted the submission for summary judgment after the case had been ruled to a jury trial by his predecessors, we observed from the certified records before us that on the 19th day of September, A. D. 1985, His Honour Judge Jesse Banks, disposed of the law issues in the matter, and ruled the case to a trial by jury on the complaint, count 2 of the answer, and counts 3 and 4 of the reply. Further, that on the 14th day of July, A. D. 2000, His Honour, Judge Emmanuel Kollie, then assigned and presiding over the Civil Law Court, also ruled the Board of Arbitration's majority and minority reports to a jury trial. Notwithstanding these various rulings, referred to supra, and the legal implications thereof, the co-defendant-in-error judge, His Honour Varnie D. Cooper, on the 30th day of November, A. D. 2000, ordered the issuance of a notice of assignment for trial of the action of ejectment for Saturday, November 4, 2000, at the hour of 11:00 a. m. without a jury trial, thereby setting aside the res-pective rulings of his predecessors of concurrent jurisdiction. This action by the co-defendant-in-error judge was not only contrary to law but, as pointed out by the plaintiffs-in-error, ipso facto constituted a reversible error.

As noted earlier, the plaintiffs-in-error claimed title to the property by virtue of a public land deed from the Republic of Liberia. On the other hand, the co-defendant-in-error also claimed title to the subject property in litigation, which claim to title was also derived from the Republic of Liberia. 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." See Dunbar v. Perry, 13 LLR 510 (1960). In this regard and the laws extent in this jurisdiction, both parties were required to establish their claim of title to the property since the primary object of an ejectment suit is to test the strength of the titles of the parties, and to award possession of the property in litigation to a party whose claim to title is so strong as to effectively negate his adversary's right to recover. Indeed, as far back as 1895, this Court held: "Nothing tends greater to disturb tranquility, to hinder industry and improve-ments in communities than the insecurity of property, personal or real, to prevent which courts of justice are established." For reliance, see Reeds v. Hyder, 1 LLR 271 (1895).

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. Hence, the granting of an application for summary judgment was not necessary since both parties had laid claim and title to the same property in litigation, and since there was a factor or

issue that warranted a trial by jury to establish true ownership of the property, especially after the case had been ruled to trial by jury.

Further, this Honourable Court is taken aback by the fact that the application for summary judgment was subsequently granted by the co-defendant-in-error judge, His Honour Varnie D. Cooper, after his colleagues had ruled the case to trial by jury. It is the law, procedure, and practice hoary with age in our jurisdiction, that a judge cannot review the judicial acts of another judge, except this Honourable Court of last resort. This Court has 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 judgment after the case has been ruled to trial by another circuit court judge." Dennis et al. v. Phillips 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 judgment and awarded judgment as a matter of law. This Court held then that Judge Koroma had reviewed and interfered with the ruling of his colleague; therefore his judgment was reversed and the case remanded for a new trial. The facts in the Dennis case and the instant case are analogous. The judgment awarded the defendants-in-error is therefore reversible, and this Honourable Court so holds.

As regards the second issue, which is whether or not the petition for a writ of error would lie, predicated upon the facts and circumstances in this case, the plaintiffs-in-error submit-ted that the absence of two legal counsels at the time the co-respondent judge, His Honour Varnie D. Cooper, entered final judgment on November 30, 2000, constituted a good reason or justifiable cause to seek the aid of the writ of error, the rationale being that Counsellor Nagbe was on November 30, 2000 engaged with the Supreme Court of Liberia, being the same date and time Judge Cooper had assigned the case for reading of the Supreme Court's mandate growing out of the writ of prohibition filed before Mr. Justice Sackor. Further, Counsellor Gausi, who was co-counsel for the plaintiffs-in-error in this case, was out of the bailiwick of the Republic of Liberia at the time the co-defendant-in-error judge entered his final judgment. The plaintiffs-in-error contended that within the contemplation of section 16.24 of the Civil Procedure Law, there existed a good reason why timely announcement of the appeal was not made at the time of the rendition of the judgment by the co-defendant-in-error judge, and that since the said judgment had not yet been executed a writ of error was the proper remedy available. Section 16.24 of our Civil Procedure Law provides that:

"A party against whom judgment has been taken, who has for good reason failed to make a timely announce-ment of an appeal from such judgment may within six months after its rendition file with the Clerk of the Supreme Court an application for leave for a review by the Supreme Court by writ of error."

The other reason why a writ of error will lie in this case is for the Supreme Court to review the erroneous act committed by the co-defendant-in-error judge in the court below. A recourse to the records showed that on November 30, 2000, the only matter before the co-defendant-in-error

judge, His Honour Varnie D. Cooper, respecting this case, was to read the mandate from Mr. Justice Sackor, emanating from the writ of prohibition, as per the notice of assignment dated Novem-ber 27, 2000, notifying the parties to appear on November 30, 2000 for reading of the mandate. Notwithstanding, the defendant-in-error judge proceeded to render final judgment in the action of ejectment, after reading the mandate. The co-defendant-in-error judge specifically declared:

"The property in question in which the plaintiff and the intervenor, the United Methodist Church, are intending to oust, evict, and eject the defendant, Adelaide Florence Anderson-Dayrell and Varnie Noah from their premises, is hereby set aside and the court rules that the defendants are the owners of the aforesaid property, subject of the ejectment suit...."

A further recourse to the records in this case revealed that the co-defendant-in-error judge did not conduct any trial, whether by jury or without a jury, in the action of ejectment; yet, he decided in favor of the co-defendant-in-error by conferring ownership of title to the realty in the manner he did. The records of this case are silent on any form of trial, or to any disposition of witnesses prior to the rendition of the judge's final judgment. It is the holding of this Court that the co-defendant-in-error judge violated the fundamental principle of due process of law; that is, a law which hears before it condemns; which proceeds upon inquiry and render judgment only after trial." For reliance, see Wolo v. Wolo, [1937] LRSC 12; 5 LLR 423 (1937).

A jury trial is so vital in the procedure to determine title that this Honourable Court, in the case Larsannah v. Passawe, made the following remarks, speaking through Mr. Justice Harris: "The question now arises, can a court, that is, a judge alone, without the aid of the jury, try an action of ejectment when the issues raised in ejectment are mixed issues of law and facts." [1961] LRSC 42; 14 LLR 599 (1961). Continuing, Mr. Justice Harris said: "As this Court said many years ago, nothing tends great-er to disturb tranquility, to hinder industry and improvement in communities than the insecurity of property, personal or real, to prevent which courts of justice are established." Further, this Honourable Court recognized that ejectment is "among the peculiar trials wherein the court may not only assist but may direct the jury in coming to the conclusions warranted by the law and the facts in the case." Larsannah v. Passawe, [1961] LRSC 42; 14 LLR 599 (1961), text at 600. Also, this Honourable Court has held that "ejectment proceedings involve mixed questions of law and fact and are to be tried by a jury, under the direction of the court." Gbassage v. Holt, [1975] LRSC 23; 24 LLR 293 (1975). The consistency of the holdings of the Court on this issue points out clearly that only a jury can decide the issues joined by the parties to the ejectment suit and anything contrary to this, as was done in the instant case, constitutes a gross error on the part of the judge, and this Honourable Court so holds.

In keeping with the several opinions of this Honourable Court, a judge of concurrent jurisdiction is without legal authority to review, modify, or interfere with the judgment of his colleague of concurrent jurisdiction, as was erroneously done by the co-defendant-in-error judge. Kanawaty et al. v. King[1960] LRSC 66; , 14 LLR 241, 242 (1960).

Another error committed by the co-defendant-in-error judge was that he rendered final judgment immediately after the reading of the mandate of the Supreme Court. He had no authority to do so, and by so doing, he violated the well known and established practice in this jurisdiction, which is, that when a subordinate court receives a mandate from the Supreme Court, it becomes the legal duty upon the court, or the judge assigned therein, to issue a notice of assignment to the parties to appear for the reading of the mandate. After the mandate is read, the court then resumes jurisdiction over the case. Any subsequent action must be done in keeping with law. It is therefore the considered holding of this Court that the co-defendant-in-error judge, His Honour Varnie D. Cooper, did not act in keeping with the law when he entered final judgment in the case immediately following the reading of the mandate of the Supreme Court. Hence, error will lie.

As to the contention that several issues were raised in this case but may not have been passed upon, it has always been the practice of this Court to pass upon only those issues it deems meritorious, worthy of notice, and germane to the legal determination of the case. It need not pass on every issue raised in the bill of exceptions or in the briefs filed. In this case, this Court has acted in keeping with practice and precedence and has addressed itself to only those issues and/or questions it considers to be germane to the determination of the controversy. See Lamco J. V. Operating Company v. Verdier, [1978] LRSC 9; 26 LLR 445 (1978).

Wherefore and in view of the foregoing facts and circumstances and the laws controlling in this case, it is the considered opinion of this Court that the application for a writ of error should be and same is hereby granted, and the peremptory writ ordered issued. The ruling of the trial judge ordering the entire action of ejectment dismissed without a jury trial is reversed. The Clerk of this Court is ordered to send a mandate to the court below ordering the judge presiding therein to resume jurisdiction over this case and commence the hearing of the ejectment action with a jury trial, which had already been ruled to a jury trial by His Honour Jesse Banks in 1985. Costs are to abide the final determination of the case. And it is hereby so ordered.

Judgment reversed.

King et al v Morris [1969] LRSC 29; 19 LLR 306 (1969) (13 June 1969)

LAURA KING, HENRY T. HOFF, and T. EDWIN SWEN, as successors to EDITH HERRON, ELIZA JACKSON, and REGINALD JACKSON, as Administratrix and Administrators of Z. A. JACKSON, Intestate, Appellants, v. ADELAIDE E. MORRIS, Appellee.
MOTION TO DISMISS APPEAL FROM THE MONTHLY AND PROBATE COURT, MONTSERRADO COUNTY.

Argued April 30, 1969. Decided June 13, 1969. 1. A motion brought in a proceeding alleging lack of jurisdiction in the court takes precedence in the matter before any court. 2. Failure to serve a notice of appeal and file proof thereof, are grounds for dismissal of an appeal.

During the pendency of an appeal from the Monthly and Probate Court of Montserrado
County, a motion was made by the appellee to dismiss the appeal for failure of the appellant to have served a notice of appeal and
to have filed proof of service with the clerk of the court.
Motion granted, appeal dismissed. Samuel B. Cole for appellants. Phillip Brumskine

for appellee.
MR. JUSTICE MITCHELL

delivered the opinion of the

court. This case originated in the Monthly and Probate
Court for Montserrado County, during its February 1967 Term. It grows out of a petition filed by Adelaide Morris, petitioner, against
Laura King, Henry T. Hoff, and T. Edwin Swen, as successors to Eliza Jackson, Edith Herron, and Reginald Jackson, as administratrix
and administrators of the estate of Z. A. Jackson, which petition avers: "1. That she is the owner in fee of sixty acres of
306

LIBERIAN LAW REPORTS

307

land situated in the Township of Paynesville ; the said property having been sold in the year 1922 by
one R. H. Jackson and his wife Janie Jackson, as heirs of one Z. A. Jackson, to her late grandfather, J. J. Morris, who willed it
as 'Adelaide Farm' to her late father J. L. Morris, who, in turn, was bequeathed the same in fee after the death of her mother, Maude
A. Morris, who also in her last will and testament confirmed said bequest. All of which more fully appear from exhibits A, B, C,
and D, proferted herewith. 2. That by virtue of letters testamentary issued by the court to respondents as administratrix and administrators
of the estate of Z. A. Jackson, and in spite of their knowledge of the premises laid in count hereof, respondents have, in a subtle
attempt to deprive your petitioner of her said property and unjustly enrich themselves, included petitioner's said sixty acres in
their inventory and begun selling petitioner's said property as they had similarly done in the case of thirty-six acres owned by
J. B. Trinity of this City. "Wherefore, petitioner respectfully prays this court to order the said administratrix and the administrators
to exclude from the said inventory petitioner's sixty acres of land and to grant unto her such other and further relief as this court
may deem legal, just and right." Pleadings in this matter progressed as far as the rebutter, and thereafter the Probate Commissioner
disposed of the matter in the following decree : "The court says that pleadings filed in this court are ex parte in nature and the
court accepts them as such until they are challenged. This court has concurrent jurisdiction with the Civil Law Court. This court
in Montserrado County is the only court vested with authority in all matters touching estates, be they testate or intestate. But
it is not within the compe"

308

LIBERIAN LAW REPORTS tency of this court to pass upon title. In the case at bar, the only deed
made profert of in the entire pleading is an alleged deed from R. H. Jackson and his wife to J. J. Morris. Since there is no other
deed to show that title is now vested in Jackson's estate, which would have necessitated the court to refuse to pass upon the issue
because title would have to be proved before the court, the court orders the sixty acres made part of the inventory filed in this
estate excluded. And it is hereby so ordered. "To which ruling of the court counsel for respondent excepts, praying for an appeal
to the Supreme Court of Liberia. "Given under my hand and seal of court this 3rd day of May, 1967.
"[Sgd.] J. GBFLEN DAVIES

Judge, Monthly and Probate Court." From
this decree of the Probate Commissioner, respondents excepted and appealed their cause to this appellate court. Upon the call of
this case, our attention was drawn to the fact that the appellee had filed a motion to dismiss the appeal, which, according to our
system, is precedent to argument. The motion's grounds are : "1. Because appellee says, that although appellants excepted to and
announced an appeal from the final ruling rendered against them by the trial judge on May 3, 1967, as is evident from the record
in this case, and filed their bill of exceptions and appeal bond in the office of the Clerk of the Monthly and Probate Court for
Montserrado County, they have failed and neglected to complete said appeal, as the law requires, in that no notice of appeal has
been issued and served on her as the law directs, which notice alone would place her under the jurisdiction of this Court, as will
more fully appear by the certificate issued by S. E.

Williams, Clerk of the Monthly and Probate Court
for Montserrado County, annexed hereto and marked Exhibit A to form a part of this motion. "2. And also because appellee says, that
by virtue of the facts stated in count i hereof, this Court should refuse jurisdiction over the appeal because of the complete absence
of the issuance, service and return of the notice of appeal, which under our statutes and the several decisions of this Court, constitutes
legal grounds for the dismissal of an appeal." To this motion to dismiss, the appellants filed their opposition, alleging that the
notice of the completion of the appeal was issued, served and returned by the ministerial officers of the court below, and that the
certificate issued by the clerk of the Probate Court below, made profert with appellee's motion, is false and misleading. Lastly,
that the said clerk of the trial court was forced and coerced into issuing the said certificate. Upon inspection of the certificate
in question, it is found to be genuinely issued under the signature of the clerk of the Probate Court and the seal of the court.
Hence, we have no alternative but to accept the fact that the notice of the completion of the appeal was never served and returned
as the law requires. According to our practice, a motion taken to the jurisdiction of the court must have priority before any court.

The record before us shows no proof that the notice of appeal was served and proof thereof filed, a ground for dismissal of an appeal.
In Roberts v. Brown, [1963] LRSC 40; 15 L.L.R. 415 (1963), the Court said, at 419: "Under the 1956 Code, tit. 6, § 1020(d), a civil appeal from a court of record may, upon motion properly
taken, be dismissed for negligent failure to have notice of appeal served on appellee. " 'The omission from the records of a return
to the notice of appeal is a material error, and is ground for

dismissal of the appeal.' Greaves v.
Johnstone,

2

L.L.R.

121 (1913).

" ' It is the service of the notice of appeal which alone gives the appellate court jurisdiction
over the - appellee.' Brownell, v. Brownell, [1936] LRSC 3; 5 L.L.R. 76 (1936) . " 'The only legal evidence of such service is the official return of the proper ministerial officer.' Brownell v. Brownell,
Id." By virtue of the foregoing, the motion to dismiss is sustained and the appeal is hereby dismissed, with costs against the appellants,
and the clerk of this Court is hereby ordered to send a mandate to the trial court informing it of this opinion. And it is hereby
so ordered. Motion granted, appeal dismissed.

Dennis v Refell [1945] LRSC 3; 9 LLR 26 (1945) (4 May 1945)

JOSEPH F. DENNIS, Appellant, v. HELEN REFFELL, by her Husband, J. A. REFELL, Apellee.
APPEAL FROM JUDGMENT OF FORECLOSURE OF MORTGAGE.

Argued March 27, April 3, 1945. Decided May 4, 1945. 1. Under a prayer for general relief in a suit in equity, any relief may be
given if it is not distinct from and independent of or inconsistent with that specially prayed for. 2. The Constitution provides
that a feme covert may convey property of which she is possessed otherwise than through her husband. 3. A party may not on trial
introduce evidence on points on which issue has not been joined in the pleadings.

Appellee, plaintiff below, brought a bill in equity
against appellant, defendant below, for foreclosure of a mortgage. A decree was entered against the defendant, but on appeal to this

Court the case was dismissed with permission to plaintiff to refile her suit. Dennis v. Reffell, [1942] LRSC 1; 7 L.L.R. 332. The present suit was then commenced and a decree again obtained against defendant. On appeal from decree in favor of plaintiff, judgment affirmed.
Joseph F. Dennis for himself. appellee. Nete Sie Brownell for

MR. JUSTICE DAVID delivered the opinion of the Court. This case comes up to this Court of last resort for review upon a bill of exceptions containing five counts. It is necessary to a clear apprehension of the facts to be ruled upon that the material facts of the case be first stated, and this shall be done as briefly as possible. On March 19, 1936 appellant contracted a loan of two hundred and seventy-two pounds sterling from the appellee, and as security for the payment of said loan appellant executed a mortgage lien on lots Number 89, 90, and 129, all situated in the city of Monrovia.

Concurrent with the loan and the security given to secure the repayment of said loan, appellant and appellee entered into an agreement, marked by the court below as exhibit "D," which instrument reads as follows: "REPUBLIC OF LIBERIA MONTSERRADO COUNTY. "It is hereby agreed by and between Helen Reffell of the party of the first part, and Joseph F. Dennis of the second part, both of the City of Monrovia, County of Montserrado, and Republic of Liberia, that in consideration of a loan by party of the first part to party of the second part of the sum of two hundred and seventy two pounds sterling (£272) or one thousand three hundred and five dollars and sixty cents ($1,305.69) and as security for which, party of the second part has this 19th day of March A.D. 1936, transferred by Warranty Deed to party of the first part lots Nos. 124 with buildings thereon, number 90 and half lot No. 89, all being in the City of Monrovia, Liberia. "Now IT Is UNDERSTOOD that the party of the first part hereby promises and agrees that should the said party of the second part pay to the said party of the first part the sum loaned of ($1,305.60) one thousand three hundred and five dollars and sixty cents with £28.0.0 (twenty eight pounds) or $134.60 (one hundred and thirty four dollars and sixty cents) interest, on or before the 19th day of March A.D. 1937, party of the first part will immediately upon the receipt of said amount retransfer to party of the second part lots Nos. 124 with buildings, 99 and half lot No. 89 without further charges. "Otherwise the transaction and transfers this day made shall stand firm. "It is hereby further agreed and understood by both parties that should the party of the second part fail and neglect to pay said sum in full on or before the date same falls due for payment he, the said party of

the second part, hereby loses and forfeits all rights of redemption both in law
and in equity forever to all said property. "IN WITNESS whereof the parties hereto have hereunto set their hands and seals this 19th
day of March A.D. 1936. "[Sgd.] J. F. DENNIS Party of the Second Part [Sgd.] HELEN REFFELL Party of the First Part. "Signed and sealed
in the presence of : [Sgd.] ANTHONY BARCLAY." It appears from the records certified to this Court that when the time for the redemption
of this mortgage expired the appellant failed to make payment of the loan together with interest, but that a year later the said
appellant executed a note or memorandum for the extension of the said mortgage, which instrument, marked by the court below as exhibit
"E," reads as follows : "MONROVIA, LIBERIA, March 19, 1938.
"MRS. HELEN REFFELL, MONROVIA. "DEAR MADAM:

"In consideration of your
agreeing to extend the time of the mortgage entered into between you and myself until March 19, 1939, I hereby acknowledge that I
owe you up to March 19, 1938, the sum of three hundred and thirty pounds (X33o.o.o) sterling, and agree to pay interest on the above
amount at the rate of ten per cent (io%) per annum commencing from March 19, 1938, until the said principal is liquidated. "Very
truly yours, [Sgd.] J. F. DENNIS. "Witnesses : [Sgd.] S. HORRACE ["] ROLAND COOPER."

It would appear also that notwithstanding this
last promise on the part of the appellant he again failed to live up to his obligation and so two years later the appellee entered
suit for the foreclosure of the mortgage. That suit traveled to this Court but was dismissed on procedural grounds as stated in the
opinion rendered by His Honor the Chief Justice on February 6, 1942. Dennis v. Reffell, [1942] LRSC 1; 7 L.L.R. 332. By said opinion and judgment this Court gave appellee, Helen Reffell, permission to refile her suit after the payment of all costs.
Accordingly, the present suit was entered in the court below and a decree again was obtained against appellant. It is from this decree
that he now prosecutes this appeal for the second time. The court below very ably passed upon the points of law raised in the several
pleadings of the parties. The principal points raised by the defendant in the court below are as follows: (I) That appellee had failed
to pay all of the accrued costs of the former suit as ordered by the Supreme Court before refiling the present suit; (2) That the
prayer of the plaintiff, now appellee, did not include any request by said appellee to the sheriff to make his returns to the writ
in this suit, because, he contended, a prayer in equity is equivalent to a written direction to the clerk in a court of law; (3)
That the appellee being a feme covert is without legal capacity to contract; and · (4.) That appellant made tender of the amount
of the loan but that appellee did not accept same. The court below passed upon these salient points and we find said rulings to be
sound in law and in equity. As to the first point that appellee failed to pay costs of the court before refiling, profert of the

approved bill of costs in the former case was made by appellee as having been paid, as well as a receipt of the sheriff showing said

payment. The approved bill of costs was all that the plaintiff in the court below was required to pay
prior to the renewal of her suit. It was also shown that when a supplementary bill of costs was later submitted, containing items
supposed to have been omitted from the first bill of costs, appellee promptly paid same and hence appellant suffered no injury as
to the payment of costs. The court below correctly overruled said objection. Coming to the second point, to wit, that the petition
to the court did not contain instructions as to when the writ was to be returned and when the appellee was to put in his formal appearance,
we find the ruling of the court below against appellant well supported by law in that the judge held that the prayer in the petition
was general and not special and, as such, under a prayer for general relief any relief may be given unless it is distinct from and
independent of or inconsistent with that specially prayed for. Furthermore, a petition is addressed to the discretion of the court
and hence the petitioner cannot insert in said petition what the judge may or may not do in the exercise of a sound discretion. Nor
does a petition to a court of equity fulfil the function of written directions in a court of law which the clerk, not the judge,
is compelled to follow literally. There was therefore no foundation for this plea raised in the pleadings of the defendant, now appellant,
in the suit. As to the third point which raised the question of appellee being a feme covert, the ruling of the court below was in
keeping with the law of this country when said judge cited the case Dlyon v. Lambert, r L.L.R. 178, decided at the January term,
1884, wherein this Court held : "From the record we find that it is maintained by the appellees that the appellant in this case,
being a femme couverte, could not legally contract or buy the land in dispute. "It is hardly necessary for this court to say, the
Con-

stitution of Liberia provides that a femme couverte may convey property she is possessed of otherwise
than through her husband ; which term includes both personal and real property, and that by sale, devise or otherwise. This court
is of opinion that she being allowed to bargain and sell under such circumstances, is also allowed to bargain and buy more especially
by her husband's assent. Hence the court below erred in instructing the jury that appellant being a femme couverte, could not buy
the lands in question, especially when the testimony of A. H. McFarland proved that he bid in the land in question for appellant by request of her husband." Id. at 180. Coming
to the last point urged in the court below by appellant, that he made tender but that appellee rejected same, this is a question

of fact which should have been proved at the trial. To our surprise, the records show that when the case came on for trial appellant failed to produce one witness or any written evidence to show that he made tender of the amount due on the mortgage in keeping with exhibits "D" and "E." On the other hand, at the trial appellant attempted to introduce oral testimony when he himself was on the stand that he was blocked by appellee in his efforts to secure the money. The judge correctly overruled this kind of evidence because it was never raised in the pleadings and was not one of the points on which issue had been joined. These points just traversed form the salient issues in the case, and, as before stated, we find no hesitation in saying that the trial before the court below was regular and the judgment or decree should not be disturbed in keeping with the principle enunciated in the case Moulton v. Republic, 2 L.L.R. 47, 2 Ann. Ser. 21 (1911) , in which this Court held that when the evidence is clear and the trial is regular, the judgment of the lower court will not be disturbed. It is therefore the opinion of this Court that the decree of the court below be and the same is hereby

affirmed ; that the said mortgage be and the same is hereby forever closed ; that the property be sold at public auction to the highest bidder after due and timely notice ; and that from the proceeds of same, appellant's loan and all accrued interest be paid, and the surplus, if any, be paid over to appellant after deducting all costs of the court. Costs are ruled against the appellant ; and it is hereby so ordered. Affirmed.

Glassco et al v Thompson [1983] LRSC 24; 30 LLR 670 (1983) (4 February 1983)

THOMAS GLASSCO et al., Appellants, v. **KOFA THOMPSON,** Appellee.

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

Heard: November 15-16, 1982. Decided: February 4, 1983.

1. It is the inherent power of courts to punish for contempt.

2. A person need not be a party to a pending suit to be punished for contempt.

3. A contempt proceeding is a sui generis action. Thus, the court, without a complaint, may on its own motion institute proceedings to punish for offenses against its dignity and authority.

4. In an action for contempt, the admission and denial of averments in a bill of information, without qualification, will be deemed as an admission against interest and proof of the matter asserted.

5. Refusal to obey a court order constitutes contempt, regardless of the unsoundness or voidness ab initio of the court's judgment.

6. The purpose of contempt proceedings is to vindicate the dignity of the courts. Distinct from any litigation from which they may arise, contempt proceedings must be separately tried and adjudicated. Under the "New Judiciary Law", every court has the power to punish for a criminal contempt.

7. A person may be permitted to intervene in a case prior to rendition of final judgment where his rights or interest are, or will be materially affected.

8. The Supreme Court, may in its discretion, permit a third party to intervene in a case in which he was not an original party.

A default judgment was rendered in favor of appellee and a writ of possession placed in the hands of the sheriff to put appellee in possession of the property sued for. Appellants were not parties to the suit. When the sheriff went to effect the execution, he was confronted by a mob, including appellants herein, who physically obstructed him and refused to vacate. A bill of information was filed complaining of the obstruction and appellees, defendants in the ejectment action, were cited to appear to show cause why they should not be held in contempt. Appellants

were not named as defendants. However, when the sheriff went to serve the citation for the contempt proceedings, appellants were identified as those who were part of the mob that obstructed the sheriff in enforcing the writ of possession. They were therefore cited to appear.

Appellants appeared and argued that by failing to name them as parties to the ejectment suit and to the bill of information, the court was without jurisdiction to punish them for contempt. They also argued that they not being parties to the ejectment action, they had the right to protect their properties from unlawful seizure by the sheriff. The judge rejected their argument, adjudged them guilty of contempt, and imposed a fine of $300.00 on them. From this judgment, appellants appealed to the Full Bench.

The Supreme Court held that it is the inherent power of the courts to punish for contempt and that a person need not be a party to an action to be punished for contempt, and the fact that the appellants were not parties to the ejectment action and not served with the writ of possession, is immaterial to the issue of contempt as long as they knew that the writ was issued by a court, but chose to disregard judicial authority. Accordingly, the Supreme Court affirmed and confirmed the judgement.

M. Fahnbulleh Jones appeared for appellants. James Doe Gibson appeared for appellee.

MR. JUSTICE YANGBE delivered the opinion of the Court.

The appellants in this bill of information were charged with contempt and fined $300.00 by the circuit judge below for physically obstructing the sheriff and preventing him from enforcing a writ of possession issued in an action of ejectment to which they were not parties.

On this appeal, we are asked to determine whether the judge committed a reversible error by imposing a fine of $300.00 upon all five (5) of the appellants for their deliberate and admitted interference with the enforcement of the writ of possession.

From the records certified to us in this case, we want to observe the following facts.

On January 10, 1980, Mr. Kofa Sayon Thompson, the plaintiff, appellee herein, filed an action of ejectment against one Tarpeh Comnlah, Daniel Crusco, Isaac Wolo, Sayon, Old lady Nmanson and other appellants, of New Kru Town to be identified, alleging that the said appellants were illegally occupying a tract of **land** which he, Kofa Sayon Thompson, had purchased from the heirs of King Peter.

No answer to the complaint was filed within the statutory time. Hence, a clerk's certificate to this effect was consequently obtained by Mr. Thompson and at the disposition of the law issues, the appellants were placed on a bare denial.

When this case was called for trial on May 4, 1981, the appellants likewise failed to appear. A default judgment was entered against them under Rule #7 of the Circuit Court, with the exceptions taken and the appeal announced on their behalf by a court-appointed counsel.

After the appellants refused to pay the bill of costs and failed to perfect their appeal, Mr. Thompson then filed a motion to dismiss the appeal and to enforce the judgment entered in his favor. Needless to say, the motion was entertained without a resistance and in the absence of Counsellor Jones for appellants.

The first writ of possession was immediately thereafter issued but when it was later discovered that the deed to the **land** contained some error, Mr. Thompson promptly petitioned the Circuit Court for a correction of his deed. The petition was granted and the necessary corrections made by the court, with no motion to intervene, no caveats, or any legal objections from adjacent property owners.

Based upon the corrections made after final judgment in the ejectment suit, through the assistance of a government surveyor from the Ministry of Lands, Mines and Energy, a second writ of possession was issued by the court ordering the sheriff to restore Mr. Thompson in possession of his property. When the sheriff went to New Krutown to place Mr. Thompson in possession of his property, he was confronted by a mob who physically obstructed him and refused to vacate.

It appears that appellants - Thomas Glassco, Jackson Doe, Joseph Wolo, Garrison Togba and Oldlady Nmanson were among the persons who had physically obstructed the sheriff, but because the names of all the persons involved in the mob action were not immediately available to the court at the time of the filling of the bill of information, only the original defendants to the ejectment suit were cited for contempt. But when the sheriff proceeded along with Mr. Thompson to New Kru Town to serve the bill of information, they saw appellants and recognized them on sight as participants and cited them to appear.

When they appeared through Counsellor M. Fahnbulleh Jones, appellants argued that by failure to name them as parties to the ejectment suit, or as respondents in the bill of information, the court was without jurisdiction to punish them for contempt and that they had a right to protect their properties from unlawful seizure by the sheriff.

The court rejected this argument, saying that even if its judgment was clearly wrong and appellants' properties were thereby adversely affected, they did not have a right to take the law into their own hands by attacking the sheriff. All five (5) of them were fined $300.00 for contempt of court.
On this appeal, they have raised similar arguments and buttressed them by a claim that the $300.00 fine imposed on them is excessive and contrary to the statutory limit of $100.00.
We now turn to the merits of these arguments in light of the applicable laws.

The Supreme Court of the Republic of Liberia has held that it is the inherent power of the courts to punish for contempt; that to be punished for contempt, a person need not be a party to the suit. See In Re Moore, 2 LLR 97 (1913). The fact that appellants were neither named parties to the ejectment action, nor were they served with copies of the writ of possession issuing there-from, is immaterial to the issues of contempt, as long as they knew that the writ was issued by a court but chose to disregard judicial authority; for it has been held by this Court that obedience to a restraining writ, whether it is a writ of injunction or otherwise, commences from the time the party charged with contempt had actual knowledge of such a writ or the issuance thereof. Ibid; also see Porte v. Dennis, [1947] LRSC 1; 9 LLR. 213(1947).

A contempt proceeding is a sui generis action. Thus, the court without complaint may of its own motion institute contempt proceedings to punish for offenses against its dignity and authority, although the contempt was not strictly speaking committed in the actual presence of court. Above all, the seriousness with which the Supreme Court regards contempt depends on the intent of the respondent's act. Gibson v. Wilson and Blackie, [1943] LRSC 10; 8 LLR 165 (1943). See also In re Caranda, 8 LLR 249 (1944).

Counsel for appellants has admitted that when his motion to vacate execution of the writ of possession was heard and denied in his "absence, a bill of costs was issued and attempted to be served on the appellants who now DISREGARD the said bill of costs." (see middle passage of his brief on page 2). On page 3 of counsel's brief, he also unequivocally admits that: "When the sheriff in the lower court went to execute the second writ of possession, dated 4th day of February, 1982, some of the appellants herein resisted and refused to be evicted on the grounds that they knew nothing of this case even though they were parties to the ejectment suit, and no judgment was rendered against them which would be enforced." (emphasis supplied).

Despite this glaring admission to the charge of unlawful interference with a writ of possession, counsel for appellants denies in count 4 of his brief that his clients ever obstructed the writ of possession. In an action for contempt, the admission and denial of averments in the bill of information, without qualifications, will be deemed as an admission against interest and proof of the matter asserted. This Court will therefore view counsel's admission as a conclusive evidence of contempt. 13 C. J. S., Contempt, § 61.

Refusal to obey a court order constitutes contempt, regardless of the unsoundness, or voidness ab initio, of the court's judgment. The International Trust Company of Liberia v. Weah, [1964] LRSC 13; 15 LLR 568 (1964). Similarly, where the court had jurisdiction over the persons and subject matter of the action the fact that the injunction or restraining order is merely erroneous, or was improvidently granted or irregularly obtained, is no excuse for violating it. The order of a court must be obeyed until vacated or modified by the issuing court, or until reversed on appeal by a superior court. Therefore, when an injunction has been violated, an order holding the violator in contempt will be held. Oost Afrikaansche Compagnie v. Mensah and Davis, 13 LLR 11 (1957).

The purpose of contempt proceedings is to vindicate the dignity of the courts. Distinct from any litigation from which they may arise, contempt proceedings must be separately tried and adjudicated. Kpunel et al. v. Gbassie and Hunter, [1962] LRSC 8; 15 LLR 50 (1962).

In conclusion, we hold that the trial judge committed no reversible error by imposing a $300.00 fine upon the five (5) appellants in this case for their deliberate and admitted obstruction of the sheriff in the execution of a writ of possession lawfully issued in the action of ejectment below.

Under the "New Judiciary Law", every court has the power to punish for a criminal contempt. Judiciary Law, Rev. Code 17: 12.6. But the fine for a criminal contempt of a circuit court is limited to $100.00. There are five (5) persons in this case who were fined $300.00 for contempt, or $60.00 each, which is far less than the maximum allowed by statute. Appellants' contention that the fine was excessive is, therefore, unmeritorious.

The appellants were not without adequate legal remedy even if their rights were clearly violated by the writ of possession. Their rights to file a motion to intervene (Civil Procedure Law, Rev. Code 1:5.63), a motion for a relief from the judgment (Ibid., 1: 41.7), or to avail themselves of the remedy provided for persons not personally served (Ibid, 1:3.44) were and still are, available to the appellants in this case.

Although this Court has said that the rights of no one shall be concluded by a judgment rendered in a suit to which he was not a party, it has also held that, under certain circumstances, a person may be permitted to intervene in a case pending before a court prior to the rendition of final judgment, where his rights and interests are, or will be, materially affected. Johns v. Witherspoon, [1946] LRSC 3; 9 LLR 152 (1946). The same principle was upheld in the case of Childs and Johnson v. States, [1934] LRSC 18; 4 LLR 138 (1934), where this Court said that upon proper application made and good cause shown, the Supreme Court may, in its discretion, permit a third party to intervene in a case in which he was not an original party.

Based upon these decisions of the Supreme Court, we hold that the ruling of the circuit judge finding the appellants guilty of contempt does not constitute a reversible error. We therefore affirm same. And it is so ordered. Judgment affirmed.

Coffah v Pyne et al [1944] LRSC 25; 8 LLR 380 (1944) (15 December 1944)

YARNKOON COFFAH, Petitioner, v. K. NIMLEY PYNE and R. F. D. SMALLWOOD, Resident Circuit Judge of the Circuit Court of the First Judicial Circuit, Montserrado County, Respondents.
CERTIORARI TO THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued
November 1, 6, 1944. Decided December 15, 1944. 1. A trial judge did not commit error in refusing a request for a continuance in
order that the attorney for the party making the request might attend a meeting of a fraternal organization. 2. In civil cases the

defendant is required by law to specially plead in his answer every affirmative matter upon which he desires to rely. 3. If no answer is filed the defendant shall be understood to deny the truth of the allegations of fact and to rest on that defense only.

Plaintiff,
now co-respondent, sued defendant, now petitioner, in ejectment. Upon judgment for plaintiff, defendant successfully applied to an Associate Justice of the Supreme Court for a writ of certiorari to the circuit court. Upon review of the case by certiorari, judgment affirmed. Charles T. 0. King for petitioner. for respondent. B. G. Freeman

MR. JUSTICE DAVID delivered the opinion of the Court.
Upon a writ of certiorari issued on February 24, 1941 from the Chambers of one of the Associate Justices of this Court to review the judgment in favor of plaintiff in an action of ejectment wherein said judgment was entered in the court below in the Circuit Court of the First Judicial Circuit, Montserrado County, by one K. Nimley Pyne, plaintiff, now one of the respondents, against Yarn-

koon Coffah, defendant, now petitioner, the records in this case were brought up for the attention of
this Court. The history of the case briefly stated is as follows: On October 25, 1940 the plaintiff, K. Nimley Pyne, commenced an action of ejectment against Yarnkoon Coffah, defendant, for the recovery of a certain lot, onequarter of an acre of land, situated, lying, and being in the borough of Krutown on Water Street in the city of Monrovia. It would appear that in settlement of a debt the premises referred to above had by Mr. Pyne been turned over to one Mr. Bar-Rolle to rent out in order that he might recover the sum of eighteen pounds which he owed the said Mr. Bar-Rolle. The house on the premises was then rented out to Mr. Yarnkoon Coffah by Mr. Bar-Rolle who had assumed temporary possession of the premises. When the debt had been liquidated, the said Mr. Bar-Rolle in the presence of Mr. Pyne and of other witnesses duly informed Mr. Coffah that the property was not his but was owned by Mr. K. Nimely Pyne. Upon being asked to surrender the premises, Mr. Coffah refused to leave and offered to purchase the premises, which request was denied. Having been in adverse possession of said property since May, 1940 and notwithstanding plaintiff's repeated requests to defendant to vacate therefrom, defendant had refused to vacate and had persisted in unlawfully withholding the said premises, much to plaintiff's inconvenience and damage. This suit was therefore instituted against defendant Coffah for the purpose of recovering the said property. The defendant was duly summoned as per returns of the sheriff but from the records submitted to this Court he neither filed an appearance nor made an answer within the time prescribed by law, and when the case was called for trial he appeared in person and submitted to the jurisdiction of the court. On January 15, 1941 this case among others was as-

signed for trial on the following day. At the call of the case the clerk of court, not finding the writ among the papers in the case, reported that it apparently had not been returned, whereupon counsel for plaintiff prayed for an order of court to issue a new writ. The case was then suspended until Tuesday, January 21, 1941, pending an investigation regarding the writ. It was at this stage of the action that Counsellor Charles T. 0. King announced in open court that he would represent the defendant. When the case was called on January 21 in keeping with its assignment, it was brought to the attention of the court by the clerk that he had found the writ among other documents in his office and the court, upon inspection having found the writ to be in order and duly returned, called the case for trial. Even though Counsellor King had irregularly and at a late stage of the action announced that he would represent the defendant, instead of being present the following letter was received by the trial judge from Attorney Samuel C. M. Watkins: "MONROVIA, January 21, 1941.
"HIS HONOUR
R. F. D. SMALLWOOD, RESIDENT CIRCUIT JUDGE, FIRST JUDICIAL CIRCUIT, MONROVIA.
"YOUR HONOUR,

"Counsellor Chas. T. 0. King has directed me to inform you that he left the City on Monday the 20th instant to attend the Grand Lodge of U. B. F. and respectfully to request that you will kindly defer the hearing of any and all matters in which he is interested particularly those filed from this Office, he being the leading lawyer. "Thanking Your Honour of the consideration and with sentiments of respect, "Yours very truly, King & Watkins [Sgd.] SAM'L C. M. WATKINS
ifttorney-at-law."

Under the circumstances appearing, was Counsellor King regularly retained and authorized to represent defendant? And if so, announcing himself at that stage of the case, was the letter written from his office by his assistant after he had left town couched in the manner and tenor in which it appears sufficient legally for the court compulsorily to accept it and postpone the case? The records show clearly that Counsellor King knew of the assignment of the case for the twenty-first instant, and that the case was to be taken up, no matter what phase of it, yet, notwithstanding that, he left town on the twentieth instant without first obtaining an excuse from the court or without filing a motion for continuance if he felt there were grounds for same. His act, besides in our opinion being irregular, was unquestionably designed to force the court to postpone the case indefinitely since Counsellor King left not knowing whether his request would be granted or not, especially so when the object of his leaving town was not sickness or an unexpected emergency over which he had no control. This Court will not lend a. hand to or favor such irregular and questionable practices. In the absence of a regular motion for continuance and particularly

since Counsellor Charles T. 0. King was not unaware of the assignment of the case yet in furtherance of justice, his honor the trial judge again suspended the case until January 22 to enable the defendant to have his lawyer in court. The case was called on the day assigned and, discovering that the defendant was in court without a lawyer and that no motion for continuance had been filed in the office of the clerk, a jury was empanelled, the case was tried, and a verdict was returned in favor of the plaintiff. Counsel for defendant thereafter appeared in court and filed an application to set aside the verdict and award a new trial. Same was denied and a motion in arrest of judgment was then filed, resistance thereto was made and was sustained, and thereafter final judgment was entered by the court in favor of the plaintiff.

The petitioner seems to hinge his principal argument on the following grounds : ( ) That the writ was not duly served on defendant, now petitioner; and (2) That, in spite of a request made by him to defer the matter because of his counsel's temporary absence from the city, the case was tried. Reviewing the first count of his contention, we have discovered that when the trial judge had observed that no appearance or answer had been filed in the case, the writ was called for and could not be found at the moment. The court therefore entered into a summary investigation of the whereabouts of the writ and upon query being made by the court it was disclosed that the writ had been served by bailiff Padmore during the absence of the sheriff who returned it to the late deputy sheriff to make the necessary returns. After diligent searching in the papers of the said deputy sheriff, the writ was discovered and reported. Hence the writ was duly served on defendant. In the second case, to have granted the request of the learned counsel to defer the trial upon such a flimsy excuse, namely, to attend a Grand Lodge meeting, especially when he did not state that there was any particular duty or function he had to perform, would in our opinion be establishing a precedent of far-reaching effect and would to a great extent hinder the speedy trial of the case. Under the circumstances the trial judge had no alternative but to proceed with the trial of the case. There are two questions presented by this case. We must first determine when a defendant is summoned. Our law provides that: "If the defendant, having been returned summoned on a writ of summons, shall not appear within four days after the time therein appointed for his appearance, or if after the return of a writ of re-summons the defendant shall not appear, within four days after the time therein appointed for his appearance, whatever

the return may have been, it shall be the right of the plaintiff or plaintiffs, having first filed his or their complaint, unless the complaint be in ejectment to move for a writ of attachment, which shall be granted as herein after provided." Stat. of

Liberia (Old Blue Book) ch. II, § 7, 2 Hub. 1528. Secondly, in civil cases, as is the one now under consideration, the defendant is required by law to specially plead in his answer every affirmative matter upon which he desires to rely. Hence even when an answer is regularly filed, defendant is not allowed to set up any defense not specially raised in one of the pleas in said answer. Stat. of Liberia (Old Blue Book) ch. V, § 8, 2 Hub. 1540; Rev. Stat. § 290. Our statutes further provide that "if no answer is filed . . . the defendant shall be understood to deny the truth of the facts, and to rest on that defence only. . . ." Stat. of Liberia (Old Blue Book) ch. V, § 6, 2 Hub. 1540. Solomon v. Sherman, 1 L.L.R. 317 (1897). Defendant filed no answer, and a remand of the case as suggested by our dissenting colleagues would only delay justice without any material benefit to petitioner except that of gaining time. The plaintiff in the court below established legal title to the property, the subject of these proceedings, by exhibiting a deed to said property issued to him by the President of this Republic and, although the original had been misplaced, a certified copy thereof was issued from the State Department over the signature of the Honorable J. Edmund Jones, then Acting Secretary of State of Liberia. The instrument then is an evidence of the action of the Government upon the title of the claimant. The law provides that upon certain conditions citizens shall acquire title to a portion of the public lands, and that a deed thereafter shall issue which shall be probated and shall be registered according to law. Since we have every reason to believe that the defend-

ant, now petitioner, was given every opportunity to make his defense and as we are further convinced that an attempt was being made to unduly prolong the proceedings of a clear case against him, the Court is therefore of the opinion that the decision of the court below be affirmed with directions to said court to record and take such further proceedings as may be necessary to put plaintiff in the court below, now respondent, in possession of the said lot of land in dispute, with costs against defendant, now petitioner; and it is hereby so ordered.
Affirmed.

MR.

JUSTICE SHANNON,

dissenting.

This Court has repeatedly both enunciated and upheld the principle that where a trial is regular and the evidence clear the judgment should not be disturbed. Phillips v. Republic, 4 L.L.R. I I , 15 (1934) · The logical converse of this principle must necessarily and naturally be that where a trial is not regular or the evidence clear the judgment resulting therefrom ought not to stand. It does not appear to me that the trial of this case in the court below was regular or the evidence unbiased, and the following facts

taken from the records certified to us are the basis for my conclusions. K. Nimley Pyne, plaintiff now co-respondent, instituted an action of ejectment against Yarnkoon Coffah, defendant now petitioner, on October 20, 1940 before the Circuit Court for the First Judicial Circuit, Montserrado County; and upon assignment and call of the case on January 15, 1941 before His Honor R. F. D. Smallwood, Resident Circuit Judge for said Circuit, the clerk of court informed said judge that there was no writ of summons in said matter found among the records and that from all indications said writ was lost. There was an investigation into the question of whether or not there was a writ served and returned in the matter so as to give

the court jurisdiction over the defendant and, in the absence of affirmative proof that such service was performed and returns made, whether or not a new summons or subpoena should be issued. Yarnkoon Coffah, defendant, appears to have been then in court and when called upon to make a statement as to whether he was summoned in the matter, Counsellor Charles T. 0. King announced to the court that he was representing the said Yarnkoon Coffah. For some reasons not clearly shown by the records, the investigation was suspended until January 21, 1941, at which time the procedure to be adopted would be decided after the conclusion of the investigation that had been commenced. On the day to which the case had been posponed, it appears as if Counsellor King did not attend court but requested his then junior partner, Attorney Samuel C. M. Watkins, to write to the court and ask for an excuse for him for a few days as he had to reach Brewerville to attend the session of the State Grand Lodge of the United Brothers of Friendship which was then convened. He was not asking for a continuance for a protracted period. This letter seems to have caused the following record to have been made by the judge as appears in the minutes of January 21, 1941 : "The court says that it is the tendency of practising lawyers before the court to come to court and ask for assignments of causes and fail to follow them up and as such causes are assigned from time to time and not heard. It is decided that whenever a case is assigned and timely notice given the Counsellor or the parties concerned and they fail to appear, the court, in the case of the plaintiff, will have said case stricken from the docket and bill of costs made out against the plaintiff. And, in case of the defendant, the court will go on with the case as far as it is possible and determine same only with two (2) exceptions;) that either the lawyer for the plaintiff or the defendant is engaged in

the Supreme Court and said fact is made known to the court. The court will then excuse said lawyer and continue the case. And in the second instance, a regular motion for continuance filed ; and in the absence of either one of the two exceptions referred to, the court will adhere to the ruling here given." From

this ruling of His Honor Judge Smallwood it is readily deduced that a practice obtained whereby lawyers representing causes before that court would, because of good reasons, write and ask for postponement of their causes and that indulgence would be given and the causes postponed ; so that where it appears that some of the lawyers unduly took advantage of this privilege, it was within the province of the court to discipline them without causing inconvenience and irremediable wrong to the parties whose interest would be at stake. What is more striking is that in face of this ruling which obviously denied the application of Counsellor King through Attorney Watkins for the postponement of the cause for a few days, the record is wanting in any proof that the petitioner, defendant below, was afforded an opportunity to secure another counsel. The situation became more muddled when on the following day, January 21, 1941, as the record discloses, upon resuming the case : "Plaintiff was represented by Counsellor B. G. Freeman assisted by Attorney Jos. F. Dennis. Defendant not having filed an appearance was not represented by counsel but was in court in person. The following named persons composed the jury in the case. . . . They were duly qualified. Complaint read to the jury as well as the writ of summons and the returns of the Sheriff." It is seen then that the investigation that had been commenced to which reference has already been made was never resumed, so how the writ of summons, with the returns of the sheriff thereon, found its way into the rec-

ords of the case for it to be read to the jury will forever remain an enigma ; and the statement set out in the opinion of the majority of my colleagues that the clerk informed the court that the writ of summons in question had been found appears not to be supported by the records of the case. I mention the following as the possible injury to the petitioner, defendant below, in handling the matter in such a loose and careless way: an investigation commences on the point of the absence from the records of the writ of summons, the returns to which alone, barring defendant's own voluntary submission, would give the court jurisdiction over his person. This investigation was suspended and never appears to have been resumed. Yet, upon the recalling of the case for trial and upon the empanelling of a jury, the clerk read a document purporting to be the writ of summons in the case with returns thereon, the defendant being before court without his counsel to properly and correctly contest the procedure. And the defendant remained in this condition during the entire trial so that after the testimony of each witness on the direct examination when defendant was asked if he had any questions to ask, he would reply that his lawyer was not present and that therefore he had no questions to ask. See record. Now how this writ was found, if at all, was never explained until Counsellor King for his client filed both an application to set aside the verdict of the jury as well as a motion in arrest of judgment, and the explanation given by the sheriff is to my mind demurrable. Said sheriff said that he did not perform the service in person; but that at the time of the issuance of said writ he was at his home on the Saint Paul

River and the writ was handed to the deputy sheriff who handed it to bailiff Padmore for service ; that bailiff Padmore informed the deputy sheriff that he had served the writ, which information was passed on to the sheriff and on the strength of which

he, the said sheriff, made the returns in November and dated them for October 25, 1940; and that said writ was, since January 15, 1941, found in the clerk's office among other papers. Whilst it is true that the declaration of a ministerial officer of court made in a return is to be taken in most cases in preference to the declaration of others, yet an issue or protest against the correctness of a return is, in my opinion, entertainable where the officer making such return declares afterwards that the actual service of the writ was not performed by him and where the returns to said alleged writ are made about a fortnight after the alleged service of the writ, as the record shows, and are ante-dated. The defendant, in the deplorable condition of being without the benefit and service of counsel, was not in the position to properly raise issues challenging all these irregularities, nor was he ever squarely given an opportunity to admit or to deny the truthfulness of the returns. This brings us to the consideration of the issue : Whether or not the trial thus had was in consonance with the provisions of our statutes governing the case as to make same regular, even were the service of the writ of summons upon the petitioner, defendant below, conceded. First of all, it is my opinion that if the trial judge conceded the truthfulness and genuineness of the return of the sheriff as evidence of his service of said writ, in the absence of an appearance of the defendant on record together with an answer filed, it was error on the judge's part to have afforded either defendant or his counsel a hearing during the trial of the cause. The learned trial judge appears to have confused the statutes in this respect for, in the absence of an appearance and at the call of the case, a judgment by default may be applied for and granted. We quote the relevant portion of the statute : "If the defendant, having been returned summoned on a writ of summons or upon a writ of re-summons

shall not appear within four days after the time therein appointed for his appearance, or if a defendant, who has been summoned by publication, shall fail to appear on the date named in the writ, the plaintiff may take judgment by default, and apply for a writ of execution, attachment, or make such other application as may be necessary to enforce or perfect his judgment." 1 Rev. Stat. § 282. However, where an appearance is filed but with no subsequent answer, then the defendant is considered to rest his defense on a bare denial of the facts stated in the complaint. "Every answer must be filed within twenty days after the appearance of the defendant; provided that the complaint shall have been filed before

the expiration of ten days from the said appearance, otherwise it shall be filed within ten days after the defendant shall have received notice of filing of the complaint. "If no answer is filed as provided in the last section, the defendant shall be understood to deny the truth of the facts, and to rest on that defence only. . . ."` Stat. of Liberia (Old Blue Book) ch. V, § 5, 6 at 45, 2 Hub. 1540; i Rev. Stat. § 288. There is, howeVer, some slight difference in procedure between other ordinary actions and an action of ejectment; and the procedure prescribed in actions of ejectment, in the event of the non-appearance of the defendant, appears not to have been followed so as to have brought the trial within the pale of regularity. "If the defendant, having been returned summoned on a writ of summons, shall not appear within four days after the time therein appointed for his appearance, or if after the return of a writ of re-summons the defendant shall not appear, within four days after the time therein appointed for his appearance, whatever the return may have been, it shall be the right of the plaintiff or plaintiffs, having first filed his or their

complaint, unless the complaint be in ejectment to move for a writ of attachment, which shall be granted as herein after provided." Stat. of Liberia (Old Blue Book), ch. II, § 7, at 33, 2 Hub. 1528. (Emphasis added.) The following is the procedure in an action of ejectment: "In ejectment there shall be no writ of attachment or of arrest, nor any bail required, but on a return of a writ of summons, the plaintiff, having filed his complaint, if the defendant do not appear, may cause a copy thereof, together with a copy of the writ of resummons, to be set upon the property claimed, ten days before the return day of the re-summons, and for that purpose may have a writ of re-summons, although the writ of summons may have been returned summoned; and if the defendant do [sic] not appear within four days after the said return day, the plaintiff shall be entitled to a judgment by default." Stat. of Liberia (Old Blue Book) ch. I, § 36, at 38, 2 Hub.

1533.
If
the prescribed procedure as quoted above had been followed in substance and in spirit, of course again conceding that the writ of summons was duly served and returned, the necessity of the investigation commenced by His Honor Judge Smallwood, but never concluded according to the records, would have been obviated; and the doubt and uncertainty surrounding the returns of the sheriff to the said writ of summons, which said writ was apparently lost or mislaid and peculiarly found, would have been removed. Because of the several irregularities and inconsistencies pointed out herein, I have found myself unable and unwilling to agree with my colleagues in their majority opinion and have therefore withheld my signature from the judgment, being of the opinion that the judgment of

the lower court should be reversed and a new trial awarded. His Honor the Chief Justice concurs in this opinion,
except that he does not concede that if defendant has not filed an appearance he may still, at the last moment, appear and defend
as a defendant who has filed no answer.

In re R.F.D. Smallwood [1942] LRSC 9; 8 LLR 3 (1942) (8 May 1942)

CASES ADJUDGED
IN THE

SUPREME COURT OF THE REPUBLIC OF LIBERIA
AT

APRIL TERM, 1942. In re R. F. D. SMALLWOOD, Resident Circuit Judge, First Judicial Circuit, Montserrado County, POHLMAN J. BRACEWELL, Sheriff of Montserrado County, H. LAFAYETTE HARMON, Counsellor-atlaw, and FRANK E. TOLBERT, Respondents. In re JAMES T. PHILLIPS, Secretary of the Treasury, Respondent.
CONTEMPT PROCEEDINGS.

Argued
April 22, 27-29, 1942. Decided May 8, 1942. 1. An appeal when perfected operates as a stay of execution and the sheriff is thereby
enjoined from taking any further steps. 2. It is a contempt of court where an appeal serves as a supersedeas and any person interferes
with or adversely affects it. 3. Where a mortgage is regarded only as a security as it now generally is, the mortgagor remains to
all intents and purposes the beneficial owner of the estate and may control, manage, and dispose of it as he wills, subject of course
to the mortgage. 4. The relation of attorney and client, being one of trust and confidence, disqualifies the attorney because of
such relationship from purchasing at a judicial sale the property in litigation in which his client is concerned, and from holding
it for his own use, such purchase being regarded as contrary to public policy.

H. Lafayette Harmon,* co-respondent herein and counsel for Frank E. Tolbert, co-respondent herein and
ED. NOM This case and related cases are defective in that there are conflicting statements
as to who instituted the proceeding in equity and in what capacity.

assignee of the mortgage in question,
initiated a proceeding in equity in the Circuit Court for the First Judicial Circuit to correct an alleged error in a lot number
in a mortgage deed. The circuit court decreed that the number be corrected. On appeal to the Supreme Court by the administrators
of the estate of the mortgagor, this Court denied the petition on the ground that it was defective. Ex parte Massaquoi, [1941] LRSC 14; 7 L.L.R. 273 (194 r) , rearg. denied[1942] LRSC 8; , 7 L.L.R. 404 (1942). Subsequently during the hearing in this Court of a related injunction proceeding we ordered the case continued on the docket
and in an interlocutory order substantially affirmed the order of the lower court which had ordered the moneys accruing from the
lease of the lot in question sequestered in the Treasury Department. After the appeal in the equity proceeding, supra, had been perfected
but pending review by the Supreme Court, the trial judge, co-respondent herein, heard a bill in equity for the foreclosure of the
mortgage deed as corrected, decreed it foreclosed, and issued a bill of sale. Pohlman J. Bracewell, sheriff, co-respondent herein,
sold the land to H. Lafayette Harmon and executed a deed for the corrected lot number. The Commissioner of Probate refused to admit
the sheriff's deed to probate. On appeal from this decision of the Probate Court, the Supreme Court denied probate, Bracewell v.
Massaquoi, [1942] LRSC 6; 7 L.L.R. 390 (1942) , and issued a Rule for Judge Smallwood, Pohlman J. Bracewell, H. Lafayette Harmon, and Frank E. Tolbert to show cause why
they should not be held in contempt and for the Secretary of the Treasury to appear in connection therewith. After trial in this
Court, Judge Smallwood, H. Lafayette Harmon, and Frank E. Tolbert adjudged guilty of contempt, Pohlman J. Bracewell adjudged not
guilty of contempt, and judgment suspended as to Secretary of the Treasury Phillips.
Judge R. F. D. Smallwood, H. Lafayette Harmon,
Frank E. Tolbert, Pohlman J. Bracewell, and James T.

LIBERIAN LAW REPORTS Phillips, Secretary of the Treasury, for themselves.
B. Ricks and C. Abayomi Cassell, amici curiae.

5
A.

MR. JUSTICE TUBMAN delivered the opinion of the

Court. One of the distinctive
privileges of the courts and one which they regard with jealous care is their inherent power to preserve and uphold their dignity
and ensure obedience to their orders and mandates by proceedings for contempt. The most learned of the judges, and especially those
of courts of last resort, exercise this power with great caution but when necessary with marked effectiveness. We think it necessary
to quote excerpts from what this Court said in 1864 in the case Johnson v. Johnson, I L.L.R. 24, which involved a review by certiorari
of an injunction to stay an execution. "The law carries with it great power where defiance is practiced, but on the other hand it
is reasonable where responsibilities make it expedient. .. . The court is a mighty organ and any person who is clothed with its prerogatives
has in a very large degree the care and protection of all living under its influence. . . . "The law never contemplated violence,

only when violently assailed, and no person has the right to violate the law, or in other words obstruct it in its legitimate pursuits."
Id. at 24-25. There were multifarious litigations in this Court, as revealed by the docket, between the administrators of the estate of the late Momolu Massaquoi, and J. J. Massaquoi, Frank E. Tolbert, and H. Lafayette Harmon. A bill in equity for correction of a number in a mortgage deed, Ex parte Massaquoi, [1941] LRSC 14; 7 L.L.R. 273, rearg. denied. [1942] LRSC 8; 7 L.L.R. 404 (1942) an injunction proceeding, and objections to the probate of a sheriff's deed arising out of a lower court decree foreclosing a deed for the corrected

mortgage number, Bracewell v. Massaquoi, [1942] LRSC 6; 7 L.L.R. 390 (1942) were appealed from the Circuit Court for the First Judicial Circuit to this appellate jurisdiction. The bill in equity for correction of a number was the first taken up and disposed of at the April term, 1941, of this Court. But upon motion filed by counsel for appellee against whom final judgment had been entered in said case, His Honor Mr. Justice Russell, one of the concurring Justices, under Rule of Court granted an application for a reargument of said cause on the ground that whereas the opinion had dismissed the case the judgment had remanded same. On appeal to this Court en bane at its November term, 1941, the case was remanded for the parties to replead. Next came the trial of the injunction case which, when it reached a certain stage, was ordered continued on the docket and an interlocutory order was issued ordering the moneys accruing from the lease of lot Number 272, sequestered in the Treasury Department by orders of the court below, to be continuously held under sequestration, with the exception of the eighty-one dollars mentioned in the stipulations of counsel dated September 25, 1939, until further orders of this Court. A copy of this order was to be sent to the court below and to the Honorable Secretary of the Treasury of Liberia. This was done. Lastly the objections to the probate of a sheriff's deed, resulting from the foreclosure of the mortgage deed and sale of the property to H. Lafayette Harmon, came up for hearing. In the process of hearing this cause, it was revealed that the appellant therein, H. Lafayette Harmon, counsellor and attorney-at-law for Frank E. Tolbert, assignee in the mortgage between the Massaquois, had brought an action for the correction of the number in the original mortgage deed between the Massaquois, which said original mortgage deed mortgaged lot Number 226. The action for correction of number sought to have said number 226 changed to number 272. The

Judge of the Circuit Court for the First Judicial Circuit had made a final decree ordering said change, which said final decree had been appealed from said court to the Supreme Court by the administrators of the estate of the late Momolu Massaquoi. While said appeal was upon

the docket of this appellate Court and undecided by it, the said H. Lafayette Harmon and Frank E. Tolbert had brought their action of foreclosure of said mortgage, but for lot Number 272 instead of lot Number 226, which said lot Number 226 was the lot set out in said deed of mortgage. His Honor Judge Smallwood, Resident Judge of the Circuit Court for the First Judicial Circuit, had proceeded to hear and determine said action of foreclosure and had entered a final decree decreeing said mortgage foreclosed and lot Number 272 sold. H. Lafayette Harmon, counsellor and attorney-at-law for Frank E. Tolbert, assignee, had bid in said lot Number 272 and had obtained a sheriff's deed and offered same for probate, at which time the administrators of the estate of the late Momolu Massaquoi had objected to the probate thereof on grounds that lot Number 272 had not been mortgaged by their intestate, and that the decree of the trial court decreeing the number changed was not enforceable as said decree had been appealed from and was then still sub judice in the appellate Court on appeal. Objections to the probate of said deed were made to the Commissioner of Probate who, finding out from a certificate from the clerk of this Court that the petition for the change of number had not been decided, sustained the objections, ruling inter alia: II [T]hat respondents, now objectors, having completed their appeal to said Court, the said appeal seems to have grown out of exceptions taken to the ruling of the Judge of the First Judicial Circuit Court, on a petition filed by one Frank E. Tolbert for change of number in a certain mortgage deed, from 226 to 272, said case being on appeal as afore. . .

said it is obvious then, that this Court cannot, and will not assume jurisdiction of it. . . ." Counsellor Harmon and the sheriff excepted to same and appealed the matter here. At the last November term of this Court, we sustained the position of the Commissioner of Probate and ordered the said sheriff's deed held in the office of the clerk of that court, and issued a rule for His Honor Judge Smallwood, Resident Judge of Montserrado County, H. Lafayette Harmon, counsellor-at-law, and Frank E. Tolbert to be summoned to appear at the April term of this Court, 1942, to show cause why they should not be found in contempt. In obedience to these mandates, His Honor Judge Smallwood filed returns to justify his conduct alleging inter alia that : ( ) Appellant in the correction of number case had failed to file an approved bill of exceptions and an approved appeal bond within statutory time, and (2) He did not intend to commit a contempt of Court and, if the Court considers his conduct contemptuous, he prays for absolution. He also objected to Counsellor A. B. Ricks as amicus curiae. Counsellor Harmon and Frank E. Tolbert filed returns to justify their conduct, also alleging that there was no legal appeal in the correction of number case as the appellants had not filed an approved appeal bond or an approved bill of exceptions, and consequently they felt justified in filing and prosecuting their mortgage foreclosure case. The sheriff submitted in his returns that: ( ) He was the ministerial officer of the Circuit Court for the First Judicial Circuit and his acts were done upon orders of

the judge of the circuit court, and (2) In executing those orders of the court, he had acted within the scope of his authority and within the law. With these returns read, His Honor Judge Smallwood was the first to address the Court. He gave solemn assurance that he had lost sight of the fact that he had approved

the appeal bond when he proceeded to hear and determine the case of foreclosure, that he had never approved the bill of exceptions, and that no one had called his attention to the fact that there was an appeal in the change of number case. At this point, Counsellor A. B. Ricks informed the Court, as he had done at the last term in the case of objections to the probate of the deed, that he had repeatedly in open court called the judge's attention to the pendency of the appeal when he was about hearing said foreclosure case, but his honor the trial judge had wantonly disregarded said notice and that he, Counsellor Ricks, thought Mr. Carney Johnson, clerk of said court, would remember it. Mr. Carney Johnson, clerk of the trial court, was summoned, and thus he appeared for the first time on the scene and said that he did not recall that Counsellor Ricks had called the judge's attention to the pending appeal in the correction of number case. Questions from this Bench put to His Honor Judge Smallwood and his answers gave the impression that he had committed purely an unintentional error of judgment, which he confessed when he asked to make a statement on the record of Court and threw himself upon the Court for absolution. This request of his we required to be reduced to writing in the nature of an amended return. He did so and wrote the following: "Further to the returns of His Honour Judge Smallwood, on page three in the above entitled cause and the latter part of the fourth paragraph on said page and page four, His Honour Judge Smallwood concedes the point that where an appeal bond is approved by the trial Judge, the Judge thereof loses jurisdiction over the cause and jurisdiction can only be resumed by a Mandate from an appellate court. "In the case now under consideration by the Honourable Supreme Court of Liberia from which grew these contempt proceedings, the approval of the bond

was not then within the knowledge of His Honour Judge Smallwood and upon the service upon him of the Writ to show cause why he should not be held to answer for contempt, he was surprised to note that he had approved said appeal bond as same had slipped his memory and he was not reminded by the officers of the court nor the lawyers in the case nor the parties themselves before nor after he took up and tried the case of Foreclosure of mortgage, and it was not until he had been served with process to appear and show cause why he should not be held to answer for contempt that he observed that he had approved of said bond. "Judge Smallwood wishes to bring

to the attention of the Honourable Supreme Court, that upon his elevation to the Bench of the Circuit Court he made a ruling to the effect, that upon the trial of any case by him where the party was appealing, and if he is out of the City when the time comes for the filing of bills of exceptions and appeal bonds, the appellant was to file same with the Clerk and the Clerk was ordered to make a notation as to the date of filing and when he returns to the City and this fact is brought to his attention by the Clerk or the parties themselves he would approve same as of the date of filing in order not to delay or prejudice anyone's appeal, then would it be consistent to approve of an appeal bond and said fact as still within his knowledge and ignore same and try a matter the subject of an appeal? Wherefore Judge Smallwood submits that he was not reminded by the pleadings of the opposing lawyer nor in open court and that this fact of his approving of the appeal bond upon his honesty as a Judge had been forgotten and he sincerely apologizes for this act and asks that Your Honours be good and gracious enough to forgive him for this first offence, not so much that he is afraid of the punishment that the Supreme Court

might inflict, but to see that an attempt has been made to contravene the prerogatives of the Supreme Court gives him more pain than any punishment that the Court might inflict, as I have always tried to make it my duty to do justice to all parties coming before me. Judge Smallw000d has no knowledge of any other development in these proceedings and is not a party of them. "Wherefore in keeping with that part of his returns referred to, Judge Smallwood, again asks the Supreme Court of Liberia to relieve him of the idea of contempt, as his sense of justice is too high to have the desire to contempt any court, to say nothing of the Honourable Supreme Court of Liberia." "Respectfully submitted, [Sgd.] R. F. D. SMALLWOOD, Resident Judge."

Counsellor H. Lafayette Harmon and Frank E. Tolbert were the second in order to argue their returns. They vigorously urged that the appellants in the correction of number case had not perfected their appeal because they did not : ( ) File an approved bill of exceptions, (2) File an approved appeal bond, (3) Pay costs, and (4) Serve notice of the completion of appeal. Hence, they contended, there was no appeal that could serve as a supersedeas. They therefore felt justified in having the mortgage foreclosed and lot Number 272 sold. After a series of questions from the Court to these two co-parties and after their answers, it soon became evident even to themselves, it seemed, that defects in perfecting an appeal of the nature of those claimed to have existed in that appeal would be grounds for the dismissal of an appeal by the appellate Court upon motion properly filed in the appellate Court, especially so where the trial judge had approved the appeal bond and thus lost jurisdiction over the cause. Harmon and Tolbert therefore brought into Court amended returns which, while in

some degree apologetic, yet sought subtly to justify their conduct, the soundness of which was soon shattered. Then finally they asked leave of Court to withdraw both their returns and amended returns and to file substitute returns. With leave granted, the following were what they filed as such returns : "H. Lafayette Harmon, Counsellor at law, and Frank E. Tolbert, co-respondents in proceedings for contempt, most respectfully beg leave of court to withdraw their returns and amended returns filed in these proceedings, to substitute the following as their returns : "1) They acknowledged the service on them of the Writ of Summons to appear and show cause. "2) As to the substance of the charge of contempt made against them, they do hereby admit that their act of bringing and prosecuting an Action of Foreclosure of Mortgage, while an Action for Change of Number in said mortgage was pending on appeal in the Honourable Supreme Court, and not then disposed of by Your Honours, was indeed out of order and an error. They believed at the time that since the bill of exceptions filed by appellants had not been approved, and no notice of appeal had been issued and returned in the cause : `Ex Parte J. J. Massaquoi, for his Wife, Sarah Massaquoi, Petitioner-Appellee, Administrators of the Estate of the Late Momolu Massaquoi, Intervenors-Appellants,' that there was no appeal, without any intention whatever to contempt this Honourable Court; but when the proceedings in contempt were in process of hearing, and various questions were being propounded to them by Your Honours, they became convinced that they were legally out of order, and wrong.

"3) They therefore tender this written Apology to Your Honours for their actions, and confessing their guilt, and acknowledging their wrong, and most humbly and earnestly implore your pardon, clemency and forgiveness. "Respectfully submitted, [Sgd.] H. LAFAYETTE HARMON,
Counsellor-at-law

[Sgd.] FRANK E. TOLBERT,
Respondents."

Both the judge and other parties having confessed their guilt but declaring it unpremeditated and praying to be absolved, we thought that we had about concluded our inquiry; but when the returns of the Honorable Secretary of the Treasury, James T. Phillips, were called for and it was discovered that the Honorable Secretary had filed none, a Rule was entered against him and he was summoned to show cause why he had failed to make returns to the mandate served on him. He appeared and made returns and supplemental returns. As the lava came bursting forth we found that our investigation had been playing upon the crater of a volcano and that his returns had caused it to erupt. We quote those returns: "The Honourable James T. Phillips, Secretary of the Treasury, Republic of Liberia, one of the appellants in the above entitled cause, begs to acknowledge the service upon him of a copy of the Court's Order embodied in the Court's Judgment handed down on the 20th day of February A.D.

1942, and respectfully makes the following returns : "1) Because the Honourable Secretary of the Treasury says that he has literally obeyed the Orders of this Honourable Court with respect to the funds that have come to his hands since the order of the Circuit Court first judicial circuit was issued on the 27th day of August A.D. 1940, in that said funds have remained se-

questered and not paid out in conformity with the Order and Judgment of this Honourable Court dated loth February 1942, as aforesaid, as will more fully be shown by the following documents, profert of which is herewith made, viz...
"1) Statement showing disposition made of checks issued in favour of the estate of the late Momolu Massaquoi, etc., dated April 27, 1942. "2) Order of His Honour Judge Summerville signed by Acting Clerk of Court, J. Daniel Beysolow, dated 3oth day of August A.D. 1 939· "3) Notice from the Clerk of the Circuit Court dated August 27, 1940. "4) Certificate from the Clerk, Circuit Court, dated September 20, 1940. "s) Notice from Clerk of the Circuit Court dated September 20, 194o. "6) Certificate from the Clerk of Circuit Court dated September 11, 1940. "7) And this the Honourable Secretary of the Treasury is ready to prove. "2) That the $81.00 stipulated to be paid out and

confirmed by order of court has been accordingly paid out, leaving a net balance in the hand of the Honourable Secretary of the Treasury of the sum of $405.00 unpaid to this date. And this the Honourable Secretary of the Treasury is ready to prove. "3) That the Honourable Secretary of the Treasury regrets very exceedingly that he omitted to make the formal and legal returns required by the letter of His Honour the Chief Justice dated March io, 1942. The reasons which the Honourable Secretary of the Treasury begs

leave to assign for this oversight is inadvertence and pressure of overwhelming duties which caused him to overlook said letter of the Chief Justice directing the course to be pursued in making returns to the judgment of the Court dated February 20, 1942. For this inadvertence the Honourable Secretary of the Treasury begs to offer his deepest regrets and apology, wishing at the same time to assure this Honourable Court that it was very far from his intention to contempt this Court. He therefore respectfully begs the Court to accept said apology as a purge of any contumacy which the Court might otherwise have attributed to his inadvertence. And this the Honourable Secretary of the Treasury is ready to prove. "Respectfully submitted, James T. Phillips, Secretary of the Treasury, R.L., by his Attorney "[Sgd.]
NETE SIE BROWNELL
,

Attorney General of Liberia.

"Dated this 26th day of April A.D. 1942."
" 1 939

T.O. No. 374 dated 1 5/4/39--
Checks Nos. 66730 and 66738 "(Received by Sheriff P. J. Bracewell on the 27th day of August, 1940, in keeping with order of Circuit Court, dated 27/8/40) "T.O. No. 1020 dated 3 0/2/39 --

$162.00

Check No. A84o2

81.00

"(Received by Sheriff P. J. Bracewell on the 27th day of August, 1940, in keeping with order of Circuit Court, dated 27/8/40)
" I 940

T.O. No. 89 dated 6/3/4o-- Check No. A1o423

8 r.00

16

LIBERIAN LAW REPORTS

"(Received by Sheriff P. J. Bracewell on the 27th day of August, 1940, in keeping with order of Circuit Court, dated 27/8/40)

"T.O. No. 895 dated 30/9/40-- Checks Nos. A20886 and A20887

162.00

" (Received by Hon. H. Lafayette Harmon on the 26th day of September, 1940, in keeping with order of Circuit Court dated 20/9/40) "T.O. No. 6z6 dated 8/Io/4o--

Check No. A214o8

8i.00

"(Received by Hon. H. Lafayette Harmon on the ioth day of October, 1940, in keeping with order of Circuit Court dated 20/9/40)

Total
"1

$648.00
2

Total payments due for 1941 and 1942 (up to and including March 31) 405.00
"(Held up by the Treasury in keeping with letter dated September 9, 1940 from Al-Haj Massaquoi, Co-administrator of the Estate of
the late M. Massaquoi; Vide Treasury Department No. 2179/ 186/940D, dated September 10, 1940) "Respectfully submitted [Sgd.] W. R.
TOLBERT, JR. Disbursing Officer, R.L."

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Said respondents two days later filed supplemental returns as follows: "Further
to our returns of today's date, we beg to file the following documentation, to wit:
"a) Letter from Al-Haj Massaquoi to the Secretary
of Treasury dated September 9, 1940; "b) Treasury's letter No. 2179/186/940D dated September io, 1940;

"c) Treasury's letter No. 2270/173/940D dated September 3o, 1940, addressed to the Honourable Attorney General with six (6) enclosures;
"d) Letter No. 2165/92/40 addressed to the Clerk of Probate Court, Monrovia, dated 15th November 1940 by the Department of Justice;
Letter No. 1920/78/40 addressed to the Secretary "e) of the Treasury by the Honourable Attorney General dated 16th October 1940;
"f) Letter from the Clerk of Probate court to the Honourable Attorney General dated 15th November 1940 together with a statement
of the real estate holdings of the late Hon. Momolu Massaquoi as issued by J. J. Mends-Cole, Collector of Internal Revenues; "g)
Letter No. 2 1 7 5 /7 8/40 from the Attorney General to the Secretary of the Treasury, dated 15th November 1940.

"Respectfully submitted,
James T. Phillips, Secretary of the Treasury, R.L., by his Attorney [Sgd.] NETE SIE BROWNELL
Attorney General of Liberia.

"Dated April 28, 1942." Here it was discovered that
several orders and certificates had been issued by the clerk of the Circuit Court for the First Judicial Circuit as upon orders of
the judge thereof. His honor the judge disclaimed knowledge of these and disavowed having given orders to the clerk to issue them.
The relevant certificates and orders are as follows : "OFFICE OF THE CLERK OF COURT OF THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY,
MONROVIA. "REPUBLIC OF LIBERIA, MONTSERRADO COUNTY.

"REPUBLIC OF LIBERIA to the Administrators of the
estate of the late Momolu Massaquoi, (Al-Haj Massaquoi, et al.,) the Secretary of the Treasury, R.L., and the Paymaster of the Treasury,

R.L. respondents, GREETINGS: "You, and your agents, and all persons whatsoever acting directly or indirectly under you, are hereby restrained, prohibited and enjoined, under the penalties by law prescribed, until this court shall have made further orders hereupon, from collecting any of the rents accruing from lot number 272, situated on Ashmun St., Monrovia, Liberia of the Estate of the late M. Massaquoi, nor to interfere therewith, directly or indirectly. "And you are hereby further commanded to appear before this court on the time required by law, if you desire to show cause why this Injunction should be dissolved. "Issued by orders of His Honour Judge Summerville, and given under my hand and seal of court this 3oth day of August A.D. 1939 [Sgd.] J. DANIEL BEYSOLOW,
Acting
Clerk of Circuit Court."

and "OFFICE OF THE CLERK OF COURT, FOR THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY, MONROVIA.
27th August,
1940.

"REPUBLIC OF LIBERIA, MONTSERRADO COUNTY. "THE HONOURABLE SECRETARY OF THE TREASURY, R.L., THE PAYMASTER OF THE TREASURY,
R.L., MONROVIA.

 "GENTLEMEN,

"Please take legal notice that in keeping with terms of stipulations filed in Court in the Cause :Ex parte Massaquoi, for his Wife, Sarah Massaquoi, Petitioner-Appellee, Administrators of the Estate of the Late Mornolu Massaquoi, IntervenorsAppellants. the court has today dissolved said Injunction and ordered the release of such checks which may be in the hands of the Paymaster of the Treasury on account of rent for premises No. 272 held under lease by the Government to the Sheriff for Montserrado County to be paid over to Petitioners to satisfy an order of sale. "You are therefore requested to surrender said checks to the Sheriff of this County and obtain his receipt. "By order of the Resident Judge. (Seal) Yours faithfully,
[Sgd.] CARNEY JOHNSON,
Clerk of the aforesaid court."

In addition, "REPUBLIC OF LIBERIA, MONTSERRADO COUNTY. "IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY, CLERK'S OFFICE, MONROVIA. "Certificate "Tills IS TO CERTIFY, that according to due legal and regular proceedings had, the title to premises Lot Number 272 situated on Ashmun Street in City of Monrovia, and only occupied by Government for the use as Office of Civil Service Bureau, has passed by Decree of Court and Sale from Momolu Massaquoi
to H. Lafayette Harmon.

1940. "Effective as from July 18th Given officially, as per order of Court

for the First Judicial Circuit, R.L., this zoth day of September A.D. 1940.
"[Sgd.] CARNEY JOHNSON
Clerk, Circuit Court First Judicial
Circuit, Montserrado County, R.L."

and "REPUBLIC OF LIBERIA, MONTSERRADO COUNTY. "OFFICE OF THE CLERK FOR THE FIRST JUDICIAL CIRCUIT,
MONTSERRADO COUNTY, MONROVIA.
20th September, 1940.

"THE HONOURABLE, THE SECRETARY OF THE TREASURY, R.L., TREASURY DEPARTMENT, MONROVIA.
"MR. SECRETARY, "I append hereto a dossier of Court's record marked `A' to 'C' in reference to Lot No. 272 situated on Ashmun Street
in the City of Monrovia, and leased to the Government of Liberia. "His Honour the Judge of the Circuit Court for the First Judicial
Circuit, Montserrado County, has instructed me to notify you that as a result of Foreclosure Proceedings had between the substituted mortgagee, Frank E. Tolbert
against the Administrators of the Estate of the late Momolu Massaquoi, who leased the said lot No. 272 to the Government, that the
title to said lot has legally passed to Mr. H. Lafayette Harmon, under Decree, and sale, and Order of Court. See copies marked 'A'
and 'B' respectively. "The Treasury Department, R.L., is therefore fully authorized to treat with the said H. Lafayette Harmon, in
future on all matters touching and concerning

the said Lot No. 272; Mr. H. Lafayette Harmon is also empowered
and entitled to receive all rents now due or which may hereafter be due on said premises. "Your obedient servant [Sgd.] CARNEY JOHNSON
Clerk of the aforesaid Court."

and
"REPUBLIC OF LIBERIA, MONTSERRADO COUNTY. "OFFICE OF THE CLERK OF COURT FOR THE FIRST JUDICIAL
CIRCUIT, MONTSERRADO COUNTY, MONROVIA.

"Certificate "This is to certify, that on the i8th day of July, 1940, when His Honour Judge
Smallwood entered FINAL DECREE in the case:-- Frank E. Tolbert, substituted Mortgagee, petitioner vs. Al-Haj Massaquoi, Nathaniel
Massaquoi and T. W. D. Leigh, Administrators of the late Momolu Massaquoi, respondents there were no exceptions entered, no appeal
prayed for in the proceedings. (See copy of Minutes for the 18th July 1940). There is no Bill of Exceptions nor an Appeal Bond in
the proceedings. "Given under my hand and seal of Court this nth day of September, A.D. 1940. [Sgd.] CARNEY JOHNSON
Clerk of the
Aforesaid Court."

His honor the trial judge aforesaid having denied knowledge of the existence of these orders, it was necessary

for the clerk of the trial court, Mr. Carney Johnson, who issued said orders, to appear a second time on the

scene to give testimony as to how and why he issued such orders in the name of the court without orders of the judge. Mr. Johnson emphatically declared that he had been ordered by the judge to issue all of the orders just read except one but that said orders were given to him orally by the judge, and that since the orders grew out of a judgment and writ of sale given in writing by the trial judge he had thought the oral orders sufficient. After a repartee in the character of questions and answers between the judge and his clerk, Mr. Johnson, the sheriff was called before Court, and he affirmed that the judge had given the orders, the clerk had upon the judge's orders issued them, and that he, the said sheriff, had served them. We feel impelled to place on record that the sheriff, Pohlman Bracewell, Esq., showed while before this Court a tendency neither to cover up anything nor to twist anything, but instead seemed to make a clear breast of what he knew, and we do not hesitate to say that we were favorably impressed with his disposition in this regard. Now to the analysis of the facts brought out and the application of the law controlling them. His Honor Judge Smallwood, Counsellor Harmon, and his client Mr. Tolbert, who is also an attorney-atlaw, insisted throughout the hearing in these proceedings for contempt that they had no knowledge of an appeal pending in the Supreme Court from the final decree of his honor the trial judge. As much as we are inclined to accept and even desirous of accepting the solemn declarations of a judge as possessing great credibility and as absolutely unimpeachable, we have been startled when we endeavored to harmonize his honor's statement with the attendant facts and circumstances of the case. His Honor Judge Smallwood entered a decree ordering the number in the mortgage deed changed from Number 226 to Number 272 on October z6, 1939. The

intervenors-appellants therein excepted and gave notice of appeal on the same date; His Honor Judge Smallwood approved the appeal bond on December 22, 1939. On April 3, 1940, the record of appeal was filed in the appellate Court. Because of the inability of a majority of the members of the Court to arrive at the seat of Court, no business was transacted at the April term, 1940. On July 18, 1940, his honor the trial judge entered a decree foreclosing said mortgage while the appeal in the correction of number case was yet pending in the appellate Court and undecided by that Court. If the above be true and correct as it is, then it would appear obvious that the respondents herein, Counsellor H. Lafayette Harmon and his client Frank E. Tolbert, who brought the foreclosure suit to foreclose the mortgage and sell the lot as Number 272, which number they were seeking to have inserted in said deed of mortgage instead of lot Number 226, and His Honor Judge Smallwood, who heard the case and ordered the mortgage

foreclosed and lot Number 272 sold when the appellate Court had not affirmed his judgment, were guilty of an attempt either to anticipate the appellate Court's judgment or to adversely affect any judgment the appellate Court might give that would not affirm the said lower court's judgment, or were guilty of an arbitrary and deliberate disregard of the law on appeal which provides that an appeal shall serve as a supersedeas, or were guilty of a disregard for the dignity, authority, and power of this appellate Court. "An appeal when perfected operates as a stay of execution, and the sheriff is thereby enjoined from taking any further steps under any writ of execution, or otherwise." 1 Rev. Stat. § 427. This is the lex loci. It is contempt of court, says the law, where an appeal serves as a supersedeas and any person interferes with or adversely affects it. "Where steps taken to review an order, judgment,

or decree by appeal, writ of error, certiorari, or other authorized proceeding amount to supersedeas, it is not contempt to refuse to act under the order of the trial court. On the other hand, any attempt to carry out the order during the pendency of the proceedings for review will be adjudged contempt, although, if the party so acting has no knowledge of the appeal and supersedeas, he is not in contempt; and where a stay of proceedings on defendant's motion is granted until the hearing and determination of the motion, plaintiff is not punishable for contempt in proceeding after denial of the motion, because he did not wait until a formal order on the decision had been actually entered. If the action to review does not operate as a supersedeas, execution of the order of the court of first instance is not suspended during the pendency of the proceedings. Disregard of a supersedeas afterward vacated is not contempt. Exercising the right to have an order on which contempt proceedings are based revised is not contempt of court. One disobeying an order of court, pending appeal therefrom, may question such order only in so far as he can show it to be absolutely void, and cannot be heard to say that it is erroneous, however flagrant it may appear to be. It has been held that a reversal of the decree on which contempt proceedings are predicated operates to abate such contempt proceedings, although the rule does not seem to be of universal application; and an order of commitment cannot be opposed on the ground that the order determining liability on which the commitment was based has been modified on appeal." 13 Corpus Juris Contempt § 19, at 16-17 (1917). The parties respondent in these proceedings argue that they were not aware that an appeal had been taken in the correction of number case ; but why was the judgment in the correction of number case not first executed and the change of number effected as the law directs if they

had no knowledge of the pending appeal? Without enforcing the decree of the trial court which decree had been appealed
from, by correcting the number in the mortgage deed on record and by procuring a copy thereof under seal as evidence of the fact,
Frank E. Tolbert and/or his counsel deliberately changed the number in his, Frank E. Tolbert's, assignment of mortgage, while the original mortgage deed remained
the same, and brought and prosecuted their action of foreclosure. The judge decreed the mortgage foreclosed and ordered the lot with
the unauthorized corrected number sold without having first corrected it in the records or in the original deed of mortgage, and
ordered rentals that had accumulated prior to the assignment of the mortgage and prior to its foreclosure released, first to Frank
E. Tolbert and then to his counsel who is supposed to have bought the property. The next question that strikes us hard is, how can
the respondents in these contempt proceedings claim ignorance of the perfecting of the appeal in the correction of number case when
the parties defendant, the intervenors, in the correction of number case gave notice of exceptions to the final decree and of appeal
which was noted in the records of the trial court? Did not the trial judge consult the record before he approved the approved appeal
bond? Would he not have consulted the record when the petition for foreclosure was presented him with a view of ascertaining whether
the appeal in the correction of number case had been perfected by the intervenorsappellants and disposed of and whether or not same
had been disposed of by the Supreme Court? Surely if it had been disposed of, a mandate from this Court to the trial judge would
have been sent down to the trial court with the final judgment as is done in every case decided here; and we have pursued the practice
of sending not only a copy of the judgment but also a copy of the opinion. In any case, supposing the number had been ordered

corrected by the appellate Court or there had been no appeal taken from the trial court's final decree, upon
what authority of law could respondents have acquired the rentals that had accrued and had been sequestered prior to the foreclosure
of the mortgage, could they have deprived the mortgagor of his equity of redemption, and what was his honor the judge's legal authority
for so ordering, considering the kind of mortgage this was? "Where a mortgage is regarded only as a security, as it now generally
is, the mortgagor remains to all intents and purposes the beneficial owner of the estate, and may control, manage, and dispose of
it as he wills, so far as concerns all persons except the mortgagee, and subject to the condition that he must do nothing to destroy
or impair the mortgagee's security. He is a freeholder, as regards all the rights and privileges, both civil and political, which
the possession of a freehold confers, and cannot be deprived of his title, even after breach of condition, except by a voluntary
surrender or conveyance or by a due and regular foreclosure." +I Corpus Juris Mortgages§ 591, at 62o-21 (1926). And the following
is even more pertinent: "Notwithstanding the existence of a mortgage on land, the owner thereof may sell and convey his interest,

that is, the equitable title or equity of redemption, to a third person, transferring to the latter all his own rights in the premises, and the mortgagee has no right to interfere in the sale or prevent it. But of course such a sale does not prejudice the rights of the mortgagee; the grantee succeeds to the mortgagor's estate, occupies his position, takes subject to the encumbrance, and is subject to the same equities." Id. at 621. "Under the influence of the equitable conception that the mortgagor is the substantial owner of the property mortgaged, and of statutory enactments

either expressly announcing or impliedly confirming that view, the courts of many jurisdictions have adopted the rule that a mortgage passes to the mortgagee neither the legal nor equitable title to the property mortgaged. The mortgage, according to these authorities, merely pledged the property for the performance of the obligation secured, and the mortgagee acquires a bare right to enforce performance against the property. This right is not enlarged by default in performance or by possession of the mortgaged premises. On the contrary, the mortgagor retains until foreclosure and sale both the legal and equitable ownership. It has been held that the rule is not altered by the circumstance that a power of sale is granted the mortgagee, but on this point there is authority to the contrary. Furthermore, under this doctrine a deed of trust in the nature of a mortgage is commonly though not universally regarded as leaving the legal title in the mortgagor. But while an opposite view finds some support, a deed absolute intended as a mortgage is considered by the weight of authority to transfer legal title to the mortgagee. Statutes have been enacted in some instances not prohibiting a conveyance of the legal title to the mortgagee, but merely providing that such a conveyance shall not be presumed in the absence of express stipulations." 19 R.C.L. Mortgages § 88, at 311-12 (1917). And lastly:
"By the strict doctrine of the common law a mortgagee is entitled to the immediate possession of the mortgaged premises, in the character of the legal owner, and therefore, unless his right in this respect is waived or controlled by stipulation in the mortgage, he may, even before breach of condition, maintain ejectment and oust the mortgagor. But according to the modern equitable doctrine, which regards the

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mortgage as nothing more than a lien or security, the mortgagor is entitled to remain in the possession and enjoyment of the estate at least until breach of condition, even without the clause now commonly inserted in mortgages securing this right to him. A mortgagor of one undivided moiety of land cannot have partition against his mortgagee who

is the absolute owner of the other moiety. But a mortgagor in fee is entitled to possession against the grantee of the mortgagee."
27 Cyc. of Law & Proc. Mortgages 1234-35 (1907). A striking revelation was made when Mr. Johnson, the clerk of the trial court, was
before this Court. In a batch of court papers which he held in his hand was discovered a bill issued to J. J. Massaquoi by him, the
clerk, in which he asked for fees for the registrar and for himself for changing the number of the mortgage on record. This bill
was made before the ten days for filing a bill of exceptions had expired and was approved by Counsellor Harmon with a notation to
Mr. Tolbert to pay same. "REPUBLIC OF LIBERIA, MONTSERRADO COUNTY. "OFFICE OF THE CLERK OF COURT FOR THE FIRST JUDICIAL CIRCUIT,
MONTSERRADO COUNTY, MONROVIA. "THE HEIRS OF J. J. MASSAQUOI to CLERK OF CIRCUIT COURT, MO. CO. for services ren-

dered in the matter
of correction of deed as follows : Order on Registrar for correction $ .5o
Copy of Court's Ruling .5o " " Surveyor's certificate
.5o " stipulations .5o $2.00 "Received payment with thanks
"Clerk of Court.

"Non: As soon as this amount is received the documents will be handed the Registrar for the correction. "O.K. MR. FRANK TOLBERT
Please pay 8/4d [Sgd.] H. LAF. HARMON
3/11/39.

"Certified true and correct copy of the original filed with the records for the correction
of deed between the heirs of J. J. Massaquoi and Al-Haj Massaquoi et al., for lot No. 272, City of Monrovia. "CARNEY JOHNSON
Clerk
Circuit Court, Mo. Co.

(Seal of Court)." What could have been Mr. Harmon's intention in having such a bill issued before the ten
days for filing a bill of exceptions had elapsed when the intervenors-appellants had placed on record a notice of appeal? We see
no purpose in Mr. Harmon's action other than to deprive the intervenors-appellants of an appeal. It seems to us clear, therefore,
that there was an intent ab initio to deprive said appellants of their right of appeal and thus acquil-e said property at any hazard.
Counsellor Harmon claimed that he was the highest bidder at the sheriff's sale and that he paid three hundred and fifty pounds for the property. The sheriff's certificate of sale supports
Mr. Harmon's assertion in this respect, which certificate of the sheriff is as follows: "REPUBLIC OF LIBERIA MONTSERRADO. "CERTIFICATE
OF SALE "I, Pohlman J. Bracewell, Sheriff for the County of Montserrado, do hereby certify that on the 2oth day

of August A.D. 1940, at the Court House in the City of Monrovia at [time omitted] o'clock p.m. pursuant to the order of the Court and Notice of Sale hereto annexed, I sold to H. Lafayette Harmon, he being the highest bidder, the premises lot number two hundred and seventy-two (272) on Ashmun Street, in the City of Monrovia, described in said Notice of Sale; and I therefore certify that such sale was in all respects honestly, fairly and legally conducted to the best of my knowledge and ability and the proceeds thereof will be disposed of, as follows, to wit: "The sale price and high$1680.00 £350.0 .o est bid being 6.11.8 To pay cost of court 31.60 " " Sheriff's collection 21.17.6 105.00 @ 6%70 mortgage against 32 1. 10.10 debt 1 543.40
$1680.00

£35 0. 0. 0

Balance of debt $293.40 to% Attorney fee 1 8 3 .68 $477. 08 -- £ 99.7.1 0 "[Sgd.] POHLMAN J. BRACEWELL,
Sheriff, Mo. C.

"Monrovia, Liberia,
August 20, Certified true copy [Sgd.] CARNEY JOHNSON
Clerk of Court.

"True copy of the original. [Sgd.] H. LAF. HARMON." It appears from the tabulations in said certificate that $1543.40 or £321.10.10 of said amount was paid against the mortgage debt to Mr. Tolbert, the assignee who had procured the foreclosure of the mortgage. From a statement of amounts paid by Mr. Tolbert to

J. J. Massaquoi for the assignment of the mortgage, which statement with receipts was presented by Mr. Tolbert himself, it will be seen that the total amount paid by Mr. Tolbert for the assignment was £138.0.0 or $662.40. Counsellor Harmon was the purchaser at the sheriff's sale and, when a question was put to the counsellor as to whether or not he could legally purchase the property when he was the lawyer for the assignee, Mr. Tolbert, Counsellor Harmon replied that there was no law that prevented him from so doing. We were amazed at such a reply coming as it did from a lawyer of Counsellor Harmon's ability and astuteness, for it is plainly forbidden by law for him to have done so. "The rule seems to be well settled that, the relation of attorney and client being one of trust and confidence, the attorney is by reason thereof incapacitated to buy and hold property sold at a judicial sale in which his client is interested, where the purchase would result in any injury or disadvantage to the client, or involves any act on the attorney's part that is in any degree inconsistent with his duties toward the client. In some jurisdictions it is further said that

an attorney is disqualified by the relationship of attorney and client alone from purchasing at a judicial sale the property in litigation in which his client is concerned, and from holding it to his own use without the consent of his client; such a purchase being regarded as contrary to public policy, regardless of motives or of whether the client actually lost or gained by the transaction." 16 R.C.L. Judicial Sales § 8o, at II (1917).

But the ridiculous was reached when the sheriff informed the Court that Counsellor Harmon had not paid him anything for the property sold. There seemed to have been some illicit understanding between Mr. Harmon and Mr. Tolbert so that although Mr. Tolbert paid only $662.40 for the assignment of mortgage, he received

$1543.40 from the sale of the lot, according to his acknowledgment of the same. He also received $324.00 from the rentals, according to the statement of the Treasury Department, making a grand total of $1867.40 received by him. According to the sheriff, Mr. Harmon, who although present in Court did not challenge or offer to rebut the said statement, paid nothing for the property but drew from the Treasury Department upon the court's order $224.00 on account of rental and a sheriff's deed for lot Number 272 and $183.68 as a ten percent attorney's fee from said sale. What a travesty of justice and a pollution of judicial procedure and what collusion and connivance by and between judge, officers of court, lawyer, and client! We cannot too strongly indicate our detestation and abhorrance of this affair. At the last stage of the hearing, his honor the trial judge having continuously and categorically denied knowledge of the pendency of the appeal, the clerk of court, Mr. Johnson, produced from his office a certified copy of an application for a writ of injunction addressed to His Honor Judge Smallwood praying him to stop and prevent the sale of the said lot Number 272 because of the pendency of an appeal in the correction of number case, and he also produced a minute showing his honor the judge's ruling thereon, which we think was the death knell to the alleged ignorance of the judge and parties of the pendency of said appeal. We recite that application and ruling : "Al-Haj Massaquoi and Nathaniel Massaquoi, Administrators of the Estate of late Momolu Massaquoi, Plaintiffs in the above entitled cause, complain of Frank Tolbert and Pohlman J. Bracewell, Sheriff of Montserrado County, Defendants, that said Defendants intend to sell at public auction or private sale premises Number 272 situated in the City of Monrovia, County of Montserrado and Republic of Liberia, and that the said Defendants ought not to do the

said acts which they intend to do as aforesaid,

because the said plaintiffs say that there is a case now on appeal from this Court before the Honourable Supreme Court of Liberia with reference to the change of the number of the premises affecting materially the sale about to be made by Defendants not yet heard and decided; that to sell said premises under such circumstances would be illegal, and anticipating the Judgment of the Honourable Supreme Court of Liberia. "All of which said plaintiffs are ready to prove." "C. C. F. J. C. August term 1940 5th day's session "August 19, 1940 "Io A.M. "The Circuit Court for the First Judicial Circuit, Mo. Co., met today pursuant to adjournment. His Honour Richard D. Smallwood, Judge presiding by assignment. Officers of Court present. Minutes of the last day's session approved with the necessary correction. "2 P.M. "The hour of recess having expired Court resumed business. . . . "Counsellor Harmon in closing for Defense argued and cited. . . . "The Court recessed in law and opened in Equity." The Court then said : "The Clerk of this Court handed me a complaint in an Action of Injunction filed by Counsellors Barclay and Ricks for Al-Haj Massaquoi and Nathaniel Massaquoi, Administrators of the estate of the late Momolu Massaquoi versus Frank Tolbert and P. J. Bracewell, Sheriff Montserrado County to enjoin the sale of the premises of the late Momolu Massaquoi mortgaged to Frank Tolbert which Mortgage was

foreclosed by a regular proceeding in this Court and a decree rendered thereon in favour of the said Frank Tolbert from which no appeal was taken and prosecuted ; the complaint was handed me by request of Counsellor A. B. Ricks for the purpose of securing an order before the filing of the document, which note of Counsellor Ricks is attached to said document. The Court issued an Injunction to stay the enforcement of the execution from which no appeal was taken and prosecuted." That these certified copies were correct was not denied by respondents.
In view of all the circumstances, the magnitude, and the gravity of the case, we are of the opinion that His Honor Judge Smallwood, Counsellor H. Lafayette Harmon, and Frank E. Tolbert are each and all guilty of contempt; and that since the sheriff's actions were in obedience to the orders of the judge by whose orders said sheriff claims he was bound, although we do not uphold the unrestricted legal correctness of his theory, yet because of his frank attitude we are disposed to refrain from punishing him at this time. The Honorable the Secretary of the Treasury who failed to make returns to the mandate served on him and even neglected so to do after having received the letter of direction of His Honor the Chief Justice until he had been summoned to appear and show cause, has asked to be purged of his contempt and, in view of the promptness of and the comprehensiveness of the returns which he finally did file, we are willing to suspend sentence against him for the present pending our consideration of his returns to the mandate that will follow this opinion. His Honor Judge Smallwood, shall forthwith pay to the marshal of the Court a fine of one hundred dollars ; Counsellor H. Lafayette Harmon shall forthwith refund the amount of $224.00 received from the Treasury for rentals of lot Number 272, pay a fine of one hundred

dollars, and be suspended from practice until the Justice presiding in Chambers shall have inspected receipts showing that the fine of one hundred dollars and the refund of $224.00 shall have been paid, at which time he may order the suspension lifted; Frank E. Tolbert shall forthwith refund the amount received by him from the Treasury for rental of lot Number 272 in the sum of $324.00 and pay a fine of seventy-five dollars. Sheriff Bracewell shall be absolved. Judgment against Secretary of the Treasury Phillips is suspended. The foreclosure proceedings and all actions taken in relation thereto are hereby nullified and adjudged void ab initio; and the cost of these proceedings shall be borne equally by Counsellor H. Lafayette Harmon and Frank E. Tolbert. The sums to be refunded by Counsellor Harmon and Frank E. Tolbert on account of rental shall be collected through the Circuit Court for the First Judicial Circuit and shall be paid over to the administrators of the estate of the late Momolu Massaquoi forthwith to be handled by them in keeping with law. The sum of $405.00 sequestered in the Treasury account shall also be released and paid to said administrators to be also handled by them as aforesaid, and his honor the judge of the said court shall see that these orders are forthwith executed and shall make returns to the Justice presiding in Chambers within fifteen days from the date of the judgment about to be announced; and the marshal of the Court shall collect all of the fines hereby imposed forthwith; and it is so ordered. Judge Smallwood, H. LaFayette Harmon, and Frank E. Tolbert guilty of contempt. Pohlman J. Bracewell not guilty of contempt. Sentence suspended as to Secretary of

the Treasury Phillips.

Johnson v Smith [1977] LRSC 54; 26 LLR 331 (1977) (25 November 1977)

T. 0. DUSUMO JOHNSON, Petitioner, v. FRANK W. SMITH, Assigned Circuit Judge, Sixth Judicial Circuit, Montserrado County, et al., Respondents.
APPEAL FROM RULING OF JUSTICE IN CHAMBERS GRANTING WRIT OF CERTIORARI TO CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued October 25, 1977. Decided November 25, 1977. 1. An answer interposed by one who acts as an attorney but is not licensed as such will not be recognized, and the defendant will be ruled to a general denial. 2. A defendant in an action at law who is ruled to a general denial because. the person acting as his attorney was not licensed, may, in bringing certiorari proceedings growing

out of the first action, raise the affirmative defense which was raised but not recognized in the answer in the original action.
3. A change of attorney in a second action involving the same parties and the same subject matter as an earlier action which has not been withdrawn, must be effected in the manner prescribed by statute for change of attorneys generally.

This was a certiorari proceeding which had its origin in an action in ejectment filed in July 1974, by the respondent Woosely Philips in the Circuit Court against the petitioner herein. That action was never determined. In 1976, plaintiff in ejectment filed a bill of information advising the Circuit Court of the inaction in the case. The information also remained undetermined. In July 1976, plaintiff commenced another action in ejectment against the same defendant for the same property involved in the 1974 suit, but with a different attorney representing him. No change of counsel appeared of record. When trial was commenced in the second action, defendant announced he would not participate. He then filed the petition for certiorari, and the second ejectment suit was halted by the alternative writ issuing out of chambers. The Justice in chambers before whom issues

were argued fully agreed that petitioner was entitled to the writ, and the ruling was affirmed by the Court en banc, with a mandate issued to the court below to resume jurisdiction over the issues pending in the earlier action of ejectment.
J. C. N. Howard for petitioner. respondents. Moses Yangbe for

MRS. JUSTICE
ion of the Court.

BROOKS-RANDOLPH

delivered the opin-

On July 15, 1974, Attorney Horatio G. Hutchins filed an action of ejectment on behalf of his client Woosely Philips against defendant Dusumo Johnson, in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County. On July 23, 1974, Counsellor Samuel B. Cole filed an answer for his client Dusumo Johnson. Pleadings progressed as far as the reply and rested. On January 31, 1975, defendant Dusumo Johnson filed a motion to dismiss the plaintiff's cause of action on the ground of fraud with reference to the plaintiff's title deed annexed to his complaint, stating that said deed was a forgery. No resistance to this motion is found in the record nor is there any indication that the motion was ever heard or determined in the court below. On May I, 1976, Attorney Hutchins filed information in the Civil Law Court of the Sixth Judicial Circuit, drawing the court's attention to defendant's failure to respond to repeated notices of assignment in the ejectment action. The defendant, the respondent in the information proceedings, filed a resistance contending that the disputed land was legally his. The record reveals

that the information and resistance were never passed upon by the court below. In spite of these circumstances, and while the ejectment case of July 15, 1974, still remained undetermined on

LIBERIAN LAW REPORTS

333

the docket in the Civil Law Court, Sixth Judicial Circuit, plaintiff Woosely Philips filed yet another action of ejectment against the selfsame defendant Dusumo Johnson, for the selfsame 25 acres of land originally sued for in 1974. However, it was not Attorney Horatio Hutchins but Counsellor Moses K. Yangbe who filed the second action of ejectment on behalf of the plaintiff by complaint dated July 20, 1976. A second action of ejectment was thus instituted between the same parties for the same subject matter; and although the plaintiff employed the services of two different lawyers--a different one in each of the two cases--for asserting his claim to the disputed piece of property, there is no change of counsel appearing in either of the two files in the case. The record further reveals that the defendant through his counsel filed an answer on July 3o, 1976, raising the question of lis pendens; that is to say, the previous suit of ejectment, together with the failure to have changed counsel. This was also raised in the petition for certiorari before the Justice in chambers. The second case of ejectment was called before Judge Frank W. Smith, and trial began on February 8, 1977. The law issues having been previously passed upon, the judge asked for a jury to try the issues joined. It was at this stage that defendant Dusumo Johnson, the petitioner, through his counsel made the following record in the minutes of court: "Defendant wishes to give notice that he is taking no part whatsoever in the trial of this case, and will have no challenge to any of the jurors." After witnesses had testified for the plaintiff, the petition for certiorari was filed, and proceedings in the ejectment suit out of which those proceedings grow were suspended by the alternative writ issued out of the chambers of Mr. Justice Azango. On February 9, 1977, petitioner applied for a writ of certiorari in the chambers of Mr. Justice Horace, but withdrew and filed through Counsellor MacDonald

334

LIBERIAN LAW REPORTS

Kradue, an "amended petition" on March 16, 1977. At this stage the matter was brought before Mr. Chief Justice Pierre when he took up duties in chambers on June 1, 1 977. As indicated by him, the amended petition contains seven counts which have raised the following issues: ( ) that ejectment in the court below, out of which certiorari grows, was instituted in the Civil Law Court in Monrovia in the September 1974. Term, and is still pending before that court undetermined ; (2) that it was attorney Hutchins who had represented the plaintiff in ejectment, Woosely Philips, the co-respondent in these proceedings, and prepared and filed the ejectment suit in 1974; (3) that there is no showing that there was any disposition of the former case of ejectment in the court below, to have justified the filing

of the suit out of which these proceedings grow, and which second suit of ejectment is now being represented by Counsellor Moses Yangbe, without notice of change of counsel. The amended return of the respondents raised several issues : they have contended that Counsellor Samuel B. Cole who alone had represented the defendant and filed an answer in the suit out of which these proceedings grow was not licensed to practice law at the time he prepared and filed the answer, and that this invalidated the pleading. With respect to the first issue, the court is in agreement with the Justice in chambers that under the theory of lis pendens respondent Philips could not legally institute another action of ejectment against the selfsame defendant Dusumo Johnson for the selfsame 25 acres of land originally sued for in 1974 without first withdrawing the 1974 action. Griffiths V. Republic, [1973] LRSC 77; 22 LLR 288, 295 (1973). Under the Civil Procedure Law, the pending suit is a valid defense and can be pleaded either in the responsive pleading or, at the option of the pleader, on motion to dismiss. Rev. Code 1 :9.8, I 1.2 ( ) (d). In other words, the pending suit was sufficient ground for dismissal of the

present suit from which these proceedings grow. This issue was properly raised in the answer to the second ejectment suit. But Counsellor Samuel B. Cole, counsel for defendant Johnson, was not a licensed lawyer and therefore could not appear before the court. An attorney, although qualified, is not entitled to practice before any court before obtaining the license to do so required by statute. Where the term of an attorney's license has expired, he is barred from practicing until it is renewed. Republic v. Sherman, i LLR 139 (t88t). The judge in the lower court was therefore correct in ruling the defendant to a general denial. Rev. Code :9.1 (2). But would this dismissal of the answer in the Civil Law Court bar the petitioner in certiorari from raising the issue of lis pendens? The plaintiff has failed to support his contention that failure of defendant's counsel to renew his license before representing defendant in the ejectment action and pleading lis pendens in that action bars a licensed counsel for the defendant from raising the same defense in certiorari proceedings before the Supreme Court. The defendant's lawyer in the lower court was disqualified, so that the petitioner was free and indeed entitled to get a qualified lawyer to represent him in the Supreme Court in the certiorari proceedings. Petitioner is entitled to counsel to plead his cause. Constitution, Article I, Section 6th. Therefore this Court concurs with the Justice in chambers that "since defendant's attorney was without a license before the Civil Law Court, the respondent judge was correct in dismissing the answer and ruling the defendant to a bare denial of the facts of the complaint. But would this dismissal of the answer in the Civil Law Court have prevented the petitioner in certiorari from raising the issues he has, as have been listed hereinabove? "For instance, even if petitioner's lawyer in the

Civil Law Court was not qualified to have legally represented him, did that prevent a licensed lawyer from raising the issues before the Supreme Court in certiorari? It is true that ejectment was brought by Philips against Dusumo Johnson in 1974 through Attorney Horatio Hutchins, of counsel for the plaintiff, and it is also true that that case- is still pending. It is also true that there is no change of counsel in the records in either of the two ejectment cases between the same parties in the case, growing out of the same subject matter; this can be shown by inspection of the case-file of the 1974 case, as well as the records of the second ejectment case made profert in these proceedings. In the circumstances, I do not see that it matters whether or not the answer in the second ejectment suit was filed by a disqualified lawyer, and therefore had to be dismissed." The next issue is on the change of counsel. We have seen that in the 1974 ejectment suit, Attorney Horatio G. Hutchins represented co-respondent Philips, but that in the second ejectment suit he was represented by Counsellor Moses K. Yangbe. Yet there is no change of counsel on record. Respondent's contention in his return to the amended petition was that there was no need for change of counsel since there were two separate and distinct suits. This position is untenable. There is but one suit, since the parties and the subject matter are the same and the plaintiff had not withdrawn the first ejectment suit. Respondent was therefore under a duty to give notice of change of counsel according to law. Our law and practice are definite as to the mandatory requirement for change of counsel should a party decide that he needs to employ the services of another lawyer to represent him. An attorney of record may be changed by order of the court, or by filing with the clerk of court a notice of change signed by the attorney and the party with a copy served on the other parties. Rev. Code f :1.8 (2). Since

this law was not followed, Counsellor Yangbe cannot legally represent the respondent. In addition to the above issues, the respondent further states that the amended petition was invalid since the petitioner had not paid respondent's cost in the withdrawal of the first pleading. A review of the record indicates that petitioner paid ten dollars as costs to the respondent. The record reveals a certificate under the signature of the marshal of the Supreme Court and receipt issued by the defendant's counsel Moses Yangbe that ten dollars was paid as "respondent's return costs." Count 6 of the amended return does not indicate the amount which should have been paid or which the respondent regarded as full payment. If the ten dollars was not adequate "to settle completely" the amount of costs, it was the duty of the respondent to have given the petitioner notice of what the proper amount should have been. Under the circumstances the bench en banc agrees with the ruling in certiorari by the chambers justice and accepts ten dollars as complete settlement of any cost respondent might have incurred in the preparation of the amended return. In view of the foregoing,

the Supreme Court en banc affirms the ruling of the Justice in chambers in the certiorari proceedings in this case to the effect that the alternative writ of certiorari should be, and the same is hereby granted ; and the Clerk of this Court is ordered to send a mandate to the court below, commanding the judge there to resume jurisdiction over the issues pending between the parties, giving preference to the suit filed in 1973, with its motion to dismiss and the information filed with reference thereto. These must be determined without further delay, allowing any party dissatisfied with the judgment to take appeal. Costs against the respondents.
And it is so ordered.
Ruling affirmed.

Cummings v Hughes [1968] LRSC 37; 19 LLR 18 (1968) (14 June 1968)

SADIE CUMMINGS, MOMOLU S. COOPER, Chairman, Claims Commission, LAWRENCE A. MORGAN, LAFAYETTE MORGAN, and BANK OF MONROVIA, Appellants,
v. JAMES H. HUGHES, SARAH WALKER, and ROYAL CEASER, heirs of JAMES H. HUGHES, deceased, Appellees.
APPEAL FROM THE CIRCUIT COURT
OF THE SECOND JUDICIAL CIRCUIT, GRAND BASSA COUNTY.

Argued March 18, 1968. Decided June 14, 1968. 1. A restraining injunction is not designed to undo what has already been done. 2. The Supreme Court will only consider matters and issues properly presented before it in the certified record on appeal, and will consider allegations and arguments otherwise presented, as extrajudicial statements or unsupported contentions. 3. That party on appeal who has the burden of sustaining an argument should exercise due diligence in obtaining the requisite documentary proof to form part of the certified record on appeal.

It appeared that the terms of a temporary injunction had been violated when checks were paid out by defendants in an injunction suit, one payee thereafter obtaining a certificate from another judge in the same court attesting to the fact that no legal objections to such payment were on file in the court. However, the record on appeal was deficient, in that no documentation of wrongdoing was presented to the Supreme Court. On appeal by defendants from judgment of contempt of court, therefore, the judgment was reversed.
Jacob H. Willis and Lawrence A. Morgan for appellants.
Richard A. Diggs for appellees.

MR. court.

JUSTICE ROBERTS

delivered the opinion of the

19

A mining concession known as the Liberian American and Swedish Company, operating in Liberia, popularly called Lamco, acquired several parcels of land in Lower Buchanan, Grand Bassa County, in a location known as "Lamco Concession Area," from varied persons ; direct owners of, or heirs to, these properties, through expropriation by the Government. Compensation for these properties was made by the Secretary of Treasury, through a Claims Commission specifically set up for the purpose. For the settlement of one of these claims, two checks were issued in favor of the heirs of the late David Mann, alleged to be Sadie Cummings, James W. Hunter, and Sophia Hunter. On December 27, 1965, appellees filed a complaint in an action of injunction, in which they sought to enjoin, restrain and prohibit co-appellants Momolu S. Cooper, Lawrence A. Morgan, and Lafayette Morgan, members of the Claims Commission mentioned above, from paying over to appellant Sadie Cummings these checks, and the Bank of Monrovia from honoring them, contending said property to be theirs by virtue of descent. Hon. Joseph P. H. Findley, Circuit Judge for the Second Judicial Circuit, ordered the clerk of court to issue a writ of summons directed to appellants to appear on December 20, 1965, to show cause why the interlocutory writ of injunction should not be issued against them as prayed for by appellees. According to the brief filed by appellees, the clerk issued the writ together with a writ of injunction directed to the appellants. This last writ obviously impelled filing of pleadings by both sides, which progressed to the surrejoinder: Also filed was a motion for dissolution of the injunction, followed by opposition to the motion. This is also shown from the notations made by the judge on January 23, 1966. In accordance with the assignment, and in compliance with the show cause writ, the court met on the iith of January with appellants in attendance to consider the show cause order. The judge then and there declared

that he had not ordered the clerk to issue a writ of injunction, resulting in pleadings, and her act in this regard was unauthorized, for which cause he ordered the writ and the show cause summons abated, and directed that a new summons be issued to be served on appellants to show cause why the interlocutory writ should not issue. There is no showing from the record sent forward to this Court that the summons was issued, neither that the court met at any subsequent time to consider this matter, other than January 23, 1967. Appellees' counsel averred in his brief and argued during the hearing that the court met on January 17, 1966, and the judge ordered the writ of injunction issued, but this Court has no certain knowledge of this fact. Nevertheless, to the argument advanced by his adversary, he conceded that what was sought to be enjoined had already been done, in that one of the checks had already

been delivered and honored. A second check was issued on the 25th of June, but this time delivered to a James W. Hunter, who was never a party to the injunction suit. Mr. Hunter, indubitably aware of the proceedings, appeared before Judge Roderick N. Lewis, presiding over the May Term of Court, Second Judicial Circuit, and importuned the court for a certificate envincing that there was no objection before the court in this regard. We find it necessary to quote the certificate given by Court, which reads as follows : "In the office of the clerk of court, Second Judicial Circuit, Grand Bassa County, sitting in Buchanan, at its May Term, 1966.
"This is to certify that James W. Hunter is one of the legal heirs of the late D. W. Mann, to whom the Claims Commission has delivered his late uncle's claim reward for land he had signed over to the Government. There being no legal objections before this court, he is free to negotiate any check from the Claims Commission.

"By order of the presiding Judge, Second Judicial Circuit, Grand Bassa County, Republic of Liberia. "[Sgd.] CHRISTINA V. COKER-SMITH, Clerk of Court.

"Approved: "[Sgd.] RODERICK N. LEWIS, PRESIDING JUDGE."
To this certificate, the judge said : "And we are led to believe, and this is our opinion, that they (meaning appellants) influenced the court to certify that there was nothing filed in this court against the heirs of the late D. H. Mann." Of course, counsel for appellee, Samuel W. Payne, a former Circuit Judge, requested the court to review the acts of a colleague, as apparent from his affidavit to a submission made by Jacob Willis, counsel for appellants, to be relieved from contempt proceedings, when he said : "It is strange that without any notice to the plaintiff, Judge Lewis called the case in the absence of the plaintiff and took the action submitted by counsellor Jacob H. Willis, in favor of James W. Hunter, when he was no party to the suit; and, further, the judge's remark, that as far as he has reviewed the records he has not been able to discover any objections being filed against the heirs of the late David Mann, nor do the clerks of both divisions of court have any knowledge or records that the aforesaid heirs are barred. This plaintiff says that the judge's actions in this connection are without foundation. Wherefore, we ask the court not to entertain the submission and that the contempt proceedings be continued with, together with the injunction proceedings." The judge made the following ruling in the contempt proceedings : "This court is convinced beyond all measure that

the defendants have absolutely been in contempt of

court, especially the Claims Commission and Mrs. Sadie Cummings ; not

only has the Claims Commission failed to appear and to answer in these contempt proceedings, maybe because the plaintiffs appeared to them as nonexistent, but at least, without answering, they should have regard for the orders of this court by not paying out the money; furthermore, nothing in 13/i and P/2 directed the Commission to pay and the defendants are hereby guilty of contempt of court, they are jointly and severally fined $roo.00, that is, if the Sheriff cannot find all of them to pay this $ioo.00 together, any of the three will be held to satisfy the judgment. Secondly, these defendants are again jointly and severally held to pay to the Sheriff of this Court the proceeds from the two checks, nos. 33183 and 21081. The Sheriff will thereupon deposit these amounts in a substantial bank, excluding the Bank of Monrovia, to be held in escrow until these injunction proceedings are determined by this court, or any court to which the matter may be removed, as to whether or not plaintiffs are entitled to injunctive relief. To which ruling defendants excepted and will avail themselves of the necessary statutory provision of appeal to the court of last resort sitting at March Term, 1967, and submit. "At this stage, the clerk of court will seal the carbon copy of the writ of injunction issued by her on the 17th day of January, 1966, since the document is missing from her record, and issue a certified copy of the writ with seal. And it is so ordered. Matter suspended." From the records certified to this Court, there is no disclosure that the clerk issued the summons ordered by court, certainly there was no restraint on anyone giving and the other receiving and negotiating checks up to the 17th day of January, 1966, when the first check is said to have already been negotiated. A writ of injunction is a writ issued by a court of competent jurisdiction requiring

a party to refrain from performing the act specified therein. A writ of injunction is, therefore, not a writ to undo what has already been done. According to the records taken on January 23, this check was negotiated before notice of the injunction proceedings. If this is true, then our above paraphrase of this writ holds. Unfortunately, there is no record certified to us showing whether this check was negotiated before or after the issuance of the injunction. We have endeavored to show in this opinion that the record forwarded in this case is deficient and without many relevant documents. The file sent in this case consists of the following: ( ) Notice of appeal ; (2) Appeal bond ; (3) Certificate of filing of the notice of appeal ; (4) Bill of exceptions; (5) Minutes of court for January 23, 1967, and (6) Certificate from Judge Lewis and a letter to the Chief Clerk, Supreme Court of Liberia, transmitting these documents. Strangely, this deficiency was never raised during the hearing, especially by appellees, who should have exerted all diligence to prove that appellants did violate the injunction. This Court takes cognizance of those issues that are regularly and legally brought before it. We do not take for granted issues advanced by counsel in their briefs and arguments, nor statements of judges unsupported by proper records, in accordance with lex scripta. The duties incumbent on counsel to perform

is no responsibility of the Court. There are important issues raised and citations made by counsel for both sides which we refrain from delving into because of the manner of presentation. It is rather unfortunate that the Court seems powerless to implicate Hunter, who obviously had knowledge of the injunction that impelled him to procure the certificate, and the clerks of both divisions of Court, whom Judge Findley regarded as having deceived Judge Lewis. Considering the above, we cannot but reverse the judgment of the court below, with costs against appellees.

Kaizolu v Corneh [1968] LRSC 22; 18 LLR 369 (1968) (19 January 1968)

HAWAH KAIZOLU,, Appellant, v. VAEMUYAL CORNEH, attorney in fact for the tribal authorities of VAI TOWN, for himself and the people of VAI TOWN, Appellees.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued October 11, 1967.
Decided January 19, 1968. 1. The mere filing of a caveat, with nothing further done to test its legality, does not give rise to a cause of action for damages to real property based upon cancellation of a lease agreement by a third party. 2. No redress can be sought for a wrong by way of an action for damages, until loss has been sustained. 3. Judges in courts of concurrent jurisdiction may not overrule each other, but dissatisfied parties to a ruling are to be directed to appellate relief, as the law provides.

After a lease agreement with a third party was entered into and signed, and part payment made pursuant thereto, a caveat was filed against the real property by the defendant, against whom an action for damages to real property was brought by plaintiff, claiming the loss of the entire rental period as damages. The complaint was dismissed by the trial court, the agreement never having been offered for probate, from which judgment the plaintiff appealed. The judgment of the trial court was affirmed.
MacDonald Perry and Lawrence Morgan for appellant. Nete Sie Brownell for appellee.

MR. Court.

JUSTICE MITCHELL

delivered the opinion of the

Hawah Kaizolu of Vai Town, Monrovia, sued on an action of damages for injury to real property in the Circuit Court, Sixth Judicial Circuit, Montserrado County, June 1967 Term, against Varmuyah Corneh, of Vai Town,

individually and as attorney-in-fact
for the tribal authorities of Vai Town and the people of Vai Town. Her
complaint, in brief, alleges that she is the fee simple owner
and entitled to the lawful possession of a piece of property situated on the
left-hand side of the United Nations Drive Road leading
to the Monrovia Free Port, a portion of which she and her family presently
occupy by virtue of a decree of court dated October 27,
1964, and by virtue of this decree vesting in her title to and ownership of
the said piece of property, and that the defendant has
greatly embarrassed her in the exercise of her right over the said piece of
property by the filing of a caveat against the probate
and registration of any instrument or document in connection with the said **land**. In consequence of the said caveat filed she lost
a valuable contract with one Issam S. Saad, who had entered a lease
arrangement with her for a portion of the property in question.
The filing of the caveat was not merely damaging to the plaintiff in her
peaceful possession of her property, but was also an outright
defiance of the decree of the Circuit Court, which had not been altered nor
changed by this appellate court, and which caused plaintiff
to lose the agreed-upon rental in the lease entered into between herself and
Issam S. Saad, in the sum of two hundred thousand dollars
over a stated period of twenty years, and the amount of depreciation of the
property at the time of surrender. Moreover, she had
been required by the lessee to return to him twenty-one thousand dollars
already paid her for three years' rent, at the rate of seven
thousand dollars per annum. With the complaint, she made profert of all of
the relevant documents, including the decree of the court
which vested her with title to the property in question, copies of
correspondences between lessor and lessee concerning the purported
contract and the return of the twenty-one thousand dollars, a copy of the
contract, and a copy of the receipt tendered to the lessor
on refund of the twenty-one thousand dollars.

The defendant, on being summoned, appeared and answered
in seventeen counts, averring that plaintiff, being a feme covert, could not
sue in her own right without making her husband a party
to the suit in damages, unless she was engaged in a commercial business ;
that she had chosen the wrong form of action, because in such actions as the
one at bar the
plaintiff must allege trespass with force, or by entry upon the realty and
breaking the close, thereby committing some damage to
the physical structure of the tenements, but an implied violation of an
alleged inchoate interest, which a caveat does not offer,
does not grant the right for damages to real property. He further denied the
truthfulness of plaintiff's allegation contained in
her complaint, of being the "fee simple owner" of the particular tract of **land**, because the tribal title deed, couched in the ruling

of the judge below, was a legal fiction and denial of the law, since the judge was not authorized to issue a title deed out of a leasehold agreement. He said further in his answer that the mere filing of a caveat in the Monthly and Probate Court for Montserrado County does not constitute any damage to real property to warrant a claim of two hundred thousand dollars as damages, when no instrument was ever offered for probate, and objections filed, resulting in actual loss to plaintiff's real property. He also said that the decision of the Supreme Court referred to by the plaintiff in her complaint did not decide the validity of the title deed in question ; nor was the contract entered into with Issam by plaintiff legal, because it imposed on the right of the tribal authorities whose leasehold with plaintiff for the said land terminates in the year 197o, whereas plaintiff was endeavoring to lease the said property for a period of twenty years, a time over and above the period of time for which the property was leased to her by the tribal people of Vai Town. The foregoing and many other grounds were alleged in defendant's answer, to which the plaintiff replied, as pleadings rested at the point of the rejoinder.

The issues of law were heard at the June Term of the Circuit Court by Judge Joseph P. Findley, and a very extensive ruling handed down by the court on July 3, 1967, dismissing the case, concluded as follows : "In our opinion, plaintiff's complaint is baseless and her interest in the property has not accrued in keeping with the tribal deed exhibited with the complaint; secondly, nothing in the pleadings shows any false representation by both the caveat or the letter to Saad by defendant, to the injury of plaintiff. "We also take judicial notice of the deed, the original lease between plaintiff and the Vai people, which are all filed in this court and not denied by the parties. The answer in respect to the validity of the tribal title deed is sustained with its fortifying rejoinder. The complaint and reply overruled in this respect, and the action dismissed, with costs against plaintiff. "And it is hereby so ordered. "Given officially in open court this 3rd day of July, 1967.
"[Sgd.] JOSEPH FINDLEY,
Circuit Judge."

Upon rendition of the foregoing final decree, plaintiff, now appellant, excepted and prayed for an appeal to this appellate court by her bill of exceptions which we shall set forth in its entirety: "Hawah Kaizolu Wahhab, plaintiff-appellant in the above entitled cause of action, being dissatisfied with your Honor's ruling on the law issues, made on the 3rd day of July, 1967, and having excepted thereto and prayed an appeal to the Supreme Court of Liberia, sitting in its October 1967 Term, now tenders this as her bill of exceptions for your Honor's approval in keeping with law and procedure, for the following reasons, to wit : "1. Because your Honor's entire ruling, in the opin-

ion of the appellant-plaintiff,
is not in keeping with law, that is to say, your Honor ruled that : " 'In our opinion plaintiff's complaint is baseless and her interest
in the property has not accrued in keeping with the tribal title deed exhibited with the complaint; secondly, nothing in the pleadings
shows any false representation by both the caveat, as well as the letter to Saad by defendant, to the injury of plaintiff. We also take judicial notice of the deed, the
original lease between plaintiff and the Vai Town people, which are filed in this court and not denied by the parties. The answer
in respect to the validity of the tribal title deed is sustained with its fortifying rejoinder. And it is hereby so ordered.' "Plaintiff-appellant submits that by means of the said ruling, your Honor rendered inoperative and ineffectual the tribal title deed relied upon in the
complaint despite the fact that validity thereto had been given by both Hon. Roderick N. Lewis, and confirmed by the Supreme Court
of the Republic of Liberia, to which ruling of your Honor dismissing the entire complaint and reply of plaintiff-appellant, she then
and there took exception and prayed an appeal to the Supreme Court of the Republic of Liberia sitting in its October 1967 Term. "2.
And also because appellant-plaintiff says that your Honor sustained the pleas raised by the defendant appellee in his answer as well
as his rejoinder." On reviewing all of the records in this case, as well as the entire ruling handed down by the trial judge on the
issues of law raised in the pleadings, it appears to us appropriate to first ascertain the sufficiency or insufficiency of the case.
The appellant has based her case upon the filing of the caveat in the Monthly and Probate Court for Montserrado County, by which
she claims to have lost two hun-

dred thousand dollars from one Issam S. Saad, as aforesaid. The legal validity of the form of action settled upon rests exclusively on the mere filing of the caveat. A caveat in law is defined as a notice
of the intention of a party to object to probate of a document such as a will, a deed, or a contract, so that the caveator preserves
his interest against an illegal invasion. In the instant case, the agreement that the appellant claims was canceled by her lessee
because of the mere filing of the caveat was never offered in probate and, hence, the merits of the caveat were never put to a legal
test to determine whether or not the appellee's objections were sound. This not having been done, no trespass on the property right
of the plaintiff occurred. Had the plaintiff put the matter to a legal test by offering her contract to probate, then a cause of
action could have arisen. But the mere correspondence between the caveator and defendant acknowledging that he did file the caveat,
was absolutely insufficient in law to authorize the filing of plaintiff's action. Moreover, the purported contract itself was of
no legal effect because it lacked probate ; therefore, no losses could have been sustained for which redress can be gotten under
the law. Plaintiff was possessed of no course of action. The following definition of accruals of causes of action applies : "The

coming or springing into existence of a right to sue. In the case of an act causing an injury, if the injury however slight is complete at the time of the act, a cause of action accrues at that time. But if an act is not legally injurious until certain consequences occur, it is not the mere doing of the act that gives rise to a cause of action, but the subsequent occurrence of damage or loss as the consequence of the act and in such a case no cause of action accrues until the loss or damage occurs." BALLENTINE'S LAW DICTIONARY, Causes of Action.

The plaintiff has styled her case as an action of damages

to real property, yet she has failed to aver any physical destruction or waste done to the property; nor had any cause of action accrued when she brought the action. Therefore, this Court agrees with the ruling of the trial judge in that respect. But another question presents itself, whether the trial judge was allowed to review the act of Hon. Roderick N. Lewis, his colleague, with whom he exercised concurrent jurisdiction over all matters in the court, when he ruled on the tribal title deed under which plaintiff claims ownership and possession of property which is the subject of this case. Although the doctrine of res judicata does not apply in this case, yet, our minds have not been satisfied that in a matter pending before a court and on which a final decree was rendered and a substantive right adjudged in favor of either one of the parties concerned, that the self-same subject matter can be reviewed by one holding concurrent jurisdiction. In Freeman v. Twe, et al.[1941] LRSC 10; , 7 L.L.R. 227 (1941), the Court held that final judgment puts an end to a suit unless an appeal is taken. Otherwise jurisdiction cannot be resumed without an order from a higher court. If Judge Roderick N. Lewis exceeded his authority by ordering a lease contract reformed into a title deed, the parties concerned had a right to avail themselves of their right to appeal. The decree of Judge Lewis stands as stare decisis and cannot be interfered with nor reviewed by a court of concurrent jurisdiction. In the instant case, the ruling made by the trial judge below when he undertook to set aside the tribal title deed ordered issued by Judge Lewis, is void and reversed insofar as it relates to the action taken against the deed. Besides, we are of the opinion that a court of law is not the proper forum to determine validity of the deed in question but, rather, if fraud or collusion was observed even in the smallest aspect, defendant should have availed himself of his right in chancery. It has been made clear that plaintiff was without a cause

of action at the time she instituted her case in the Circuit Court, because none had accrued when she filed

and no injury had been done to her property as a result of the filing of the caveat, and we are of the opinion that the trial judge did not err in dismissing the case. Hence, with the modification made above in regard to the tribal deed, the ruling of the court below is hereby affirmed, with costs against the appellant. And it is hereby so ordered.
Affirmed, as modified.

Prout v Cooper [1937] LRSC 11; 5 LLR 412 (1937) (12 February 1937)

MARTHA E. PROUT, Appellant, v. JESSE R. COOPER, Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Decided February 12, 1937. 1. One horn of an illicit union or before the lawful marriage of its parents is a bastard. 2. A bastard may however be legitimized by judgment of a court of this Republic, upon petition properly filed in accordance with statutes in vogue. 3. According to the practice of the courts administering the law aforesaid, upon the filing by the putative father of the petition for legitimation the mother had to acknowledge on record that petitioner was the father of her child; and she had also to consent to his petition for legitimation. 4. A law is a rule of action prescribed, i. e., written beforehand. 5. The enactment of the Legislature passed at its session of 1935-36 was not intended to be retrospective so as to divest persons of their rights long since vested, as that would he unconstitutional. 6. A homestead exemption cannot he created by last will and testament, but only in the manner prescribed by statute.

Appellant objected to the probate of a lease of property in which she alleged she had a joint interest with appellee. On appeal from judgment for appellee, judgment affirmed.

P. Gbe Wolo for appellant.
pellee.

Anthony Barclay
for ap-

MR. JUSTICE DIXON delivered the opinion of the Court. These proceedings were instituted in the Probate Division of the Circuit Court of the First Judicial Circuit, Montserrado County. We have carefully and patiently scanned the records and have seriously considered the issues raised in the objections to the probation of a revised agreement for the lease of the house on lot No. 5'8, of the estate of the late Samuel T. Prout, Sr., to Messrs. A. Woermann by Jesse R. Cooper. The objections contain three counts, all of

which have been herein inserted for the information of all whom it may concern, as well as to better clarify these proceedings. The objections read thus : "I. Because objector says that she and respondent are by descent the two surviving heirs of the late Samuel T. Prout, Sr., and Gertrude Louise Prout, their grandfather and grandmother, objector being the daughter of the son and respondent the son of the daughter of said Samuel T. Prout, Sr., and Gertrude Louise Prout his wife. Objector submits that respondent without legal rights and without reference to objector entered into said lease agreement with said firm of Messrs. A. Woermann, Monrovia, notwithstanding the fact that objector and respondent hold the premises by moieties and respondent has no authority to lease the whole in his own name as sole heir. All of which objector is ready to prove. "2. And also because objector says that the grandfather, Samuel T. Prout, Sr., constituted and declared in his Last Will and Testament as homestead the lot No. 518 and created by said demise (sic) an estate in joint tenancy between his wife Gertrude Louise Prout, (objector's grandmother) and his daughter Gertrude, the former of whom survived the latter ; notwithstanding which fact respondent has undertaken to lease said premises to said firm of Messrs. A. Woermann, Monrovia, as his property in fee simple and as sole heir of the said Samuel T. Prout, Sr. and Gertrude Louise Prout without reference to objector. All of which objector is ready to prove. "3. And also because objector says that respondent had undertaken without legal right and without the consent or knowledge of objector to alter the terms and conditions of the former lease agreement entered into between the said firm of Messrs.

A. Woermann, Monrovia, and the late grandmother of objector and respondent, with the apparent purpose and intent of depriving objector of her share of the rent which rightly and legally accrues to her. All of which the objector is ready to prove. "Wherefore, because of the premises above laid, and in order that justice might be done, objector prays this Honourable Court to refuse probation of said lease agreement between respondent and said firm of Messrs. A. Woermann, Monrovia, and to grant unto objector such other and further relief as to the discretion of the court the circumstances suggest and demand. And this as in duty bound objector will ever pray, and is ready to prove. "Respectfully submitted, MARTHA E. PROUT, Objector. "By and through her attorneys, "[Sgd.] P. GBE WOLO, 4(

H. LAF. HARMON,

Attorneys and Counsellors-at-Law." The respondent accordingly filed an answer containing sixteen counts only eleven of which are, in our opinion, worthy of being inserted

here as the others can have no effect on the merits of the case pro or con. The relevant portions of the answer read thus : "Jesse R. Cooper, respondent in the above entitled cause, respectfully denies that the objections of objector are sufficient to prevent the probation of the agreement of lease between himself and Messrs. A. Woermann for the following legal reasons, to wit: "1. Because respondent says that Martha E. Prout, objector, as she is called, is no heir of Samuel 'I'. Prout, Sr. or Samuel T. Prout, Jr., in that the said Martha E. Prout was born out of wedlock and consequently the child of nobody since indeed she was never legally legitimized by anybody,

and has therefore no heritable blood. Wherefore, respondent prays the objections be dismissed objector ruled to costs and the deed of lease the subject of these proceedings be allowed probated. And this the respondent is ready to prove. And also because respondent says that the so called Martha E. Prout, objector, does not even have a putative father in Samuel T. Prout, Jr., as said Samuel T. Prout, Jr. never admitted or recognized said Martha E. Prout as his offspring. She therefore could not by descent be a surviving heir of the late Samuel T. Prout, Sr., and Gertrude Louise Prout, his wife, since she was never really their granddaughter. Respondent therefore prays the dismissal of the said objections with costs against objector. And this the respondent is ready to prove. "3. And also because the respondent says that before a child can be legally legitimized, the putative father having first acknowledged said bastard as his child must make a petition in judicial proceedings, praying the legitimation of said child. Respondent says that this legal requirement has never been met by any of the Prouts under whom she, objector, claims. She therefore should be regarded as an intruder into the Prouts' family and estate and respondent so prays. And this the respondent is ready to prove. And also because respondent says that he is the only surviving heir of the late Samuel T. Prout, Sr., and Gertrude Louise Prout his wife, being the only son of Gertrude L. Prout-Johnson, their daughter, and as such he has a legal right without reference to objector who is unto this day a bastard without heritable blood, to enter into an Agreement of lease with Messrs. A. Woer-

mann for lot No. 318 in the City of Monrovia, he being the sole owner of said premises in feesimple. And this the respondent is ready to prove. "6. And also because respondent says that said objections are still further defective, bad, uncertain and unintelligible in that objector fails to make profert of the purported Last Will and Testament of the late Samuel T. Prout, Sr. referred to by her in the second count of the objections as creating a Homestead Exemption and Joint Tenancy. Wherefore,

respondent prays the dismissal of said objections with costs against objector. And this the respondent is ready to prove. "12. And also because respondent says that Samuel T. Prout, Jr., the son of Samuel T. Prout, Sr., and alleged by objector as her father always declared in his life time that the said objector was not his daughter and hence never recognized nor legitimized her. And this respondent is ready to prove. "13. And also because respondent denies that he and objector hold the premises leased, the subject of these proceedings, by moieties, for respondent says that Martha E. Prout, objector, is not the granddaughter of Samuel T. Prout, Sr., and his wife Gertrude Louise Prout, nor is she the daughter of Samuel T. Prout, Jr., and this the respondent is ready to prove. "14. And also because as to count z of objector's objections respondent says that the Statutory law provides how Homestead Exemption can be created. Samuel T. Prout, Sr., not having complied with said provision, did not create any

Homestead Exemption as alleged by objector. And this the respondent is ready to prove. "1 5. And also because respondent says that Samuel T. Prout, Sr., creating in his Last Will and Testament an Estate in joint tenancy between his wife Gertrude Louise Prout and his daughter Gertrude as alleged by objector, said creation does not ipso facto make Martha E. Prout, objector, who is an intruder, illegitimate and without heritable blood, surviving heir of Samuel T. Prout, Sr., and his wife Gertrude Louise Prout; nor does it make her an heir of Gertrude Louise Prout-Johnson the daughter of Samuel T. Prout, Sr., especially when, objector without raising any protest or objection silently acquiesced in the revocation by this court of the Last Will and Testament of Gertrude Louise Prout, the daughter of Samuel T. Prout, Sr., referred to by objector in the 2nd count of her objections, said revocation being applied for by Gertrude Louise Prout the wife of Samuel T. Prout, Sr., as the records of the court will verify. And this the respondent is ready to prove. "r6. And also because respondent denies that objector has any legal right or share of rent in the property or estate of his grandfather and grandmother Samuel T. Prout, Sr., and Gertrude Louise Prout, and not having any legal rights or share there can be no intent on his part to deprive objector of what she does not possess and never possessed. And this the respondent is ready to prove. "JESSE R. COOPER, respondent, "By his attorneys, "[Sgd.] ABAYOMI KARNGA, ANTHONY BARCLAY, BENJ. 0. FREEMAN, " Attorneys & Counsellors-at-law."

It will be observed that the objector claims heirship to the Prouts' family because she was reared in their family, as Counsellor Wolo contended during the argument here, and has been allowed to use the name of Prout, and that the Prouts actually recognized her as possessing

blood of the Prouts. Her further contention is, that her supposed grandfather at his demise executed a Last Will and Testament in which he acknowledged her as his granddaughter, and that he thereby legitimized her and made her one of his heirs. She also pleaded that her grandfather in executing said will had inserted a clause therein declaring lot No. 518 a homestead for his family, and thereby gave her an interest in said piece of property. The respondent contended in his answer to the objections, that the objector could not claim any share in the property of the Prouts as he maintained that she was a bastard, and had never been either legitimized, nor legally adopted by any member of the family. He set out further that the said objector had never been acknowledged by Samuel T. Prout, Jr., his mother's husband, whom she claimed was her putative father. Judge Bouvier defines a bastard to be "one born of an illicit union. . . . "A child is a bastard if born before the marriage of his parents, but he is not a bastard if born after marriage, although begotten before; . . . By the civil law and by the statute law of many of the states, a subsequent marriage of the parents legitimates children born prior thereto. The rule prevails substantially in Arkansas, Alabama, Georgia, etc. . . . with somewhat varying provisions in the different states; . . · but under the common law this is not so; . . ." B.L.D., "Bastard." The statute providing for the maintenance of bastard children reads as follows: "If any woman, who is delivered of a bastard child, which shall be, or is likely to be, charged upon the

public, shall, upon examination to be taken in writing under oath before any Justice of the Peace in the place where she gives birth to such child, charge any person with being the father of the child, any Justice of the Peace in the place where the person charged with the paternity of the child is a resident or inhabitant, on application of any citizen of the place where such child shall be born, may issue a warrant to apprehend and bring the person so charged before him, or any Justice; and such Justice shall commit the person so charged to jail, unless he shall enter into bonds with sufficient surety in a sum of not less than fifty dollars for his appearance at the Court of Quarter Sessions, to abide the order thereof. "If any woman, after having been summoned before any Justice of the Peace, shall refuse to swear to the parentage of her bastard child, and the child is likely to become a charge on the public, the Justice may order the said woman to be hired out from time to time as long as said child is likely to become a charge on the public ; nevertheless, the mother of said child may give bond with surety to be approved by the Court of Quarter Sessions, or a Judge thereof, for the maintenance of the child." i Rev. Stat. § 667, 668. Under the Act of 1888-89, a provision is made for the legitimizing of a child born out of wedlock, which reads : "Whereas the practice heretofore obtained in legitimizing illegitimate children, that is children born out of lawful wedlock, by means of special Acts of the Legislature does not appear consistent in view that the Act of legitimation may be effected before Courts of Record. And whereas

the Statute of Liberia does not make provisions for any definite court of this Republic to exercise Jurisdiction in such cases. "Therefore it is enacted by the Senate and House of Representatives of the Republic of Liberia in Legislature assembled.

"Sec. r. That from and immediately after the passage of this Act, the Monthly Court commonly called the Monthly and Probate Courts of this Republic be, and all of the same are empowered and authorized to receive and record the petition of any applicant or applicants to have his or their child or children legitimitized. "Sec. 2. Said Monthly and Probate Courts are empowered to exercise original Jurisdiction in all cases of legitimizing illegitimate children as referred to in section first; And it shall be the duty of any applicant to legitimize any child or children before any of the Monthly and Probate Courts of this Republic to file said petitions under the rules and regulations governing the filing of Civil cases in said courts. "Any law or parts of law to the contrary hereof be and the same are hereby abrogated. "Approved December 31, r888." Acts of the Legislature, 1888-89,5 (1st). Said petition according to the practice in vogue in the courts of this Republic has been supported by an affidavit from the mother of the illegitimate child, declaring that said child is the child of the petitioner, and that she the mother, agreed to the said legitimation, which sworn certificate should always be filed with the petition. As the pleadings developed, objector apparently not being satisfied to test her contention on what had been previously pled, sought to bolster up her case by pleading in the eighth plea of her rejoinder an act passed by the Legislature of Liberia at its session of 1935-6, which reads as follows : "An Act relating to Children Born out of Wedlock where the Parents Subsequently Marry. "Section 1. That should the natural father and mother of a child born out of wedlock, afterwards contract a marriage and take the child to live with them as a member of the family, such act on their part shall

be construed a legitimation of said child. . . ." L. 1935-36, ch. XXII. This Court commenting on said recent enactment has to point out that laws are prospective rather than retrospective, that law is a rule of action prescribed, i.e., written beforehand, for the guidance and control of the people. To permit said law to be retrospective would have the effect of disorganizing several families and of unsettling innumerable vested rights. Insofar then as the law may be applied to any couple having a child born out of wedlock, after the passage of said Act of February 24,1936, who may claim to be legitimized by the subsequent marriage of the parents, the enactment can be invoked ; but as to any such child born before said enactment we have to declare that it cannot be construed to apply to it without violating

our Constitution, and the genius and spirit of our laws in vogue at the time of the birth of appellant or the marriage of her parents.
Nor can appellant claim that she had any right to the property by virtue of the reference in the will of the late Samuel T. Prout,
Sr., to the property being used as a homestead, as a homestead cannot legally be created in that manner. The statute provides : "Sec.
T. That 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 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. "Sec. 2. To entitle any property
to this exemption a notice by the Holder to the Register of lands where the property is located, must be formally executed and

acknowledged that such property is designated and intended by the owner thereof to be so held. "Sec. 3.
It is further enacted that so much of the personal Property belonging or appertaining to the piece or parcel of land so registered
to be designated by the Householder, and appraised by the proper officer to the amount of Two Hundred Dollars, shall in like manner
be free from Execution." Acts of Legislature, 1888-89, Jo. In view of the foregoing we are of the opinion that the enactment upon
which appellant claims to have been legitimized cannot inure to her benefit, as it is unconstitutional for it to operate retrospectively;
hence as a bastard child she is not an heir of Samuel T. Prout, Sr., nor Samuel T. Prout, Jr., and hence that the judgment of the
court below should be affirmed, and appellant ruled to pay all costs; and it is hereby so ordered. Affirm e d

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Howard et al v Dennis [1937] LRSC 5; 5 LLR 375 (1937) (22 January 1937)

THOMAS F. HOWARD, W. H. KETTER, and M. DIMMERSON, Executors and Executrix of the Estate of the late G. H. VANJAH DIMMERSON, Appellants,
v. JAMES W. DENNIS, for his wife MARIA L. DENNIS, Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Decided January 22, 1937. 1. Every litigant, including the State in criminal cases, is entitled to nothing less than the
cold neutrality of an impartial judge. 2. Where a judge is satisfied that he is legally disqualified to act in a case, he should
not await an objection, but should enter on the docket that because of his disqualification he refuses to sit. 3. It is of the most

vital importance that courts should be free from reproach or the suspicion of unfairness as the judiciary should enjoy an elevated rank in the estimation of mankind. 4. Hence if a judge has been interested in a cause, the consent of parties cannot remove his incapacity nor restore his competency.

Appellees brought an earlier action for injunction against trespass committed by the appellants on property which both parties claimed, and this Court advised the present action of specific performance to determine title. [1928] LRSC 16; 3 L.L.R. 62. On appeal from the decision in the action thereupon brought for specific performance, judgment reversed and case remanded for new trial.
L. G. Freeman for appellants. No appearance for appellees.

MR. JUSTICE RUSSELL delivered the opinion of the Court. This case is before this Court on an appeal from the Circuit Court of the First Judicial Circuit, in the Equity Division of its February term, 1936. The records in the case show that the late George H. Vanjah Dimmerson entered into a verbal contract with Maria L. Dennis, the

wife of James W. Dennis of Careysburg, for the purchase of a certain town lot situated on Crown Hill, Commonwealth District of Monrovia, for an amount of two hundred twenty-seven dollars and eighty-eight cents ; and that although the said Dimmerson tendered the two hundred twenty-seven dollars eighty-eight cents, yet the said Maria L. Dennis, after receiving the sum of one hundred eighty-seven dollars and eighteen cents of the purchase money, refused to accept the balance of forty dollars which would have completed the sale of the said tract of land. The respondents in answering the petitioners' bill set out in the answer, ( ) that the petitioners were barred from bringing this action, because the Statute of Limitations had run against them ; and (2) that the contract between them and the late George H. Vanjah Dimmerson called for one hundred pounds sterling instead of two huhdred and twenty-seven dollars and eighty-eight cents as set out in the petitioners' bill. Prior to the institution of this action of specific performance by the executors and executrix of the late George H. Vanjah Dimmerson, James W. Dennis for his wife Maria L. Dennis entered an action of injunction against the late George H. Vanjah Dimmerson, enjoining him from cutting grass or cleaning said lot in question. The case was tried in the Circuit Court of the First Judicial Circuit on the 3rd day of July 1927, and decided against the late Dimmerson, to which ruling he excepted, and appealed to this Court at its April term, 1928. Upon hearing the appeal of the said appellant Dimmerson, deceased, this Court pointed out that certain equitable claims advanced during the trial by the said Dimmerson to the land in question had not been settled, and suggested that an action of specific performance should be brought by him to settle his title to said piece of land. The records in this case clearly show that at that time, the said Mr. Dimmerson

represented himself in this Court and that Counsellor Nete Sie Brownell, who was the trial judge in the case now before us for review, was the coun-

sel for James W. Dennis for his wife Maria L. Dennis. See opinion and judgment in the Record Book of this Court in the case Dennis v. Dimmerson, [1928] LRSC 16; 3 L.L.R. 62. While admitting that there are important questions of law raised in the pleadings in this case by both petitioners and respondents, which ought to be settled for the future guidance of our courts, yet it having been made clear from the records of this Court that his Honor mete Sie Brownell, the trial judge in this case, was the retained lawyer for Mr. James Dennis and his wife, we cannot do otherwise than repeat the principle enunciated in Ware v. Republic, [1935] LRSC 31; 5 L.L.R. 50, 3 Lib. New Ann. Ser. 36, heard at the November term, 1935, the portion of which relevant to this matter reads as follows: " 'Every litigant, including the state in criminal cases, is entitled to nothing less than the cold neutrality of an impartial judge, and therefore if the judge before whom a cause is to be tried is prejudiced or otherwise disqualified, he may be challenged, and if the challenge is sustained the cause may be moved to another court or tried before another judge. . . is R.C.L. PP. 539-40, § 27. · " 'Where a judge is satisfied that he is legally disqualified to act in a case he should not wait until an objection to him is raised by the parties, but should refuse to hear the cause by an entry on the docket that he does not sit in the case. This indeed is the usual practice, and the judge's decision in such cases that he is incompetent through interest is not reversible except for manifest error.' I I Ency. of Pl. and Prac. 781-82, § III (I). tt t . . . 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 concerned not only for that, but that the judiciary should 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 for his folly--but the state cannot endure the scandal and reproach which would be visited upon its judiciary in consequence. Although the party consent, he will invariably murmur if he do not gain his cause ; and the very man who induced the judge to act when he should have forborne, will be the first to arraign his decision as biased and unjust. . . Oakley v. Aspinwall, 3 N. Y. 547, 552 (185o), cited in I I Ency. of P1. and Prac. 784, note 3. "'We conclude, that the presiding judge being interested, was absolutely incapacitated to take cognizance of, or sit in the case. The consent of parties could not remove his incapacity, or restore his competency against the prohibition of the law; which was designed not merely for the protection of the party to the suit, but for the general

interests of justice. And, consequently, the judgment rendered by him was nullity, and left the case remaining undisposed of, as completely as if the judge had not been present at the court.' Chambers v. Hodges, 23 Tex. 104, 112 ('859) , cited in i i Ency. of P1. and Prac. 784, note 3." Because of the foregoing reasons, we cannot but express surprise that a judge of the intelligence and legal ability of His Honor Judge Brownell should have presumed to preside over the trial of a cause in which, as to its essential features, he had been the retained counsel of one of the parties before his elevation to the bench ; and hence, because of his patent disqualification to try same, and his neglect to recuse himself, the decree in this case should be reversed and the case remanded to the Circuit Court of the First Judicial Circuit, to be tried by any other Circuit Judge except His Honor Nete-Sie Brownell with costs against appellees; and it is hereby so ordered. Reversed.

In re H. Lafayette Harmon [1936] LRSC 32; 5 LLR 334 (1936) (22 December 1936)

In re H. LAFAYETTE HARMON, Respondent.
CONTEMPT PROCEEDING.

Decided December 22,

1936.

1. One charged with the commission of an offense which implies stealth and secretiveness. may not he convicted ii the evidence tends to show the use of violence and that the defendant felt he was thus justified in entering property in dispute, he being one of the claimants thereof. 2. When a duty is imposed upon a member of the bar, and he entrusts that duty to another with results adverse to his expectations, the responsibility is his. 3. If that duty was in order to purge himself of a contempt committed, any miscarriage or apparent miscarriage of justice which he claims grew thereout aggravates rather than mitigates said contempt.

Respondent appeared before the Supreme Court for disciplinary action as to contempt committed earlier, and the Circuit Judge of the Second Judicial Circuit was allowed to intervene. Respondent adjudged guilty of aggravating contempt and punished accordingly. H. Lafayette Harmon for respondent, assisted by P. Gbe Wolo and W. V. S. Tubman. The Attorney General, R. F. D. Smallwood, T. G. Collins, and M. Dukuly,

members of the Bar Committee of Montserrado County, appeared as amici curiae. MR. JUSTICE RUSSELL delivered the opinion of the Court. This case had its beginning in the chambers of His Honor the Chief Justice in the year 1934; and the facts are set out in his opinion printed in [1934] LRSC 23; 4 L.L.R. 161 and in appendix II, part I of our New Annual Series No. 2, pages 260 to 273 inclusive. The Chief Justice having, as therein expressed,

directed that Mr. Harmon should be cited to appear before the Court en bane, writs of summons were issued and returned, and the case was heard before the full. Bench on

the Isth, 6th and 2 I st days of January, 935, after which the Court unanimously held that the said respondent, H. Lafayette Harmon, was guilty of contempt of court. See opinion of Mr. justice Dixon printed in 4. L.L.R. and on pages 1;3-161 of said New Annual Series No. 2, the conclusion of which reads: "This Court cannot find words sufficiently strong in which to condemn the actions of Counsellor Harmon in writing a letter dated June 17, 932, to the late ex-Chief Justice Johnson, by virtue of which he induced him to issue a writ of possession against A. D. J. King, and which in turn led to the said A. D. J. King's writing a letter to the late Chief Justice which was manifestly improper; but which nevertheless was induced by the improper conduct of Mr. Harmon. "Nevertheless, inasmuch as the matter of A. D. J. King's remains in the Department of Justice, this Court will not now sentence Mr. Harmon for the contempt committed, but will give him an opportunity to redeem himself by the assistance he will give the Department of Justice in straightening up this matter and properly prosecuting the said A. D. J. King for the crime he is charged with having committed. The respondent in these proceedings should be ruled to pay all costs of these proceedings; and it is hereby so ordered." The judgment of this Court immediately thereafter pronounced reads: "This cause having been called for hearing, Counsellor H. Lafayette Harmon appeared for himself, and the Deputy Solicitor General, attached to Cape Palmas, appeared for the State. After arguments pro et con, it is hereby adjudged : "That he is guilty of contempt of court: but that the judgment punishing him therefor be suspended until, at least, the April term next ensuing in order to give him, the said respondent, an opportunity:

"(I) To present a receipt from Messrs. the Cavalla River Company, Ltd., showing that he, the said respondent, shall have complied with the order of this Court to pay, or cause to be paid unto the said Cavalla River Company, Ltd., the $45o.00 received from Jacob H. Logan in limited powers of attorney, and all costs which he neglected to include in either of the two bills of costs he signed as correct; " (2) To present a report showing in detail that assistance he shall have rendered the Department of Justice in collecting the evidence against, and assisting in the prosecution of, Alfred D. J. King for the offense alleged to have been committed by the said Alfred D. J. King in breaking open the factory of Messrs. W. D. Woodin & Co., Ltd., and removing the goods of said company from their factory in Little Bassa as complained of. "(3) To present a letter of apology to this Court for his letter to the late ex-Chief Justice Johnson, dated June 17, 1932, by which the said Chief

Justice Johnson was ,mislead and caused to give and retract an order for writ of possession, by virtue of a letter of protest offensively worded from Alfred D. J. King, to the late Chief Justice, dated i8th July, 1932; thereby making his orders appear ridiculous and ineffective. "(4) To present a letter of apology for his misrepresentation which caused our Supreme Court to appear impotent to enforce a judgment due to his neglect to return to Logan the $450.00 in limited powers of attorney, the greater portion of the amount of the judgment involved in the case; and for misrepresenting that a judgment had been rendered against Alfred D. J. King in another case, although no such case had ever been filed. The costs of these proceedings to be held pending our final, judgment."

With items t, 3 and 4 Mr. Harmon complied during succeeding terms of court by (a) filing on the 3rd of October, 1935, a letter from W. S. Murdock, agent of the Cavalla River Company, Ltd., that he had received the limited powers of attorney in settlement of their claim against Jacob H. Logan, which letter was orally confirmed by the said W. S. Murdock, testifying on oath before this Court on the 5th day of December, 1935 ; (b) in compliance with item 3 he filed, on the 2nd of March, a written letter of apology to the memory of the late exChief Justice Johnson for his false and misleading representations to the said late ex-Chief Justice upon which false and misleading statements the late Chief Justice Johnson had acted, and from which actions thereon he had had to recede, resulting in his orders having been made to appear ineffective and absurd; (c) complying with item 4 of said judgment he, on March 2, 1935, filed the requisite letter of apology for misrepresenting that a judgment had been rendered against Alfred D. J. King in a case which had never been entered. There then, until the 9th day of September, 1936, still remained outstanding only his compliance with item 2 of the aforesaid judgment, viz.: To present a report showing in detail what assistance he had rendered the Department of Justice in collecting the evidence against, and assisting in the prosecution of, Alfred D. J. King for the offense alleged to have been committed by the said Alfred D. J. King, in breaking open the factory of W. D. Woodin Co., Ltd., and removing the goods of said company from their factory in Little Bassa as complained of. It is his return to this last mentioned item, the second item in our judgment of February r, 1935, that we have been considering at this term of Court, and upon which we have now to express an opinion. The returns were first read in open court on Monday, November 23rd, and are substantially as follow :

"MONROVIA, LIBERIA

September
9, 1939

"THE HONOUR.ABLE THE SUPREME COURT OF LIBERIA, NOVEMBER TERM A. D. 1936,
MomtoviA. "YOUR HONOURS: "I beg to submit to you
herewith, copies of correspondence received from my assistant at Grand Bassa
containing report on the trial of and determination
of the case Republic of Liberia, plaintiff vs. Alfred D. J. King, defendant,
Crime: 'Grand Larceny' which was tried and decided at
the last August term of court at Grand Bassa. "You will observe that the
prosecution lost the verdict and judgment in said case and
although the defendant admitted committing the act complained of, he disputed
title deed to the land. In the face of the defendant's
admission that he did break open the factory of the Cavalla River Company,
limited, at Little Bassa and took away the goods, cash,
produce etc. therefrom, property of the Company, the court seems to have held
the view that although the said Company was in possession
and trading on premises which Mr. King the defendant claimed title to, he had
a right to do what he did without any responsibility
being attached. "I have no doubt you will agree, that if the court took this
position, whether right or wrong, the prosecution would
be powerless. The attached copies explain in fuller detail. "With assurance
of my profound respects. I have the honour to remain,
"Your obedient servant,
[Sgd.] H. LAFAYETTE HARMON,

SolicitGr and Counselor-at-law."

LIBERIAN LAW REPORTS

339

Upon the reading
thereof His Honor Judge Summerville, the trial Judge, then being present,
applied to this Court for permission to file an application
to intervene so as to show that Mr. Harmon had grossly misrepresented the
facts elicited during the trial; and the reasons why, in
view of the evidence adduced, he, the said Judge, took full responsibility
for the instructions he gave the trial jury which had
brought a verdict of acquittal in favor of the said Alfred D. J. King. The
leave prayed for was granted, the motion filed, and when
the cause came on for hearing on December 14th, His Honor the Judge appeared
in person in support of his said motion ; the Honorable the Attorney General,
and Counsellors Smallwood, Collins,
and Dukuly, members of the Bar Committee of Montserrado County, upon the
invitation of the Court appeared as anzici curiae, and the
said H. Lafayette Harmon, respondent, appeared in person, and was assisted by
Counsellors William V. S. Tubman and P. Gbe Wolo. Most
of the evidence was documentary, consisting principally of certified copies
of the record of the trial of Alfred D. J. King for grand
larceny, in the Circuit Court of the Second Judicial Circuit over which His
Honor Judge Summerville had presided, supplemented by
the oral testimony of William B. Murdock who during the course of his
testimony produced a letter from the said respondent which
reads as follows: "H. LAFAYETTE HARMON Solicitor & Counsellor-at-law. "LAW
OFFICES: MONROVIA-GRAND BASSA CABLE ADDRESS: · Harmony
"Ref. No. 334/36 L.

340

September 8, 1936.
"THE AGENT, MESSRS. THE CAVALLA RIVER COMPANY,
LTD., MONROVIA. "DEAR MR. MURDOCK,

"I am sorry to have to inform you, that the State
Prosecution lost the case against A. D. J.
King at Grand Bassa at the recent August term of the Circuit Court, in the
charge of Grand Larceny brought against him for feloniously
breaking open your factory at Little Bassa and taking your stocks and
property therefrom. "I attach hereto copy of the detail report
which I received from my Assistant, Attorney Benson at Grand Bassa, who
assisted in the prosecution of the criminal case against
this man, in the interest of the Company and on my behalf, I having been
requested to do so by the Supreme Court of the Republic;
from it you will see the flimsy points on which the verdict and judgment was
lost, the main point of the defendant's defence being
that although your factor was in possession of the premises he had title to
it and therefore had a right to enter and do what he
did, and the court seemed to have sustained this defence against the
commission of a criminal act. 'I rather not make any further
comments on the way foreigners' interest is handled by our courts now-a-days,
I leave it to you to make your own decision in the
premises.' "You will note also, that Mr. King is threatening your former
Factor Mr. Deshields with an action simply because he went
before the court and testified the truth against him; how far this will go I
cannot tell. "Yours faithfully, [Sgd.] H. LAFAYETTE
HARMON."

From the records it seems to us clear that said respondent Harmon disobeyed
the orders of the
Court, to himself personally assist in the collection of evidence, and
prosecution of said Alfred D. J. King, but entrusted the duty
imposed upon him to a junior assistant, Attorney J. A. Benson, of far less
legal experience. The result of this was that King was
prosecuted for grand larceny, an offense which implies stealth,
secretiveness, fraud or cunning when the facts adduced tended to
prove that King committed a violent offense by forcibly breaking open the
factory in broad daylight, with the assistance of a band
of armed men, claiming that the factory had been illegally built upon his **land**, the title to which Henry DeShields, landlord of W.
D. Woodin & Co., Ltd., had contested, and who had based his claim to the
premises in dispute upon a deed, the boundaries of which
had been by said H. Lafayette Harmon, the respondent, fraudulently copied
from that of Alfred D. J. King's, and that DeShields had
thereupon taken possession of the **land**, and the Cavalla River Company, as
successors of Woodin Co., Ltd., had upon the advice of
said Harmon refused to negotiate for the lease of the premises with Alfred D.
J. King, the owner of the premises thus in dispute.
Moreover, as was shown in an investigation held here on the 3oth day of
December, 1935, Mr. Harmon stated in the presence of His

Honor Judge Shannon and others, that his clients preferred to lose the money rather than allow Murdock to go to Bassa; and the investigation further showed that although the said Murdock was several times subpoenaed as a witness to testify in said case, yet upon the advice, or connivance, of said respondent he never went to Bassa to give the required testimony. Whatever irregularities the trial judge may have committed, as contended here by respondents, in permitting the disputed title to the premises to be drawn into the case of larceny, on one point at least the trial judge would

seem to have followed the opinion of this Court in the case Yancy v. Republic, decided by us on February 1, 1935, printed in .. L.L.R. 68 and on pages tos to 117 of our New Annual Series No. 2, the relevant portion of which reads: "Hence this Supreme Court cannot be expected to affirm a judgment of conviction against any person charged, unless the evidence adduced is sufficient to satisfy our minds and consciences that the accused is correctly charged, and the evidence satisfactorily proves him guilty of the offense as charged. "For the object of evidence is juridical conviction. "The evidence adduced having tended to prove defendant guilty of a violent offense, upon an indictment charging him with a secretive offense, we cannot but reverse the judgment of the court below, and remand the case for a new trial." The case was thus, apparently, lost by Mr. Harmon's disobedience of our orders of February t, 1935, to assist the prosecution, which act of disobedience itself merits our severe censure; and his disobedience has been further aggravated by the letter above quoted, tending to impugn the justice of our courts nowadays in its administration of justice to foreigners. Our opinion, therefore, is that the offense of the said H. Lafayette Harmon, respondent, has been considerably aggravated by the actions hereinbefore mentioned; and that the mildest punishment appropriate to the misconduct should be his suspension from the legal profession for five calendar years from the date of the judgment presently to be pronounced ; and after said period of five years he will be permitted to apply to this Court to be reinstated, provided that within said interval no further demerit mark shall have been recorded against him ; and it is hereby so ordered. Respondent adjudged guilty.

Johnson v Burge [1984] LRSC 49; 32 LLR 420 (1984) (22 November 1984)

JOHN B. JOHNSON, Appellant, *v.* **MADAM S. GOODING BURGE**, Appellee.

MOTION TO DISMISS APPEAL FROM THE DEBT COURT FOR MONTSERRADO COUNTY.

Heard: October 18, 1984. Decided: November 22, 1984.

1. In computing any period of time prescribed or allowed by statute, by order or rule of court, by rule or regulation, or by executive order, the day of the act, event or default after which the designated period of time begins to run is not to be included.
2. The last day of any computed period is to be included unless it is a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Sunday nor a legal holiday.
3. When any computed time prescribed or allowed by law is less than ten days, intermediate Sundays and holidays shall be excluded from the computation. Civil Procedure Law, Rev. Code I :1.7
4. A condition for appeal is that the appellant secures the approval of an appeal bond by the trial judge and files the same with the clerk of the court within sixty days after the rendition of judgment. Civil procedure Law, Rev. Code I :51.8
5. The statutory provisions of the Civil Procedure Law on appeals from courts of record, being strictly intended to accomplish the purpose of appeal to the Supreme Court, the Court is precluded from giving any other construction to it.
6. As an appeal bond is intended to indemnify the appellee, the entire purpose would be defeated if the appellant was made to correct a neglect or violation that could terminate the case in favor of the adverse party.
7. The statutory requirement that the affidavit of sureties should sufficiently describe the property offered as security to the appellant's appeal bond means that the affidavit must state the property number, the quantity of property, and the designated metes and bound of the property, with their terminal points and angles. Where the description omits these points, the case is subject to dismissal.
8. An appeal bond which lacks an indemnification clause may be dismissed upon a showing of such defect.
9. In an appeal bond, the appellee enters into a contract with the appellant to the effect that the appellant will give security to be approved by the court that he will indemnify appellee from injuries arising from the appeal, and that the appellant will comply with the judgment. Thus, where any provision is bridged, the violation is material and the appeal may be dismissed.

This is an appeal by the appellant from a judgment rendered against him by the Debt Court for Montserrado County. When the case was called for hearing by the Supreme Court, the Court was notified of the filing of a motion to dismiss the appeal and a resistance thereto. In the motion to dismiss, appellee asserted that the approved appeal bond had been filed beyond the statutorily prescribed time of sixty days from the date of rendition of judgment by the lower court; that the affidavit of sureties had failed to sufficiently describe the property used as security to the bond; that the bond sought to indemnify the appellant rather than the appellee; and that the notice of completion of appeal was served and filed beyond the sixty day period prescribed by statute.

The appellant, in resisting the motion, contended that the appeal bond was approved and filed within the time stipulated by the statute, according to his mathematical calculation. The appellant also contended that under the Civil Procedure Law, it was the responsibility of the clerk of court to issue, order served, and filed with the court the notice of completion of appeal, and that in any case, the law did not require service and filing of the notice of completion of appeal within sixty days. With regards to the defectiveness of the appeal bond, the appellant asserted that the appellee was guilty of lashes for her failure to challenge the bond within three days of its filing; that the property stated in the bond as security was sufficiently described; and that the indemnity clause was clearly intended to apply to appellee. The appellant noted that the reference to indemnifying appellant was a mere typographical mistake and a harmless and immaterial error which did not affect the rights of the appellee. Appellant cited cases of the Supreme Court to the effect that mere technicality should not be the basis of dismissal of a case.

The Court rejected the various contentions of the appellant, holding that the errors were significant enough to warrant dismissal of the appeal. On the question of the late filing of the approved appeal bond, the Court, noting that the appeal statute was to be strictly construed, observed that the bond was filed sixty-one days after the rendition of judgment by the trial court, one day later than the period prescribed by the appeal statute.

The Court further noted, with reference to the lateness of the notice of completion of appeal, that the law contemplated the service and filing thereof within sixty days from the rendition of judgment. Where this was not done, the Court said, the appeal was fatal and should be dismissed. The Court rejected the contention that it was the sole responsibility of the clerk to issue and order served the notice of completion of appeal, noting that the statute imposed on the appellant the responsibility to superintend an appeal taken by him from a judgment of the lower court.

The Court also opined that the bond was defective because it sought to indemnify the appellant rather than the appellee. It observed that the error was material and bridged the contract between the appellant and the appellee as to the indemnification of the appellee. Moreover, the Court said, the affidavit of sureties had failed to sufficiently described the properties of the sureties as contemplated by the statute. The test of sufficiency, the Court said, required a statement of the number and location of the property, the quantity of property offered, and the metes and bound of the property. The Court rejected the appellant’s contention that the appellee had suffered waiver and lashes in not challenging the defects in the bond within three days of the filing of the bond, noting that the appeal statute was different from the general statute on bonds, which was relied upon by appellant.

The Court therefore granted the motion, *dismissed* the appeal and ordered the *judgment* of the lower court enforced.

Moses M. Agbaje, Sr. appeared for appellant. *Clarence E. Harmon* appeared for appellee.

MR. JUSTICE KOROMA delivered the opinion of the Court.

Madam S. Gooding Burge, appellee in this action has, by and through her counsel, moved this Court to dismiss the appeal taken from the final judgment of the Debt Court for Montserrado County, for reason that the appellant, John B. Johnson had failed and neglected to comply with the statutory requirements for perfecting an appeal to this Court. The appellee contends in this regard that the appellant had not filed an approved appeal bond; nor had he served and filed a notice of completion of appeal as required by law, so as to bring the parties under the appellate jurisdiction of this Court. Hence, appellee says, the appeal should be dismissed and the judgment of the court below affirmed.

Countering this motion, the appellant has filed a seven-count resistance which, for the benefit of this opinion, we quote herein below:

'1. Because appellant submits as to count one (1) of the purported motion that the contention of appellee that appellant's appeal bond was filed beyond the statutory period of 60 days is a mathematical error and misleading, in that, final judgment in this case having been rendered on the 26th day of August, A. D. 1983, the 60th day fell on October 26, 1981, the date on which the approved appeal bond was filed and therefore the appeal bond was filed within statutory time.

2. And also because further to count one (1) of the purported motion, appellant submits that the service of the notice of completion of appeal on appellee on the 27th day of October, A. D. 1983, was also in accordance with statute and cannot be regarded as a fatal error, in that under the statute governing appeals from courts of records.... After the filing of the bill of exceptions and the filing of the appeal bond as required by sections 51.7 and 51.8, 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." (*See* Civil Procedure Law, Rev. Code 1 :51.9). Appellant strenuously contends that each of the steps required in taking an appeal is prescribed

by the statute from section 51.5 through 51.9 and the time and manner in which each act shall be done specifically stated.

Unlike under the old 1956 Code, where notice of completion of appeal and appeal bond must be completed within 60 days, the Revised Statute does not require notice of completion of appeal to be issued and served within 60 days after final judgment but only after the filing of an approved bill of exceptions. The contention of appellee is therefore without legal foundation and groundless.

3. And also because further to count (1) of the purported motion, appellant submits that the notice of the completion of appeal having been issued by the clerk of the trial court upon application of appellant, within the statutory time, on the 60th day after final judgment, appellant has substantially performed the duties required of him by statute and can suffer no neglect. Therefore, the service of said notice on the appellee by the sheriff on the 61st day after final judgment is an act of officers of court which cannot prejudice the right of any party since appellant has no further duty to perform in the service of the notice on appellee. This Court has consistently held that. . . . . "Where timely completion of an appeal was precluded by circum-stances entirely beyond the appellant's control, the appeal will not be dismissed for untimeliness. The right of appeal on the merits will not be denied for violation of a procedural rule when such violation is neither negligent nor deliberate. *Duncan v. Perry*, 15 LLR 210 (1958).

4. And also because as to count two (2) of the purported motion, appellant submits that appellee is guilty of waiver and laches to question the description of the property offered as security on the appeal bond or to challenge the legal sufficiency of the sureties to said bond, in that, under the statute, appellee should have filed her exceptions to the sureties within three (3) days of filing of the appeal bond, and failure to do so, the bond cannot now be questioned or disturbed. *See* Civil Procedure Law, Rev. Code 1 :63.5; *Kerpai v. Kpene*, [1977] LRSC 4; 25 LLR 422 (1977). Appellant maintains that the property offered having been sufficiently identified and con-firmed by the certificate of valuation from the Ministry of Finance, the requirement of the statute has been satisfied.

5. And further because appellant also submits as to count three (3) of the purported motion, that the contention raised therein is an immaterial and harmless technicality which does not prejudice the legal right of appellee and should be disregarded, in that, an inspection of the appeal bond will clearly reveal that appellant and the sureties are....firmly bound unto Madam S. Gooding in the sum of $6,000 00, current money of the Republic of Liberia to be paid to Madam S. Gooding, appellee.... Appellant contends that the mere statement "That condition of this Bond is that we

IDENTIFY THE APPEL-LANT'....is a clerical mistake in misspelling which does not contradict nor invalidate the binding force and effect of the obligation assumed by appellant and his sureties in the obligatory paragraph of the bond and the condition of this obligation" is only an explanation of $6,000.00 and therefore does not render the bond detective nor insufficient. Appellant submits that the modern tendency of the law is to discourage the dismissal of cases on immaterial technicalities. See *Kerpai v. Kpene,* [1977] LRSC 4; 25 LLR 422 (1977); *Levin v. Juvico Supermarket*, [1974] LRSC 46; 23 LLR 201 (1974).

"1. . . . .When the appeal bond and the property valuation statement both contain the assessed valuation of the property pledged, the failure to set forth valuation in the affidavit of sureties will not be considered such a defect as to warrant dismissal of the appeal.

2. . . . . Mere technicalities which do not affect the merits of the case are not favored by the Supreme Court as a basis for deciding cases on appeal...."

6. And further because appellant submits and strongly maintains that a dismissal of this appeal will only vest the debt courts of Liberia with jurisdiction over criminal and other cases of civil nature other than debts; in that the trial court has no trial jurisdiction of the subject matter because it is a criminal action of GRAND LARCENY which originated in the office of the assistant county attorney for Montserrado County, M. G. Travers, as the promissory note, issued to secure the release of appellant from prison and which is the basis of this case, prove. Appellant maintains that the payment of $812.50 in the office of the assistant county attorney after being charged and imprisoned for grand larceny at the time was RESTITUTION which is part of the punishment for grand larceny or theft of property upon conviction and the issuance of a promissory note to pay the balance of $4,000.00 through the office of the Assistant County Attorney cannot in any wise change the criminal character of the offense to a civil action; especially so, when said promissory note authorized the Assistant County Attorney to continue with the prosecution in case of default. This legal and material point the trial court disregarded and assumed jurisdiction over the cause. Under our law, a civil court cannot legally exercise jurisdiction over a criminal cause of action and for this the entire case is dismissible for want of jurisdiction in the trial court and appellant so prays. (*See Davis v. Diggs,* [1952] LRSC 18; 11 LLR 237 (1952). *See* also *Compagnie des Cables Sud-Americaine (French Cable) v. Johnson,* [1952] LRSC 23; 11 LLR 264 (1952); *Lee v. Republic,* 1 LLR 184, 185 (1884).

7. And also because appellant further submits that as appellant's answer in the court below and the construction contract between the parties herein will reveal, the only civil right of action available to recover the amount paid against the total price of the contract for failure of appellant's company to perform, is an action of damages over which the debt court has no trial

jurisdiction, which jurisdictional issue was raised in appellant's answer in the trial court, but the court adamantly ignored this issue and maintained that debt is an action growing out of a contract, which is prejudicial and arbitrarily rendered, and any judgment of a court or tribunal rendered without jurisdiction over the subject matter is void. *Compagnie Des Cables Sud-Americaine (French Cables) v. Johnson,* [1952] LRSC 23; 11 LLR 264, 269 (1952).

WHEREFORE AND IN VIEW of these salient legal reasons, appellant most humbly prays that the purported motion of appellee to dismiss this meritorious appeal be denied and the case dismissed in its entirety with costs against appellee for want of jurisdiction in the trial court.

Respectfully submitted,
John B. Johnson...APPELLANT
By and thru his Counsel
.....
ATTORNEY & COUNSELLOR-AT-LAW"

In passing upon counts one, two and three of the resistance, we take recourse to the appeal statute and the statute controlling the computation of time. For, it appears that the appellant is contending that two months, that is, from August 26, 1983 to October 26, 1983, is exactly sixty days whether or not any month therein is more than thirty days. Further, the appellant seems to be basing his argument, as to the computation of time, on calendar months rather then statutory days.

The statute requires that:

"In computing any period of time prescribed or allowed by statute, by order or rule of court, by rule or regulation, or by executive order, the day of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Sunday or a lega1 holiday, in which event the period runs until the end of the next day which is neither a Sunday nor a legal holiday. When the period of time prescribed or allowed is less than ten days, intermediate Sundays and holidays shall be excluded from the computation." Civil Procedure Law, Rev. Code 1:1.7.

Predicated upon the above quoted provision of the statute, the final judgment in this case having been rendered on August 26, 1983, the period of time allowed by statute for appellant John B. Johnson to perfect his appeal to this Court commenced to toll on August 27, 1983, and continued to do so for sixty days including Sundays and legal holidays. A mathematical calculation of the sixty days, commencing with August 27, 1983, will show that the 26th day of October 1983, was the sixty-first day from the time of the announcement of the appeal.

1. August 27, to 31, 1983 – 5 days
2. September 1 to 30, 1983 – 30 days
3. October 1 to 26, 1983 – 26 days

The three addends--that is five days, thirty days and twenty-six days respectively--will make up a total sum of sixty-one days.
The statute requires that: "The appellant shall secure the approval of the bond by the trial judge and shall file it with the clerk of the court within sixty days after rendition of judgment. Rev. Code I: 51.8. From an inspection of the appellant's appeal bond, which is part of the records certified to this Court, we observe that it was approved by the trial judge on October 26,1983, a date which is by mathematical calculation said to be the sixty-first day after the rendition of final judgment in the case at bar. The notice of completion of appeal was issued on October 26, 1983, and served and returned served on October 27, 1983. While the statute on the issuance and service of the notice of completion of appeal needs to be construed as to time, the statutory provision on the time of the filing of the appeal bond is unequivocally clear. That is, the appeal bond must be approved by the trial judge and filed with the clerk of the trial court within sixty days after the rendition of final judgment. The appeal bond having been approved and filed on October 26, 1983, the same being the sixty-first day after the rendition of final judgment, counts one, two and three of the resistance crumble against count one of the motion.

Count two of the motion attacked the affidavit of sureties to the appeal bond as being fatally defective. That is, for failure to sufficiently describe the real property offered as security so as to create a lien on the bond for the purpose of indemnifying the plaintiff/appellee. This violation of the statute, appellee stated, was an incurable legal blunder which renders the appeal bond fatally defective and the appeal dismissible.

The appellant countered this attack in count four of the resistance, stating that the appellee had suffered waiver and laches for not having questioned or challenged the legal sufficiency of the sureties to said bond and failing to file his exceptions to the sureties within three (3) days of the filing of the bond. Appellant cited for legal support of this argument the Civil Procedure Law, Rev. Code I: 63.5 and the case *Kerpai v. Kpene*, [1976] LRSC 69; 25 LLR 322 (1976). After

carefully reading these citations, we cannot see that the statute cited by the appellant synchronizes with the issue of contention. In taking advantage of the statute controlling appeals to this Court, the appellee has attacked the appellant for violation thereof. Instead of addressing himself specifically to the issue, the appellant has decided to rely on the general statute on bonds and security. Every statute, says Mr. Justice Tubman, must be construed with reference to the object intended to be accomplished by it. *Roberts v. Roberts.* [1942] LRSC 4; 7 LLR 358 (1942). The statutory provisions of the Civil Procedure Law on appeals from courts of record are strictly intended to accomplish its purpose of appeals to this Court and this Court is precluded from giving any other construction to it. There is no provision under this statute which provides for challenge to the sufficiency of sureties. An appeal bond being intended to indemnify the appellee, its entire purpose would be defeated if the appellant was made to correct a neglect or violation that could terminate the case in favor of the adverse party. How-ever, the issue before us is not that of challenging the sufficiency of the sureties; rather, it is that the affidavit to the appeal bond is incurably defective because it fails to sufficiently describe the real property offered as security so as to create a lien on the bond for the purpose of indemnifying the appellee. For the purpose of this opinion, we quote below the affidavit of surety to the appeal bond:

REPUBLIC OF LIBERIA MONTSERRADO COUNTY, IN THE OFFICE OF THE JUSTICE OF THE PEACE, MONTSERRADO COUNTY MONROVIA, LIBERIA.
Madam S. Gooding Burge...Plaintiff Versus John B. Johnson,...Defendant
ACTION OF DEBT BY ATTACHMENT

AFFIDAVIT OF SURETY

PERSONALLY APPEARED before me, Peter T. Nma, the undersigned, a duly qualified Justice of the Peace in and for Montserrado County and Republic of Liberia aforesaid, Aaron G. Russ and Rebecca Kpan, sureties and after being sworn as provided by law, deposed as follows, to wit:

1. That they are sureties to the attached appeal bond in which they obligate themselves to the appellee in the sum certain named and mentioned in said appeal bond.

LOT NO. LOCATION VALUATION ACREAGE PROPERTY OWNER
N/N Paynesville $36,000.00 N/N Aaron G. Russ

2. That the government taxes on said properties have been fully paid up to date and there is no further liens on said property. That the value of said property is far in excess of the amount named and specified in the appeal bond, hereto attached, above their debts and liabilities. Sworn and subscribed to before me this 26 day of October, A. D. 1983.

Peter T. Nma
JUSTICE OF THE PEACE
MONTSERRADO COUNTY
Aaron G. Russ) SURETIES/DEPONENTS
Rebecca Kpan)
$3.00 Revenue Stamps
affixed on original."

It can easily be observed from this affidavit of surety that the real property offered is not sufficiently described at all for any location, needless to say easy location. Firstly, the said real property carries no number of Paynesville where it is said to be located. Secondly, there is no showing as to the quantity of real property offered as security. Thirdly, the property offered is not described and designated by metes and bounds, or the boundary lines of **land**, with their terminal points and angles by which alone said parcel of **land** could be demarcated and set aside from other lands. In the absence of these facts, it is impossible to locate and set aside this property offered as security for the purpose of indemnifying the appellee if the appeal was dismissed and the judgment of the lower court confirmed. Therefore count four of the resistance is dismissed as against count two of the motion.

In count three of the motion the appellee has contended that the principal office and purpose of an appeal bond is to indemnify the appellee and that where said indemnification is lacking, the bond is of no legal effect and the appeal is dismissible. The appellee maintains that the indemnity clause indemnifies the appellant and not the appellee, thereby making the bond a lega1 nullity. The appellant has neither denied nor admitted the factuality of the appellee's contention, but has argued that the issue is immaterial and technically harmless, and does not prejudice the legal rights of the appellee. Therefore, appellant says, this Court should disregard same. Recourse to the appeal bond shows that the condition of said bond is to indemnify the APPELLANT FOR ALL COSTS AND INJURIES ARISING FROM THE APPEAL TAKEN BY THE ABOVE NAMED APPELLANT. The conditional or indemnity clause indemnifies the appellant and not the appellee. An appeal bond lacking an indemnification clause is materially defective and the appeal may be dismissed upon showing of such defect. *Savice v. Chea et. al.[1954] LRSC 31;* , 12 LLR 157 (1954). In the instant case, the appellant has failed to admit the defect in the indemnification or conditional clause but contends that it is an immaterial and harmless technicality which does not prejudice the legal rights of the appellee. In an appeal bond, an appellee enters into a contract with appellant to the effect that appellant will (1) give security to

be approved by the court that he will indemnify the appellee from all injuries arising from the appeal and (2) comply with the judgment of the court to which the appeal is taken or with the judgment of any other court to which the case may be removed. *Beysolow v. Gibson,* [1943] LRSC 1; 8 LLR 79, 80 (1943). Where any provision of such contract is bridged, it cannot be said that the violation thereof is immaterial and harmless. Therefore, count five of the resistance is overruled as against count three of the motion.

Count six and seven of the resistance being irrelevant to the issue raised in the motion for our determination are hereby over-ruled as well, and with them, the resistance crumbles.

Wherefore and in view of all the 1aws, facts and circumstances herein stated, the motion to dismiss is hereby granted and the appeal taken from the *judgment* in the lower court is hereby *dismissed.* And it is hereby so ordered.

Motion granted; appeal dismissed.

Bright v Van Fiske [1986] LRSC 2; 34 LLR 14 (1986) (30 May 1986)

JOHN R. H. BRIGHT, Administrator of the Intestate Estate of the late MARY McCRITTY FISKE,
Appellant, v. **ISAAC VAN FISKE**, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.
Heard: April 9, 1986. Decided: May 30, 1986.

1. A party may make mention of an article in his pleading without proferting it, especially when the article is in the possession of his adversary. He need not give notice that it will be produced at the trial. All he needs to do is to apply for the article by a writ of subpoena duces tecum during the trial in order to have it brought into court.
2. By having the original deed of a grantor exhibited in court does not in any way prove or disprove the state of mind of the grantor on the day and date said grantor executed a warranty deed.

3. The fact that an administrator of an intestate estate, under leave of court, has authority to sell real property and execute a valid administrative deed for said property to raise funds to prosecute and defend actions involving the estate is indicative that said administrator has standing to sue on matters regarding said estate.

In May 1985, appellant, co-administrator of the intestate estate of his late mother, instituted an action for cancellation of a warranty deed executed by the latter in favor of his brother, the appellee, on June 1, 1972, about one year prior to her death. Appellant wanted the property returned to the estate of their late mother since, he alleged, she was not of a sound mind at the time and, therefore, incapable of executing a valid deed.

Appellee/respondent, for his part, contended that during the trial in the lower court the appellant/petitioner had raised the following points: (1) that the appellant did not proffer the deed he sought to cancel, nor the original title deed of the grantor; (2) that the appellant had proffered medical reports which were not attested to by doctors in the United States and England who had treated Mrs. Fiske, the grantor; and (3) that the appellant did not have standing to sue. The trial court sustained all of the grounds advanced by the respondent/appellee and dismissed the action.

The trial court noted especially that the petitioner had no capacity to sue as he had no title to the property in question.

On appeal to the Supreme Court, the Court disagreed with the trial court. The Court observed that while the trial court had erred in its decision regarding the contentions raised by the respondent/ appellee, noting particularly that as there was no dispute regarding the fact that Mary McCritty Fiske originally owned the property in question, and hence there was no need for the petitioner to make profert of the deed of Mary McCritty Fiske. The Court observe further that as the petitioner was one of the administrators of the estate of Mary McCritty Fiske, and had sworn to protect the estate, he had every right and standing to bring the action where the property of the deceased was involved. The Court accordingly opined that the entire case hinged on one question: Whether or not Mrs. Mary McCritty-Fiske had the mental capacity on June 1, 1972 to execute a valid warranty deed? The Court held that because the lower court had not made a determination on the issue of the mental capacity of the deceased, the judgment could not be upheld. It therefore *reversed* the judgment of the lower court and *remanded* the case to the said court to establish the mental condition of the grantor on the day she signed and delivered the deed which the petitioner sought to cancel.

Moses K Yangbe appeared for appellant. *Elijah Garnett* of J. Emmanuel Wureh Law office appeared for appellee

MR. JUSTICE TULAY delivered the opinion of the Court.

Mrs. Mary McCritty Fiske, decedent, over whose intestate estate these proceedings have arisen, married twice and each marriage was blessed with two sons. Prior to her death on September 22, 1973, she executed a warranty deed in favor of her son, Mr. Isaac Van Fiske, Jr., respondent in these proceedings.

Although their mother departed this life on September 22, 1973, the sons, parties to this suit, who had already gained their majority, made no attempt to preserve their mother's intestate estate until 1982 when they belatedly filed a petition for letters of administration. Although the letters of administration were immediately issued to both of them after the petition was filed, to act as administrator of their mother's intestate estate, this action was not filed until May 31, 1985.

Petitioner, John Bright, maintained that at the time their mother executed the warranty deed to his half brother and coadministrator, she was not of sober mind and was, therefore, incapable of executing a valid deed. He resorted to peaceful means to have the deed cancelled, the **land** alienated and reverted to the estate, but to no avail.

He then instituted this action for the cancellation of the said deed executed in favor of Isaac Van Fiske. We incorporate hereunder count five (5) of his petition for the benefit of this decision:

"However, during the illness of the late Mary McCritty Fiske, one of her sons, Isaac Van Fiske and the respondent in this case, surreptitiously and unduly influenced his mother, decedent, and caused her to sign a warranty deed in favor of respondent on the 1st of June, A. D. 1972. Petitioner says that during the time of the execution of the warranty deed from the decedent, Mary McCritty Fiske, to respondent, Isaac Van Fiske, the decedent had deteriorated mentally and, consequently, she was incapable of intelligently understanding the nature and effect of the document she signed, transferring title to the respondent, and as a result of the fraudulent transfer of the property described in the aforesaid deed, said parcel of **land** is exclusively owned by the respondent and not part of the estate of the late Mary McCritty Fiske,"

The petitioner made profert of a warranty deed by the late Mary McCritty Fiske in favor of one Maye Howell. He also made profert of two medical certificates.

Respondent took petitioner's petition as an outrageous allegation when he said Mary McCritty Fiske was mentally disabled at the time she executed his deed. In his returns he attacked the petition for not exhibiting copy of the warranty deed sought to be cancelled. He also challenged the fact that the medical certificate proferted by the petitioner had not been attested to by the attending physicians who treated Mrs. Fiske. Finally, he challenged petitioner's capacity to sue and recover, as petitioner had shown no title deed of Mary McCritty Fiske to the property he claimed. On his part respondent made profert of the warranty deed executed in his favor by Mary McCritty Fiske.

At the call of the case for disposition of issues of law and trial, the judge ruled thus:

(a) " the court is of the opinion that copy of the document which allegedly transferred her title ... undue influence of the respondent should have been annexed to petitioners' petition to give notice to the respondent as required by law; but because the petitioner has failed so to do, count five of the returns must be sustained. Count five of the petition is overruled.

(b) The court further observes that exhibit "B" is not attested to by any of the doctors who allegedly treated decedent in England and the United States of America; yet the petitioner has proferted them in support of his claim that decedent was incapable of understanding whatsoever she did, including the execution of the warranty deed.... the court is of the opinion that the contention as contained in count three of the returns is well taken in law and therefore count three is sustained. Count three of the petition is therefore overruled.

(c) The court is of the opinion that in order to institute an action, one must have standing in a court. Petitioner claims that he is the administrator of the intestate estate of the late Mary McCritty Fiske, and that property of the proceedings is part of the intestate estate; yet the petitioner has failed to make profert of the original title of the late Mary McCritty Fiske. Because of this omission, count six of the returns is sustained and count six of the petition overruled.

...and the petition of the petitioner being baseless in law the same is hereby overruled and dismissed." From the judge's ruling dismissing the petition, petitioner excepted and appealed.

From this ruling we have culled out three facts which we consider important, as they formed the basis upon which the petition was dismissed:

(a) Petitioner did not make profert of the deed sought to be cancelled, as the fundamental principle of pleading is to give notice to one's adversary.

(b) The medical certificates proferted with the petition are not attested to by the doctors in England and the United States who treated Mary McCritty Fiske.

(c) Petitioner failed to make profert of Mary McCritty Fiske's original title deed.

We do not take petitioner's failure to make profert of the warranty deed he seeks to cancel as an issue over which to develop high blood pressure. Since the instrument was in the possession of his adversary, he could not have filed it at the time he filed the petition. All that was required of petitioner was to make mention of the deed in his petition and this he did and, even more, he gave the names of the grantor, the grantee and the date of its execution. A party may make mention of an article in his pleading without proffering it, especially when the article is in the possession of his adversary. He need not even give notice that it will be produced at the trial. All he needs to do is to apply for it by a writ of *subpoena duces tecum* during trial for it to be produced.

In the case under review petitioner pleaded that Mary McCritty Fiske executed the deed in point on the first day of June, A. D. 1972, in favor of respondent Isaac Van Fiske. We take it that petitioner had given respondent the notice required by law as respondent admits having the deed executed in his favor by Mary McCritty Fiske.

We also disagree with the judge in passing upon the credibility of written documents proferted to be testified to during trial.

We hold that in as much as respondent had admitted that the plot of **land** alienated to him had been, at one time, part of Mary McCritty Fiske's real property, it was not incumbent on petitioner to make profert of her original title deed. Profert of Mary McCritty Fiske's original title deed in no way tended to prove or disprove petitioner's allegation that respondent Isaac Van Fiske procured title deed from decedent under undue influence.

The trial judge's conclusion that petitioner had no capacity to sue as he has no title to the property is farfetched.

In the administration of intestate estate, the question "by what authority?," is settled by the letters of administration. Petitioner herein is one of the administrators of the intestate estate of their mother, Mary McCritty Fiske. By virtue of his appointment as administrator, he must preserve, protect and save from waste any and all of the estate placed in his charge. He has the legal right to retrieve any part/portion of the estate that had gone astray, both before and after the demise of the decedent. Surely the decedent would herself have exercised the property right to retrieve any part of her estate alienated illegally.

To effectively administer the intestate estate an administrator, under leave of court, can sell the property by executing a valid administrator's deed therefor, for the purpose of raising funds to prosecute and defend actions involving the estate. If he can alienate any portion of the estate, should not an administrator maintain an action against those whom he believes are illegally detracting from the intestate estate? The answer is obvious.

These cancellation proceedings hinge on one and only one question: was Mary McCritty Fiske mentally incapacitated on June 1, 1972 and thereabout? Petitioner asserted in no uncertain terms that Mary McCritty Fiske was mentally unbalanced and unfit at the time she granted respondent the warranty deed, subject of these proceedings. He introduces two medical certificates to buttress his assertion.

Respondent regards this assertion to be unfounded allegation, contending that Mary McCritty Fiske was in her full sobriety at the time she signed onto his deed.

In cancellation proceedings, where mental incapacitation is the ground given, a few areas such as feeble mindedness due to senility, insanity - period of lucidity being absent - intoxication must

be explored. Under such circumstances, the court must guide itself against precipitation as truth is only established by investigation and delay. The petitioner emphatically asserts that Mary McCritty Fiske was mentally unbalanced when she granted respondent's deed but respondent consistently and convincingly denies the allegation. The sure and only way to get at the truth of Mary McCritty Fiske's mental condition at the time she signed respondent's deed is to admit evidence from witnesses.

Having explored the three bases, petitioner's failure to profert copy of the warranty deed sought to be cancelled, petitioner's negligence to profert copy of McCritty Fiske's original deed for the property, and petitioner's omission to profert copy of his title right to the property on which the petition was dismissed below, we conclude that each of the issues singularly, or all of them collectively, do not constitute sufficient legal ground for dismissal of the petition. The judge below should have admitted evidence in a regular trial.

His judgment appealed from is hereby reversed and the case remanded for the sole purpose of establishing the truth about the mental condition of Mary McCritty Fiske on the 1st day of June A. D. 1972 and thereabout, the day on which she signed and delivered the warranty deed to respondent Isaac Van Fiske. Costs to abide final determination. And it is so ordered.

Judgment reversed