Williams v Banks et al [1990] LRSC 4; 36 LLR 688 (1990) (9 January 1990)

SAMUEL WILLIAMS, Informant**,** v. **HIS HONOUR JESSE K. BANKS,** JR. Judge Presiding over the Sixth Judicial Circuit Court, Montserrado County, et al., Respondents

INFORMATION PROCEEDINGS AND MOTION FOR RE-ARGUMENT.

Heard: November 13, 1989. Decided: January 9, 1990.

1.Re-argument of a case will not be granted, except when by petition for good cause shown that some palpable mistake is made inadvertently overlooking some facts or points in issue; that said petition be presented within three days after the filing of the opinion for which re-argument is sought; a justice concurring in the judgment must order it; and the moving party must serve a copy of the petition, containing a brief and distinct statement of the grounds upon which it is based, on the adverse party as provided by the rules relating to motion.

2. When the statute requires that any action to be taken or performed within a specified time after notice, such as petitioning or moving for re-argument of a case before the Supreme Court, in computing the time, the day of service of the notice is to be excluded.

3. Where the Supreme Court has decided a case and has sent a mandate to the lower court to resume jurisdiction over the case, the Court loses jurisdiction.

Joseph Jackson and Mary Jackson-Langley, respondents/ movants, instituted an action of ejectment against Josiah Ware to recover thirty (30) acres of **land**. When the case was called for hearing, counsel for Mr. Ware failed to appear and, therefore, judgment was rendered against the said Josiah Ware. It was from this adverse judgment that appellant appealed to the then People's Supreme Tribunal, where the decision of the lower court was reversed and a new trial of the case ordered.

While the case was pending in the lower court, Samuel T. William, informant, filed a bill of information before the then People's Supreme Tribunal. Joseph Jackson and Mary Jackson-

Langley, appellants/respondents filed a motion before the People's Supreme Tribunal for reargument of the case. The People's Supreme Tribunal denied the motion for re-argument because the respondents failed to fully comply with the principles for the granting of re-argument. The petition for re-argument was *denied.*

S. Edward Carlor appeared for the Informant. *F. Nyepan Torpor* appeared for the Respondents.

MR. JUSTICE AZANGO delivered the opinion of the Court.

This case commenced with an action of ejectment instituted against Josiah Ware, appellant, of the City of Careysburg by Joseph Jackson and Mary Jackson Langley, appellees, on June 2, 1979 to recover thirty acres of **land**.

When the case was finally called for hearing, counsel for appellant failed to appear and judgment was rendered against appellant. From said adverse judgment, appellant took his flight on appeal to the then People's Supreme Tribunal sitting in its March Term, A. D. 1981, which reversed the decision of the court below with the mandate that the assigned judge presiding should resume jurisdiction over the case for re-trial.

While the case was still pending, Samuel T. Williams, informant, filed a seven-count bill of information in which he alleged as follows:

1.That even though he was not a party to the ejectment, he was arrested and imprisoned on the order His Honour Jesse Banks, Jr., judge presiding over the Sixth Judicial Circuit Court, Montserrado County; and that while he was in jail, on the instruction of the judge, his house was completely demolished.

2. That Defendant Josiah Ware in the ejectment suit was never served with the writ of summons since same was served in June, 1979 and while the defendant died in November, 1931.

3. That a suit cannot be maintained by the heirs and legal representatives of Jackson after a period of forty-eight (48) years of acquiescence.

4. That the mandate of the Honorable Supreme Court mandating the judge of the lower court to resume jurisdiction over the case for re-trial was never carried out.

5. That since no information or application was filed before His Honor Jesse Banks, he erred in ordering the sheriff of the trial court to break down his house.

6. That the doctrine of estoppel operates against Aaron Jackson for his failure to assert or establish his claim over the property, subject matter of the proceeding within the time required by law.

7. That the court below had no jurisdiction over the person of defendant Josiah Ware because he had died prior to the issuance and service of the writ of summons.

After the informant had filed his bill of information, respondents Mary Jackson Langley and Joseph Jackson, Jr. filed a motion before this Court for re-argument of the case contending among other things:

1. That the Supreme Court on December 29, 1988 inadvertently held that no one appeared for the movant, while in reality Counsellor S. Edward Carlor, apart from appearing for them had even filed returns on the 8thof December, A. D. 1988.

2. That even though their counsel was in court, he could not be heard because informant's counsel was arguing and had not submitted the case for ruling.

3. That the Supreme Court did not pass on their returns to the information, otherwise judgment in their favour would have been rendered.

4. That if the Supreme Court had passed on the returns of movant, it would have realized that information will not lie since there was no case pending in the lower court growing out of the ejectment suit since the Supreme Court's mandate was fully executed and judgment brought in their favor.

5. That the court also inadvertently overlooked the fact that Josiah Ware appeared voluntarily to clarify that he was not Josiah Ware but later joined issues in the ejectment suit.

6. That prior to his death, Josiah Ware appointed Samuel Williams as his attorney-in-fact and that the case was heard and disposed of before Josiah Ware died.

7. That information is to have the parties conform to the order of the Supreme Court but in the case at bar, no order was disobeyed. Therefore, it was an inadvertent move to reverse the judgment on information.

The only issue worth addressing ourselves to is whether or not the motion has sufficient legal reasons to warrant a reargument of the case.

According to Rule 1X of this Court, it has been made categorically clear that re-argument will not be heard until the following condition have been fully fulfilled:

PART 1: -*Permission for*- For good cause shown to the Court by petition, a re-argument of a cause may be allowed when some palpable mistake is made inadvertently overlooking some facts or points of law.

Part 2: *Time of* -A petition for re-hearing shall be presented within three (3) days after the filing of the opinions, unless in cases of special leave granted by Court

PART 3: -*Contents of Petitioner:* The petition shall contain a brief and distinct statement of the grounds upon which it is based, and shall not be heard unless a Justice concurring in the judgment shall order it. The moving party shall serve a copy upon the adverse party as provided by the rules relating to motion.

This court held in the *case The Management of Broadway Cinema v. Mah and the Board of General Appeals*, [1989] LRSC 32; 36 LLR 439 (1989), that those praying for the re-argument of a case before this Court should remember the following:

1. That whilst strictly speaking, a re-argument is simply a new hearing and a new consideration of the case by the court in which the suit was originally heard and upon the pleadings and dispositions already in the case, and that hearing before an active court for the purpose of determining whether the Court will revise its own action by correcting errors and modifying or setting aside its own judgment, it is mandatory to take into account:

a) The parties, as a matter of right, are usually entitled to a personal hearing for the argument of the case when proper request is made therefor, but the exercise of this privilege is subject to reasonable regulations by the appellate court, and like any other privilege, may be waived. while argument of the case in the first instance on appeal is a matter of right, re-arguments are directed for the satisfaction of the Court alone, and are all together subject to its discretionary control and direction. Where the statute requires that the case be noticed for reargument for three (3) days in computing the time the day of service of the notice is to be excluded.

b) That a petition for a rehearing is a request to the Court to revise its own action by correcting errors and modifying or setting aside its own judgment. One to whom the decision is not adverse cannot petition for a rehearing. The appellate court may adopt reasonable rules regulating the right to rehearing; such as:
i) That the petition must be approved by a concurrent justice of the Court;
ii) That a brief must be filed in support of the petition;
iii) That the record on which the original hearing was had should be filed and considered the true record on the re-hearing though there may have been some irregularities in incorporating matters therein;
iv) An order will be treated as a part of the record and as legitimately before the court for examination on the re-hearing of an appeal, if the case was submitted by both parties at the first hearing, on the theory that the order was properly in the records;
v) The filing of a motion for leave to present a petition for re-hearing;
vi) The granting of such leave should not suspend the enforcement of, vacate or annul the judgment;

c) A re-hearing should not be granted unless there is a reasonable showing that the judgment rendered was erroneous. But when a re-hearing is ordered, such rehearing may be granted even when the result must be the same as that announced in the original opinion. This is true when (1) the concurrence of one or two justices consisting the court delivering the judgment on appeal is limited to the result, and thereby the law of the case is not made; (2) the original opinion fails to consider a point raised in the appeal, which, if tenable, might be fatal to the cause of action set forth in the complaint; and (3) the former opinion announces certain rules of law which, in the judgment of the court as constituted when the motion for rehearing is considered require modification to prevent misapplication of the same on a new trial of the cause. The fact that the decision will have no important bearing on a large class of other cases and that on account of a pressure of business the opinion on the original hearing was not as full as desirable, is a material consideration in determining whether a re-hearing will be granted. It should be recognized that questions not advanced on the original hearing will not be considered on the petition for re-hearing. This must necessarily be so because if new questions should be raised on a rehearing, there would be no end to a case on appeal. This rule is especially recognized and applicable in the case of a question as to the constitutionality of a statute.

d) New evidence cannot be considered on a petition for a rehearing. Where a non-suit is granted on a particular ground, which is held insufficient by the appellate court, a re-hearing will not be allowed to consider and determine any other ground on which it is claimed the non-suit should have been granted but which was not considered by the trial court. The failure of the appellate court to consider a matter alluded to in the oral argument, recorded and referred to in the petitioner's brief, though not lightly, may be ground for a re-hearing.

e) As aforesaid, when a point was overlooked by the court in its opinion, a re-hearing should be granted where a fatal variance is shown, and the point was raised but overlooked by the court.

f) The petition for the re-hearing must be filed within the time prescribed by the statutes or rules of court; and such petition filed within the prescribed time will be considered. A motion to modify a mandate of the Supreme Court is in the nature of a petition for a re-hearing, and may be filed during the time allowed for a re-hearing, on behalf of a party who has not waived it, although the opinion has been certified by the clerk of the court below. When a petition for a re-hearing is duly filed, it is the usual practice to permit amendments after the time for filing the petition has expired, assigning additional grounds for re-hearing.

g) Where after the decision of a case and the rendition of an opinion by the appellate court, its mandate is regularly transmitted to the trial court and spread on its records, it is well settled that the appellate court, in the absence of fraud, accident, inadvertence or mistake, has no jurisdiction to recall the mandate and entertain a petition for a re-hearing and a motion for leave to file the same will be denied, as it is manifest that there must be finality somewhere in all litigations. The logical point for appellate jurisdiction to terminate is that time when there is again vested in the trial court jurisdiction to proceed, carry out and enforce any judgment delivered by the appellate court.

We are of the unanimous opinion that the petition does not fully comply with the principles in the opinion quoted *supra.* Therefore the motion should be and the same is hereby denied. The Clerk of this Court is hereby ordered to send a mandate to the court below with instructions that it will resume jurisdiction over the matter and enforce its judgment. And it is hereby so ordered. Costs are ruled against informants.

Motion/petition denied

Lartey et al v Corneh [1967] LRSC 20; 18 LLR 177 (1967) (16 June 1967)

BOIMA LARTEY, et al., surviving heirs of decedents and people of the late CHIEF MURPHEY, and VEY JOHN, residents of Vey Town, Appellants,
v. ALHAJI VERMUYAH CORNEH, Attorney-in-fact for the people of Vai Town, et al., Appellees.
Argued April 18, 1967. Decided June 16,
1967. 1. An application to the Supreme Court for reargument may be made by motion, as well as by petition. 2. A trial court may not
constitute itself the sole judge of factual issues properly calling for determination by a jury.

Appellants moved for reargument,
not by petition, of a cause which had been decided against them on appeal, and in which they claimed the trial court refused to submit
to the jury a question of fact concerning grantees under whom they claim.
Motion granted.

Morgan, Grimes and Harmon for petitioners.
0. Natty B. Davis and Sie-Brownell for respondents.
MR. CHIEF JUSTICE WILSON delivered the opinion of

the Court. We address this
opinion only to the motion for reargument. The only point to consider in this motion is that the circuit court dismissed appellants'

action of ejectment without taking evidence. In the opinion of this Court it was held that the appellants are the direct heirs of Murphey and Vey John, late of Vey Town, Bushrod Island, Montserrado County, who owned in fee 25 acres of land, which descended to them by inheritance. This was contested by the appellees and raised an issue of fact that appellants contend should only be determined by a jury, but seemed to have 177

been overlooked in the ruling of the circuit judge who dismissed the case. Though this Court's opinion in its March 1966 Term said otherwise, the appellants also contend that the names Murphey and Murvie refer to two persons, not one, and that the trial court erred in disagreeing without taking evidence. There are two deeds that we find in the record executed by two Presidents of Liberia at different times. One vested title in Chief Murvie Sonii, et al., and aborigine grant by the late President Edwin J. Barclay, on April 2, 1931, and the other, from the Republic of Liberia to Murphey and the residents of Vey Town (Vey John's people) , executed by President Arthur Barclay on June 21, 1906, each granting 25 acres of land, but differing in their metes and bounds. Before passing on the merits of the judge's ruling, we must take under consideration the opposing affidavit filed in the motion for reargument by appellees' counsel, praying for the dismissal of said motion on the grounds that there can be no motion for reargument before an appellate court to reconsider its opinion and judgment in a case heard by it, and that an application for reargument must be brought on by petition and not by motion. To determine the merit of this contention, we will consider the relevant law. Rule VIII of the Revised Rules of the Court reads : "Permission.--For good cause shown to the Court by petition, a reargument of a cause may be allowed when some palpable mistake is made by inadvertently overlooking some fact or point of law. "Time.--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. "Contents of Petition.--The petition shall contain a brief and distinct statement of the grounds upon which it is based, and shall not be heard unless a

Justice concurring in the judgment shall order it. The moving party shall serve a copy thereof upon the adverse party as provided by the rules relating to motions." Our Civil Procedure Law, 1956 Code 6 :310, provides : "An application to the court for an order shall be made by motion, which, unless made during a hearing or trial, (a) shall be made in writing, (b) shall state with particularity the grounds therefor, and (c) 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. The sections applicable to captions, signing and all matters of form of pleadings shall apply to all motions and other papers allowed by this Title."

When arguing before this Court, appellees' counsel was required to say whether or not a petition, as a motion, provides for a prayer for relief. It was conceded by him that both ended in a prayer for relief. Each is therefore intended to move the Court to do some act and give the relief sought. This being the case, it does not seem that the contention that the two procedures are separate and distinct in law, and do not serve the same purpose, has any merit, especially in view of the analogous nature of the law above recited. Moreover, such practice has long been permitted by this Court. Count one, therefore, of appellees' opposing affidavit is not sustained. The issue of whether the deeds represent one or two grants appears to present a substantial question of fact to be determined by a jury, and the trial court exceeded its authority by being the sole judge of the issue. The motion, therefore, is granted, costs awaiting final determination. And it is so ordered. Motion granted.

Lib. Trading v Cole [1967] LRSC 16; 18 LLR 150 (1967) (16 June 1967)

LIBERIA TRADING COMPANY, by its Manager, the Widow and Heirs of DAVID S. COLEMAN represented by ETTA COLEMAN and OTHELO COLEMAN, Appellants, v. SAMUEL B. COLE, Appellee. ON APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued April 25, 1967. Decided June 16, 1967. 1. When the record on appeal of a cause before the Supreme Court is inconclusive, making it impossible for the Court to arrive at a determination of the issues, the case will be remanded for retrial of the issues.

The record of proceedings, in an action of ejectment decided in favor of the plaintiff, was confusing and inconsistent. In view of the foregoing, the judgment was reversed and the case remanded to clarify the issues. Morgan, Grimes and Harmon for appellants. Appellee pro se.

MR. Court.

JUSTICE SIMPSON

delivered the opinion of the

During the September 1964 Term of the Circuit Court for the Sixth Judicial Circuit, Montserrado County, an action of ejectment was filed in that court by Samuel B. Cole, of the City of Monrovia, against the Liberia Trading Company and the widow and heirs of the late David S. Coleman. The complaint substantially alleged that the plaintiff therein, now appellee in these proceedings, was the bona-fide owner, and entitled to possession of two lots situated and lying in

Sinkor, in the Commonwealth District of Monrovia, Republic of Liberia. The complaint alleged that the above-referred-to lots

were acquired by him from one Christiana C. Burke, of Clayashland, Montserrado County, by a warranty deed, dated 195o. The complaint went on to state that irrespective of his ownership and right to possession, the appellants herein, defendants in the court below, were illegally and unlawfully detaining and holding appellee's property from him. In answer to the complaint as filed, appellants held that the deed of plaintiff was fraudulent and worthless because at the time of its registration the said deed carried no date, as evidenced by a certified copy of the same received from the Bureau of Archives, of the Department of State. This and other legal and factual issues were raised in the answer and subsequent pleadings. After ruling on the law issues, a determination was made by the court to the effect that a board of arbitrators be established to determine whether or not encroachments were being made and by whom. In pursuance thereof, a board of arbitrators, consisting of three surveyors, namely, J. K. T. Scotland, William J. Macborrough, and J. Pleh Reeves, was appointed. On October 19, 1965, this board submitted its findings to Hon. Joseph P. Findley, the judge presiding by assignment. This document has been marked P/r. Accompanying this survey report was a plot of the area that was marked P/2. After this report was submitted on October 25, of this same year, the defendants filed objections to this report. These objections were sustained by the court and a new survey ordered made by the same board that had previously been constituted by the court. According to the minutes of the proceedings in the court below, a second survey was made, at which time the deed of appellee, together with two deeds of appellants were submitted to the arbitrators. It is interesting to note here that both parties claimed a common" grantor as a source of their respective titles. According to the testimony of the chairman of the board of arbitrators, he and

the other members of the board visited the property, at which time the contesting parties were present. Furthermore, each party indicated the area claimed in accordance with their respective deeds. Continuing, chairman Reeves stated : "We did the work and found out that the area in dispute corresponded with the deed of Mr. Samuel B. Cole. The defendants did not show us any deed for this area. So we made our report to the court." At this stage of the trial, on January 6, 1966, the second surveyors' report and corresponding plot were given the court's identifying marks C/1 and C/2, and admitted into evidence. At this same time the deed of appellee was marked P/3 for identification. After chairman Reeves left the stand, board member

William J. Macborrough took the witness stand,
and stated, inter alia, that he served on the said board, repre-

senting the defendants. His testimony also revealed that the defendants had one deed for three and three-quarter acres of land and that the area described in that deed was verified at the premises. Continuing his testimony the witness said that there was another deed of defendants for one acre of land. However, this land could not be verified at the premises. In concluding, Mr. Macborrough testified that appellee had presented a deed for two lots and that the descriptions in these two lots were also verified at the time of the survey. But the appellants could produce no deed for these two lots. At this particular juncture of the trial, Macborrough was asked to identify the documents marked P/1 and P/2, which were the plot and report of October 19, 1965. These documents were thereafter confirmed by the court. After this was done, the document marked P/3, the deed of appellee, was then confirmed by the court. The minutes, as made a part of the record in these proceedings and certified to this Court, showed, further, that on January 13, 1966, plaintiff asked for admission into

evidence of the documents marked P/1, P/2, and P/3. No objections in respect to the admissibility of these documents having been made, they were admitted into evidence by the court. At a subsequent point in the trial, by way of a subpoena duces tecum, the survey report of October 19, 1965, was produced in court by the clerk of the Circuit Court, after it had been identified as P/6. However, at the time it was offered into evidence, objection in respect to its admissibility was interposed by appellee and sustained by the court. The ground was that this document constituted the rejected survey report and, therefore, was not then relevant to the case at trial. The confusing thing here is that the self-same appellee had, as previously stated herein, requested the admission of the same document into evidence, bearing the mark P/1, and it had been so admitted. In other words, what appellee had objected to here was previously requested by him of the court and had been granted. A further recourse to the minutes shows that the later survey report which had not been objected to and its accompanying plot which had been marked C/1 and C/2, were in point of fact never offered, nor admitted, into evidence.
When this case was being argued before the court and the issue of the missing documents was raised, these were presented in the appellate court by appellee, and it could be seen that they had at all times remained in his possession since the commencement of the trial in the court below and had never been entered into evidence. In view of the above inconsistencies in the court below in respect to the admissibility, and admission into evidence, of the two survey reports and their respective plots representing schematics of what had been included in the reports, this Court finds that the record before it is inconclusive and, therefore, makes it impossible to arrive at a proper determination of the issues presented. In the circumstances, we find ourselves compelled to remand

this case for a new trial of the issues. The Clerk of this Court is hereby ordered to send a mandate to the lower court
ordering a new trial forthwith, costs in these proceedings to abide final determination of the case. And it is hereby so ordered.
Reversed and remanded.

Tulay v Salvation Army (Lib.) [2002] LRSC 29; 41 LLR 262 (2002) (13 December 2002)

GEORGE S. B. TULAY, Appellant, *v.* **THE SALVATION ARMY (LIBERIA) INC**., by and thru MAJOR BRIAN KNIGHTLY, Appellee.

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

Heard: November 14, 2002. Decided: December 13, 2002.

1. A party cannot object to the identification of a deed, the registration and probation of which has been sanctioned by the Supreme Court.
2. The grantee of a deed for a parcel of **land** is under no legal obligation to investigate the right and title deed of the grantor in relation to the occupation of the premises by a lessee.
3. Rule 13 of the Code of Moral and Ethical Conduct of Lawyers defines a lawyer's duty to his client and prohibits a lawyer from acquiring interest in the property of his client.
4. No lawyer should acquire interest in the subject matter of a litigation which he is conducting, either by purchase or otherwise, which he did not hold or own prior to the institution of the suit.
5. A lawyer should refrain from any act whereby, for his personal benefit or gain, he abuses or takes advantage of the confidence reposed in him by his client.
6. A lawyer violates the Code of Moral and Professional Ethics and abuses the confidence reposed in him by the client in taking advantage of his legal and professional duty and acquires interest in his client's property, regarding which he represents the client.

7. A lawyer is required by the Supreme Court to be not only professionally qualified and possessing the required legal knowledge and education as professional legal practitioner, but it also requires the individual to be of a high standard of ethical conduct and behaviour and good moral character.
8. A lawyer owes a fiduciary duty to his client, and as such cannot take advantage of his professional duty to acquire interest in the client's property in litigation.
9. A party's title deed, valid and registered in accordance with the law, is the best and most conclusive evidence for the settlement of dispute over the title to property, and prevails over the mere possession of property as evidence of title in an ejectment action.
10. Where the plaintiff in an ejectment action has shown a valid and legal title to property, he or she is rightfully entitled to recover the said property in dispute upon the strength of that title.
11. The primary object of an action of ejectment is to test the title of the parties and to award the possession of the property in dispute to that party whose chain of title is so strong as to effectively negate his adversary's right of recovery.

The appellant, a counsellor-at-law who represented the legal interest of the Intestate Estate of the late Frederick R. Johnson, acquired a number of property from the estate in consequence of his representation of the said estate. In one of such transactions, the appellant represented to the Administratrix of the Estate that a certain property of the Estate was in a deteriorated state, that its value had deteriorated substantially, and that he was therefore offering to purchase the said property in one lump-sum amount suggested by him. However, the appellant failed to make full payment, as had been agreed to, but elected instead to make partial payment and by various modes, including artifacts sent to the Administratrix to sell and apply the proceeds towards the purchase amount. As a result of the appellant's non-compliance with the arrangement, the administratrix of the estate informed the appellant that the property was no longer being sold to him but to another party, that the part payments already made by him would be returned to him, and that he was being given a period of one month to vacate the premises. The administatrix then sold the property to the appellee herein, the Salvation Army (Liberia) Inc. The appellant refused, on notice, to vacate the premises and challenged the sale of the property to the appellee. Consequently, the appellee commenced an action of ejectment. From a unanimous verdict of the jury in favour of the appellee, which was confirmed by the trial judge in a final judgment, the appellant appealed to the Supreme Court. The Court affirmed the judgment of the lower court, holding that the appellant had acted unethically, unprofessionally, and in violation of the Code of Moral and Ethical Conduct of Lawyers in taking advantage of his professional relationship with the client to secure interest in the client's property.

In addition, the Court opined that the client of the appellant had the right to cancel the arrangement with the appellant for the purchase of certain property of the client because of the violation of the appellant with the terms of the arrangement, and that he was precluded from challenging the client's transfer deed to the appellee. The Court pointed out that its review of the record had clearly shown that the estate never passed title to the appellant and therefore he could not challenge the transfer made to the appellee. It observed that the appellant's continued use of the premises after he had been duly notified to vacate the same was therefore without any legal justification and an outright intrusion into and encroachment on the subject property, for which an action of ejectment would lie.

The Court rejected the contention that the trial court had failed to dispose of the law issues,

noting that when the case was first before the trial court, the law issues were disposed of by the Court and that the Supreme Court had dealt with the issues and remanded the case; hence, there was not a need for the trial court to again dispose of the law issues after the Supreme court had rendered a decision thereon. Accordingly, the Court affirmed the judgment of the trial court.

George S. B. Tulay and *Fomba O. Sheriff* of Tulay and Associates appeared for the appellant. *Francis S. Korkpor, Sr.* of Tiala Law Associates, Inc. appeared for the appellees.

MR. JUSTICE JANGABA delivered the opinion of the Court

Mrs. Victoria Johnson-Maxwell, the only surviving heir of the Late Frederick R. Johnson, is the administratrix of the Intestate Estate of the Late Frederick R. Johnson, which had its offices located within the vicinity of the Pan African Plaza and the old Toyota Garage opposite the Monrovia City Hall. The aforesaid Estate has many valuable properties on both sides of Tubman Boulevard, including split level bungalows/ apartments toward the beach and adjacent to the Pan African Plaza. It is one of these bungalows or apartments that is the subject of the ejectment suit before this Court on appeal. The grantor, Mrs. Victoria Johnson-Maxwell, is an old lady presently living in the United States of America and is being represented in Liberia by one Jessie Payne, her attorney-in-fact.

In 1991, Mr. Payne engaged the legal services of the appellant, Counsellor George S. B. Tulay, to serve as lawyer for the Frederick R. Johnson Estate. Counsellor Tulay who accepted the engagement was successful in evicting illegal occupants from many of the estate's premises. The records before us show that in 1992 Counsellor Tulay acquired two other pieces of property from Mrs. Victoria Johnson-Maxwell while serving as her legal counsel. Counsellor Tulay also moved in the subject property in 1992 and subsequently re-quested Mr. Payne to sell him the apartment he had occupied. Mr. Payne requested Counsellor Tulay to pay the sum of L$500,000 (Five Hundred Thousand Liberian dollars) but Counsellor Tulay pleaded with him and promised to pay cash down L$ 100,000 (One Hundred Thousand Liberian dollars). However, Counsellor Tulay elected to make a payment totaling L$10,000 (Ten Thousand Liberian dollars) which payment was rejected by Mr. Payne and said amount was returned to Counsellor Tulay. However, Counsellor Tulay refused to take back the money. Consequently, Mr. Payne refused to sell the premises to him.

Subsequently, Counsellor Tulay called Mrs. Victoria Johnson-Maxwell in the United States and informed her that her property was badly damaged and that it was advisable for her to sell some of the premises of the estate, especially the one that he had occupied. He offered to buy the apartment he occupied for the sum of US$10,000 (Ten Thousand United States dollars), which offer Mrs. Victoria Johnson-Maxwell accepted with the hope that Counsellor Tulay would make a cash down payment of the amount. Instead, Counsellor Tulay elected to send African costumes such as dresses, and arts and crafts, which mode of payment was protested to by Mrs. Victoria Johnson-Maxwell.

On the l2th day of October, A. D. 1995, Mrs. Victoria Johnson-Maxwell wrote a letter to Counsellor Tulay informing him that she had rescinded her offer to sell her property to him due to his failure to make full payment, and that she had decided to sell the subject property to another person who was willing to pay her the full price at one time. She further in-formed Appellant Tulay that the total amount of US$3,500.00 (Three Thousand Five Hundred United States dollars) paid by him to her would be refunded to him by her nephew, Jessie S. Payne, upon the receipt of the letter. The letter moreover gave one month notice to Counsellor Tulay to vacate the premises without delay. We shall say more about this letter later in this opinion. On the 16th day of February, A. D. 1996, Mrs. Victoria Johnson-Maxwell sold the subject property to the Salvation Army (Liberia) Inc. for the sum of US$31,000.00 (Thirty-One Thousand United States dollars). The deed was probated and registered in accordance with law.

The Salvation Army (Liberia) Inc., appellee herein, instituted an action of ejectment against the appellant on February 3, 1997, in the Civil Law Court for the Sixth Judicial Circuit Court, Montserrado County, during its March Term, A. D. 1997, presided over by His Honour M. Wilkins Wright, then resident judge. The complaint alleged that the appellant, defendant in the lower court, had failed to resolve the matter through a conference to ascertain his intention for his continued use and occupation of the premises. The appellee there-fore prayed the trial court to eject and evict the appellant from the property and to place the appellee in possession of the subject premises. The appellant filed an answer on February 14, 1997 claiming ownership to the property on the ground that he had made part payment to Mrs. Victoria Johnson-Maxwell in 1993 or 1994 for the property. He contended that Mrs. Maxwell could not have legally sold the premises to the appellee, and that in any event the appellee' s deed was defective in that the property in question was conveyed by Mrs. Victoria Johnson-Maxwell without a decree of sale from the Monthly and Probate Court. The plaintiff filed a reply on the 19th day of February, A. D. 1997, whereupon pleadings in this case rested. Thereafter, the appellant filed a motion to dismiss the ejectment suit, stating that there were two cases pending before the Civil Law Court and the Monthly and Probate Court, involving the same property and the same parties. The appellant also prayed the trial court to dismiss the action on the ground that the appellee's title deed for the premises was legally defective. The trial judge dismissed the appellee's action of ejectment on May 16, 1997 on the ground that the appellee's title deed was defective and on the principle of *lis pendens.* The appellee excepted to the ruling and announced an appeal therefrom to this Court. The ruling of the trial court dismissing the appellee's ejectment action was reversed by this Court during its October 1998 Term, and the case was remanded to be heard on its merits. In obedience to the opinion and mandate of this Court, the trial court resumed jurisdiction over the case on March 22, 1999 during its March Term, A. D. 1999. After the conclusions of the evidence and the entertaining of arguments, *pro et con,* the trial court submitted the case to the empanelled jury on May 31, 1999. The jury brought a unanimous verdict in favor of the appellee. On the 5th day of June, A. D. 1999, His Honour Joseph W. Andrews, presiding over the March 1999 Term of the trial court by assignment, confirmed and affirmed the verdict of the trial jury, and ordered the clerk of court to issue a writ of possession to oust, evict and eject the appellant from the subject property and place the appellee in possession thereof. The appellant excepted to this final judgment and announced an appeal therefrom to this Court, upon a thirty-three count bill of exceptions. We deem counts (1), (3), (20), (32) and (33) of the bill of exceptions worthy for the final determination of this case.

In count one of the appellant's bill of exceptions, he alleged that the trial judge had failed to dispose of the law issues in the case on March 22nd 1999, before proceeding to hear the factual

issues. The appellee countered this contention by asserting that the law issues in the case were disposed of by His Honour M. Wilkins Wright; that the suit was outrightly dismissed on the law issues; and that the ruling was reversed by this Court on appeal and the case remanded to be heard on its merits. This Court says that it is in full agreement with the contention of the appellee that the laws issues in the case were disposed of, and that the action of ejectment was dismissed by the lower court while disposing of the law issues. During the October, A. D. 1998 Term of this Court, the ruling on the law issues dismissing the ejectment suit was reversed and the case was remanded, with instructions to the trial judge to resume jurisdiction over the case and to proceed with it on its merits in keeping with law. Hence, count one of appellant's bill of exceptions is not sustained.

In count (3) of the bill of exceptions, the appellant alleged that the trial judge erred when he overruled his objections to the identification of the appellee's deed in this case because the said deed was a subject of litigation in the probate court and the Supreme Court of Liberia. A recourse to the records before us, coupled with our previous decision of 1998, reveal that the trial judge, in disposing of the law issues, dismissed the ejectment suit on the grounds that the appellee's title deed was defective and that the doctrine *lis pendens* precluded institution of the suit. That ruling, as aforesaid, was reversed by this Court. The appellee's title deed was the subject of litigation, as ruled upon by the then trial judge, which ruling as well as the issue of caveat raised by the appellant, were reversed by us. It was therefore baseless for the appellant to object to the identification of the appellee's deed, the registration and probation of which was sanctioned by this Court in its opinion of A. D. 1998. Hence, count (3) of appellant's bill of exceptions is overruled.

In count 20 of the bill of exceptions, the appellant alleged that the trial judge erred when he sustained an objection, without stating the ground therefor, to the appellant's question posed to Mr. Cooper as to whether the appellee had investigated the right and title of their grantor before buying the premises from Mrs. Johnson-Maxwell. The records in this case show that the trial judge did give a ground for sustaining the appellee's objection to the appellant's question. This Court says that the letter of Mrs. Johnson-Maxwell, dated October 12, 1995, which was addressed to Appellant Tulay, clearly rescinded her offer to sell the subject property to him, and also informed him of her intention to sell the said property to another party. This Court holds that the grantee was under no legal obligation to investigate the occupation of the premises by Appellant Tulay in the face of this communication, copies of which had been sent to her lawyer and her attorney-in-fact for their information and necessary actions. Hence, count (20) of the appellant's bill of exceptions is hereby overruled.

In counts (32) and (33) of the bill of exceptions, the appellants alleged that the trial judge committed a reversible error when he affirmed the verdict of the jury in his final judgment awarding the subject property to the appellee. This Court shall decide the issues raised in these counts later in this opinion.

The appellant argued before this Court substantially that he took possession of the subject property in A. D. 1992 with the consent and approval of Mr. Jesse Payne, attorney-in-fact of Mrs. Victoria Johnson-Maxwell, and that the appellee knew that the appellant was in possession of the property when the said property was sold to it by Mrs. Johnson-Maxwell. The appellant strongly contended that the property was conveyed to the appellee by Mrs. Johnson-Maxwell without a decree of sale being issued by the Monthly and Probate Court for Montserrado County. He admitted during the hearing of this case that he did not have a title deed executed by Mrs. Johnson-Maxwell, after he had made part payment, up to the time of this litigation. In this

connection, he filed an action for specific performance in the Civil Law Court to compel Mrs. Johnson-Maxwell to issue him a title deed. However, he informed this Court that said action was still pending before the trial court undetermined. He further argued that where either party in an ejectment action does not have a title deed, the party which has prior possession thereof is entitled to the subject property. He therefore prayed this Honourable Court to reverse the judgment of the trial court and remand this case for a new trial.

The appellee's counsel filed a brief in which he raised and argued five issues before this Court. However, we consider only issues 1 and 2 to be germane to the determination of this case. In that connection, the appellee's counsel argued that it was unethical for the appellant to express interest in the estate while serving as legal counsel for the aforesaid estate. The other issue argued by the appellee, and which claimed the attention of this Court, was that Mrs. Johnson Maxwell did not pass title to George Tulay because she had changed her mind to sell the subject property to him on account of the deceit perpetrated by him; and that consequently, she wrote a letter to the appellant rescinding her offer to sell to the appellant the property in dispute and offering to refund the money paid to her. The records showed that the appellant refused to receive the money. Moreover, the appellee contended further that Mrs. Johnson-Maxwell had informed the appellant that she had sold the property in question to the appellee. The appellee therefore maintained that the appellant had no title to the property and, hence, could not contest the title of the appellee, especially because Mrs. Johnson-Maxwell had not signed any deed in favor of Counsellor Tulay. Accordingly, the appellee prayed this Honourable Court to confirm the judgment of the trial court.

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

1. Whether or not Mrs. Victoria Johnson Maxwell ever passed title to the appellant, Counsellor George S. B. Tulay, for which he can contest the title of the appellee, Salvation Army (Liberia) Inc.?
2. Whether or not it was unethical and unprofessional for Counsellor Tulay to express an interest in the F. R. Johnson Estate while he was serving as lawyer for the said estate?

We shall decide these above issues in the reverse order. During the arguments of this case, Counsellor Tulay admitted acquiring two (2) separate pieces of property from the Estate of F. R. Johnson, located between 41st and 51st Streets in Sinkor, while he was serving as lawyer for the aforesaid estate. He also admitted that he had expressed an interest in purchasing the very bungalow/apartment that he had occupied since 1992, the time during which he served as legal counsel for the F. R. Johnson Estate. Counsel for the appellee argued before us that Counsellor Tulay had made false representations to Mrs. Victoria Johnson-Maxwell to the effect that the property was badly damaged during the Liberian civil conflict, that the price of US$10,000.00 (Ten Thousand United States dollars) was a good price for one of the bungalows, and that he was interested in acquiring one of the said bungalows from Mrs. Johnson-Maxwell. In short, the appellee said, Counsellor Tulay had advised his client, Mrs. Johnson- Maxwell, that the bungalow he was interested in was valued at US$10,000.00, due to its damage in consequence of the Liberian upheaval, and that Mrs. Johnson-Maxwell had reluctantly agreed to the sale, with the understanding and hope that Counsellor Tulay would make a full cash down payment. It was against this background, the appellee said, that the attorney-in-fact of Mrs. Johnson-Maxwell,

Jesse Payne, had filed a complaint of unethical conduct against Counsellor Tulay with the Grievance and Ethics Committee, which was still pending undetermined.
Rule 13 of the Code for the Moral and Ethical Conduct of Lawyers clearly defines a lawyer's duty to his client, and also prohibits a lawyer from acquiring interest in the property of his client, as in the instant case. Rule 13 emphatically provides:
"No lawyer should acquire interest in the subject matter of a litigation which he is conducting, either by purchase or otherwise, which said interest he did not hold or own prior to the institution of the suit."
Also, Rule 15 of the Code of Moral and Professional Ethics states, *inter alia,* that: "A lawyer should refrain from any act whereby for his personal benefit or gain, he abuses or takes advantage of the confidence reposed in him by his client..."
In the face of the prohibition clearly imposed by these rules of our Code of Moral and Professional Conduct, Counsellor Tulay still acquired two (2) separate premises of the F. R. Johnson Estate in fee simple from Mrs. Victoria Johnson-Maxwell, and further expressed his interest in one of the bungalows/apartments, which is subject of this litigation, while he was serving as lawyer for the estate. Thus, Counsellor Tulay grossly violated the Code of Moral and Professional Ethics of our legal profession when he took advantage of his legal and professional duty and acquired interest in his client's property, subject of this litigation. His act is not only violative of his moral and professional ethics, but also an abuse of the confidence reposed in him by his client.
In the case *In re Weah[1971] LRSC 98;* , 20 LLR 535 (1971), text at 538, this Court held that: "Not only are lawyers required by the Supreme Court to be professionally qualified, but they are also held to a high standard of ethical conduct." We strongly re-emphasize that the Supreme Court does not only require lawyers practicing before our courts to acquire legal know-ledge and education as qualified and professional legal practitioners, but also that they equally be lawyers with good moral character who are always held to a high standard of ethical behavior. A lawyer owes a fiduciary duty to his client, and, as such, he/she cannot take advantage of his professional duty to acquire interest in the client's property in litigation, as in the case at bar.
We shall now decide the issue of whether or not Mrs. Victoria Johnson-Maxwell passed title to the appellant, Counsellor George S. B. Tulay, for which he can contest the title of the appellee, Salvation Army (Liberia) Inc. The answer to this question is no. The certified records in the case show that Mrs. Victoria Johnson-Maxwell did not pass title to Counsellor Tulay for the property in litigation. It is also clear that she changed her mind to convey said premises to him when she became aware that he that had deceived her. Consequently, she wrote him rescinding her promise to sell the subject premises and informed him of her intention to sell the property to another person. We shall hereunder quote the said letter for the benefit of this opinion:

Mrs. Victoria Johnson Maxwell
463 EAST UTICA Street
Buffalo, N.Y. 14208, U.S.A.
Counsellor George S.B. Tulay
The Tulay & Tulay Law Associate
Lynch Street

Monrovia, Liberia
Dear Counsellor Tulay,

I Sincerely find it expedient and appropriate at this point in time to have you informed through this medium that you once expressed interest and desire to have my house, in which you have resided for the past three years, but purchase will not materialize based on the following reasons:

You failed to live up to the payment agreement pertaining to the sale of said house which is located between Pan African Plaza and Toyota Garage. You have made four different payments.

In 1993 you made two separate payments in the amount of US$1,100.00 (One thousand One Hundred United States Dollars) (i.e.) you first paid US$500.00 (Five Hundred United States Dollars) then US$600.00 (Six Hundred United States Dollars) respectively, including few pieces of African Crafts that you sent for me to sell and use the proceeds as part payment.

You alleged that you had paid to my nephew, in the person of Mr. Jessie S. Payne, attorney-in-fact for said property, the sum of 5 0,000,00 Liberian dollars which he vehemently denied. He says instead that in 1992 you paid only L$10,000 (Ten Thousand Liberian dollars), which was at the time equivalent to US$400.00 (Four Hundred United States dollars). In recent times, you again made two separate payments of US$1000.00 (One Thousand United States dollars) each, which summed up to US$2,000.00 (Two Thousand United States Dollars). Therefore the total payment over the last three years are far less than 1/3 (one-third) of the total amount of US$18,000.00 (Eighteen Thousand United States dollars). In other words, you have just paid US$3,500.00 (Three Thousand Five Hundred United States dollars). This piece-meal payment is totally unacceptable to us. Hence, you have fallen short and gone completely contrary to the payment term that we agreed on. It was agreed that you would complete payment in less than one year.

Let it be known that because you have failed to make full payment, I have decided to sell the house to another person who will pay me full price at one time.

In view of the foregoing, your total amount of US$3,500.00 (Three Thousand Five Hundred United States Dollars) will be refunded to you by my nephew, Jessie S. Payne upon receiving this letter. As such, you have been given a one calendar month period to leave the premises in question without delay.

In addition to these counts, you also chose to take my Nephew, Jessie S. Payne, to court over properties that he serves as legally constituted attorney-in-fact to protect my interest as administratrix while I am away. You further went beyond to even collecting rent. This act on your part has seriously embarrassed him and made him to spend huge sums of money in this regard. Further more, you have even challenged him over the very house that I deeded to him in November of 1987, claiming that it is yours. These acts on your part are totally unacceptable.

Finally, please be informed that copies of this letter have been sent to our lawyer and Mr. Jessie S. Payne for their information and necessary actions.

Kind regards.

Sincerely yours,

Victoria Johnson Maxwell

Administratrix"

It is important to note that Counsellor Tulay did not deny the receipt as well as the content of this letter and/or the averments contained therein. Mrs. Johnson-Maxwell did not only rescind her promise to convey the property to Counsellor Tulay, but she gave him a one month notice to vacate the property, which is the subject of this litigation on appeal before us. This Court holds that the oral sales contract between Counsellor Tulay and his client was abrogated immediately upon the rescission of her offer to sell said property to him. His continuous use and occupation of the property, in spite of this sufficient notice to vacate said property, was without any legal justification, but an outright intrusion into and encroachment on the subject property.

We further observe from the records in this case that Mrs. Johnson-Maxwell subsequently wrote Counsellor Tulay two (2) separate letters dated January 8, 1996 and January 16, 1996, which letters were marked and confirmed as exhibits "PE/4" and "PE/5", respectively. In her letter of January 8, 1996, she informed Counsellor Tulay that she had already sold the property situated between the Pan African Plaza and the Toyota Garage to the Salvation Army (Liberia) Inc., which she understood Counsellor Tulay had occupied for more than three (3) years. She also informed the appellant to vacate her premises immediately, and that the money which he had paid in piece meal would be refunded to him by the Garnett and Associates Law Firm. She further advised Counsellor Tulay not to give the Salvation Army (Liberia) Inc., the appellee herein, any trouble as she was 88 years old, not well, and could not wait the rest of her life to sell the premises. In her letter of January 16, 1996 to Counsellor Tulay, she informed him that the transaction between them was null and void because he could not pay for the property he was living on free of rent, which act the appellant, as a lawyer, knew was illegal. She further reminded the appellant that she had sold the property to the appellee, and that the appellant should vacate her premises without causing any trouble. She ensured him that he would be refunded of his money paid to her in advance.

This Court holds that the evidence adduced at the trial in this ejectment action was indeed conclusive that Mrs. Victoria Johnson-Maxwell did not pass title to Counsellor Tulay as would have enable him to contest the ejectment suit brought by the Salvation Army. The appellee's title deed, which was valid and was registered in accordance with law in this jurisdiction was the best and most conclusive evidence for the settlement of the dispute over the title of the subject property. Thus, the appellee's deed prevailed over the appellant's mere possession as evidence of title in this ejectment action. *Railey v. Clarke*, [1950] LRSC 8; 10 LLR 330 (1960); *King v. Simpson*, [1966] LRSC 12; 17 LLR 226 (1965), text at 229.

We further hold that where the plaintiff in an ejectment action, as in the instant case, has shown a valid and legal title to the property, the plaintiff is rightfully entitled to recover said property in dispute upon the strength of title so established during the trial. This Court has held in past times that the "primary objective in suits of ejectment is to test the title of the parties, and to award

possession of the property in dispute to that party whose chain of title is so strong as to effectively negate his adversary's right of recovery." *Duncan v. Perry,* 13 LLR 510 (1960), text at 515. For all the reasons we have stated in this opinion, we hold that the appellee is rightfully entitled to the possession of the subject property in litigation, the possession of which the appellant is wrongfully and illegally withholding from the appellee.

In view of the facts and circumstances in this case, it is the considered opinion of this Court that the final judgment of the trial court appealed from should be, and the same is hereby confirmed and affirmed. The Clerk of this Court is hereby ordered to send a mandate to the court below commanding the judge presiding therein to resume jurisdiction over the case and enforce the final judgment of the court. Costs are ruled against the appellant. And it is hereby so ordered.

Judgment affirmed.

Helou Bros v Hunter [1966] LRSC 60; 17 LLR 520 (1966) (1 July 1966)

HELOU BROTHERS, Lebanese Merchants Doing Business in Liberia, by their Manager, SHAHIN HELOU SAAD, Appellants v. HAWAH KIAZOLU-WAHAB and His Honor, 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 ERROR.

Argued May 19, 1966. Decided July 1, 1966. 1. When a party who has been judicially directed to file a bond under Section 1231 of the Civil Procedure Law files a bond which does not bear the revenue stamp required by Chapter 18 of the Revenue and Finance Law and the party fails to make timely application to correct the insufficiency of the bond under Section 1014 of the Civil Procedure Law, a motion to dismiss the case will be granted. 2. The Supreme Court may simultaneously dismiss an application for a writ of error and modify the judgment below. 3. If a judgment has been entered without jurisdiction of the person of the defendant, the defect is cured if the defendant thereafter appears and participates in subsequent proceedings or invokes the action of the court for his benefit.

A ruling by the Justice presiding in Chambers granting a writ of error in an ejectment action was affirmed by the full Court which, however, modified the judgment of the circuit court in the ejectment action by a remittitur of damages.
P. Amos George Law Firm for appellant. Perry Law Association for appellees. Dukuly &

MR. CHIEF
JUSTICE WILSON delivered the opinion of the Court. To amend a petition for a writ of error previously filed in the Chambers of Mr.
Justice Clarence L. Simpson, Jr.,
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an amendment to said petition was subsequently filed on the 2.8th day of September, 1965, praying for the issuance of an alternative writ of error against a proceeding determined by His Honor Judge Hunter, then presiding over the Circuit Court of the Sixth Judicial Circuit, Montserrado County. This petition as amended charged the trial judge with having proceeded illegally with the trial and disposition of an action of ejectment filed against petitioner in error because as the petitioner contended, he did not have his day in court. The petitioner also challenged the correctness of the returns made to the writ of resummons by the sheriff, contending that at the time the writ is supposed to have been served Shahin Helou Saad and Marga Baum, who were named defendants and agents for Helou Brothers, were out of the country--that is to say, Marga Baum left the country in 1962 and did not return to the Republic, and Shahin Helou Saad, at the time of the alleged service of the writ, was in the Republic of Lebanon, which made it impossible for the writ to have been served on them. The petitioner alleged that, notwithstanding this claimed impossibility, the trial judge on the basis of false returns of the sheriff, and in the absence of petitioner in error, entered judgment upon a verdict made by a specially empaneled jury to try said action and assessed damages of $150,000 for an illegal detention of a parcel of land measuring not more than 3o to 40 feet which plaintiffs claim they held on lease from respondent in error, Hawah Kiazolu-Wahab. The returns of the respondents in error, comprising 12 counts, prayed that the petition be denied for legal and factual reasons which we consider necessary to quote word for word, to wit: it 1. Because respondents in error say that the writ as prayed for has no legal foundation in that, in keeping with the statutes controlling the issuance of a writ of error, the parties are referred to as plaintiff in error

and defendant in error, according to the party suing and the one sued, but to the contrary the petitioner in error, as it styles itself has violated this principle of nomenclature in keeping with our statute, practice and procedure. See 1956 CODE 6:1231. "2. And also because respondents in error say that the writ as prayed for has no legal and factual foundation in that the petitioners are estopped from raising any jurisdictional issue over their persqns and as to the manner of service of process on them in that, on the 21st day of December, 1965, the petitioners voluntarily appeared in the court below by means of what they termed a submission and obtained the release of goods seized by the sheriff 'to enable the defendants to be in position to pay the costs as well as the prinicipal of the damages ... ,'as will more fully appear from an inspection of the hereto attached copies of the ruling of Judge Hunter, one of the respondents herein. (See the submission filed in the court below, the judge's ruling and orders, and the sheriff's returns to said orders.) "3. And also because respondents in error say that the petitioners

in error are forever barred and estopped for any alleged defects in the issuance and service of process; for in the court below, the said petitioners in error did file an instrument in the proceedings styled 'Defendants' Submission,' hereto attached to form a part of these returns. Respondents in error submit that a 'submission is a putting one's property or person under the control of another. A yielding to authority.' See BOUVIER'S LAW DICTIONARY (Rawle's 3rd rev. 1914) Submission. "4. And also because respondents in error further say that, according to the general rule, if a judgment has been entered without jurisdiction of the person of the defendant, the defect is cured if the defendant thereafter appears and participates in subsequent proceedings or invokes the action of the court for his benefit.

See 3 AM. JuR. 806-807 Appearances § 37. Further : `A general appearance may rise by implication from the defendant's seeking, taking, or agreeing to take some step or proceeding in the cause, beneficial to himself, or detrimental to the plaintiff, other than one to contest the jurisdiction only.' 3 Am. JuR. 783 Appearances § 3.

"In the instant case the petitioners in error appeared in the court below, sought and obtained the order of the court for the release of the seized goods to them, which was to their benefit and to the detriment of the plaintiff in the main ejectment case. "5. Respondents in error further say that the application for a writ of error is an indirect request made of this Honorable Court by the petitioners for an aid in all their acts which have no foundation of good faith from the facts and circumstances surrounding the case at bar, in that petitioners in error have even failed to disclose in their petition the fact that they filed a submission in the court below as well as obtaining the court's order to release the goods to them, which the respondent judge did, as per ruling and the returns of the sheriff. "6. And also because respondents in error say that the petitioners in error having undertaken to take delivery of the goods seized to have them sold to enable them to pay the cost as well as the principal, they thereby waived all objections as to the legality of the court's jurisdiction over their persons. "7. And also because respondents in error further contend that the application for the writ is providently prayed for in the instant case; that is to say, the processes were lawfully issued and properly served in keeping with the returns of the sheriff, as appears from copies of the writ of summons ; and respondents in error further submit that: " 'The return is merely evidence by which the court

is informed that the defendant has been served. When the judgment recites service and there is a return, the recital is always based on the return, and

the two are to be construed together.' 21 R.C.L. Process § 6z. "In the instant case, the record reveals that service of process was had by the sheriff and the writ of resummons issued only for the permissive compliance with Section 1125 of the Civil Procedure Law, quoted supra. 'Generally, if the record is silent as to service, or in the absence of a return there is a recital of due service, then on a collateral attack jurisdiction will be conclusively presumed.' 21 R.C.L. Process § 62. "In the instant case, there was both service and return in accordance with the record; furthermore, no evidence was ever introduced to rebut the returns with respect to regular service having been had upon both the persons of plaintiff in error and his codefendant in the court below. In the premises, the recital of service cannot herein be attacked. See Perry v. Ammons, [1965] LRSC 11; 16 L.L.R. 268 (1965). "8. And also because respondents in error say further that as to Counts 1, 2 and 3, as well as 4, 5, 6, 7, and 8 of the petition, the points therein made have no legal efficacy and foundation, in that the said points raised in the aforesaid counts propose issues which should have been presented during the trial of this case in the court below. Moreover, because the petitioners in error wantonly failed to appear and defend even though returned summoned and resummoned, and because of their subsequent submission to the court's jurisdiction and participation in the judgment to their benefit and to the detriment of the defendants in error coupled with the returns of the sheriff for Montserrado County, they are forever barred and estopped from raising the issues contained in the petition.

9. And also because respondents in error say that the petitioners in error herein have greatly misled this Honorable Court in that, although they have filed an instrument entitled 'Submission' in the court below, as if seeking a similar relief now sought by them in these proceedings, and although said 'Submission' is before the presiding judge for disposition, yet the petitioners have elected, while still said matter is pending before the respondent judge in the court below, to take flight to the Chambers of this Honorable Court for the relief they now seek. (C m. And also because respondents in error further say that it is true that the petitioners in error were served with the processes but that, due to inadvertence of counsel, no formal appearance was filed and, because of such omission, the plaintiff secured a judgment by default from the present term of court, and thereafter final judgment was rendered awarding the property to plaintiff together with damages to amount of $15o,000 as will more fully appear from an inspection of the hereto-attached copy of motion of the International Trust Company of Liberia to intervene. "11. And also because respondents in error further say that the entire proceedings should be dismissed because of the defective indemnity bond filed by the applicant (petitioner in error) in that from an inspection of the bond filed by the petitioner in error, there is no revenue stamp attached thereto in accordance with law. Respondents in error submit that: " 'In the year 1906, the Legislature of

Liberia, for the purpose of increasing the revenue, passed a statute entitled a "Stamp Act" which provides that certain documents shall be subject to a stamp duty to be thereon affixed as per schedule then prescribed ; among which are bonds, etc. Said act was supplemented and enlarged by a subsequent stamp act approved January 24, 1923, which included appeal bonds etc., and

provided that no document of the nature of those mentioned therein, issued after the thirtieth day of June, 1906, should be deemed valid, or be received as evidence in courts of justice unless it should have been properly stamped in accordance with the schedule above-mentioned in said Act. Upon careful examination of the records filed, we find that the bond filed in the cause was not stamped according to law, and is, therefore, void and of no legal effect.' Tisdell v. Zeonvonyon, [1937] LRSC 16; 6 L.L.R. 24, 25-26 (1937) " 'No document or instrument subject to stamp duty under the provisions of Section 57o above shall be deemed valid or received in evidence in court unless it bears revenue stamps of the Republic of Liberia cancelled in accordance with the provisions of Section 571 above. This section shall not, however, be understood to exempt from payment of the stamp duty hereinbefore specified any document or instrument even though such document or instrument is not required as evidence before a court.' 1956 CODE 35 :573.
"12. And also because respondents in error say that the bond required to be filed in error proceedings is in the nature of an appeal bond ; for this Honorable Court has only appellate jurisdiction in keeping with provisions of the Constitution of the Republic of Liberia. Respondents in error submit that the bond as tendered by the petitioners in error being defective, the writ should be quashed. (See certified copy of the bond filed by the petitioners in error hereto attached.) " On the same day, that is to say the 3rd of January, 1966, respondents in error filed a motion to dismiss the petition and quash the writ of error setting out two grounds, to wit : "1. Because, in keeping with law, one of the very essential prerequisites of the issuance of a writ of error, if required by the presiding Justice in whose Chambers the appeal is made, is a tender of a valid

bond by the appellant (in this case the petitioners in error) . In the instant case, the Chambers Justice, His Honor C. L. Simpson, Jr., emphasized the necessity of the conformity with this requirement; in other words, he did not dispense with the said provision, thereby making the tender thereof mandatory and prerequisitory. Nevertheless the petitioners in error, as if to challenge, disregard, and disobey law and procedure relating to the appeals in this Honorable Court, negligently and irresponsibly executed, tendered, and filed a bond

without meeting the requirements relating to bonds, that is to say, the petitioners in error refused, neglected, carelessly and improvidently omitted to attach a revenue stamp to the said bond, thereby rendering these appellate proceedings a fit item to crumble as though they never existed. Respondents in error ask this Honorable Court to take judicial notice of the original bond filed in these proceedings and as per certified copy thereof attached to this motion. "2. Respondents in error further say that, according to the Constitution of the Republic of Liberia, this Honorable Court is exercising an appellate jurisdiction in these proceedings; consequently the bond tendered and filed in pursuance thereof and in consonance therewith tantamount to any bond ; and the material defect thereof as outlined herein is fatal to the entire proceedings. The entire proceedings should therefore be dismissed and the writ quashed." Because of the allegations contained in the petition charging false returns of the sheriff regarding the actual service of the writ, His Honor Judge Hunter, on instructions of Mr. Justice Simpson, instituted an investigation and made a report, the last paragraph of which stated that: "From all aspects of the investigation, the defendants were not in the country, as was established by Mr. Halou's passport. However, the sheriff's returns were made relying on the information of the bailiff, as

you will more fully see from the records attached for Your Honor's final ruling." This motion, however, was withdrawn by petitioners in error with reservations. Subsequently an amended motion to dismiss the petition and quash the writ of error was filed setting forth, in substance, the following legal and factual reasons : i. Because the bond as filed and tendered by respondents in error carelessly and improvidently omitted to carry a revenue stamp, which rendered said proceedings fit for dismissal. 2. That in keeping with the Constitution of the Republic of Liberia the Supreme Court was exercising appellant jurisdiction in these proceedings ; consequently a bond filed in pursuance thereof is in the nature of an appeal bond and the failure to affix the stamp thereon is a material defect. Respondents in error also maintained that the petitioners in error were estopped from contesting either the issuance and service of said precepts or the validity of the judgment by the rule that if a judgment has been entered without jurisdiction of the person of the defendant, the defect is cured if the defendant thereafter appears and participates in subsequent proceedings or invokes the action of the court for his benefit. The latter contention of the respondents in error referred to a submission filed by the petitioners in error setting up a claim of not having been placed under the jurisdiction of the court, this time claiming that they were out of the country at the time the writ is supposed to have been served, and that a brother who was in charge of the business had left the City of Monrovia for a period of 5 days. Petitioners in error also submitted that under the statute controlling ejectment proceedings, application should have been made by the respondents in error for a writ of resummons before a judgment by default could be entered against them and that,

by recourse to the record, there is no indication that a resummons was either prayed

for or granted,
nor had service of any precept been made on the petitioners in error. This submission concluded with a prayer which we consider it necessary to quote word for word, to wit: "Wherefore, in view of the foregoing, defendant submits therefore that you will investigate the allegations contained herein, and if found to be true and correct, that Your Honor will rescind the judgment given and order the defendant restored to his status quo and a copy of the writ of ejectment ordered served on him, as in keeping with the law."
It was because of this submission that an investigation was ordered by the Chambers Justice to be conducted by the trial judge; however, it seems necessary for us to quote some of the questions and answers that were recorded during this investigation to support his claim of nonservice of the writ and the alleged false returns of the sheriff. The following are some of the questions and answers that were propounded to witness Shahin Helou Saad : "Q. You will please state all facts and circumstances within your knowledge touching the allegations you have made against the sheriff. "A. All I know is that on December 28, 1965, the sheriff came with a writ of possession and closed my business by order of the court and he told me that there was a case against me and I was not present; and it was not true, because I did not know about the summons; I can prove that, because when the writ of summons was served in the month of July, I was not in the country; I was in Lebanon. "Q. Did you leave an agent or representative to succeed you at the time you went to Lebanon? "A. Yes, I left someone, Farood Helou Saad, my brother and my partner in the business. "Q. Can you say as to whether this writ was not served on your brother, partner, or on your agent? "A. I do not think so."

As against this testimony was evidence that, although the sheriff did not personally serve the writ on defendant in error, service was made on the representative of the company by his deputy, court bailiff George Sherman, who testified as follows. "Q. Are you acquainted with one Marga Baum and Shahin Helou Saad of Monrovia? "A. Yes. "Q. Can you say as to whether you served any precepts on this company, and if so, what time and on whom did you serve them by orders of the sheriff of this court? "A. I served the writ of ejectment; but when I got there they told me that the manager was gone away; the acting manager who was left in the business and whom I identify now in court was the gentleman who signed and received the writ." Witness A. Dondo Ware, who accompanied the court bailiff for the purpose of identifying to him the Helou Brothers area so as to be able to serve the writ, testified as follows. "Q. Do you recall at any time accompanying the bailiff of this court,

George Sherman, for the purpose of identifying the Helou Brothers area to him for the purpose of serving a writ of summons in this ejectment case? "A. Yes. "Q. Please explain what happened. "A. When the bailiff got to the business house of the company I was with him and I asked for the man that was in charge, and Mr. George Daou said that he was the man. The bailiff summoned him and he read the complaint, writ, and other documents. It was I who told him to sign the papers and he signed his signature to it. When asked to identify the signature of Mr. George Daou, he stated : 'This is the very writing and signature of

Mr. George Daou.' Two days later I went to the office where I met Fred, the brother of Shahin Helou, and he admitted to me of the writ and they were laughing at me and they said to me that the plaintiff will not get anything out of the matter; the German Government will give them that place." One Moses Duaryenneh was called to the stand and, over objections of the respondents in error, was asked and answered the following questions : "Q. Are you acquainted with George Daou of the Helou Brothers? "A. This is my second time seeing him, but I am not acquainted with him. "Q. Please explain the circumstances under which you saw him in connection with the present ejectment case now under investigation. "A. The only thing that I know about the ejectment case besides being disposed of by this court, it was on the 22nd day of December, 1965, when His Honor the Judge adjourned court to meet after Christmas. I immediately went to the Henries Law Firm to attend some private business of mine. There I met a stout white man before Counsellor Dennis's desk; he was having on an old white panama hat. Counsellor Dennis then told me to have a seat. I took my seat. This gentleman was telling Counsellor Dennis how a writ of possession was served on him and one Hawah Kiazolu-Wahab was placed in possession of her land. Counsellor Dennis asked me what kind of ejectment case did you people have in court. I told Counsellor Dennis that we had an ex parte ejectment case in which Hawah KiazoluWahab is plaintiff and Helou Brothers are defendants. He then asked me as to whether a formal appearance was filed. I told him, no; no

formal appearance, neither an answer. He again asked me where was the judge. I told him that the judge was gone to Bassa. Counsellor Dennis then asked this white man whether any writ was served on him. He said : 'Yes, a writ was served on me and I took same to Counsellor P. Amos George.' Counsellor Dennis asked me the whereabouts of Counsellor P. Amos George now. I said 'I did not know the whereabouts of Counsellor P. Amos George.' I then told Counsellor Dennis that I learned that Counsellor P. Amos George was in Sanniquelli attending a murder case. Whilst talking this, Counsellor Smythe entered the office and we commenced my business. After my business I left and this is all I know." I want to note here that this

witness was the assistant clerk of the Circuit Court of the Sixth Judicial Circuit, Montserrado County, before whom this case was being tried. This brief account and history of the case is not intended to serve as a review of the ejectment proceedings tried and determined by the circuit court since, rather than a regular appeal, we are only considering determination of an appeal from the ruling of Mr. Justice William E. Wardsworth on a petition of a writ of error growing out of said ejectment proceedings. It must be noted here that, notwithstanding the claim of petitioners in error of not having been properly and legally brought under the jurisdiction of the court, they elected very strangely and unprecedently not to move immediately by writ of error but adopted a novel proceeding of a submission contesting jurisdiction over their persons which they claimed to be based on the false and misleading returns of the sheriff. Acting on this submission the trial judge made the following ruling. "In the case of Hawah Kiazolu - Wahab, plaintiff, versus Marga Baum and Shahin Helou, agent for

Helou Brothers in which final judgment was given and a writ of possession ordered, the court has been informed that the sheriff has duly executed the writ of possession and the plaintiff has been put in possession of the property in the rear of defendant's business house and has made his returns to this court in the adequate execution of the judgment of this court; but the court was later informed that in executing the damages part of our judgment, he also closed all the business of all the warehouse, which was not ordered in our judgment. So as to mete out transparent justice to both parties and to enable the defendant to be in position to pay the costs as well as the principal of the damages, the sheriff is hereby ordered to release to defendants the key for their business house in which regular commercial business is transacted for income, pending my investigation into the allegation set forth and contained in the submission filed by the defendants, and to make his returns to this court by tomorrow morning as to how he has executed this order. And he is to keep the key for only the warehouse that falls within the value of the damages and nothing in excess of that; and it is so ordered." This ruling of the judge does not appear to us to be responsive to the submission made by petitioners in error through Counsellor P. Amos George who, strangely, did not except to same but rather permitted his clients to participate in this revival of action on the final judgment of court and had his clients accept the keys of the premises, reenter, and proceed in regular performance of their business to be able to pay costs and damages decreed in said verdict and judgment. It was after this participation in the submission proceedings that the learned Counsellor, for his clients, sought the benefit of a writ of error which was denied by the Chambers Justice. The Chambers Justice's ruling, however, was exclusively based on the alleged failure of petitioner in error to affix the required revenue stamp on the appeal bond, in

keeping with
the statute, to make said bond valid, since according to the statute, a bond, if required, must possess all of the essentials to
make it valid. Section 573 of our Revenue and Finance Law provides that: "No document or instrument subject to stamp duty under the
provisions of section 570 above shall be deemed valid or received into evidence in court unless it bears revenue stamps of the Republic
of Liberia cancelled in accordance with the provisions of section 57 1 ." Independent of this section is Section 574 which provides
a penalty for failure to affix revenue stamps, as is required, subjecting the defaulter to a fine of not more than $5o. It was contended
by petitioner in error during the argument before us that the sole purpose of the statutory provision requiring revenue stamps to
be affixed to a document to make it valid is to secure revenue to the Government; and where not done, only a penalty is provided.
We cannot harmonize our opinion with this contention. The statute, as construed in several opinions of this Court makes the sufficiency
of a bond one of the jurisdictional requisites of the completion of an appeal ; and a legal bond must carry a revenue stamp. The
penalty for such failure as provided by section 574 of our Revenue and Finance Law does not relieve the defaulting party of the denial
of the right to be heard on an appeal because of failure to file a bond that is not timely and legally stamped. Further supporting
our position, we quote the following. "The omission to stamp an appeal bond in accordance with the Stamp Act is a material error." Freeman V. Republic, 2 L.L.R. 189 (1915) Syllabus 2. By way of excusing themselves from liability, the petitioners in error invoked Section 1231 (d) of the Civil Procedure Law which provides that a petitioner in error "may" be required to file a bond as contrasted with other

like requirements under the statute which employ the word "shall." The learned counsel overlooked the fact that this statutory provision
makes the filing of a bond in error proceedings optional, but where, as in the present case, the Chambers Justice requires it, it
is mandatory; and in such case, the bond must be stamped, otherwise it is invalid. We desire here to remark that no court in the
exercise of its judicial functions is authorized to amend, repeal, modify, or grant any concessions to any party litigant save as
expressly provided by statute; nor can any common-law provision be applied in substitution of an existing statute. The Chambers Justice's
ruling applying Section 57o of the Revenue and Finance Law which requires a revenue stamp to be affixed to a bond refers to Section
570 (8) which specifies the instruments to which revenue stamps are mandatorily required to be affixed. Section 1014 of the Civil
Procedure Law affords a party an opportunity to make sufficient an insufficiency in his appeal bond by petitioning the appellate
court for permission to make it sufficient; but this the petitioner in error hopelessly failed to do until he had been attacked by
his adversary. Petitioner's counsel, however, contended that he made tender of said stamp to the clerk of the Supreme Court who refused

to accept same on the ground that he was not authorized to do so except by orders of the Chambers Justice ; yet counsel, knowing this to be a statutory requirement, elected not to apply to the Chambers Justice to make sufficient this insufficiency. We cannot, therefore, but sustain the ruling of the Chambers Justice to the effect that the bond of petitioner in these error proceedings is invalid. The circumstances which obtained in Gibson v. Tubman, 13 L.L.R. 610 (196o), cited by petitioners in error differ from the circumstances in this case, in that the appellants in that case did apply for a revenue stamp to be placed on the appeal bond but there were no flag receipts available for procurement at the time of the filing of the

bond ; hence the appellants in that case deposited the amount into the Internal Revenue and obtained a receipt which they affixed to the bond, thereby fully complying with the statute relating to the affixing of a revenue stamp to the bond. It was stressed in the argument before us by the petitioner in error that the failure to affix a revenue stamp to the appeal bond was not sufficient ground for dismissal of the appeal or the denial to him of the right of review of the court of the allegedly illegal trial. He cites the opinions by this court in Buchanan v. Arrivets, [1945] LRSC 2; 9 L.L.R. 15 (1 945), and Cole v. Williams, io L.L.R. 191 (1949). We must here state that these two opinions just quoted do not harmonize with the statute on this point. These two opinions, in our opinion, seek to amend, modify, and grant concessions which are not reserved as exceptions to this statute by the lawmakers ; hence both are hereby recalled. In our opinion, courts of justice are not lawmakers but law interpreters, which must be strictly in conformity with the statute and not otherwise. Nor, too, should this Court give encouragement to negligence and slothfulness on the part of lawyers who indulge in not only carelessly handling the interests of their clients but failing to comply with the statute in the hope of getting the benefit of concessions from the Court. It has ever and anon been declared by this Court that litigants must not expect the Court to do for them that which they ought to do for themselves. Even if this Court were moved with sympathy to reverse the ruling of the Chambers Justice in this stamp issue as immaterial or technical because of the sentimental contention of petitioners that they should not be subjected to the payment of such an enormous sum of money, namely, $15o,000, on the insignificant and minor default or failure to affix a revenue stamp, it cannot escape us to bring under consideration the legal impossibility of the Court entertaining error at the stage it was applied for and the circumstances which followed the rendition of

final judgment in this case by the voluntary, inexcusable, and questionable

conduct of the petitioners' counsel--that is to say, waiving the right secured to him under the law to apply for error immediately after the rendition of final judgment which he claimed was rendered not only in his absence but on false returns of the sheriff that his client was actually summoned, when in fact he was not summoned. The record of the investigation of the charge of false returns of the sheriff substantially shows by the testimony of the witnesses recorded and cited supra in this opinion that the service was performed and the documents relating to same given petitioners' counsel by his clients, which documents he placed in his pocket and obviously carelessly failed to file an appearance and an answer, to the injury and damage of his client. Estoppel has been raised by the respondents against this Court entertaining these proceedings for the reason that petitioner is precluded and estopped from questioning any defects, if at all they existed in the issuance and service of process as well as the validity of the judgment, because of waiver on their part in keeping with the general rule which has been authoritatively summarized as follows. "According to the general rule, if a judgment has been entered without jurisdiction of the person of the defendant, the defect is cured if the defendant thereafter appears and participates in subsequent proceedings or invokes the action of the court for his benefit." 3 AM. JuR. 806 Appearances § 37. " A general appearance may arise by implication from the defendant's seeking, taking or agreeing to take some step or proceeding in the cause beneficial to himself or detrimental to the plaintiff, other than one to contest the jurisdiction only." 3 AM. JuR. 783 Appearances § 3. In the instant case, petitioner appeared in the court below and participated in the case to the extent of repos-

sessing the goods and property seized on the execution to enforce the judgment of the court rendered against him. According to the ruling of the trial judge on the petitioner's submission, to which he recorded no exceptions, although present in court when same was made, "to enable the defendant to be in position to pay the costs as well as the principal of the damages, the sheriff is hereby ordered to release to defendants the key for their business house in which regular commercial business is transacted for income, pending my investigation of the allegation set forth and contained in the submission filed by the defendants. . . ." Obtaining the benefit of a release of the key and repossession of the property seized on the execution enforcing the judgment in the case for the purpose of continuing business transactions to raise income for the settlement of the costs of court and damages of $150,000 awarded by the jury and confirmed by the judgment of the court precludes the petitioners in error from seeking the benefit of a writ of error to contest the legality of the judgment and the claimed false returns of the sheriff, since the petitioners in error have submitted to the jurisdiction of the court by said submission and obtained benefits from the court to the disadvantage of their adversaries. "Admissions which have been acted upon by others are conclusive against the party making them, in all cases between him and the party influenced. It is of no importance whether they were made in express language to the person himself, or

implied from the open and general conduct of the party. For, in the latter case, the implied declaration may be considered as addressed to every one in particular, who may have occasion to act upon it. In such cases the party is estopped, on grounds of public policy and good faith, from repudiating his own representations. . . . "It makes no difference, in the operation of this rule, whether the thing admitted was true or false; it being

the fact that it has been acted upon, that renders it conclusive." i GREENLEAF, Evidence 329, 333 § 207, 208 (Lewis ed. 1896). We have made this departure in not confining ourselves to the ruling of the Chambers Justice on the question of failure to affix the required revenue stamp to the bond demanded by the Chambers Justice when the alternative writ of error was issued, because of what is felt and alleged to be too insignificant and not sufficiently material to deny issuance of the peremptory writ. We could not avoid taking judicial notice of the circumstances which have provoked these proceedings by the conduct of counsel for petitioners in error as their lawful agent and his failure to timely move for error to bring said proceedings to this Court for review. Counsel elected to move by submission and still, after getting the benefit of said submission, challenged the jurisdiction of the Court by error, which has exposed his clients to grave and serious embarrassments, damages, and injury which we are inclined to feel were deliberate, willful, and therefore unprofessional and unethical. In affirming the ruling of the Chambers Justice, since we have no legal authority to do otherwise, we must here remark that we cannot in good conscience and transparent justice confirm a verdict and judgment in such extremely excessive damages. It is not apparent, according to the record which we cannot escape taking judicial notice of, that by reasonable deductions such an enormous sum of money has justly accrued to respondents in error. We must nevertheless recognize the fact that there was a trespass by the intrusion on and occupation of a piece of real property of respondents by petitioners, which property was not a part of their lease holding. Hence, compensatory damages and eviction from said excess piece of property fairly and justly accrue to the appellees without prejudice to the lease agreement for the property. In

the light of the foregoing, the undescriptive and unqualified amount of $150,000 assessed by the jury's verdict is hereby reduced to the sum of $20,000. This position is buttressed by the fact that an error proceeding before the Supreme Court has the character of an appeal since it brings under review the entire record of a trial as does a regular appeal ; hence this Court is authorized in a proceeding on a writ of error to give such judgment as ought to have been given by the court from which the appeal was taken. Deciding on the conduct of Counsellor P. Amos George we must here remark that same was unprofessional and unethical,

tainted with carelessness and indifference to the interests of his clients, and has a criminal coloring which cannot be condoned by this Supreme Court since it has seriously and adversely affected his clients. He is therefore suspended from the practice of law directly and indirectly for a period of one calendar year from the date of this judgment. The ruling of the Chambers Justice is affirmed with costs against the petitioners in error. And it is hereby so ordered. Ruling in Chambers affirmed; judgment modified.

MR. JUSTICE SIMPSON dissenting.

The relevant facts have been stated and therefore there exists no need for a further review of these facts.
I have refused to sign the majority opinion because of my inability to agree with the proposition that the present error proceedings should be dismissed predicated upon the failure of plaintiff in error, appellant in these proceedings, to have affixed to the petition a revenue stamp as is required by our Revenue and Finance Law.

It is undeniably true that the Revenue and Finance Law requires that revenue stamps be affixed to appeal bonds. Section 570 of the Revenue and Finance Law (1956 CODE 35 :57o) prescribes that bonds of the type used in the present case should have affixed thereto a revenue stamp to be valid. Additionally, Section 574 lays down a penalty for failure to affix or cancel revenue stamps as required by Section 570. On the surface, in reading Section 573 one immediately and understandably gets the impression that a document without the required stamp is invalid and may not be received in evidence in court. However, upon continuing to Section 574 and viewing the criminal implications contained therein, one wonders whether the prime concern of the Legislature is the paying of the required stamp fee or the rendering of the document invalid. In order best to be able to answer this question, we must delve into legislative history to uncover the intention behind the law. Why was this law passed? The first pronouncement on the Stamp Act .by this Court was in the case of Page V. Jackson, 2 L.L.R. 47 (191) , in which Mr. Justice McCants-Stewart, speaking for the Court, said at 2 L.L.R. 48-49 "The Stamp Act was passed for the purpose of increasing the revenue. The suggestion for such a law emanated from the Postal Department, and was urged upon the ground that it would increase the postal revenue. In his annual message to the Legislature, dated December 16,1904, His Excellency President Barclay said : 'The Postmaster General is exceedingly anxious to place the service on the same footing in all parts of the country; but he is hampered by want of funds. . . And His Excellency in his annual message to the Legislature dated December 11,1906, dealing with the affairs of the Postal Department, said, among other things :

" 'The Postmaster General having made the necessary preparations, the Stamp Act went into force at the beginning of July. This Act will be very helpful as it affords a revenue.' " True, the case just quoted was one dealing with the use of a postage stamp in lieu of a revenue stamp due to the lack of a revenue stamp in a remote area of the country. But it is also evident that the legislative history was exposed and the underlying intention of the Legislature for the passage of the particular act made manifest. Next, in the case of Pratt v. Hazeley, [1929] LRSC 10; 3 L.L.R. 127 (1929), this Court reaffirmed two basic principles which, in our view, underlie the reasons for the above-mentioned pronouncement. Quoting with approval from the Page case, supra, Mr. Justice Grigsby pointed out in the Pratt case, 3 L.L.R. 128, that the Court is Ct . . . not inclined to look favorably upon technical points, which do not go to the merits of the controversy. A court of last resort should deal with the principles underlying every issue brought before it." And Syllabus 2 of the Pratt case reads as follows. "Where a need for a revenue stamp arises and there shall be no more on hand available, an instrument is properly stamped if it has affixed thereto any government stamp of the value required by the Stamp Act." These two points, in our view, constitute a clear indication of the thinking of this Court more than 37 years ago. Are we to project this thinking to a new horizon or retrogress? In the case of Brownell v. Brownell, s L.L.R. 76 (1936), this Court held that every statute should be expounded not according to the letter but according to the meaning and intent. In that case, at 5 L.L.R. 79, the Court quoted the following passage from Yancy v. Yancy, [1934] LRSC 31; 4 L.L.R. 204, 214--216: "Every statute, it has been said, should be expounded, not according to the letter, but according to

the meaning; for he who considers merely the letter of an instrument goes but skin deep into its meaning. Qui haerit in litera haerit in cortice. Whenever the legislative intention can be discovered, it ought to be followed with reason and discretion in the construction of the statute, although such construction may seem contrary to the letter of the statute. . . ." This same point was again expounded in Massaquoi v. Massaquoi, [1938] LRSC 18; 6 L.L.R. 320 (1938) , where this Court, at 6 L.L.R. 322, through Mr. Justice Tubman quoted with approval the following: "Closely allied to the doctrine of the equitable construction of statutes, and in pursuance of the general object of enforcing the intention of the legislature, is the rule that the spirit or reason of the law will prevail over its letter. Especially is this rule applicable where the literal meaning is absurd, or, if given effect, would work injustice, or where the provision was inserted through inadvertence.

* * *

. . . If the purpose and well-ascertained object of a statute are inconsistent with the precise words, the latter must yield to the controlling influence of the legislative will resulting from the whole act." 36 CYC iio8-1111 Statutes. It is conceded that in the case of Leigh v. Taylor, [1947] LRSC 11; 9 L.L.R. 329 (1947),

this Court held that the insufficiency of the stamps on an appeal bond renders the bond defective and the appeal dismissable.
We are saying that, in accordance with other pronouncements of this Court, the time is ripe that there be a change in the thinking of the Court where the letter of the law killeth and the death was not intended by the lawmakers. We have further observed that in the case of Richards v. Holt, [1956] LRSC 9; 12 L.L.R. 292 (1956), Mr. Justice Pierre, speaking for the Court held that an appeal bond which is not It

validated by a revenue stamp on its face is materially defective. The Justice also quoted a similar and earlier pronouncement of this Court in the case of Freeman v. Republic, 2 L.L.R. 189 (1915). However, it is a strong contention that since the expressed intention of the Legislature was to secure additional revenue, and to this end the Legislature proceeded to prescribe a punishment for failure to affix a revenue stamp on certain types of documents, at all times the prime objective of courts should be the meting out of transparent justice. Additionally, where statutes are construed and interpreted, it is always the responsibility of the Court to determine what the Legislature intended ; for it is axiomatic that legislative will is but the refinement of the general will and this general will is but an expression of the innermost thoughts of the majority of the population; therefore, where a revenue stamp is required to be placed upon a legal document before the same may be admitted into a court of law as evidence, we submit that the affixing of the stamp on the document when the defect is discovered should be sufficient to activate its validity. In other words, the payment should be allowed to be made, nunc pro tunc, as is the case with the late payment of costs of court. If, however, we concede, arguendo that the defect upon the bond renders the same invalid, is that a ground for dismissal of special proceedings in the Chambers of a Justice of this Court without the right to make good this defect at a subsequent time and have the matter attended upon its merits? In other words, is the bond a jurisdictional issue in error proceedings which will necessitate an involuntary dismissal upon the merits? The Civil Procedure Law provides that: "Before a writ issues the plaintiff in error shall be required to pay all accrued costs, and he may be required to file a bond in the manner prescribed in section 468 above, such bond to be conditioned on paying the damages sustained by the opposing party if

the judgment, decree or decision complained of is affirmed." [Emphasis supplied.] 1956 CODE 6:123I(d).

In contradistinction

to the above-quoted provision regarding the filing of bonds in proceedings on writs of error, we find the following relating to bonds in injunction proceedings : "The judge shall require the plaintiff to give a bond with two or more legally qualified sureties before granting a writ of injunction." [Emphasis supplied.] 1956 CODE 6:1o81. From a comparison of the wording of these two provisions, it can be readily seen that Section 1081, by use of the words "shall" and "before," makes it a mandatory precondition to the issuance of the writ of injunction that the proper bond be filed with the court. For this reason it has been repeatedly held by this Court that the filing of the bond constitutes a jurisdictional step. However, it is because of this proposition that the Legislature has also provided in Section 597 of the Civil Procedure Law (1956 CODE 6:597) that the dismissal of an action for lack of jurisdiction does not constitute an adjudication upon the merits, thereby granting unto the applicant another opportunity to seek relief. This seems to us to constitute a projection of the concept that cases should not be dismissed on mere technical issues. Should we not in this Court follow the same rule? Turning to subsection (d) of Section 1231, as quoted supra in this opinion, it is made discretionary with the Chambers Justice to require the filing of the bond. It is very noticeable that Section 1231 does not make the filing of the bond a precondition to the issuance of the writ, as indicated by the use of the word "may" which is permissive rather than the mandatory "shall" which was employed by the Legislature in Section 1o81 relating to injunctions. In our view, where a particular act is permitted by the statute to be utilized or invoked by the as-

signed Justice in his discretion, and the same is not made

mandatory by the Legislature, in such event the nonperformance of such act may not constitute a jurisdictional defect that will serve to defeat the merits of the particular case at bar. The next issue which we find ourselves compelled to touch upon is concerned with the modification of the trial court's judgment by this Court. The Chambers Justice had a motion and resistance made thereto for a quashing of the writ predicated upon what was considered a defective and invalid bond. The assigned. Justice sustained the motion and quashed the alternative writ. His order in Chambers was appealed from the full Court for a review of the order. The full Court determined that the Chambers Justice's ruling in quashing the writ was wellfounded in law and that, therefore, the same should be affirmed. Now, it is our contention that it would constitute a paradox for this Court to affirm the ruling of the Chambers Justice quashing the writ for lack of jurisdiction and simultaneously determining that the judgment of the lower court was excessive and should, therefore, be reduced or modified by a remittitur. This, in our view, is rather incongruous. We submit that, in accordance with Section io6i of our Civil Procedure Law, this Court may affirm or reverse the judgment of the trial court or award such other judgment as in its

opinion will best conduce to the end of law, justice, and equity. However, the modification of a judgment on appeal is predicated upon the power of this Court to review the particular subject matter. It has been said that a writ of error "substitutes" for an appeal and, therefore, since this Court may modify a judgment of a lower Court, it may also modify a judgment-in-error proceeding.
To begin with, there has been a lot of controversy and misunderstanding about the definition, scope, and effect of an appeal as distinguished from a writ of error. At early

view of a matter that had been concluded by a court of lesser jurisdiction; one was by means of an appeal and the common law there were two methods for effecting a reother by means of a writ of error. A writ of error generally was sued out against the judge of a lower court complaining against certain specifically assigned errors of law as committed by the judge in his several rulings in the proceedings. This was the only type of review available to defeated litigants in actions at law. This rule existed predicated upon the rule of law which was legally conclusive to the effect that factual determinations of a jury were not the proper subject of appellate review except in instances wherein the facts submitted to the jury were insufficient in law to constitute a prima facie case. On the other side of the ledger we had, at early common law, appeals which encompassed both the law and the facts and admitted of an appellate review touching both assumed errors of fact and of law. Obviously, all of this was in conformity with the basic constitutional provision that no individual should be deprived of life, liberty, property, or privilege but by judgment of his peers, or the law of the land, meaning thereby, due process of law. A recourse to our law shows that the word, appeal, as used at early common law has been broadened to include writs of error as they were originally understood. In the premises, it cannot be "said, using the past connotation of the phrase, writ of error, that the same substitutes for an appeal; for to say this would constitute an implied assertion to the effect that error proceedings are almost synonymous with a regular appeal. This would be incorrect, for error proceedings are commenced in the presiding Justice's Chambers, whereas appeals are reviews of either that Justice's determinations or the final judgments of lower courts. Let us now return to the case at bar. Can we deny the existence of jurisdiction in virtue of the filing of an in-

valid bond and at the same time impliedly admit the existence of jurisdiction for the purpose of modifying a judgment? Law writers have said over and again that where a particular tribunal lacks jurisdiction over the subject matter, it is possessed of jurisdiction solely in the restricted sense of determining the absence of jurisdiction, and when this is determined the action must be dismissed. Jurisdiction is defined as the authority, the naked power,

by which courts and judicial officers take cognizance of and decide cases. We earlier held that the issue of the bond should not in contemplation of law be deemed a jurisdictional issue so as to defeat the case on its merits. It was contended that in this we were wrong, for this did constitute a jurisdictional issue which in effect left the Court powerless to review the lower court's proceedings through the writ of error ; consequently, the ruling quashing the writ was sustained. It therefore follows that where the Court was powerless to act in reviewing the whole of the proceedings in the court below it was, a fortiori, powerless to modify any portion of those proceedings. We strongly contended that the appellate review spoken of by the Legislature in Section io6 of the Civil Procedure Law is intended to mean appellate review in instances wherein jurisdiction does exist. And where there is a modification of a lower court's judgment favorably to a plaintiff in error, this act constitutes an exercise of jurisdiction over the subject matter ; for the Court would have both taken cognizance of the excessive judgment and decided that a remittitur was in order. In such an instance, the whole record would be opened for appellate review. However, it seems to us to be an improper application of the rule to partially open the lower court's records. Either this Court has the power, the authority, the jurisdiction properly conferred by statute to determine whether errors were committed in the lower court or it does not. It cannot be said that a court partially has jurisdiction.

We have intentionally refrained from delving into the facts of this matter. We are constrained to limit ourselves to the jurisdictional issue involved, our colleague's ruling on the motion to dismiss and the majority's determination that the lower court's judgment should be modified. There are many unsavory aspects of the factual side of this matter which we feel ourselves enjoined from reviewing due to the limitation of the ruling which was sustained by the majority of my colleagues and with which we have been unable to agree. For the above reasons, we have filed this dissenting opinion in the manner in which we have done.

King v Williams et al [1925] LRSC 8; 2 LLR 523 (1925) (6 January 1925)

ALFRED D. J. KING, Plaintiff in Error, v. **HIS HONOR H. B. WILLIAMS**, Judge of the Monthly and Probate Court, Grand Bassa County, Eddie G. W. King and Clavender V. King, his wife, Defendants in Error.

Argued December 23, 1924. Decided January 6, 1925.

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

1. If a defendant, though not served with process, takes such a step in an action, or seeks relief at the hands of the court as is consistent only with the proposition that the court has jurisdiction of the cause and of his person, he thereby submits himself to the jurisdiction of the court, and is bound by its action as fully as if he had been regularly served with process.

2. Likewise if a defendant has been served with process, any objection he may have to the irregularity of the service must be made promptly, otherwise his failure to appear and object will amount to a waiver of his right to do so.

3. Where a party to a judicial proceeding admits by some act or conduct the jurisdiction of the court, he may not thereafter, simply because his interest has changed, deny the jurisdiction, especially where the assumption of a contrary position would be to the prejudice of another party who has acquiesced in the position formally taken.

4. The court which is competent to decide on its own jurisdiction in a given case, may determine that question at any time in the proceeding of the case whenever that fact is made to appear to its satisfaction, either before or after judgment.

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

Application for Writ of Error. This case is brought before this court upon a writ of error sued out by the plaintiff in error to have the records of the case in the court below brought before this court, and the rulings and judgment of the judge thereof reviewed, and the errors alleged to have been committed in the premises corrected.

The assignment of errors filed embraces two points upon whiel, it is contended by the plaintiff in error that the court below committed manifest error.

This is a case in which the plaintiff in error petitioned the Monthly and Probate Court, Grand Bassa County, at its August term, A. D. 1922 for the appointment of a special administrator to execute a deed for lot number 2 from a two acre tract of **land** situated in the City of Edina in the County of Grand Bassa, known as lot number 3 and commonly described as 2 in 3, whereupon the court appointed Thomas M. Moore as the said special administrator who instead of executing the deed for the lot number 2 for which the plaintiff had petitioned the court, administrator Moore unauthorizedly and illegally executed a deed to the said petitioner for lot number 3 in 3 from a part of the same tract of **land** commonly known as number 3 in 3, to which said lot the deceased had no title. When this said deed for lot number 3 in 3 was offered for probation the same was duly objected to by Clavendar v. King, one of the defendants in error, and who held title deed to said piece of **land** which had been duly probated and registered. While said objection was under consideration by the Monthly and Probate Court for Grand Bassa County and pending its decision, the said plaintiff in error adroitly, at the October term of said court, A. D. 1923, submitted a further petition to the court asking that his former petition which had been granted, be amended so as to read and include lot number 3 in 3, the property of the said defendant in error. The said defendant in error being in court at the time, through her counsel, laid certain objections upon the record of the court, objecting to the court's granting the petition of the petitioner, now plaintiff in error. Plaintiff in error contended in the court below that the defendant in error could not come into court and object to his illegal acts, which acts would have a tendency to affect her title to the said property, without leave of court or permission to do so.

The general rule is that if a defendant, though not served with process, takes such a step in an action, or seeks such relief at the hands of the court as is consistent only with the proposition that the court has jurisdiction of the cause and of his person, he thereby submits himself to the jurisdiction of the court, and is bound by its action as fully as if he had been regularly served with process. Likewise if a defendant has been served with process, any objection he may have to the irregularity of the service must be made promptly, otherwise his failure to appear and object will amount to a waiver of his right to do so. Where a party to a judicial proceeding admits by some act or conduct the jurisdiction of the court, he may not thereafter, simply because his interest has changed, deny the jurisdiction, especially where the assumption of a contrary position would be to the prejudice of another party who has acquiesced in the position formerly taken. A court which is competent to decide on its own jurisdiction in a given case may determine that question at anytime in the proceedings of the cause, whenever that fact is made to appear to its satisfaction, either before or after judgment.

Therefore the judge of the court below, in absence of all legal technicalities, did not commit material error, when he sustained the petition of the defendants in error.

The plaintiff in error should follow the statutory procedure to acquire his property, if his claim be valid. The judgment of the court below is affirmed, with costs in favor of defendant in error.

R. E. Dixon and Anthony Barclay, for plaintiff in error.

H. L. Harmon., for defendants in error.

Dossen et al v RL [1924] LRSC 4; 2 LLR 467 (1924) (31 January 1924)

JULIA A. DOSSEN by and through her husband James J. Dossen, **S. D. Ferguson** and **L. Manoah Ferguson**, heirs of S. D. Ferguson, Plaintiffs in Error, v. **REPUBLIC OF LIBERIA**, Defendant in Error.

Argued November Term, 1923. Decided January 31, 1924.

Johnson and Witherspoon, JJ.

Any form of expression in a devise which shows an intent to give the whole title will be held sufficient to pass the title in fee-simple.

Mr. Justice Johnson delivered the opinion of the court:

In re the Estate of the late Sarah E. Ferguson, deceased—Application for Escheat. This case originated in the Circuit Court of the first judicial circuit, Montserrado County; being an application by the county attorney of Montserrado County, praying the judge of the said Circuit Court to cause a parcel of **land** in the City of Monrovia, owned by the said Sarah E. Ferguson, to be escheated to the Republic, under the existing laws of the Republic, for want of legal heirs.

The said plaintiffs in error, made their appearance in court and laid claim to the real estate of the said Sarah E. Ferguson, and after hearing the cause, the judge of the said Circuit Court decreed, inter alia, that the said property, lot number 249, in Monrovia, with all the appurtenances thereto belonging revert to the Republic of Liberia, under the statute laws of Liberia.

To this judgment, counsel on behalf of the said heirs of S. D. Ferguson took exceptions, and has brought the case up to this court for review on a writ of error. The assignment of errors reads substantially as follows:

1. That the county attorney failed to prove, by oral testimony, the facts which he alleged in his application to escheat, that the late Mrs. Sarah E. Ferguson, being a citizen of this Republic, died intestate leaving no legal heirs to inherit her property.

2. That the said county attorney did not set out distinctly in his application, any specific parcel of **land** with a dwelling house thereon in the City of Monrovia, to be escheated to the Republic of Liberia, for want of legal heirs.

3. That no application or petition has ever been offered by any person in the court below, to escheat lot number 249 to the Republic of Liberia, and

4.That the point raised by the defendant in error in the court below, with regard to the reversion of his gift to donor or his heirs, in case of failure of heirs of donee, is not covered by the laws of the Republic, now in force concerning escheat.

They therefore prayed that the decree and judgment of the court below be reversed. As to the first, second and third points raised in the assignment of errors, we will observe that these alleged defects might have claimed the attention of the. court, had they been offered by heirs of the said decedent; but under the circumstances we regard them as merely technical objections, and as such can have no weight in the determination of the case at bar; we therefore deem it unnecessary to discuss said questions. Coming to the fourth point, we find that the late S. D. Ferguson, in the first section of the codicil to his last will and testament, made the following devise:

"The lot which I purchased from Mr. B. V. R. Melville and his mother in the City of Monrovia, viz. : lot number 249, situated on the south side of Broad Street, with all the buildings and improvements on it, I give, devise, and bequeath unto my wife Sarah Elizabeth Ferguson her heirs and assigns forever to be used or disposed of as she or they may desire."

It requires no lengthy discussion to set at rest the issues raised in the case. There are only two questions to be decided:

1. What estate did Sarah E. Ferguson hold in lot number 249?

2. Sarah E. Ferguson dying intestate, and without heirs, could her said property revert to the donor or his heirs, or should it be escheated to the Republic of Liberia, in accordance with the provision of the Act of the Legislature approved January 11, 1883?

It has been settled by numerous decisions of the English and American Courts, that any form of expression in a devise which shows an intention to give the whole title will be held sufficient for that purpose; as a devise in fee-simple; or to one forever; or to one and his heirs and all similar expressions, showing an intention to have the devisee enjoy the property in fee-simple, will have the effect to so convey it. (2 Jarman on Wills, 253, 254; Co. Litt. 9b.) The usual form is to give the property to the devisee, his heirs and assigns forever; this is all that is technically necessary.

It is obvious, then, that by the said codicil the late S. D. Ferguson conveyed to Sarah E. Ferguson lot number 249, in the City of Monrovia, to be held by her in fee-simple; or in other words gave her the whole title.

Now the fact that the said Sarah E. Ferguson died without leaving heirs, may be presumed from the claim set up by plaintiffs in error, who were connected with her, and were intimately acquainted with her. They made their appearance in court and laid claim to said lot number 249, because, they alleged, the said Sarah E. Ferguson, having died intestate leaving no heirs, said property should revert to them, the heirs of the donor.

It follows then, that S. D. Ferguson deceased, having conveyed the whole estate in fee-simple to the said Sarah E. Ferguson; and the latter having died intestate, leaving no heirs, the said lot number 249, should be escheated to the Republic of Liberia.

The judgment of the court below should be affirmed; and it is so ordered.

Arthur Barclay and A. Karnga, for plaintiffs in error.

L. A. Grimes, Attorney General, for defendant in error.

Couwenhoven v Beck et al [1920] LRSC 4; 2 LLR 364 (1920) (3 February 1920)

P. COUWENHOVEN, Agent for the Oost Afrikaansche Compagnie, Grand Bassa County, Appellant, v. **LEVI A. BECK** and **ADDIE A. J. BECK**, his wife formerly A. A. J. SMITH, Appellees.

ARGUED DECEMBER 9, 1919. DECIDED FEBRUARY 3, 1920.

Dossen, C. J., and Witherspoon, J.

1. Although a foreigner may not hold freehold estates in Liberia he is privileged to hold leaseholds.

2. Actions of ejectment may be brought against any person holding property by possession adverse to the interest of party plaintiff.

3. A party may commence a suit as soon as the right of action accrues.

4. Hence, if such right accrues too late to be commenced during the next ensuing term, he may immediately commence just the same, entitling his pleadings in the next succeeding term.

5. To enable one to successfully plead the statute of limitations in bar of an action of ejectment he must be able to prove: 1. That he, or he and his privies have had open and undisturbed possession of said property for at least twenty years consecutively; 2. That said possession was adverse to the title of plaintiff and/or those in privity with him; 3. That neither plaintiff nor anyone under whom he claimed was under any legal disability to bring suit during said period of twenty years.

6. A non-expert witness might, in such case, give his opinion as to the sanity of such person based upon his long personal contacts, and careful observation of such person.

7. If a title deed although apparently valid shall not have been probated and registered within four months from the date of execution it is not error to reject it as evidence upon objections properly taken.

8. In ejectment the plaintiff must recover, if at all, upon the strength of his own title.

9. Proof of prior possession, no matter how short the period will be prima *facie* evidence of title against a wrongdoer.

Mr. Chief Justice Dossen delivered the opinion of the court.

Ejectment. This case is before us upon an appeal from the rulings and final judgment of the Circuit Court of Grand Bassa County, at the August session of said court, 1917, rendered against appellant, defendant below.

The history of the case as appears from the records is briefly as follows :

On the twenty-first day of April, A. D. 1903, lot number seven, situated in the lower ward of the City of Buchanan, Grand 'Bassa County, was, by J. W. Gibson and Louisa Harris, acting as guardians for Anna Gibson their ward, leased unto the Oost Afrikaansche Compagnie, the appellants before us, under all the requirements and formalities required by the statute, without protest or objection thereto from any person whomsoever. That by virtue of the said title and under color of the right conveyed thereby, appellant entered upon the property, made certain improvements thereupon, and held open and peaceful possession thereof adversely to the alleged right and title of appellees or their privies. That thereafter, that is to say on the first day of April, A. D. 1912, the said Anna Gibson having reached legal age of maturity conjointly with her husband John E. Dennis made and executed a second lease deed to appellant for a further term of years and that the said instrument passed under the statutory requirement without legal objection thereto. That appellant by virtue of said second lease continued in possession of the property and was in occupancy of the same when this action of ejectment was brought by appellees to recover same. Appellant in his answer to the complaint sought to bar the action by pleading the statute of limitations. The lower court proceeded first to adjudicate the legal issue raised by said plea, and held that the statute of limitations did not apply and that the case was not barred by the statute, and ruled the case to be heard upon its merits. To this and other rulings of the lower court as well as to the final judgment in the premises appellant excepted and has brought the case up upon a bill of exceptions for review. Having thus briefly stated the case as disclosed by the records we proceed to consider the points laid in the bill of exceptions and addressed to our consideration.

The first exception is taken to the ruling of the trial judge on count one of the defendant's answer. From inspection of the pleadings we find that defendant, now appellant, in the said first count of the answer attacked the complaint upon the ground that it was brought against the wrong party; that appellant being a foreigner was debarred from holding lands in this country; that an action of ejectment could not therefore be brought against him and that his lessor and not himself was answerable.

There appears to our minds no legal merit in this contention. While it is true that under our Constitution foreigners are prohibited from holding freehold estates in Liberia, still the Constitution imposes no inhibition to them holding leaseholds, which fact has been recognized by the custom of the country and upheld by decisions of this court during the whole period of our international intercourse. In *East African, Company v. Dunbar* (I Lib. L. R. 279) this court held that a freehold differed from a leasehold estate. That while under the Constitution only citizens can hold the former species of property, the latter was open to the enjoyment of any one "without respect to race or nationality." Ejectment being a possessory action it lies against the person in adverse possession of the property in dispute, whether he be the owner or the lessee and whether citizen or foreigner. Ejectment may properly be brought against one who holds no shadow of title, but is in possession as a mere *trespass. (Minor v. Pearson,* Lib. Ann. Series, No. 3, p. 26.) The plea not being well founded in law it was not error in the judge below to overrule the same.

The second exception in the bill of exceptions is taken to the court's denying the motion of the defendant, now appellant, to the jurisdiction of the court. The grounds relied upon in this motion for dismissal for alleged want of jurisdiction are, substantially, that the case was commenced in the August term of court, before the expiration of the preceding May term. We have carefully examined the statutes relating to the jurisdiction of the Circuit Courts and the Rules of Practice of these courts and have failed to discover any legal merit in the contention either expressly or impliedly. The Act of the Legislature of Liberia, approved January 11, 1913, declared the terms of the Circuit Courts of this Republic in the following language : "That from and after the passage of this Act the Circuit Courts now established in this Republic in accordance with the said referred to Act, shall open sessions in the County of Montserrado, Grand Bassa, Sinoe and Maryland on the second Monday in February, May, August and November in each year." A subsequent Act provides : "that ten days after the adjournment of any regular session of the Circuit Court, shall commence the next session of said court and all matters not requiring a jury may be heard and disposed of upon application as provided for in this Act before the meeting of the regular jury session." The statutes cited constitute the law relating to the terms or sessions of said courts and was the law relied upon in the contention by counsel for defendant, now appellant. But it will be observed that they in no *wise* support the contention. They can not be construed as implying that a plaintiff is disallowed from entering suit in one term of court before the expiration of the preceding term and they confer no power upon the courts to dismiss actions brought under such circumstances on the ground of want of jurisdiction.

The statutes prescribing the time-limit for filing complaints and written directions and for summoning defendants are to be understood as fixing the time-limit in which these acts must be legally performed, the object and intention of which is obviously to allow the defendants ample time in which to make their defense and to prevent surprise, but by no process of reasoning are we able to apply those provisions in the sense in , which we are asked to apply them in the exception under review. We hold that a plaintiff is entitled to bring his action immediately after the cause of action accrues if he elects so to do. It furnishes no ground for dismissal if he elects not to wait until the expiration of a term before bringing his suit. And his course would be free from all implication of injustice towards the defendant, if, as in the case at bar, he seeks redress at the earliest opportunity opened to him under the rules of pleadings. Cases sometimes arise when in order to secure the appearance of a defendant and to protect the interest of the plaintiff it becomes necessary that he should act speedily and without delay. To hold that he is debarred from exercising his right of action during the intervening period between the duration of one term and the commencement of the next ensuing term would operate as a suspension of the office and operation of the courts and of his right to the free and full enjoyment of the benefits of the judicial power established to safeguard and protect and enforce those rights. This we hold is not contemplated by the statutes of the country relating to the commencement of actions, and we refuse to uphold the contention as sound.

We come now to the third point in the bill of exceptions involving the court's ruling on the plea of limitation pleaded in the answer.

This court has uniformly held that the plea of limitation when properly pleaded and substantially proved will bar an action by operation of the statute of limitations. Statutes of limitation have been incorporated into the laws of all civilized countries whose system of jurisprudence is recognized by our laws. The wisdom and policy of this species of the law have received the approbation of writers of high legal repute, and the efficacy of its application to conditions which sometimes arise in society, has received the sanction of the highest courts of English speaking countries. Statutes of limitation are founded upon natural justice and upon sound reason and common sense. They are to be found among the earliest of our laws and have in no small measure furnished the ground for the just adjudication of disputes to property which have arisen in this country without whose aid the courts might have stumbled. When however the plea of limitation is pleaded in bar of an action of ejectment—such as the action at bar—the essential elements which constitute the plea must be established by evidence amounting to conclusive proof or the plea will fail. Now what are those elements of the plea which defendant must prove ? (1) He must prove that he, or he and those under whom he claimed title, had open and undisturbed possession of the property in dispute for twenty years consecutively. (2) That he held adverse to the title of the plaintiff and to those in privity with him when necessary. (3) He must establish substantially that neither plaintiff, nor those under whom he claims, was under any legal disability to bring suit during any part of the period since the cause of action accrued and the statute began to run. *(Page and Page v. Harland,* I Lib. L. R. 463.)

Plaintiff in the pleadings contested the legal efficacy of the plea in bar in this case on the grounds : (a) That the ancestor under whom plaintiff claims title to the property in litigation by the rule of descent was incapacitated from *insanity* to bring suit during a part of the time since the cause of action accrued which, when eliminated, leaves the cause within the statute; (b) That plaintiff herself was incapacitated from *infancy* during a part of the time; and (c) that she was further incapable from being under coverture during part of the period.

Looking into the evidence for the plaintiff we find that one witness, namely : Levi A. Beck the co-plaintiff in this suit was upon the stand to testify to the insanity of James S. Smith, the ancestor of plaintiff under whom she claims title to the property in litigation, from 1891 to 1895, or a period of about four years. His evidence while not that quality of evidence which the law regards as expert was nevertheless competent. With respect to the efficacy of this evidence we would remark that the plea of insanity .may be established by evidence of this grade. As to whether this class of evidence should be received as proof conclusive there has been great diversity of opinion both in the English and American courts. In America it has been determined upon grave consideration that where a witness has had opportunities of knowing and observing the conversation, conduct and manners of a person whose sanity is in question he may depose

not only to particular facts, but to his *opinion* or *belief as* to the sanity of the party formed from such actual observation. *(Clary v. Clary,* 2 Iredell 78.)

The evidence of witness Beck comes within this rule and was therefore competent and in the absence of rebutting evidence was sufficient in our opinion to establish the plea of *insanity.*

As to the second ground in the contention of plaintiff against the plea of limitation, namely : *"infancy"—the* records show that the evidence adduced substantiated this plea conclusively. We need not carry our research further than our own statutes to find the legal foundation for this plea.

Says the statute : "No action of ejectment can be commenced more than twenty years from the time the cause of action has accrued." But, "If either of the parties be absent from the Republic during any part of the time, or be *under age,* or insane during any part of the time, such part of the time *shall not be reckoned,"* etc. (Lib. Stat., Old Blue Book, ch. I, p. 32, sec. 18.)

The third ground, namely : "coverture," is not among the statutory defenses to the plea of limitation as just cited above and therefore we refuse to consider it. It is a rule of general acceptation that a court will not travel outside of the purview of the statutes of the country to ascertain what is the law controlling the case when those statutes speak on any question before it. The pleas of *insanity* and *infancy* are both good pleas to the plea of limitation and when they so affect the issue as to leave the cause still within the statute after allowing for the legal disability which they produce, the statute of limitation will not apply in bar in such cases. This case, however, is not very materially affected by these pleas, since, as we have already observed, the burden of proof shifted upon the defendant under his plea of limitation. He was bound to show the essential ingredients which constitute the plea before it would become imperative upon the plaintiff to prove any statutory exception. Looking into the evidence for the defendant we have failed to discover evidence to support their plea conclusively. The paper title in the form of two lease deeds from defendant's **land**-lady do not cover twenty years' title or possession prior to this suit. The first of said leases was executed in A. D. 1903, and the second in A. D. 1912 ; these two instruments while valid in themselves, left open a period of four years to complete the period of time requisite to bar the action. There is no satisfactory proof of any description to cover this period and therefore the plea failed and the lower judge did not err in so ruling.

The remaining four exceptions involving the rulings of the court below on the admission of the title deed of plaintiff as written evidence; the judge's charge to the jury to the effect of the

evidence in support of the plea of limitation; and the verdict and the final judgment predicated thereupon, we propose to consider under one head. Let us consider first the validity of the title deed offered by plaintiff in support of her claim to the property in dispute, the admissibility of which as evidence was objected to by the defendant on the ground that it had not passed through the requirements of the statute with respect to probation and registration within the time prescribed. Examining the instrument we find that it purports to have been executed in 1891; probated in 1893 (two years later), and registered in 1917 ; twenty-six years after the original transaction. The Statute of 1865, which seems to have been enacted to prevent fraud by secret conveyances of lands and to open the door to any legal objections to any such transfers, expressly limits the time to *four months* within which all conveyances and transfers of real property shall be probated and registered. The statute is mandatory and not merely directory; so that all such instruments to be of any validity, or legal efficacy, must not only comform to its provisions but comformity must be made within the time limit prescribed by the said provisions. The paper title of plaintiff although purporting to have been probated and registered shows upon its face that neither of these acts was done within the statutory time. Upon the legal maxim that : "whatever is not legally done is considered in law as not done at all;" the act becomes a nullity and of no legal effect. In *Reeves v. Hyder* (I Lib. L. R. 271) this court held : "That the probation of a deed makes it legal evidence before courts of law." We reaffirm this rule and hold that it was error in the trial judge to have admitted the said deed of plaintiff as evidence in support of her alleged title to the property in litigation.

We come now to consider the verdict and the final judgment predicated thereupon. It is a well established and inflexible doctrine of law that in actions of ejectment the plaintiff must recover upon the strength of his own title and not upon the weakness of the title of his adversary. This doctrine of law has been upheld by numerous decisions of this court from time to time. It was contended by the learned counsel for appellees in his able argument, that this rule had been modified, and the case' of *Minor v. Pearson* (Lib. Ann. Series, No. 3, p. 26) was cited in support of this contention. The case cited is however not analogous to the one at bar and was not successfully cited. There the defendant was before the court without any shadow of title or right of possession and was in the eye of the law a mere *intruder.* The plaintiff on the other hand though not in actual possession showed title and the right of entry. This title was higher than the naked possession of defendant, unless he had shown that his naked entry had ripened into a valid title by the doctrine of limitation and of seisin and disseisin. *(Page and Page v. Harland, supra.)*

The modification to the stringency of the rule that the plaintiff must rely on the strength of his own legal title in ejectment was in the case *Doe v. Dyeball* illustrated by Lord Tenterden, who held, that proof of prior possession however short will be *prima facie* evidence of title *against* a *wrongdoer.* This case as we have already observed does not fall within this rule of exception. The plaintiff was bound to show either title in herself or in those under whom she claimed, higher than that of the defendant's and his privies. The attempt to establish by oral testimony priority of possession by the party under whom plaintiff claimed collapsed, so that the only evidence of plaintiff's title or prior possession to the property in question was the purported deed

from J. E. Johnstone representing J. E. Hall dated October, 1891, which instrument as we have already observed was devoid of the statutory requirements to establish its validity and incompetent evidence to establish the title of plaintiff in and to said property. We cite again the inflexible rule in ejectment (i.e.) *"that a plaintiff must recover upon the strength of his own title."* There being no legal evidence tendered by the plaintiff in support of her claim to the said lot No. 7 in the lower ward of Buchanan we hold that her right and title therein and thereto has not been established.

The judgment of the lower court should therefore be reversed; costs disallowed; and it is hereby so ordered.

C. B. Dunbar and *Arthur Barclay*, for appellant.

L. A. Grimes, for appellees.

Auto Service v Richards [1966] LRSC 22; 17 LLR 289 (1966) (21 January 1966)

MONROVIA AUTO SERVICE, by and through its Resident Manager, KARL ZOLL, Appellant, v. JOHN H. RICHARDS, Appellee.
APPEAL FROM THE
CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued October 28, 1965. Decided January 21, 1966. 1. The circuit court's statutory jurisdiction of proceedings for foreclosure of a chattel mortgage cannot be defeated by private agreement between the parties. 1956 CODE 29 :140 et seq. 2. A chattel mortagee's repossession and sale of the mortgaged property under color of statutory foreclosure proceedings should be held void and the proceedings dismissed when such proceedings and process executed thereunder were sham and the mortgagor was not duly afforded notice thereof. 3. A chattel mortgagee is liable on his indemnity bond for illegally repossessing and selling the mortgaged property under color of sham foreclosure proceedings and without due notice to the mortgagor. 4. The Chattel Mortgage Act, constituting Chapter 10 of the Property Law as enacted in the 1956 Code, superseded prior law governing foreclosure of chattel mortgages. 5. Repossession and sale by a chattel mortgagee of the mortgaged property will be deemed void when carried out prior to rendition of judgment in pending foreclosure proceedings.

On appeal, a judgment dismissing chattel mortgage

foreclosure proceedings was affirmed.
James Doe Gibson for appellant. Morgan, Grimes and Harmon Law Firm (J. Dossen Richards of counsel)

for appellee.
MR. JUSTICE MITCHELL delivered the opinion of the

Court. An examination of the records before us in this case shows that on the ze st day of November, 1962, the present appellee entered into a chattel mortgage with the present appellant in the sum of $11,300, as security for which the appellee conditionally assigned to the appellant personal
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property consisting of two Henschel trucks. On June 1, 1963, the appellant filed a bill in equity for the foreclosure of the aforesaid mortgage in the sum of $8,101.16 as balance due on the amount for which the chattel mortgage was executed. Upon the filing of the bill, the resident judge delivered the following order to the sheriff : "Upon receipt of the writ of summons, complaint and the accompanying documents in the above entitled cause of action, you will forthwith seize and turn over to the petitioner or his representative the mortgaged property, i.e., two Henschel trucks, 1962 model, color gray, and also serve a copy of this order on the respondent and further make your returns to court, same to be endorsed on the back of the writ of summons and filed in the clerk's office on or before the 3rd day of June, 1963 as to the manner of service. And for so doing, this shall be your lawful authority and my order."
At the filing of the case and prior to the issuance of the foregoing order, petitioner also filed, together with his bill of foreclosure, the following indemnity bond : "Know all men by these presents : "That whereas Monrovia Auto Service, Monrovia, Liberia, by and through its Resident Manager Karl Zoll, the above named petitioner has applied for an order of court for the seizure of two (2) Henschel trucks, Engines No. 129 and 26o, now in the possession of John Richards of Monrovia, the above named respondent, the subject of a chattel mortgage. "Now therefore, we, Moni-ovia Auto Service, Monrovia, Liberia, by and through its resident manager, Karl Zoll, the above named petitioner-principal and Joseph Harris and Dopie Wreh, freeholders and householders within the Republic of Liberia, sureties, each of which sureties is worth the amount specified in the order, i.e. $12,151.74, over and above all his debts and liabilities do hereby jointly and severally under-

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take pursuant to law that the said petitioner will indemnify the said respondent for all injury which he may sustain by reason of said order of court, not exceeding the amount named in said

order, namely $12,151.74, if the said respondent shall recover judgment or the order of court be set aside. "In witness whereof we have hereunto set our hands
this 3oth day of May 1963, at Monrovia. [Sgd.] "KARL ZOLL,
"Petitioner-Principal.

[Sgd.] `JOSEPH HARRIS, [Sgd.] "Dom WREH,
"Sureties."

The necessary writ of summons was issued pursuant to the judge's order and placed in the hands of the sheriff who served the same
and endorsed thereon his returns which I shall quote for the benefit of this opinion. "On the 7th day of June, 1963, I served the
within writ of summons on the within-named John Richards of Monrovia,
Liberia, defendant, who said that he did not have the trucks
in his possession, but said that the said plaintiff had already taken possession of said trucks ; hence I could not take nor seize
the same from the defendant. I also gave him a copy of the complaint and notified the defendant to file his formal appearance in
the office of the clerk on or before the 2oth day of June, 1963. I now make this as my official returns to the clerk's office. Dated
this 7th day of June, 1963. [Sgd.] "HENRY ROBERTS, "Deputy Sheriff, Mo. Co."
Richards appeared and answered to this writ on the 15th
day of June, 1963. But realizing that petitioner's motive was to make a mockery of the court, Richards filed a bill of information
on the 11th day of July, 1963, in which he alleged that Monrovia Auto Service had instituted a pseudo action with the aim of misleading
the court

and of circumventing the authority of the court by seizing the two Henschel trucks apart from
any judicial process and even before the filing of the foreclosure proceedings. Counts 3, 4, and 5 of the information read as follows.
"3. And the informant says that although the balance due respondent by informant can be covered by the seizure by the court of only
one truck, yet respondent has undertaken upon itself to seize both of informant's trucks, with a view of harassing and embarrassing
him, respondent knowing fully well that these trucks are the only means whereby informant can obtain funds to complete payment. Informant
contends that it is an equitable principle that he who seeks equity must do equity. "4. And your informant says that although this
action is still pending before this Honorable Court undecided, yet the respondent in utter violation of the statutes governing the
foreclosure and sales of chattel mortgage properties and in violation of good conscience has undertaken and sold one of the trucks
to one Vamunyah Coneh--a thing which a court of equity should not allow the respondent to do since same is in violation of law and
good conscience. Informant further says that respondent's agent has informed him that he is about to sell the other one of the trucks.
"5. And your informant states that the amount which remains to be paid to the respondent can be recovered by the price of one truck
in case it obtains judgment and the court forecloses the mortgage. Informant states further that the seizure of his two trucks for

the amount that can be covered by the value of one of the trucks is inequitable and illegal--a thing which a court of equity ought not to allow the respondent to do." In the returns to Counts 3, 4, and 5 of the information, Monrovia Auto Service alleged the following as Count 4 of the said returns:

"4. And also because as to Counts 3, 4 and 5, respondent says and submits that the chattel mortgage statute specifically provides that the chattel mortgagee has a right to take possession and dispose of mortgaged goods without judicial process if this can be done without a breach of the peace, as in this case when petitioner himself willingly released the trucks to respondent after the action had been filed, this being a surplusage under the law and does not vitiate." The petition for foreclosure of the mortgage was not called for hearing by Judge John A. Dennis, then presiding by assignment, until the 15th day of May, 1964. During this interval of 349 days, the bill of information which had been filed, and which in our opinion was crucially relevant, was never disposed of ; and the arbitrary and illegal act of the petitioner in the foreclosure proceeding on which contempt proceedings were maintainable was never considered. These are matters in chancery where good is never screened for bad and where relief is to be given without reasonable delay. Regarding the records in both of these matters couched in the one file, I have been urged to cite a passage of Scripture found in Verses 7 and 8 of Psalm 35, reading thus : "For without cause they have hid for me their net in a pit, which without cause they have digged for my soul. "Let destruction come upon him at unawares ; and let his net that he has hid catch himself ; into that very destruction let him fall." Disposing of the chattel mortgage case, the judge made this decree: "Count 1 of the answer contests the action of the plaintiff as violating the provision of the statute which directs that all actions except injunction and replevin shall commence by written direction. The records in this case show that the said action was commenced by a written direction filed June 1, 1963. Hence said count is not sustained. Coming to the issue of the

property having been already seized, the law provides that foreclosure is the only proceeding to be instituted in the case of a mortgage. Saunders v. Grant, [1930] LRSC 2; 3 L.L.R. 152, 158 (193o). Turning over the vehicles prior to a final decree in this matter is contrary to the opinion just quoted. Next as reported in Grant v. Foreign Mission Board of National Baptist Convention, U.S.A., io L.L.R. 209 (1949), the Supreme

Court has held that private parties can never contract to oust the jurisdiction of the court. The trial of this case would be defeated, for its final

decree would not be enforceable. Because of this legal blunder, the action is dismissed, as equity delights not to do things by half.
And it is hereby so ordered." The petitioner excepted and prosecuted an appeal on a bill of exceptions composed of two counts, which I shall quote herein for completion of a thorough outlay of all of the pleadings and matters in connection with this case: r. That Your Honor erred in dismissing petitioner's action because the principles of law relied upon are not applicable in a chattel mortgage proceeding, but rather a mortgage for land and an action for breach of contract. For under the law there is a difference between a mortgage for land and mortgage or pledge for personal property. "2. And also because Your Honor failed to pass upon the very important legal issue raised in Count 2 of petitioner's complaint with reference to default in payment of the sum due in manner stipulated. Petitioner shall have the conclusive and unrestricted right to the immediate seizure and possession of the assigned property." This case was called and heard on the 28th day of October. Counsellor James Doe Gibson argued for the appellant and cited opinions of this Honorable Court which bear no similarity to the case in point as far as our interpretation of the law is concerned. In Elias Brothers v. Gibson, [1952] LRSC 16; 11 L.L.R. 218 (1952), the Court was not fore,,

stalled or precipitated by the terms of the mortgage as happened in the case at bar. And in Kanawaty v. King, [1960] LRSC 66; 14. L.L.R. 24.1 (196o), there is no similarity. Counsel further belabored the point that His Honor D. W. B. Morris as resident judge of the Circuit Court of the Sixth Judicial Circuit, Montserrado County, had issued an order directing that the trucks in question be seized by the sheriff and delivered to the petitioner upon his receipt. In fact, however, counsel knew that the said trucks had never been seized by the sheriff according to those orders and that the plaintiff had already seized them and taken them away. When required by the Court to produce this receipt or exhibit it from the record for inspection, he was found caught in his net because recourse to the sheriff's returns to the writ certified that the two trucks had been seized upon plaintiff's own initiative. In conclusion, he rested on these two points : (r) that the law upon which the trial judge relied in his ruling was not applicable to the issues at bar; and (2) that the trial judge was without legal authority to review a decision of his colleague. Those were some of the unprofessional intrigues which counsel felt would advance his cause. Such unprofessional acts have a tendency to cast aspersions on the grade and quality of our practitioners and bring discredit to our courts and the profession if judges are not alert. Appellee's counsel on the other hand maintained in his argument that Judge Dennis was not incapacitated in any legal way from hearing the law issues raised in the pleadings and the ruling thereon since no ruling had been previously made on the said pleadings; but before resting on the close on his side, the Court took recess to meet again at 3 o'clock in the afternoon. On resuming Court in the afternoon according to announcement, appellant's counsel failed to appear, which was interpreted to be an abandonment of his cause; hence there was no

alternative other than for appellee's counsel to continue his argument and close, which was done. There is no indication in the record on appeal that any

judge except Judge Dennis had previously ruled on the pleadings ; nor is this made a ground of exception in appellant's bill of exceptions. Hence the question was improperly argued, but the Court tolerated it because appellee raised no objection. The citation of law which he claimed the trial judge wrongly applied and relied upon is as follows.

"There is a difference between a mortgage of land and mortgages or pledges of personal property in regard to the right of the mortgagee after default of the mortgagor. In the latter case, there is no necessity to bring an action of foreclosure, but the mortgagee upon due notice may sell the personal property, and title from the sale will be bona fide and will rest absolutely in the purchaser."

Saunders v. Grant, [1930] LRSC 2; 3 L.L.R. 152, 158 (1930). In our opinion the court below did not wrongly apply this citation because this case was not dismissed by the court below upon the principle of law stated in the cited case but rather it was dismissed upon the principle stated by this Court in Grant v. Foreign Mission Board of National Baptist Convention, U.S.A., lo L.L.R. 209 (1949), which forbids parties from attempting to oust the jurisdiction of the courts as was done by the appellant, plaintiff below, in the case at bar. The opinion of this Court in Saunders v. Grant, supra, was predicated upon the law then in vogue which is not applicable in the present case because the Chattel Mortgage Act, constituting Chapter io of the Property Law as enacted in the Liberian Code of Laws of 1956, has superseded the law which was then in force. The opinion in question was explicitly based upon the law then effective which is no longer effective under our present statutes. Even then the criterion, as we observe, was that of giving notice before a seizure and sale by the mortgagee. But in this case, although the appellant, as plaintiff below filed his bill for foreclosure of the chattel mortgage as the

law directs, yet without the authority of the court or any other notice, he arbitrarily, illegally, and clandestinely assumed to seize the two trucks and make a disposition of them by sale. Count 1, therefore, of the bill of exceptions, is not well taken and is hereby dismissed. Dilating on Count 2, this Court says that since the petition of the plaintiff, now appellant, was entirely unmeritorious, it was not legally required of the court below to have ruled on the counts seriatim, especially when Count 2 thereof was the count which sought to oust the court of its jurisdiction. Since the case was disposed of on a jurisdictional issue, it appears to us that the grounds were sufficient for dismissal. The petitioner was without right under the law to seize the trucks and dispose

of them ; and his doing so left nothing for the court to dispose of. The trucks being the subject matter under the chattel mortgage, and they having been disposed of, there was nothing left on which the mortgage could be foreclosed ; hence the court below did not err in dismissing the plaintiff's petition ; and by his act the appellant has rendered himself liable under his indemnity bond. The ruling of the court below is sustained and hereby affirmed with costs against the plaintiff, now appellant. And it is hereby so ordered. Judgment affirmed.

Sawyer et al v Freeman [1966] LRSC 20; 17 LLR 274 (1966) (21 January 1966)

FRANCIS J. SAWYER, MARY COOPER, and His Honor, D. W. B. MORRIS, Assigned Judge of the Circuit Court of the Sixth Judicial Circuit Montserrado County, Appellants, v. JOSIAH FREEMAN, Appellee.
APPEAL FROM RULING IN CHAMBERS ON APPLICATION FOR WRIT OF ERROR.

Argued November 11, 1965. Decided January 21, 1966. An application for a writ of error is not deniable merely on the ground that the petition refers to the parties as petitioner and respondent ; the jurisdiction of the Supreme Court is dependent on the subject matter, not upon the nomenclature used in the petition. 1956 Core 6 :1231 ; (1957-58 Cum. Supp.) 6 :1254. 2. The statutorily required stipulation that an application for a writ of error has not been made for the purpose of harassment or delay should be stated by affidavit rather than in the body of the petition. 1956 CODE 6:1231(a). 3. Whether a plaintiff in error is required to file a bond for indemnification of the defendant in error in the event of the affirmance of the judgment complained of is discretionary with the Justice who grants the writ. 1956 CODE 6:1231(d). 4. An ejectment action is not triable in a circuit court unless title to real property is at issue or the alleged damages exceed $300. 1956 CODE 6:1124. 5. The sheriff's returns of service create a rebuttable presumption of the truth of statements of fact set forth therein. 6. An allegation in a petition for a writ of error is not sufficient to rebut the presumption of the truth of statements of fact in the sheriff's returns. 7. A plaintiff who elects to bring an ejectment action in circuit court where the damages claimed cannot exceed $300, thereby in effect raises an issue of title and is estopped from subsequently denying that a writ of resummons is required when the defendant has failed to appear. 1956 CODE 6 :1125. 1.

Appellants instituted an ejectment action in the circuit court against appellee, who failed to file an appearance. On attempted execution of a default judgment by writ of possession, appellee obtained from the Justice presiding in Chambers first an alternative and subsequently a peremptory writ of error. On appeal to the full Court, the ruling in Chambers granting the peremptory writ of error was affirmed.

J. Everett Bull and J. Garrison Bull for appellants. J. Dossen Richards for appellee.

MR. Court.

JUSTICE SIMPSON

delivered the opinion of the

During the March 1965 term of the Circuit Court of the Sixth Judicial Circuit, Montserrado County, an action of ejectment was filed by Mary Cooper and Francis Sawyer, the present appellants, against Josiah Freeman, the present appellee, for the recovery of a certain house situated on Lynch Street in the City of Monrovia. The writ of summons required Freeman to file his formal appearance on or before the 26th day of February, 1965. The returns of the sheriff to the writ of summons stated that although Freeman was duly served with the writ of summons on the 24th day of February, he returned the precepts and accompanying documents to the sheriff stating that he would not attend upon court. The date of returns of the sheriff was the same as the date of service of the writ of summons. The record before us reveals that Freeman failed to file a formal appearance as required by Section 290 of our Civil Procedure Law. It is further shown that subsequently and without application to court for the issuance of other precepts, there was an assignment of the case and a determination thereof by the presiding judge awarding unto the present appellants a default judgment due to the nonappearance of the present appellee in error as mentioned supra. Execution was thereafter prayed for by the plaintiffs in the court below, whereupon on the 31st day of March, 1965, a writ of possession was issued by the Circuit Court of the Sixth Judicial Circuit, Montserrado County, placing the aforesaid plaintiffs in possession of the property in accordance with the judgment rendered by that court on the 29th day of the same month. The writ of posses-

sion was duly served upon the present appellee who, thereafter, applied to the Justice presiding in Chambers during the March 1965 term of this Court, seeking the issuance of an alternative writ of error. This writ as applied for was granted by the Chambers Justice and, subsequently, upon hearing of the petition and returns made thereto, the writ was made absolute by the granting of a peremptory writ of error. At that stage an appeal was prayed for to the full Court; hence these proceedings. The petition for the writ of error alleged that an agreement of lease existed between Freeman and the plaintiffs in the ejectment action. Freeman further alleged that notwithstanding the existence

of the agreement of lease, the defendants in error proceeded to institute an action of ejectment against him and that, although he was never summoned or furnished a copy of the complaint as was falsely alleged in the sheriff's returns, the case was tried and disposed of against him. The plaintiff in error further contended in his petition that the judge erred in the rendition of a judgment by default since the law provides that no judgment by default can be legally rendered against a defendant in an action of ejectment until such time as a writ of resummons has been issued and placarded upon the subject property ; and in the present case no re-summons was ever issued. The plaintiff in error, whilst petitioning the Chambers Justice, further alleged that a regular appeal was in the premises impossible, especially since he was neither summoned nor notified of the time of the trial to have enabled him to except to and appeal from the alleged illegal judgment. In accordance with the requirement of this Court, the defendants in error filed returns in which they alleged, in substance, that : 1. This Court cannot legally assume jurisdiction over the persons herein named petitioner and respondents, for the Supreme Court does not have original jurisdiction in actions of this nature as is implicitly

alleged by plaintiff in error in naming the parties petitioner and respondents. 2. The verification to the effect that the application for the issuance of a writ of ejectment has not been made for the mere purpose of harassment and delay should have been included in the application itself and not the affidavit. 3. In an action of ejectment, the writ of re-summons is not necessary where plaintiff has failed to appear after being summoned. 4. A bond must be filed with the application for the issuance of an alternative writ of error or else the plaintiff in error cannot exercise his right to the granting of such a writ. 5. Where a landlord and tenant relationship exists and an action of ejectment is instituted in consequence of a default in the payment of rental, this does not constitute a suit to divest one of title to real property within the meaning of Section 1124 of the Civil Procedure Law. Most of these issues presented seem to be trivial; however, since they have been raised and need to be determined so as to do justice to all parties concerned, let us proceed to examine them. As regards the question of lack of jurisdiction due to the improper nomenclature ascribed to the parties litigant in the application for the issuance of the writ of error, suffice it to say that Section 1231 of the Civil Procedure Law refers to "A person (herinafter sometimes called the `plaintiff in error') . ." Moreover, the term "defendant in error" is used only once in the controlling statute, and there it is used to describe the person against whom the peremptory writ of error is sought. In another section of our Civil Procedure Law, the following reference is made to respondents : "Except as otherwise provided by law, when a satisfactory application is made to the assigned Justice for a writ which the Supreme Court has jurisdiction to

issue, the said Justice shall issue, or order issued from the Clerk's office, a citation to the parties named as defendants or respondents." 1956 CODE (1957-58 CUM. SUPP.) 6:1254. [Emphasis supplied]. Therefore is is clearly seen that the subject matter itself and not the nomenclature ascribed to the parties, confers jurisdiction on the court. The contention of the defendants in error would be further untenable in virtue of the fact that a recourse to Section 1231 of the Civil Procedure Law, cited supra, shows the legislative use of the word "sometimes" which in our interpretation makes the use of the phrase "plaintiff in error" permissive and not mandatory or a precondition to the jurisdiction of the court. Turning now to the point raised regarding inclusion in the application for issuance of the writ of a verified stipulation to the effect that the application is not being sought for the mere purpose of harassment and delay, we have the following to say. Section 1231 (a) of the Civil Procedure Law refers to : "An assignment of error, similar in form and content to a bill of exceptions which shall be verified by affidavit stating that the application has not been made for the mere purpose of harassment or delay." 1956 CODE 6 :1231 (a) . From the above it is readily seen that to include said stipulation in the application itself would contravene the plain wording of the statute which requires the negative averment in respect of harassment or delay to be stated in the affidavit. The next issue concerns the filing of a bond as a condition precedent to an individual's exercise of the right to have the writ of error issued on his behalf. The second paragraph of Section 1231 (d) of the Civil Procedure Law provides that : "Before a writ issues, the plaintiff in error shall be required to pay all accrued costs, and he may be required to file a bond in the manner prescribed in section 468 above, such bond to be conditioned on paying

the damages sustained by the opposing party, if the judgment, decree or decision complained of is affirmed." 1956 CODE 6 :1231 (d). [Emphasis added]. This particular requirement was initially prescribed by rule of Court at the promulgation of the Revised Rules of the Supreme Court in 1915 (2 L.L.R. 661 et seq.). It would seem as if the interpretation of this particular statute advanced by defendant in error is predicated upon the words "before" and "may" as found in the statute. In our view, the controlling word is "may" ; and here we must determine whether or not the word "may" is legally synonymous with the words "shall" and "must." Courts at times construe "may" as "shall" or "must" to the end that justice may not be the slave of grammar. However, where to construe these words as synonymous would defeat the very purpose of the statute, we must then apply to them their natural definitions in accordance with English parlance and usage. In such a case "may" becomes permissive and not mandatory. Therefore it is discretionary with the Justice presiding in Chambers to require the filing of a bond before the writ issues. In the premises the

position of the defendants in error cannot be legally sustained, for this would contravene the reason first used by courts for equating "may" with "must" or "shall." The remaining two issues which we have reserved to treat upon lastly are in a large measure related, and therefore we have decided to deal with them jointly. These issues concern ( ) the necessity for issuance of a writ of resummons in an action of ejectment and (z) whether the instant action is one of the class of the actions of ejectment involving title to the extent that it falls under Section 1125 of the Civil Procedure Law, the pertinent portion of which provides as follows : "In addition to any of the other procedures authorized by statutes or under this Title, the following procedure may be used when title is in issue in an action of ejectment. "If the defendant fails to appear after being sum-

moned, the plaintiff may have a writ of re-summons. The plaintiff shall thereupon post a copy of his complaint together with a copy of the writ of re-summons upon the real property claimed by him at least ten days before the date the defendant is required to appear under the writ of re-summons. If the defendant fails to appear within ten days of the appointed date, the plaintiff may apply for entry of default and for the entry thereon of an imperfect judgment by default. As soon as possible thereafter the plaintiff shall be called upon to establish his title to the premises or land which is the subject of his claims; . .." 1956 CODE 6 :1125.

Section 1126 must be read in conjunction with Section 1124. which provides that:
"When the title to real property is at issue or when the damages claimed exceed three hundred dollars, the action shall be tried by the Circuit Court of the county in which the real property is located." 1956 CODE 6:1124. It follows that unless title is involved or the amount in question exceeds $300, the action is improperly venued if brought in a circuit court for trial. The mere bringing of the action in the circuit court amounts to an averment of the existence of an issue that involves title, or that the amount being sued for as damages in the ejectment action exceeds $300. The plaintiff in error has stated that he was never summoned in the court below. This Court has oft and anon held that the returns of the sheriff constitute presumptive evidence as to the fact of service; however, this evidence may be rebutted. In the present case, the allegation relating to false returns was raised for the first time in the Supreme Court. This Court is not an investigatory tribunal but instead one which operates solely upon the records as made in the lower courts except where the original jurisdiction is ex-

ercised by us in accordance with the basic law of the land. In the premises, the mere allegation in the petition to the effect that the returns of the sheriff to a writ

of summons are false does not possess sufficient legal cognency to be deemed a satisfactory rebuttal of the fact of service. In virtue of the above and admitting to the legality of the service of the writ of summons in accordance with the returns of the sheriff as filed, was there in existence a sufficient issue respecting real property to make it a mandatory requirement that a writ of resummons issue in virtue of the nonappearance of the defendant in the court below as is provided in Section 1125 of the Civil Procedure Law?
Let us say, initially, that summary proceedings as defined in Section 1123 of the Civil Procedure Law constitute a prescribed procedure for instances wherein the right of possession and damages are in issue. This particular section does not deal with title. The Chambers Justice having addressed himself. to these two issues relating to title and the writ of summons, we find it expedient to quote from the Chambers Justice's ruling: "Having now concluded these other issues, let us now turn to whether, as a matter of law, it is legally incumbent upon the party plaintiff in an action of ejectment to order the issuance of a writ of re-summons where the property sought to be recovered is in the possession of an adversary in virtue of a less-than-freehold estate created by an indenture of lease. "In 1928, this Court, in Beavans v. Jurs, [1928] LRSC 8; 3 L.L.R. 28 held that 'a tenant having possessory title has a right to bring an action of ejectment.' This case was decided prior to enactment of the 1945-1946 acts of Legislature which provided that whenever title is in issue the cause is not cognizable before a justice of the peace or magistrate. This provision is now found in Section 1123 of our Civil Procedure Law ; however

in progressing to Section 1125, it is found that the writ of re-summons may be used if the defendant fails to appear after being summoned in an action of ejectment when title is in issue. "It is a logical conclusion that in every action of ejectment title is in issue, for in ejectment the plaintiff must always recover upon the strength of his own title and not upon the weakness of his adversary's. The term title is construed as follows in an authoritative treatise : 'The word "title" includes a right, but is the more general word. Every right is a title, though every title is not a right for which an action lies.' BLACK'S LAW DICTIONARY (3rd ed. 1944) "An individual may have fee simple absolute title in and to a certain tract of land ; however he may execute an indenture alienating his immediate right to possession by creating an estate for years in another. This individual is legally possessed of title, yet he does not have an immediate right to possession for which an action at law may lie. A squatter may have better title to a piece of property than one who endeavors to dispossess him based upon a legally invalid deed ; for it is a principle of law as old as the hills that one must recover upon the strength of his own title and not the weakness of his adversary's. "Therefore the word 'title,' as used in Section 1125 of the Civil Procedure Law, covers less than freehold estates, including estates for years as in the case presently before us. The second paragraph of the said Section 1125 is applicable in respect of the case at bar, thus

making it a mandatory requirement that wherein the defendant in an action of ejectment fails to appear after being duly summoned,
it is legally incumbent upon the plaintiff to apply for the issuance of a writ of re-summons to be placarded upon the subject property,
thereby giving unto defendant and
the world constructive notice of service of process.

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"The facts in
the case at bar have revealed, and it is uncontroverted, that there was only the service of a writ of summons upon the defendant
which was insufficient to give the court jurisdiction over the particular subject matter which constitutes one of man's prized possessions.
Here the judge erred." Moreover, the complaint as filed alleged that the defendant therein was 2 years in arrears in the payment
of rental which amounted to $2oo at a rate of $100 per annum. The venue of this ease before the circuit court instead of a magistrate
or a justice of the peace is in itself an implied admission of the existence of an issue relating to title to real property. Having
elected to venue the action before a circuit court obviously believing same to be an action properly cognizable before that court
in virtue of the provisions of Section 1124 of our Civil Procedure Law, the defendants in error, plaintiffs in the court below, cannot
avail themselves of a defense to the effect that the procedure prescribed by law when title is in issue should not here be applied
to the extent of making it mandatory that a writ of re-summons issue in an action of ejectment when a party defendant has failed
to appear in accordance with the said provisions of section 1125 of the Civil Procedure Law. Predicated upon the above, it is the
determination of this Court that the ruling of the Chambers Justice be, and the same is, hereby affirmed. Costs in these proceedings
are ruled against the appellants. And it is hereby so ordered.
Ruling affirmed.

Roberts v Kaba et al [2004] LRSC 20; 42 LLR 228 (2004) (17 August 2004)

HELENA ROBERTS, KEBEH ROBERTS and ANTHONY ROBERTS, representing the Interstate Estate of the late ZAYZAY ROBERTA, Petitioners/ Appellants, *v.* **HIS HONOUR YUSSIF D. KABA,** Assigned Circuit Judge, Civil Law Court, Sixth Judicial Circuit, Montserrado County, 1st Respondent, HIS HONOUR B. S. TAMBA, Justice of the Peace for Montserrado County, 2nd Respondent, and KORNASSA SUMO, by and thru His Attorney-In-Fact, JAMES ARKU, 3rd Respondent, Appellees.

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

Heard: April 28, 2004. Decided: August 17, 2004.

1. A party cannot be concluded by a judgment without having his day in court.
2. Prohibition will lie to prohibit the unlawful act of a trial court and to undo what has been unlawfully done.
3. A trial judge cannot order a justice of the peace to resume jurisdiction and enforce judgment in a matter that is beyond the jurisdiction of the justice of the peace.
4. Prohibition will lie where a trial judge proceeds by wrong rules rather than rules which should be observed at all times.
5. Where documents presented to a justice of the peace raise issue of title to real property, the justice of the peace should refuse jurisdiction over the matter, as he lacks jurisdiction over the subject matter.
6. Where title is not in issue, a special proceeding to recover possession of real property may be maintained in a circuit court or a court of a justice of the peace or a magistrate.
7. The court of a justice of the peace or magistrate has jurisdiction only of cases in which the amount of the judgment demanded does not exceed three hundred dollars.
8. A justice of the peace court is without jurisdiction to try a summary ejectment action wherein title to real property is at issue.
9. The trial by a justice of the peace of an action of summary ejectment wherein title is involved constitutes a usurpation of jurisdiction and prohibition will therefore lie.
10. A writ of prohibition will be granted to prevent or enjoin inferior courts or tribunals from assuming jurisdiction which is not legally vested in them.
11. Prohibition will lie where a justice of the peace has proceeded by wrong rule which should be observed at all times.
12. The Supreme Court will grant a writ of prohibition where it appears that a subordinate court or tribunal has exceeded its jurisdiction or attempted to proceed by a wrong rule different from those which ought to be observed at all time.
13. Prohibition not only prohibits the doing of an unlawful act but goes to the extent of undoing what has already been done.
14. A writ of prohibition will not only prevent whatever remains to be done by the court against which the writ is directed, but will give complete relief by undoing what has been done.
15. Where the procedure and method adopted is illegal and unwarranted, prohibition will lie to prevent what remains to be done.
16. The President is given the authority by the Judiciary Law to designate the geographic area, such as a city, township, settlement or other similar area, over which each justice of the peace shall have territorial jurisdiction and within which he shall hold court for the trial of actions.

17. A justice of the peace does not have jurisdiction over an area outside of his assigned territorial area and over which another court is given territorial jurisdiction.

The petitioners/appellants, administratrix and administra-tors of the intestate estate of the late Zayzay Roberts, appealed from a ruling of the Justice in Chambers denying their petition for a writ of prohibition against the judge presiding in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, a justice of the peace whose action had been chal-lenged in the Civil Law Court by the petitioners/appellants on ground that he lacked jurisdiction to handle the action filed before him, and the plaintiff who had instituted the action of summary proceedings to recover real property before the justice of the peace. The basis for the petitioners/appellants motion before the justice of the peace to dismiss the action was the assertion that title was involved and that the justice of the peace could not hear such a case, but rather the circuit court. The plaintiff in the proceedings before the justice of the peace had opposed the motion to dismiss, stating that petitioners/appellants' reliance on a mandate from the Supreme Court which was never enforced did not constitute title to the disputed property or title deed to the said property. The justice of the peace, without issuing any assignment for the hearing of the case, had a writ of possession issued and served on the appellants. From this action and the subsequent ruling by the justice of the peace denying the motion to dismiss, the appellants sought review by the circuit court on summary proceedings.

The circuit court judge, on the strength of a conference held with the parties and without going into the merits of the case ordered the justice of the peace to resume jurisdiction over the case and enforce his judgment. It was from this action by the circuit court judge that the petitioners/appellants petitioned the Justice in Chambers for a writ of prohibition. The Justice in Chambers heard and denied the petition. It is from this ruling that an appeal is taken to the Full Bench.

The Supreme Court reversed the ruling of the Chambers Justice, holding: (a) that the petitioners/appellants had not had their day in court since there was absent any evidence that the petitioners had been summoned or served with any assignment for the case and no hearing was had in the case before they were evicted; (b) that the justice of the peace had exceeded his jurisdiction since the matter, involving title, was beyond his jurisdiction; (c) that the circuit court judge was in error in ordering the justice of the peace to resume jurisdiction over the case and enforce his ruling in view of the fact that the matter was beyond the jurisdiction of the justice of the peace.

The Court further opined that the procedure followed by the justice of the peace in not summoning the petitioners and not conducting a hearing before rendering a decision and ordering the petitioners evicted was in violation of rules which the justice of the peace should have followed at all times. Moreover, the judgment growing therefrom could therefore not be conclusive with respect to the petitioners. The Court noted also that once documents were presented to the justice of the peace and the issue of title arose, the justice of the peace should have refused jurisdiction over the matter as provided by law rather than assume jurisdiction and oust the petitioners/appellants from the property without a trial. The Court therefore held that in such a case, not only will prohibition lie to prevent any further action by the lower court but that it will also serve to reverse all illegal actions taken by the lower court.

MADAM JUSTICE COLEMAN delivered the opinion of the Court

This appeal grows out of a ruling of the Justice in Chambers, denying a petition for a writ of prohibition.

Mr. Justice Elwood L. Jangaba presiding in Chambers of this Honourable Court during its March Term, A. D. 2002, heard and denied a petition for a writ of prohibition filed by the petitioners/appellants herein., Helena Roberts, Anthony Roberts and Kebeh Roberts, administratrix and administrators of the Intestate Estate of the Late Zayzay Roberts, against His Honour Yussif D. Kaba, Assigned Judge of the Sixth Judicial Circuit Court for Montserrado County, Justice of the Peace B. S. Tamba, and Komassa Sumo by and thru her Attorney-In-Fact, James Arku. The appellants excepted to the ruling of the Justice in Chambers and announced an appeal to the Full Bench. Hence, this appeal.

According to the certified records transmitted to this Court, appellee Sumo is alleged to have purchased a parcel of **land** on February 28, 1979 from the late Willie Hinneh, which is situated and lying in Point Four, Montserrado County, and containing 325 sq. ft. of **land**. The grantor, Willie Hinneh, is said to have executed and signed a deed in favor of Appellee Sumo, which said deed was probated and registered in accordance with law in Vol. 301-78, page 745, and re-transcribed according to law in Vol. 21-2001, pages 3-5, and filed in the Center for National Documents and Records/ National Archives, R L.

Appellee Sumo, an alleged lover of the late Zayzay Roberts instituted an action of summary proceedings to recover possession of real property before justice of the peace B. S. Tamba against Helena Roberts, Anthony Roberts and Kebeh Roberts, administratrix, administrators and heirs of the late Zayzay Roberts. There is no evidence that a writ of summons was issued, served and returned served. The records show only that a writ of possession was first issued on the 4th day of January, 2002 and served on the appellant. After attempted eviction of the appellant, their counsel prevailed on the justice of the peace not to evict the appellant without a trial. The justice of the peace ordered the appellants to be repossessed of the said property and a notice of assignment was issued and served for the hearing of the matter on February 13, 2002.

The appellants appeared before the justice of the peace as a result of the February 13, 2002 notice of assignment served on them. They were represented by the Henries Law Firm, in person of Counsellor James C. R. Flomo, who requested the justice of the peace to dismiss the action on grounds that title was involved. Counsellor Flomo contended that appellants' title to the subject property was a mandate of 1979 from former Chambers Justice George Henries and a judgment of the Civil Law Court rendered in favor of appellants' late father, Zayzay Roberts, in an action of specific performance to compel Willie Hinneh to sign a deed in favor of Zayzay Roberts for which Willie Hinneh had received money from Zayzay Roberts. These documents, appellants' counsel alleged, related to the identical property claimed by appellee Sumo and therefore presented an issue of title, which placed the trial of the case beyond the trial jurisdiction of the justice of the peace court.

Counsellor Joseph H. Constance, who represented the appellee, in counter argument, requested the justice of the peace to deny the motion to dismiss the complaint, as a judgment or a mandate in an action for specific performance which was never enforced, cannot be used as title deed to real property. Appellee's counsel also contended that title to the subject property was never vested in appellants' father, Zayzay Roberts, by the issuance or signing of a deed. Hence, as title

was not in issue, the justice of the peace court had trial jurisdiction.

The justice of the peace, B. S. Tamba, ordered the issuance of a notice of assignment for February 21, 2002, for a ruling on the motion to dismiss the action. However, prior to the rendition of the ruling, the appellants filed a petition for summary proceeding before the Civil Law Court to review the ruling of justice of the peace Tamba on the motion to dismiss the complaint for lack of trial jurisdiction. Co-respondent B. S. Tamba, in his returns, alleged that summary proceedings could not lie against him because he had not made any ruling for which the trial court could review. His Honour Wynston O. Henries, presiding over the Civil Law Court, held a conference, after which he mandated justice of the peace Tamba to resume jurisdiction and make his ruling and proceed in keeping with law.

The justice of the peace resumed jurisdiction over the matter and ruled on March 22, 2002, denying appellants' motion to dismiss the action, for reasons that title was not in issue, noting that appellants did not exhibit any deed to show title and that a mandate or a judgment which was never executed could not confer title.

There is no record to show whether the justice of the peace issued another notice of assignment for the hearing or had a hearing on the summary proceeding to recover possession of real property after he made his ruling denying appellants' motion to dismiss the complaint. However, a second writ of possession was issued on March 23, 2002, based on an alleged judgment of March 22, 2002, which ordered that appellant be ousted and evicted.

Subsequently, on March 23, 2002, the appellants, by and through their legal counsel, Counsellor Ignatius Weah, filed another summary proceedings against the justice of the peace stating that they were being illegally evicted and ousted from their property without notice of a hearing or a hearing being conducted. The trial court issued a citation for a conference which was attended by Counsellor James R. C. Flomo and Counsellor Ignatius Weah as counsels for the appellants, and Counsellor Joseph Constance representing the appellee. After the conference, His Honour Yussif D. Kaba, presiding over the Civil Law Court, mandated the justice of the peace court to resume jurisdiction and enforce his judgment.

On April 15, 2002, the appellants, thru Counsellor James W. Zotaa, now representing the appellants, filed a four-count petition for a writ of prohibition, which was amended on May 20, 2002. The amended petition contained eight-counts.

Appellant contended in their amended petition: That the justice of the peace denied them their day in court, in that they were not served with a writ of summons and brought under the jurisdiction of the justice of the peace court; that title was involved which placed the matter beyond the trial jurisdiction of the justice of the peace; and that the circuit court judge proceeded by wrong rule for which prohibition would lie since the trial judge did not hear the merits of the summary proceedings when he illegally mandated the justice of the peace to enforce his judgment.

The then Chambers Justice, His Honour Elwood L. Jangaba, ordered the issuance and service of the alternative writ, which was issued, served and returned served. The appellee filed a fourteen-count returns on June 12, 2002, to the appellant amended petition, contending, among other things: That the appellant had their day in court, that they were served with a writ of summons and brought under the jurisdiction of the justice of the peace court; that title was not in dispute, in that the appellants never exhibited any title before the justice of the peace; that the letters of administration presented to the court was to only administer the interstate estate of appellants' late father; that the deeded property of appellee Sumo could not be administered by the appellants as part of the interstate estate of their late father; that Counsellor James Flomo of the

Henries Law Firm and Counsellor Ignatius Weah attended and actively participated in the conference, after which the trial judge, His Honour Yussif D. Kaba, mandated the justice of the peace to enforce his judgment.
The Justice in Chambers heard and denied the petition. We hereunder quote a relevant portion of the Chamber Justice's ruling for the benefit of this opinion:

"Rule 33 of the Revised Circuit Court Rules provides that upon the application of a party petitioner for summary proceedings against a magistrate or justice of the peace the judge shall cite the parties to a conference prior to issuing the writ which contains a stay order. It is not denied by the petitioners that a conference was never held, but they contended that the trial judge did not hear the merits of the summary proceedings when he man-dated the justice of the peace to enforce his judgment.

We agree that prohibition is the proper remedy where a trial judge proceeds by different rules from those which ought to be observed at all times. *Parker v. Wornell*, 2 LLR 525 (1927); *Mensah v. Tecquah*, [1954] LRSC 29; 12 LLR 147 (1954)

In the instant case, the trial judge cited the parties to a conference attended by them without the issuance of a writ in conformity with Rule 33 of the Revised Circuit Court Rules. Thereafter, the trial judge mandated the justice of the peace to enforce his judgment. This Court holds that the trial judge never proceeded by different rules which ought to be observed at all times. Hence, prohibition will not lie."
From this ruling of the Justice in Chambers, appellants appealed to the Full Bench. However, prior to the appeal being heard, appellant filed a motion before the Full Bench captioned "motion to dismiss for lack of jurisdictions", wherein they challenged the justice of the peace's jurisdiction over the subject matter and the person of the appellants, and also raised other issues which would lead to discussing the merits of the case as though on regular appeal.
Since the motion has not challenged the jurisdiction of the Full Bench over the appeal emanating from the ruling of the Chambers Justice on the petition for issuance of a writ of prohibition, this Court will not deal with said motion since we are not considering the merits of the case.
The salient issues for our consideration in these prohibition proceedings are as follows:

1. Whether or not the justice of the peace and the trial judge proceeded by wrong rule, for which prohibition will lie?
2. Whether or not prohibition will lie where the justice of the peace exceeds his trial jurisdiction?

We shall decide the above stated issues in descending order. Did the justice of the peace proceed by wrong rule when the appellants and their counsels first appeared before the justice of the peace and request him to refuse jurisdiction and dismiss the complaint as title was involved? The justice of the peace denied the motion to dismiss and without any evidence that a trial was held, ordered that the appellants be ousted and evicted. Even though there is a second writ of possession, which was served on the petitioner, there are no returns to show whether or not the writ of possession was ever carried out and the appellant ousted and evicted. This procedure adopted by the justice of the peace was clearly illegal and did not afford the appellants their day in court.

This Court is of the view that the appellants did not have their day in court in the justice of the peace court because neither is , as there is no evidence that a writ of summons was served on them nor . Neitherwas any hearing held before they were ordered evicted. But will prohibition lie where a party claims not to have his day in court?

This Court held in the case *Sawan v. Cooper et al.*[1999] LRSC 27; , 39 LLR 598 (1999), "A party cannot be concluded by a judgment without having his day in court; and prohibition will lie to prohibit the unlawful act of a trial court and to undo what has been unlawfully done."

Following Tthe conference held by the trial court, even though being in conformity with Rule 33 of the Revised Circuit Court Rules (1999) which empowers a circuit court judge to have a conference prior to the issuance of a writ of summons in a summary proceeding which is against a magistrate or justice of the peace, however the circuit court judge, after the conference, should not have ordered the justice of the peace to resume jurisdiction and enforce a judgment over a matter that was clearly beyond his jurisdiction. The judge should have instead either issued the writ of summons in the summary proceedings or alternatively ordered the justice of the peace to refuse jurisdiction over the matter as it was beyond his jurisdiction. Failing to have done so, the trial judge proceeded by wrong rule, which should be observed at all times. Hence, prohibition will lie.

Now we come to the issue of whether or not prohibition will lie where a justice of the peace exceeds his trial jurisdiction. Let us first determine whether the justice of the peace had trial jurisdiction. A recourse to the records in this case shows that the subject property was allegedly deeded to Aappellee Sumo on February 28, 1979 by the late Willie Hinneh. This deed was probated and registered according to law and was presented to the justice of the peace by appellee Sumo to show her ownership to the property. The appellants, in their motion to dismiss, exhibited to the justice of the peace letters of administration issued to them to administer the intestate estate of their late father, Zayzay Roberts, and a copy of Chambers Justice Henries' Ruling which ordered the Civil Law Court to enforce its judgment in an action of specific performance to compel Willie Hinneh to sign a deed in favor of the appellants' late father, Zayzay Roberts for the same pro-perty. The Civil Law Court had never enforced its judgment in the action of specific performance up to the time of the death of the grantor, Willie Hinneh, in the 1980's, and the death of the grantee, Zayzay Roberts, in the 1990's, and up to this date. The letters of administration and the aforesaid rulings are the documents which the appellants contended constituted their title to the subject property which placed the subject matter beyond the jurisdiction of the justice of the peace.

The records also contained an unsigned deed from Willie Hinneh to Zayzay Roberts and a judgment from the Justice in Chambers ordering Willie Hinneh to sign the deed in favor of Zayzay Roberts. A careful inspection of the unsigned deed and the deed from Willie Hinneh to appellee Sumo revealsed the identical metes and bounds on both deeds;, the exact amount of DollarsThree Thousand Dollars ($3,000.00) paid by both parties for the property and both deeds contained 325.0 sq ft. area of **land** and no more.

When these documents were presented to the justice of peace by the appellants and the issue of title arose, the justice of the peace should have refused jurisdiction over the matter, because as title was involved which couldan not be determined by him. He did not have trial jurisdiction over the subject matter and therefore exceeded his jurisdiction when he proceeded with the matterthe matter and ordered the appellant ousted and evicted without a trial, and we so hold.

Our Civil Procedure Law states that:

"Where title is not in issue, a special proceeding to recover possession of real property may be maintained in a circuit court or a court of a justice of the peace or a magistrate. The court of a justice of the peace or magi-strate shall have jurisdiction only of cases in which the amount of the judgment demanded does not exceed three hundred dollars." Civil Procedure Law, Rev. Code 1: 62. 21.

The contention of appellants is based on the above quoted statutory provision. They argue that the 2nd respondent herein, justice of the peace B. S. Tamba, had no trial jurisdiction over the sub-ject matter because the letters of administration and the copy of the ruling of the then Chambers Justice George Henries, growing out of the specific performance action against the late Willie Hinneh vested title into the appellants' late father, Zayzay Roberts. Thus, ; and that because title was involved, the justice of the peace court lacked trial jurisdiction.

Having decided that title was in issue and the justice of the peace court did not have trial jurisdiction, the next issue to determine is whether or not prohibition will lie where the court lacks jurisdiction over the parties and the subject matter?

The Supreme Court has held that "a justice of the peace is without jurisdiction to try a summary ejectment action where-in title to real property is at issue. *Younis and Howard v. Tecquah*, 11 LLR 331 (1953). The Court further said that "for a respondent justice of the peace to try an action of summary ejectment wherein title is involved would constitute usurpa-tion of jurisdiction; and prohibition would lie."

This Court has also held in several cases that a writ of prohibition will be granted to prevent or enjoin inferior courts or tribunals from assuming jurisdiction which is not legally vested in them. *Gaiguae v. Jallah*, [1971] LRSC 3; 20 LLR 163, syl.1. (1970); *Nasser v. Smith*, [1977] LRSC 27; 26 LLR 115, syl. 3 (1977); *Lamco J. V. Operating Company v. Flomo*, [1978] LRSC 24; 27 LLR 52 (1978), text at 58-59 (1978).

In the instant case, the justice of the peace neitherdid not first acquire personal jurisdiction over the party by the service of a writ of summons which is required in all civil action; nor neither did the justice of the peace court have trial jurisdiction over the subject matter as title was in issue. And, there isn't any record to indicate that a trial was conducted before the appellees were ordered evicted. The justice of the peace having proceeded by wrong rule which should be observed at all times, prohibition will lie, and we so hold.

Let us now consider whether or not prohibition is the pro-per remedy where a court exceeds its jurisdiction or proceeds by wrong rule? It is evident from the facts gathered and the records certified to us that besides the many irregularities committed by the justice of the peace in the handling of this case, the lower court failed to correct these obvious irregulari-ties and errors. Instead, it permitted the justice of the peace to preside over a matter in which he, firstly, did not acquire jurisdiction over the persons, and secondly, did not have trial jurisdiction over the subject matter as title to the subject property was raised and was in issue. We therefore conclude that the court below also proceed by wrong rule which should be observed at all times.

This Court will grant a writ of prohibition where it appears that a subordinate court or tribunal has exceeded its jurisdiction or attempted to proceed by a wrong rule different from those which ought to be observed at all time. *Parker v. Worrell*, 2 LLR 525 (1925); *Mensah v. Tecguah*, [1954] LRSC 29; 12 LLR 147 (1959), text at 150-151.

Mr. Justice Shannon, speaking for the Court in the *Mensah v. Tecquah* case, in which he relied on the *Parker v. Worrell* case, said: "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 LLR. 525 (1925). In such case, 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., *Prohibition*, § 8."

Mr. Justice Shannon concluded by saying: "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."

The *Mensah v. Tecquah* case is analogous to the instant case, in which justice of the peace Tamba, without issuing a writ of summons to bring the appellants under the jurisdiction of the court; without giving them notice to appear and have their day in court, disposed of the matter to the extent of issuing a writ of possession, even when the issue of title was raised challenging his jurisdiction. The judge proceed by wrong rule which ought to be observed at all times. Therefore, as was held in the *Tecquah* case, prohibition will lie and will also undo the unlawful acts. See also *Fazzah Bros et al. v. Collins,* 10 LLR 211 (1950) and *Scott et al. v. The Job Security Scheme Corporation, Inc.* [1983] LRSC 128; 31 LLR 552 (1983), syl.1 & 2. In the *Fazzah Bros*. case, the Court held, as far back as 1950 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." In the *Scott* case, the Court upheld the *Fazzah Bros.* case and further said that "Where the procedure and method adopted is illegal and unwarranted, prohibition would lie to prevent what remains to be done as well as undo what has already been done."

In passing, this Court takes judicial cognizance of the records before us and observe that Justice of the Peace Tamba also lacked territorial jurisdiction over the subject matter. The property in dispute is situated and lying in the Point Four area of Bushrod Island, Montserrado County. Justice of the Peace Tamba conducts his court on Old Road, in Congo Town. It is inconceivable that J. P. Tamba will assume jurisdiction over property in an area not within his jurisdiction and that is clearly within a magisterial area. The New Kru Town Magisterial Court has territorial jurisdiction over property in the Point Four area.

The New Judiciary Law of Liberia specifies that the President will designate the geographic area, such as the city, township, settlement or other similar area, over which each justice of the peace shall have territorial jurisdiction and with-in which he shall hold court for the trial of actions. If Justice of the Peace Tamba was commissioned for the Township of Congo Town where he conducts his court, then it is clear that he does not have territorial jurisdiction over property in Point Four where the Newkru Town Magisterial Court has territorial jurisdiction, because a magistrate and a justice of the peace cannot have the same territorial jurisdiction. Again, justice of the peace B S. Tamba acted outside his territorial jurisdiction.

Wherefore, and in view of the facts and circumstances of this case and the laws relied on, the ruling of Mr. Justice Elwood L. Jangaba denying the issuance of a writ of prohibition is hereby reversed, the petition is granted, and the peremptory writ ordered issued. The Clerk of this Court

is hereby ordered to send a mandate to the trial court informing the judge presiding therein to resume jurisdiction over the case and send a mandate to justice of the peace B.S. Tamba to cancel, vacate and void all of the proceedings in the summary ejectment case, including the writ of possession, without prejudice to the aggrieved party to file the appropriate action in a court of competent jurisdiction. Costs are ruled against the appellee. And it is hereby so ordered.

Petition granted.

Gould et al v RL [1903] LRSC 1; 1 LLR 393 (1903) (1 January 1903)

WILLIAM GOULD and **WESLEY S. DUNN**, Appellants, vs. **REPUBLIC OF LIBERIA**, Appellee.

[January Term, A. D. 1903.]

Appeal from the Court of Quarter Sessions and Common Pleas, Grand Bassa County.

Assault and Battery with Intent to Kill.

1. Where in an indictment for felony the prisoner upon arraignment alleged that the offence committed did not amount to a felony, and this objection the inferior court overruled, the ruling was sustained by the appellate court, which held that where there are legal defects in an indictment they should be taken advantage of either before trial upon demurrer or motion to quash, or after verdict upon a motion to arrest judgment.

2. A party is not rendered incompetent as a witness on account of interest, in a criminal prosecution, because his name appears in the special plea of prisoner's defense; where a witness had been admitted and allowed to depose at the trial it was held to be error in the court in not allowing the testimony to go before the jury.

3. The misdirection of the judge to the jury upon the law, where it led to an erroneous and illegal verdict, will be corrected by the appellate court.

4. Where the prosecutrix had assented to an arrangement which acknowledged the right of possession of the prisoner in certain property, and afterwards sought to make a forcible entry upon the property which resulted in injuries to her person, it was held that the prisoner might show the assent of the prosecutrix to his right of possession, and her subsequent forcible entry in justification of his conduct.

This is a case of assault and battery with intent to kill. The appellants, defendants in the court below, were indicted by the grand jurors for the County of Grand Bassa, at the June term of the Court of Quarter Sessions and Common Pleas, for 1900, for the aforesaid offence, and arraigned, tried, and convicted at the September term of said court for 1900. The appellants, believing that the verdict of the jury was unsupported by the evidence, tendered to the court below a motion for a new trial, which motion, having been heard by the court, was overruled. Upon this verdict the court below, on the 11thday of October, 1900, pronounced sentence, to which judgment, as well as to the other rulings of the court in the cause, the prisoners excepted and have brought the case before this court upon a bill of exceptions, for review.

We shall now proceed to consider the several points of exception set forth in the bill of exceptions. The first exception is to the ruling of the court below upon appellant's plea, and is taken as follows, to wit: "Because when, on the 28th day of September, A. D. 1900, the defendants, being arraigned, pleaded that the offence charged in the indictment was no felony, though being so charged in the indictment, and prayed his honor the judge to dismiss them from such indictment, he overruled the plea; to which defendants excepted," etc. We fail to discover the legal grounds upon which this exception is founded. This court is of opinion that if there were defects upon the face of the indictment the prisoners could only have taken advantage of the privilege afforded them, before the trial, upon a demurrer or motion to quash; or after trial, upon a motion in arrest of judgment, in accordance with the rules of practice. The court below did not err in its ruling on this point.

Passing over the second exception, which this court does not regard material to its decision of the case, we shall next consider the third exception, which reads as follows, to wit : "Because when, on the first day of October, the State called Amanda Gould and Alexander Moore as witnesses in the case of the Republic against William Gould and Wesley S. Dunn, the defendants objected to their being admitted as witnesses against them, because the names of Amanda Gould and Alexander Moore appeared in the special plea filed in this court in this trial, as rioters with others who caused all the evils which occurred on the 8thday of December, A. D. 1899, in Hartford, but his honor the judge overruled the objection," etc.

The statute laws of this country declare that ((every witness shall be considered as competent who cannot clearly be shown to be incompetent; all objections not absolutely and directly going to competency shall go to credibility only." (Lib. Stat. Bk. 1, Chap. 12, p. 58, sec. 4.) And again (in sec. 9, Chap. 12, of the same book) we have the law with respect to the incompetency of a witness on account of interest in the cause, stated as follows : "No person shall be deemed an incompetent witness on account of an interest in the cause, except he be a party thereto, or bail or otherwise security in the cause, for the party who calls him, or be answerable over to such party, or be responsible for the costs or a part of them, or except the verdict or judgment can be given in evidence against him, or except he has an interest in the plaintiff's claim or the thing in dispute." Examining the record of the case we find no facts which in the opinion of this court would tend to render Amanda Gould and Alexander Moore incompetent witnesses in the case. The grounds relied upon by the counsel for the prisoners are that the said witnesses, being pleaded against in prisoners' special plea, as rioters, they therefore have an interest in the cause. This court is unwilling to give its sanction to such a view of the law governing the competency or admissibility of witnesses, or to lay down a rule which does not seem to it to be in keeping with reason—and certainly is not in agreement with law—whereby material testimony may be barred and the ends of justice defeated. This court holds that the court below did not err in admitting the evidence of witnesses Gould and Moore, as the weight and credibility of their evidence were questions to be weighed and considered by the jury.

The fourth exception is taken to the court's ordering "the evidence of Samuel Gould to be struck from the record in the case," etc. Undoubtedly the court erred in its ruling on this point. It is the duty of the court to decide the admissibility of a witness, but when it is admitted it is with the jury to decide upon the credibility and effect of his testimony. (Lib. Stat. Chap. 12, Bk. 1, sec. 2.)

The fifth exception reads: "Because his honor the judge misdirected the jury, in that he told them that William Gould ought to have left the matter of pulling down the house for his father to settle with those who pulled it down, and that he was not the actual owner of the premises." Obviously the jury was influenced by this direction or instruction of the judge in arriving at their verdict. And upon this point, which also involves the question of ownership and possession of the property in dispute, the case largely hangs. For if William Gould, the principal defendant in this case, was in legal and rightful possession of the property, the conduct of Amanda Gould, the prosecutrix, in seeking to make a forcible entry upon the said property and to carry it off, was unwarranted by law, and Gould may be justified if in repelling force by force in defense of his habitation, an injury was inflicted upon the assailant.

From an inspection of the record we find that the **land**, upon which stood the house in dispute, is the property of Samuel Gould, father of Joseph Gould, husband of the prosecutrix; that Joseph Gould, by permission of his father, Samuel Gould, lived upon the premises during his lifetime and that after his death Samuel, the owner of said property, allowed William Gould, the

prisoner, to occupy the premises as a tenant at will. It doth also appear from the record, that on the death of Joseph Gould, husband of the prosecutrix, the said house—independent of the **land**—was entered in the inventory of his estate; that subsequently it was objected to by Samuel Gould, who claimed the house by virtue of ownership of the **land**, and that upon the matter being brought before the Monthly and Probate Court of said County, said court decided that Samuel Gould might retain the house, but that he pay the prosecutrix dower out of the same ; to which ruling, it appears, both the prosecutrix and Samuel Gould assented, and from the evidence of A. B. Brooks, the administrator of the estate of Joseph Gould, a portion of the amount allotted prosecutrix as dower in said house was paid by Gould and accepted by the prosecutrix.

This court refrains from making any observations as to the legality or illegality of the manner in which the said Monthly and Probate Court disposed of the question of title of Samuel Gould in and to said house, and of prosecutrix's right of dower in the same. It is sufficient to our conclusions of the case to observe that prosecutrix, having acquiesced in the rulings of the Monthly and Probate Court in the premises to the effect that Samuel Gould should retain possession of the house and pay her dower therein, and she having gone further and accepted a part of said dower from Samuel Gould, she is estopped from going behind her own acts, and attempting to make a forcible entry upon the premises to the extent of causing a breach of the public peace, even supposing she had an interest in the same. (II Arch. Crim. Prac. and Pleadings, pp. 1129 to 1133.)

This court further says that having carefully weighed the evidence in the case and the law bearing thereon, it entertains the opinion that the prosecution did not make out a clear and conclusive case against the prisoners; and it further says that in view of the facts surrounding the case the court below ought to have granted prisoners a new trial. The court below committed error in not so doing and also in giving judgment against the prisoners upon a verdict not supported by evidence.

This court therefore reverses the judgment of the court below, and the clerk is hereby authorized to issue a mandate informing the judge of the court below of this decision.

West v Dunbar [1897] LRSC 9; 1 LLR 313 (1897) (1 January 1897)

JOHN W. WEST, Appellant, vs. **HARRIET F. DUNBAR**, Appellee.

[January Term, A. D. 1897.]

Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.

1. 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; the doctrine of estoppel will not permit it

2. 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.

This case comes up from the Court of Quarter Sessions and Common Pleas, Sinoe County, upon a bill of exceptions, under the statutes regulating appeals. The appellee sets up claim as owner and the right of possession to three fourths of lot No. 109, in the city of Greenville, alleging that the same is wrongfully withheld from her by the appellant, and by this action she seeks to eject the appellant from said lot.

The appellant in defence of his possession to the said three fourths of said lot No. 109, sets up the plea of estoppel, and declares that the appellee having during the year 1876, for the consideration of the sum of seven hundred dollars, under written contract, leased said three fourths lot to C. F. Bertrams, agent for A. Woerman of Hamburg, his heirs and assigns, and the said C. Woerman during the year 1892 having assigned to J. W. West, the appellant, all legal rights possessed by said C. Woerman, lessee, for the unexpired time therein, she is thereby estopped from impeaching her own deed ; and appellant prayed judgment be estoppel.

The lease being for fifty years with the privilege of renewal on payment of fifty dollars, after the expiration of the first term, the appellee replied and declared that said deed of lease was in violation of the organic law of the State, as well as the ruling of this court in the case of Bigham against Oliver, determined at its January term, A. D. 1869, and hence not binding.

This case was among the many cases docketed in this court at its last session, the present appellant being then the appellee, who had obtained a verdict and judgment in his favor at the trial below. At the call of this case both parties joined in a formal motion requesting that the case

be remanded to the court below, in order that the mixed questions of law and fact determined by the court below may be submitted to a jury as is required by law in all actions of ejectment, the court below having neglected to do so. This court accordingly ordered a remand of the case, and at the new trial the appellee, H. F. Dunbar, obtained a verdict in her favor, to which verdict and judgment the appellant, J. W. West, defendant below, excepts, which brings the case again before this court for review.

The general principles of law when applied to this case must lead this court and every unselfish mind to such conclusions as are founded in law and justice. In no respect is the plea of estoppel, raised in this case, different from that determined by this court at its January term, 1895, in the action of ejectment in the case of East Africa Company, late Hendrik Muller & Co., against H. F. Dunbar. Upon the plea of estoppel raised in the case, this court then said, and which doctrine it will here again reiterate, enunciate and declare, that the plea of estoppel is among the pleas calculated to prevent one from denying his own acts or deeds, and when founded in truth, must receive the sanction of the courts of law.

Nothing would work greater injustice and give greater encouragement to fraud, than for a man to execute a deed or note in favor of another, and afterwards to be allowed to invoke the aid of the law to prove its unlawfulness. In law he is estopped or hindered from doing so. The great principle founded in justice to prevent fraud is not confined to the common law, but by the fathers of our country it is emphatically carried and incorporated into our statute law, only in different words. Liberia Statutes, Bk. i, page 24, section 13, read thus: "No action can grow out of an immoral or illegal contract;"—which may be justly interpreted to mean that no one shall be benefited by his own illegal acts. Again, the maxim, "No one shall take advantage of his own wrongs," and further, "Whatever has been said by a party himself is evidence against him." Therefore the plea of estoppel entered in this case was well founded, and the court below erred in not sustaining it and submitting its opinion of the law as evidence to the jury, directing them to render their verdict accordingly.

Another exception taken by the appellant is because the court in admitting the deed under which he claims possession only admitted it in part and not as a whole. This fact appearing in the record compels us to say, this act of the judge of the court below was in violation of the rules of evidence, because by statute the whole deed, if admitted by the court, should have been submitted to the jury as evidence of all exceptions and denials contained therein and of all facts connected with the question stated therein. (Liberia Statutes, Book i, page 56, section a5: "Deeds and all other writings shall be evidence against all parties to them, and shall also be evidence of the transfer of all titles or rights transferable by them against all mankind.") The appellee not objecting to the admission of the deed, but admitting it, the jury was then bound to consider it in all its parts, and in the absence of rebutting evidence could not disregard it, as its admittance established facts they were bound to consider in making up their verdict. In not doing this, the

verdict was contrary to the evidence and should therefore have been set aside and a new trial ordered.

During the traverse of this case, repeated reference has been made to the ruling and opinion of this court as pronounced in the case of Richard Bigham against J. Oliver. The court sees no reason for disturbing that judgment, or any other opinion previously expressed by this court, and will not, unless bound by duty to do so, when it will be in either upholding or overthrowing such judgments as are not in keeping with law and the Constitution. This court feels bound only by the law, the Constitution, and well-founded precedents.

In this case the issue is not joined upon the point of legal or illegal contract, constitutional or unconstitutional agreement, but it is presented in this wise: The appellant in his answer sets up the plea of estoppel, insisting that the appellee is concluded by her own deed. To this the appellee replies, denying the legality of her deed of lease. Hence the issue rests in the plea of estoppel, which plea was prominently before the court below and which plea this court is bound to consider; and we here say all opinions given by courts not in conformity to the issues submitted to them may be considered obiter dictum.

This court feels bound by law and justice to pronounce the following decision: The court adjudges that the judgment rendered in this case by the court below be reversed, vacated and rendered null and void, the appellee paying all costs. The clerk of this court is ordered to notify the court below to the effect of this judgment.

Williams v Young [1896] LRSC 6; 1 LLR 293 (1896) (1 January 1896)

H. A. WILLIAMS, Executor of the Estate of Mary A. Aenmy, Appellant, vs. **CORNELIUS** and **MARTHA YOUNG**, Appellees.

[January Term, A. D. 1896.]

Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.

Contested Will.

1. A will devising an estate to the wife and her children, with power to sell any portion thereof for their benefit, creates an estate in joint tenancy as between the wife and children. Joint-tenancy is where parties have a unity of interest, derived by one and the same conveyance, commencing at one and the same time, and held by one and the same individual possession; it differs from tenants in common, in which case there is a unity of possession only.

2. An estate in joint-tenancy may be in fee simple for life, for years, or at will. The subtle principle of law applicable to this species of property is the "doctrine of survivorship," whereby upon the death of all the other tenants the surviving tenant takes the whole estate without any regard to the heirs or other representatives of the deceased co-tenants. Where in an estate devised to the wife and her children, the children die leaving the estate so devised, the wife will take the whole, upon the doctrine of survivorship, and may dispose of it by sale, will or otherwise.

3. Under the Constitution of Liberia a woman does not lose her title to property which she may have acquired, either before or after marriage, on account of her coverture with an alien.

This case is before the court by an appeal from the judgment of the Court of Quarter Sessions and Common Pleas, Montserrado County, determined at its December term, 1895, founded upon the verdict of a jury unto whom was referred and submitted the will of the late Mary A. Aenmy, the same being contested by the appellees when presented before the Monthly and Probate Court, Montserrado County, for probation.

The record and proceedings in this case furnish this court with sufficient light to enable it to render such judgment as will satisfy the ends of justice, to which ends appeal courts are established. In the transcript of record filed in this case it is seen that Mary A. Aenmy, testatrix, in her last will made the following gift and bequest, to wit: "I give and bequeath unto the Methodist Episcopal Church in the city of Monrovia, my dwelling house with three-quarters of lot No. 110, for a parsonage, with the proviso that my dear husband, Moorenus A. Aenmy, shall occupy the premises during his natural life, or as long as he would desire. After his vacation either by death or otherwise, then the said property is to be turned over to the trustees of the Methodist Episcopal Church aforesaid, by my executor hereinafter named, free of charge." The testatrix named as her executor H. A. Williams. The will above referred to, on being presented to the Probate Court for probation and registry, was sought to be impeached and contested by the appellees and was consequently sent up to the Court of Quarter Sessions and Common Pleas, Montserrado County, to be tried by a jury as the law directs. Before said court the objectors submitted, first, that the testatrix Mary A. Aenmy had no legal right vested in her for lot No. no in the city of Monrovia, and consequently could not will it to the legatee named in the will. The appellant opposed this objection, by claiming ownership and property in lot No. 11o, alleged to

have been derived from the will and testament of the late A. F. Johns, the prior owner of said lot and improvements. At the trial below the appellees obtained a verdict and judgment setting aside said will, from which judgment the appeal is taken.

Referring to the will and testament of the late A. F. Johns, an authentic copy of which, duly probated and registered, being filed in the court, we find the following language in the fourth paragraph : "I give and bequeath to my wife Mary Ann Johns and her two children, my dwelling house, furniture and lot in the city of Monrovia, together with all the rest, residue, and remainder of my property of whatever kind and nature, of real, personal or mixed, of which I shall die seized and possessed, or to which I shall be entitled at the time of my death ; and it is my will and desire that my said wife shall remain the sole guardian of our two children during their non-age." The fifth paragraph reads: "I do hereby nominate and appoint my said wife Mary Ann Johns my sole executrix of this my last will and testament, without the intervention of any court, 1. e., it is my wish and desire that no bond be required of her for the execution of this trust; and she shall have power, should it in her judgment be necessary for her to do so for the support of herself and children, to sell at private or public sale any property personal or real belonging to my said estate not devised to my brother Philip or to my mother-in-law Susan Brown."

It is the opinion of this court that the fourth paragraph of this will surely creates a joint tenancy in the person of Mary A. Johns and her two children.

Subsequent provisions of said will must yield to parts admitting or containing but one hypothesis, and the fifth paragraph only refers to her official relation as sole executrix.

It may be well just here to say, that in law joint tenancy and tenancy in common are quite different and are consequently subject to different rules. The property in joint tenancy is derived from its unity, which is fourfold,—first, the unity of interest; second, the unity of title; third, the unity of time ; and fourth, the unity of possession. In other words, joint tenants have one and the same interest accorded by one and the same conveyance, commencing at one and the same time and held by one and the same individual possession. A tenancy in common happens when there is a unity of possession only, but perhaps an entire disunion of interest, of title and of time. For example, if there be two tenants in common of lands, one may hold his part in fee simple and the other for life only; here there is no union of interest. One may hold by descent, the other under lease. In one may be found a vested fee estate of fifty years' standing, while in the other one of but yesterday. Between joint tenants there is a thorough union, in many respects not unlike co-partnership in business when the acts of one of the partners in violation of the partnership business binds them all, in contemplation of law, they being as one person.

Referring again to the will and testament of the late A. F. Johns under which Mary Ann Johns claimed ownership to lot No. i io and improvements in the city of Monrovia, we cannot give other construction to the fourth paragraph of said will than that the said testator, A. F. Johns, gave to his wife Mary A. Johns, in lieu of dower, this estate jointly with his two children by her, and this is the more clear since the will in no part assigns her any dower whatever. And under the recital of this will it would be extremely absurd for anyone to deny the absolute ownership of the two children to this property, lot No. 110 and improvements, had they survived their mother, Mary A. Johns ; and this absurdity can be applied with no less legal force to Mary A. Johns, she surviving them.

It is clear that in considering this case the court and jury below wrongly acted upon the law applicable to tenants in common instead of that applicable to joint tenants. The right of joint tenants is thus defined by the learned Judge Bouvier (Bouv. Law Dict. Vol. 2, p. 113) : "Joint tenants are two or more persons to whom lands or tenancies have been granted, to hold in fee simple for life, for years, or at will. In order to constitute an estate in joint tenancy, the tenants thereof must have one and the same interest, arising by the same conveyance, commencing at the same time, and held by one and the same undivided possession." This view of the law is ably supported by Sir William Blackstone. (Blackstone Commentaries, Vol. 2, p. 180.) "The principal incident to this relation," continues Judge Bouvier, "is the right of survivorship, by which upon the death of one joint tenant the entire tenancy remains to the surviving co-tenant, and not to the heirs or other representatives of the deceased; the last survivor taking the whole estate." Chancellor Kent in his comment on the American Law clearly sustains this rule, which, however, is changed in many states by statutory laws.

In this case the property in dispute is, by the will of A. F. Johns, a devise, gift and bequest to Mary A. Johns and her two children. The testimony discloses the fact that both of the children, devisees with M. A. Johns, died, and left her, the surviving co-tenant, in possession. She therefore took the whole estate by right of survivorship; consequently she had legal right to sell or will to any person capable of holding lands in this Republic. Hence the verdict and judgment rendered in this case are without legal foundation.

The next point to which this court's attention is called is as follows: That M. A. Johns, the testatrix, marrying an alien, a citizen of Holland, lost her citizenship of Liberia, under the law that the wife takes the nationality of her husband. To this the court says, this foreign law conflicts with the organic law of the Republic. The Constitution, which throws its powerful and protecting arm to uphold her, speaks in the following language: "The property, of which a woman may be in possession before or after marriage otherwise than through her husband, shall not be taken for the payment of his debts whether contracted before or after marriage. Nor shall

the property thus intended to be secured to the woman be alienated otherwise than by her free and voluntary consent, and such alienation may be made by her either by sale, devise or otherwise." We need not add that when foreign laws conflict with the provisions of the Constitution the latter must prevail.

Viewing this case from every legal standpoint, justice requires the following conclusion: This court adjudges that the verdict and judgment of the court below is without legal foundation and that the same is hereby reversed and vacated and rendered void; that the will of Mary A. Aenmy shall have legal effect as such and that the said appellant recover from the appellees all lawful costs. The clerk of this court will issue a mandate to the court from which the appeal was taken, to the effect of this judgment.

McAuley v Madison et al [1896] LRSC 2; 1 LLR 287 (1896) (1 January 1896)

E. A. L. McAULEY, Appellant, vs. **BENJAMIN MADISON** and **MARIA MADISON**, Appellee.

[January Term, A. D. 1896.]

Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.

Ejectment.

1. The court is not bound to instruct the jury upon any point of law bearing on the merits of a case where such point was not formally raised in the pleadings, if it was proper so to do.

2. The statute limiting the jurisdiction of the Monthly and Probate Court in matters of debt does not apply to suits brought for the foreclosure of a mortgage.

3. The Monthly and Probate Court may order the sale of property accruing to an infant where it appears necessary to do so for its benefit.

4. A deed or other conveyance which is not entered for probate within four months after its execution is by statute voidable.

5. A party who, being under no legal disability at the time, stands by and permits property, which he claims, to pass into the possession of another without objecting thereto at the time, is presumed to have assented to the transaction and is estopped from afterwards raising claims thereto. (Savage vs. Dennis, and Blunt vs. Barbour, 1871 and 1872.)

This is an action of ejectment tried and determined by the Court of Quarter Sessions and Common Pleas of Sinoe County at its August term, A. D. 1894, and brought up to this court for review by the appellant on a bill of exceptions, at its January term, A. D. 1895, but deferred until this present term. The court will now proceed to consider the case by reviewing the bill of exceptions and the evidence in the case, applying the law, and then rendering its judgment accordingly.

1. The appellant objects to the instructions, of the judge below, in that he refused to charge the jury as to partition and collateral heir. This court says that the judge below did not err in refusing to give such instructions to the jury, since said question was not raised in defendant's (now appellant's) answer, so that said issue might be brought properly within the reach of the court. It is a principle of law that any matter not laid in the written pleadings of a case cannot be expected to receive the legal consideration of the court. (Lib. Stat. Bk. 1, Chap. 5, sec. 8.)

2. The court says it is of the opinion that the judge below erred in ruling against the jurisdiction of the Monthly and Probate Court in foreclosing the mortgage deed from Peel to Maarschalk, agent of Hendrik Muller & Co., for the reason that the law limiting the original jurisdiction of said court in cases of debt to two hundred dollars does not debar the said court of the right to foreclose a mortgage deed for that or any amount, any more than it hinders said court from probating such a deed. The matter of debt was not an issue before the court for its consideration, but simply foreclosing a mortgage, involving no trial of issue.

3. And the court further says that the deed of Lewis Brown should have been admitted as evidence; first, because the Probate Court did not transcend its jurisdiction in ordering the property in question sold, when it was made clear to said court that it was necessary to sell the same for the benefit of the said infant Julia Peel in question; and secondly, while it is true that the law requires the probation of all deeds and other conveyances (Act of the Legislature of Liberia, 1861, p. 91, sec. 2), still, section five of the same act voids prior claims when there has been a

flagrant neglect of probation for four months, and when said neglect results in litigations arising from subsequent conveyances. And this court further says that even if the appellees are legal heirs, by descent, of the said Allen Peel, Sr., which has not been conclusively proven by the testimony adduced in the court below, still they are estopped from now claiming any part of said **land** in dispute, in that they are guilty of laches by allowing four subsequent conveyances of the said quarter of lot of **land** No. 13 to be made without enforcing their rights, to which in law the presumption is that they either assented or that they had no legal claims on said piece of **land**; and for which, the law under the circumstances will not lend its aid for the recovery. (See Decisions of Supreme Court of Liberia in the cases Savage vs. Dennis, and Blunt vs. Barbour.)

And again, this court says that the claim of appellees is not proven to be sufficiently strong as to entitle them to recover; for the principle of law prevails, and this court will ever maintain the same, that in cases of ejectment "the plaintiff must recover on the strength of his own claim, and not on the weakness of that of the defendant."

Therefore this court adjudges that the judgment of the court below is hereby reversed and made null and void, now and forever and that appellant recover all costs in this action. The clerk of this court is hereby commanded to send a mandate to the judge of the court below, to the effect of this decision.

African Hardwood Trading Inc. v Pupo et al [1982] LRSC 95; 30 LLR 850 (1982) (21 December 1982)

AFRICAN HARDWOOD TRADING (LIBERIA) INC., by and thru its Acting General Manager, ERIC VAN DER NEUT, Petitioner, *v.* **HIS HONOUR FRANCIS N. PUPO, SR.,** Judge, Peoples Debt Court, Montserrado County, and **UPPER LOFA CORPORATION**, by and thru its President or General Manager, or other Managing Agent, KEKURA KPOTO, Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE PEOPLE'S DEBT COURT FOR MONTSERRADO COUNTY,

Decided: December 21, 1982

1. Where the returns of the sheriff to a writ of attachment showed that a particular property was not attached, the court is without jurisdiction to authorize the sale thereof.

This certiorari proceeding grew out of an action of debt by attachment instituted by the petitioner against Co-respondent. Upper Lofa Corporation. The writ of attachment ordered the sheriff to attach the lands, goods, chattels, money and credits of the co-respondent corporation, of Monrovia, Liberia, by and through its president or general manager or managing agent, Mr. Kekura Kpoto. Pursuant to this writ, the sheriff of the court, as per his returns, attached three trailer trucks valued at $90,000.00 each plus 50 logs. It appears that the co-respondent corporation had an additional 139 logs at the Freeport of Monrovia, but it is not clear whether or not these 139 pieces were specifically attached by the sheriff.

During the pendency of the debt action, the petitioner filed a motion to sell these 139 logs which it alleged had been attached at the Free Port of Monrovia, and prayed that the amount obtained from the sale be held in escrow pending final determination of the case. The court heard the motion and denied it on the ground that the logs at the Free Port were never attached and, hence, without the jurisdiction of the court. Petitioner contending that the ruling of the co-respondent judge on the motion is erroneous applied to the Justice in Chambers for a writ of certiorari. Petitioner contended that the sheriff's returns on which the court relied was incorrect as to the exact number of logs which were attached.

In order to arrive at a fair and impartial conclusion, the Justice in Chambers ordered the judge presiding in the Debt Court to ascertain the correctness of the issuance of both the certificate and the affidavit by the court's ministerial officers with respect to the service of the writ of attachment, and report his findings to our Chambers. The judge submitted his findings in which it was determined that the 139 logs at the Freeport of Monrovia were never attached. In view of this finding, and the law controlling, the Justice in Chambers upheld the ruling of the lower court and *denied* the petition.

Toye C. Barnard and *George E. Henries* appeared for petitioner. *M. Fahnbulleh Jones* appeared for the respondent

SMITH, J., presiding in chambers.

This certiorari proceeding grew out of a action of debt by attachment as sued out by the petitioner against Co-respondent Upper Lofa Corporation in the Debt Court for Montserrado County. During the pendency of the debt action, the petitioner filed a motion in the trial court to sell the logs which are alleged to have been attached at the Free Port of Monrovia, and prayed that the amount obtained from the sale be held in escrow pending final determination of the case. The court heard the motion and denied it on the ground that the logs at the Free Port were never attached and, hence, without the jurisdiction of the court. Petitioner contending that the ruling of the co-respondent judge on the motion is erroneous, has come to these Chambers by a five-count petition, alleging in substance, that the sheriffs returns on which the court relied, is incorrect as to the exact number of logs which were attached. Petitioner further contended that although in its argument, it requested the court to ascertain the correctness of the sheriff's returns, the co-respondent judge declined to give consideration to petitioner's application,

The alternative writ of certiorari having been served, respondents filed a three-count returns in which it contended that the petition is misleading with respect to the 139 pieces of logs being attached at the Free Port of Monrovia. Respondents' proferted with their returns a photocopy of the writ of attachment in support of their denial of the allegations contained in the petition,

Recourse to the writ of attachment reveals that the writ commanded the sheriff of the Debt Court for Montserrado County "to attach the lands, goods, chattels, money and credits of Upper Lofa Corporation of Monrovia, Liberia, by and through its president or General Manager or Managing Agent, Mr. Kekura Kpoto". The 139 pieces of logs at the Free Port of Monrovia were not specifically mentioned in the writ and ordered attached. However, we assume that any logs belonging to Co-respondent Upper Lofa Corporation (being part of the company's assets), no matter where they were located, were subject to be attached so as to secure the payment of the obligation complained of. Let us, therefore, see the returns of the sheriff to the writ of attachment in order to ascertain whether the 139 pieces of logs at the Free Port of Monrovia were ordered attached and attached by the sheriff. For the benefit of this ruling, we quote hereunder the sheriff's returns to the writ of attachment, as follows:

"SHERIFF'S RETURNS

"On the 27th day of May, A. D. 1982, Court's Bailiff George Sherman was deputized by the sheriff to serve a writ of attachment of which same was served and the defendant was brought to court and promised to take the court's bailiff to the company site, Upper Lofa in Wologisi, to show properties to be attached, and on the next day which was the 28th of May, Court's Bailiffs Boima Brown and James Payne were sent up to the company's site to attach the properties of the said company; they returned and reported that they attached three trailer trucks marked with TB-

39, TB-43 and TB-2067 which were valued by the project manager of the company at $90,000.00 each; and also attached 50 logs as the Bailiff reported. Therefore I now make this as my official returns to the clerk of this Honourable Court this 31st day of May, A.D. 1982. William R. Slocum, Sheriff, People's Debt Court, Montserrado County, Republic of Liberia" (sic).From the said returns of the sheriff, there is no mention made that the 139 pieces of logs at the Free Port of Monrovia were attached; and unless there is proof to the contrary, the ruling of the trial court, denying the motion to sell the said logs, should not be disturbed.

During argument before us in this proceeding, counsel for petitioner referred to an affidavit which petitioner obtained from Bailiff Henry Nelson, in an attempt to establish that the 139 pieces of logs at the Free Port of Monrovia were attached under the writ of attachment from the debt court, despite the fact that this affidavit was not made profert to the petition, thereby subjecting the same to rejection on the principle of notice. Notwithstanding, counsel for respondents proferted to their returns, a certificate from the sheriff of the debt court to the effect that he had never at any time deputized Bailiff Henry Nelson to serve a writ of attachment on the 31st day of August, A. D. 1982; therefore, the affidavit obtained from him by the petitioner is false and misleading.

For the Court's own benefit in arriving at a fair and impartial conclusion, since the interest of investors which the Court must equally protect is involved, a mandate was ordered sent to the judge presiding in the debt court to ascertain the correctness of the issuance of both the certificate and the affidavit by the court's ministerial officers, and report his findings to our Chambers.

The judge's findings in this respect as submitted on the 14th day of December, 1982, and read in open Court that afternoon, indicate that the sheriff confirmed his certificate and said that on no occasion did he deputize and delivered to Bailiff Henry Nelson any writ of attachment for service on the 139 logs. Bailiff Nelson, on the other hand, held that he served a writ of attachment given to him by the sheriff of the debt court on the logs. In the absence of any such writ to show that the 139 pieces of logs were attached, I am compelled to take cognizance of the writ of attachment as returned by the sheriff.

While this certiorari proceeding was pending before us undetermined, petitioner filed a bill of information before this Chambers against the Upper Lofa Corporation as the sole respondent alleging that the said respondent was selling the logs despite the fact that they had been attached. When the certiorari proceeding was called up for hearing before our distinguished colleague, Mr. Justice Mabande, there was also on the file a bill of information filed by Upper Lofa Corporation to the effect that the 139 pieces of logs in question were not part of the attached property. After

entertaining arguments, our said distinguished colleague discovered, as I did, and ruled that the 139 pieces of logs at the Free Port of Monrovia were never attached and, hence, they form no part of the attached property. The information as filed by the petitioner must, therefore, crumble in its entirety.

In view of the fact that the 139 pieces of logs, said to have been attached at the Free Port of Monrovia were never attached to form part of the attached property, as disclosed by the sheriff's returns to the writ of attachment, the ruling of the trial court, alleged by the petitioner to be erroneous, must be, and the same is hereby upheld.

The petition for a writ of certiorari is, therefore, hereby denied and the alternative writ quashed with costs against the petitioner. The Clerk of Court is hereby directed to send a mandate to the trial court to resume jurisdiction and proceed to hear and dispose of the action of debt by attachment in keeping with law. And it is hereby so ordered.

Petition denied.

Yenkan v Saadee [1982] LRSC 80; 30 LLR 445 (1982) (9 July 1982)

MARY SEBOE YENKAN, Eldest Legal Heir of the late THOMAS W. YENKAN, Appellant, *v.* **SARAH JARLAH YONNOH SAADEE**, Widow of the late THOMAS W. YENKAN, Appellee.

JUDGMENT WITHOUT OPINION

Decided July 9, 1982.

When this case was called for hearing, Counsellor John T. Teewia appeared for the appellee and Counsellor Clarence O. Turning appeared for the appellant.

Appellee filed a motion to dismiss the appeal on the ground that the affidavit of sureties does not contain a description of the property offered as security, sufficiently identified to establish the lien on the **land** . He cited for reliance Civil Procedure Law, Rev. Code1: 63.2 (3) and 25 LLR *West African Trading Corp. v Alrine (Liberia) Ltd.*[1976] LRSC 23; , 25 LLR 3 (1976).

The appellant resisted to the effect that the property offered as securities consist of lots number 889 and 739, situated in the City of Greenville, Sinoe County, Republic of Liberia, and being the dimension of one town lot or one fourth of an acre.

After hearing arguments *pro et con*, it is hereby adjudged that the motion to dismiss be and the same is hereby granted. The Clerk of this Court is instructed to send a mandate to the court below to resume jurisdiction over the case and enforce its judgment. And it is hereby so ordered.

Monkon Boy v Kai et al [1982] LRSC 60; 30 LLR 292 (1982) (9 July 1982)

MONKON BOY, Appellant, *v.* **HENRY KAI**, a natural guardian of FEEDOR KAI et al., Appellee.

MOTION TO DISMISS AN APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: May 31, 1982. Decided: July 9, 1982.

1. A single surety whose property valuation covers the required penalty of a bond may suffice, where the supporting papers of the second surety are defective.
2. A bond which is sufficiently descriptive in its construction and its condition clear, intelligible and capable of enforcement, though lacking in other respects, is nevertheless legal. Hence, a single surety and his bond whose documents meet all other requirements may file an appeal bond.

This is a motion to dismiss an appeal announced from a final judgment in an action of ejectment rendered by the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, to which appellant excepted and announced an appeal to the Supreme Court.

In support of his appeal, appellant posted an appeal bond secured by two sureties, the property of one of whom was defective. Appellee moved to dismiss the appeal on grounds that no approved bond was filed within statutory time and that the property of one of the sureties was defective. The Supreme Court denied the motion, holding that even though the sup-porting papers of one of the sureties were defective, those of the other surety were proper and legal in all other respects to support a valid bond.

Joseph Dossen Richards appeared for appellant, while *S. Benoni Dunbar* appeared for appellees.

MR. JUSTICE MABANDE delivered the opinion of the Court.

Appellee as natural guardian of Feedor Kai and others commenced an action of ejectment against Appellant Monkon Boy in the Sixth Judicial Circuit Court, Montserrado County, for the recovery of six (6) acres of **land** lying and situated in New Georgia, Montserrado County. To this complaint, defendant/ appellant filed a two count answer denying the allegation. Trial was held and verdict brought in favor of appellee. Judgment was accordingly rendered, excepted to and appellant prayed for an appeal to this Court on a four count bill of exceptions. While the case was pending for the hearing of the appeal, appellee's counsel filed a motion to dismiss the appeal, alleging the following: that no approved bond was filed within statutory time; that the description of the property as required by statute was not followed by appellant; and that the property valuation of one of the sureties was defective.

At the hearing of the motion, counsel for appellant conceded the defect in the property valuation of one of the sureties. The issues therefore important for our consideration and determination are as follows: (1) whether a single surety whose property valuation covers the required penalty of a bond may suffice in the absence of the second surety? and (2) whether a single surety and his bond whose documents meet all other requirements may file an appeal bond?

We shall consider these issues in the reverse order. From a perusal of the motion papers, it is evident that the bond and the supporting papers procured by one of the sureties are all proper and legal in all other respects to support a valid bond.

During the arguments, counsel for appellant conceded that the bond papers submitted by one of the sureties, Henry Duncan Togbah, did not meet the full requirements of the law. Because of this admission of appellant's counsel to this averment in the motion, we shall not consider it further, but to deny the legality of those documents.

The relevant portion of the judgment appealed from reads thus:

"The verdict was oral, which was delivered by the foreman, to the effect that the plaintiff was entitled to recover his **land**. The oral verdict of the empanelled jury being unanimous and it having supported the evidence adduced at the trial, the same is hereby confirmed and affirmed. And defendant is adjudged liable and must vacate the **land**."

It is not a monetary judgement. Therefore, any nominal amount set as penalty in the appeal bond under such circumstances shall suffice.

In *Tubman v. Greenfield*, [1981] LRSC 18; 29 LLR 200 (1981), decided July 31, 1981), it is held that:

"In all appeal bonds in civil cases, financial sufficiency is the prevailing feature because the objects of an appeal bond in such cases are the indemnification of the successful party and payment of costs."

In *Smith v. Page*, [1950] LRSC 10; 10 LLR 361 (1950), it was held that a bond which is sufficiently descriptive in its construction and whose conditions are clear, intelligible and capable of enforcement though lacking in order respects is nevertheless legal.

In view of these authorities and the issues joined by the parties, we are of the opinion that appellant's bond is sufficiently legal and capable of enforcement. With respect to the appeal bond and its related documents as submitted by Joseph Neor Cooper, we find them to be legal and proper.

We therefore hold that the motion to dismiss the appeal should be and is hereby denied with costs against appellee. The Clerk of this Court is hereby ordered to docket the appeal for consideration by this Court at its ensuing October Term. And it is hereby so ordered.

Motion denied.

Arnous et al v Firestone Plantations Co. [1995] LRSC 8; 37 LLR 785 (1995) (16 February 1995)

ALFRED ARNOUS and **SHAKIB ARNOUS**, Lebanese Merchants, Appellants, v. **FIRESTONE PLANTATIONS COMPANY**, by and thru its President and Managing Director, DON L. WEIHE, Appellee.

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

Heard: October 31, 1994. Decided: February 16, 1995.

1. Every action to recover or to procure a judgment affecting real property shall be tried in the county in which all or part of the subject of the action is situated. However where the enforcement of the judgment sought, affects the person rather than the property, even though the action grows out of a matter concerning real property, then the action is *in personan,* and may be instituted in the county where one of the parties reside.

2. Not every action growing out of transaction concerning real property is local. Where the decree sought is to operate on the person, and not upon the real property, the location of the property indirectly affected is not material

3. Under the doctrine *offorum rei sitae* controversies should be determined at the court where the controversy is situated; and that under the doctrine *of forum rei gestae*, the place where an act is done is considered the place of jurisdiction and remedy.

4. Recourse may be made to the common law only where our statutes are silent on a particular point. General Construction Law, 1956 Code 15:40.

Appellee, the Firestone Plantations Company subleased to the appellants, a piece of property at the appellee's leased premises at Cavalla, Maryland County. On December 23, 1982 the appellee wrote the appellants that its parent company, the Firestone Tire and Rubber Corporation of Akron, has decided to discontinue its operations in Cavalla as of January 31s t, 1983 and to surrender all title to its investment in Cavalla to the Liberian Government. Appellee therefore informed appellant that should it care to continue to operate the Cavalla Supermarkets, they will have to enter into a new agreement with the Liberian Government.

The appellants considered this decision on the part of appellee as a breach of the sublease agreement because, according to the appellants, the appellee knowing fully well that it had intended to discontinue its operation at Cavalla and to surrender its title to the Liberian Government as of January 31st 1983 concealed this fact from the appellants and permitted the appellants to undergo large investment expenses. The appellants therefore sued out an action of damages against the appellee in the Civil Law Court, Sixth Judicial Circuit, Montserrado County, praying for both special and general damages.
The appellee filed an answer to the complaint and along thereWith filed a motion to dismiss the action on the ground of lack of territorial jurisdiction over the subject matter by the Court, contending that the action relates to realty located in Maryland County and therefore the action should have been instituted in the Fourth Judicial Circuit Court in Harper Maryland County. The trial judge sustained the motion and dismissed the complaint, relying on the Civil Procedure Law, Rev. Code 1:4.2, to which plaintiffs excepted and announced an appeal to the Supreme Court.

The Supreme Court noted that consistent with section 4.2 of the Civil Procedure Law, every action to recover or to procure a judgment affecting real property shall be tried in the county in which all or part of the subject of the action is situated. Notwithstanding, the court noted that where the enforcement of the judgment sought, affects the person rather than the property, even though the action grows out of a matter concerning real property, then the action is *in personan*, and may be instituted in the county where one of the parties reside. In the instant case, the Court held that the action of damages as filed is not one in realty but transitory in nature. Hence it qualifies for venue in Montserrado County under the Civil Procedure Law, Rev. Code 1:4.1. The

court also overruled appellees contentions *of forum rei sitae* and *forum rei gestae,* holding that these are common law doctrines, which are applicable only when our statutes are silent, and that our statute having directed in § 4.1 of the Civil Procedure Law how actions such as the present one should be brought, the common law provisions referred to are inapplicable. The court also overruled the issue of *forum non convenience* raised by the appellees on the ground that this issue not having been raised in the trial court, appellee cannot raise it for the first time in the Supreme Court. Accordingly, the judgment of the court below was *reversed* and the case remanded for new trial on its merits.

Toye C. Barnard appeared for appellant. *H. Varney G. Sherman* appeared for appellee.

MR. JUSTICE HNE delivered the opinion of the Court.
The facts as related by the records in this case are that the appellee, Firestone Plantations Company under a sublease agreement dated November 1,1981, leased to the appellants, Alfred Arnous and Shakbi Arnous, premises at the appellee's leased premises at Cavalla, Maryland County. The term of the sublease is for an initial period of three (3) years and thereafter for renewal periods of two (2) years each unless terminated by either party at the end of the initial period or any renewal period upon six(6) months notice to the other party.

The first preambular paragraph of the sublease agreement reads as follows:

WHEREAS, sublessor leases and operates at Harbel, Montserrado County and Cavalla, Maryland County supermarkets with attached warehouses and other improvements and equipment appurtenant thereto (all of which together with the **land** on which they are located are described in exhibit 'A" attached to sublease and shall hereinafter be referred to as "Leased Premises").

According to the appellants, the portion of the "Leased Premises" covered by their sublease with the appellee are premises including the supermarket building and warehouses and other equipment and facilities located thereon.

On December 23, 1982 the appellee wrote the appellants that its parent company the Firestone Tire and Rubber Corporation of Akron has decided to discontinue its operations in Cavalla as of January 31', 1983 and surrender all title to its investment in Cavalla to the Liberian Government. Therefore should the appellants care to continue to operate the Cavalla Supermarkets, they will have to enter into a new agreement with the Liberian Government.

The appellants considered this a breach of the sublease agree-ment because according to the appellants, the appellee, knowing fully well that it had intended to discontinue its operation at Cavalla and to surrender its title to the Liberian Government as of January 31s t 1983, concealed this fact from the appellants and permitted the appellants to undergo large investment expenses.

The appellants therefore sued out an action of damages against the appellee in the Civil Law Court, Sixth Judicial Circuit, Montserrado County, praying for both special and general damages.

The appellee filed an answer to the complaint and along therewith filed a motion to dismiss the action on the ground of lack of territorial jurisdiction over the subject matter by the Court. The appellee contended in the motion to dismiss that the action relates to realty located in Maryland County and therefore the action should have been instituted in the Fourth Judicial Circuit Court, in Harper City, Maryland County.

The appellants filed a reply, to the answer as well as a resistance to the motion to dismiss. In the three (3) count motion to dismiss, the appellee, defendant in the Court below said the following:

1. That the action should be dismissed because it relates to realty which is located in Gedetarbo, Maryland County, Republic of Liberia, as such said action should rightfully and legally have been filed in the People's Fourth Judicial Circuit, Harper, Maryland County, Republic of Liberia instead of the 6th Judicial Circuit, Montserrado County Monrovia, Liberia. Defendant therefore raised the issue of territorial jurisdiction of this court over the subject matter, as the subject contract was probated in the People's Fourth Judicial Circuit, Maryland County, Republic of Liberia.

2. And also because the writ of summons is defective, and makes the said action a fit subject for dismissal; for whenever the writ of summons which subjects a party to the jurisdiction of the court is defective, as the said writ of summons, the said cause of action should be dismissed. The address of the defendant is omitted, which is a requirement of the law. Firestone Plantations of what locality, whether Akron, Ohio or Cavalla? Because of this omission, the said action should be dismissed.

3. The defendant is by the said defective writ of summons, required to appear on the third(3rd) Monday in March, same being the 21st day thereof, at "10:00 p.m.," which is not the -working

hour of the court; but rather from 8:00 a.m. to 5:00p.m., and not 10: 00 p.m., intending thereby to deprive defendant of his day in Court to appear and defend against the said unmeritorious cause of action.

In their resistance to the motion to dismiss which contains five (5) counts, the appellants (plaintiff in the damages action) said the following:

1. Because as to count 1 of the motion, plaintiffs say that an action of breach of contract is transitory and may be brought in any court where either party resides, and therefore since the defendant corporation has its principal office in Montserrado County, the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, in which the above entitled cause was instituted, has jurisdiction over the subject matter.

2. And further to court 1 of the motion, plaintiffs say that an action cognizable before the circuit court may be brought in the county in which one of the parties resides or has its regular place of business. Plaintiffs submit that since defendant has its principal office in Montserrado County, its residence is Montserrado County, and therefore the action was properly brought in said County.

3. And further to count 1 of the motion, plaintiffs say that the Circuit Court has jurisdiction over action of damages for breach of contract which is transitory in nature, and once the requirement of residence of the parties is met, the place of probation and registration of the contract is not important; hence count one(1) should be overruled.

4. And as to count 2 of the motion, plaintiffs say that the lack of defendant's address on the writ of summons does not make the writ defective nor is it a ground for dismissal of the cause of action. The writ having been served on the defendant, and defendant having filed an answer and a motion, thus bringing itself under the jurisdiction of the court, the purpose of the writ and the reason for stating the names of the parties on the writ have been satisfied, and therefore count 2 of the motion should be overruled.

5. And as to count 3 of the motion, plaintiffs say, that the hour of 10:00 p.m. stated in the writ of summons is merely a typographical error and was not intended to deprive defendant of its day in court. This being a harmless error on the part of the clerk of court and the defendant not having suffered adversely from this error, the said count should be overruled.

On April 14, 1984, the trial judge entered a ruling on the law issues, in which he sustained the motion to dismiss and dismissed the complaint, relying on the Civil Procedure Law, Rev. Code 1:4.2. The plaintiffs, now appellants, excepted to this ruling and announced an appeal. They fulfilled the jurisdictional steps required for appellate review and have placed the case before us for determination.

The appellants filed a one-count bill of exceptions in which they submit that the trial Judge erred in his ruling on law issues overruling their resistance to the appellee's motion to dismiss the entire action on the ground that it is a real property action.

In the brief of the appellee, the sole issue presented is: Whether or not an action of damages for breach of a lease agreement may be brought in a court outside the county where the demised property is located, and where the lease agreement was entered into, probated, registered, and performed, and where the alleged breach was committed.

The appellants and the appellee take opposite positions in regard to § 4.2 of the Civil Procedure Law, Rev. Code 1, the one contending that the suit is a real property action and thus should be brought in the county where the real property is located that is, Maryland County; and the other taking the position that the suit is not in realty but transitory in nature and therefore can be instituted in a county where one of the parties resides.

The one issue presented for our consideration therefore is whether the action of damages instituted by the appellants for breach of the sub-lease agreement is one which relates to realty and therefore cognizable before the circuit court of the county in which the realty is situated.

Both parties relied on the Civil Procedure Law, Rev. Code 1:4.2 which reads as follows: "§ 4.2. *Real Property actions.* Every action to recover, or to procure a judgment establishing, determining, defining, forfeiting, annulling or otherwise affecting an estate, right, title, lien, or other interest in real property shall be tried in the county in which all or part of the subject of the action is situated. If such an action is before the court of a stipendiary magistrate or justice of the peace, the action shall be brought before the magistrate or justice of the magisterial area, town. or city in which all or part of the subject of the action is situated.

The action instituted by the appellants seeks damages for what they consider a breach of the sublease agreement by the appellee. There is no doubt that the action does grow out of the sub-lease agreement. The question is whether its object is to recover or to procure a judgment establishing or determining any right, title, lien or other interest in the real property covered by the sub-lease agreement. What the action seeks to recover, from all intent and purpose, is damages for the injury which the appellants say resulted to then by the action of the appellee which they deem a unilateral termination of the sub-lease agreement.

In the case *Baaklini and Talinco General Construction and Trading Enterprises, Inc. v. Karel Logging Corporation*, 37 LLR 255 (1993), decided by the Supreme Court during its March 1993 Term, a similar issue was presented for our determination. That case involved an agreement of assignment of lease for timberland situated on Lofa County. There, as in this case, the appellants therein sued for damages for breach of contract. The damages claimed were rent which the appellee was to pay for the **land** and for logs falling below the selling price of US$100.00. The suit was instituted in the Civil Law Court, Montserrado County. Both parties had their head office in Monrovia and so were residents of Montserrado County. The appellees raised territorial jurisdiction contending that the Civil Law Court, Sixth Judicial Circuit, Montserrado County, lacked territorial jurisdiction to try the case on grounds that the action was to establish rights growing out of an interest in real property situated in Lofa County.

The trial judge dismissed the action, relying on § 4.2 of the Civil Procedure Law and which the appellee relied upon in its motion to dismiss the action. The judge held that Montserrado County, was not the proper place to try the case. Mr. Chief Justice Bull, speaking for the Court in that case, said:

"Section 4.2 of the Civil Procedure Law, Rev. Code 1, governs action which seeks judgment that will act upon the realty. Enforcement of the judgment sought must directly affect the property rather than the person. In this case, enforcement of the judgment sought in this action of damages for breach of contract will act upon the defendant even though the action does grow out of a leasehold agreement concerning real property.

The realty located in Lofa County will not be affected at all should appellants obtain a judgment in the Circuit Court for the Sixth Judicial Circuit Court, Montserrado County for breach of the contract of assignment which was executed between the parties to entitle appellee to extract logs from forest **land** in Lofa County upon valuable consideration to be paid by appellee to appellants. This action is an action in personam.

We are not persuaded by counsel's argument that the facts of this suit fall within the realm of real property actions or within any of the perimeters of real property actions as are directed by section 4.2 of our Civil Procedure Law. This is not an action brought to determine or establish any right or interest to the real property situated in Lofa County as appellee contends. There is no question whatsoever in respect to appellant's right or interest in said realty. Appellants, by instituting this action in the Sixth Judicial Circuit Court, Montserrado County, are merely seeking money damages for breach of an assignment of lease contract for realty situated in Lofa County.

"We must therefore sustain the position of the appellants that the action of damages filed by them is not one in realty but transitory in nature."

Further, in Lawyer's Reports Annotated, we find the following:

"Not every action growing out of transaction concerning real property is local. Where the decree sought is to operate on the person, and not upon the real property, the location of the property indirectly affected is not material." 1918B L.R.A., *Courts, Territorial Limitation on Jurisdiction,* pp. 511.

Any judgment rendered in this case will not affect the realty, in that title to or possession of the property will not be awarded. On the contrary, the judgment will grant or deny the damages prayed for by the appellants in which case it will act upon the parties. So, as in *Baaklini and Talinco General Construction and Trading Enterprises, Inc. v. Karel Logging Corporation,* the action is not in realty but transitory in nature.

The records show that at the time of the institution of the action both parties were residents of Montserrado County. This qualifies the action for venue in Montserrado County under the Civil Procedure Law, Rev. Code1:4.1.

The appellee raised in its brief and argued the doctrines of *forum rei sitae* and *forum rei gestae.* The appellee maintained that under the doctrine *of forum rei sitae* controversies should be determined at the court where the controversy is situated; and that under the doctrine *of forum rei gestae,* the place where an act is done is considered the place of jurisdiction and remedy. In support of this contention, he cited the Court to Black's Law Dictionary 590 (5 th. ed. 1979), and Ballentine's Law Dictionary 493 (3' ed. 1969). These are common law provisions.

Under our Reception Statute, we are to resort to common law only where our statutes are silent on a particular point. General Construction Law, Rev. Code 15:40. Our statute having directed in § 4.1 of the Civil Procedure Law how actions such as the present one should be brought, we cannot be governed by the common law provisions referred us to by the appellee.

The appellee in his brief and argument further raised the doctrine of *forum non convenience.* Counsel submits that the doctrine is applicable even where the venue is properly laid where the interest of litigants and witness would best be served were the action to be instituted in another forum. He further submits that the doctrine is an equitable one which gives the court discretionary power to decline its exercise of jurisdiction which it has over a transitory action when it believes that the action may be more appropriately and justly tried elsewhere.

The records do not show that the appellee raised the said doctrine for the consideration of the court when the case was tried in the court below. Appellee cannot therefore raise it for the first time before this Court.

In view of the facts and circumstances of the case and the law relied upon herein, the judgment of the court below is hereby reversed and the case remanded for trial on its merits. Costs to abide final determination. And it is hereby so ordered.

Judgment reversed; case remanded for new trial

RL v Lewis [1963] LRSC 50; 15 LLR 486 (1963) (10 May 1963)

REPUBLIC OF LIBERIA, Appellant, v. FRANCIS H. LEWIS, Appellee.
JUDGMENT WITHOUT OPINION ON APPEAL FROM THE MONTHLY AND PROBATE COURT OF MONTSERRADO COUNTY.

Decided May 10, 1963.

Acting Solicitor General Nelson W. Broderick for appellant. No appearance for appellee.
When this cause was called for hearing, appellant gave notice of the withdrawal of the appeal and requested this Court to send a mandate to the probate court ordering the probation and registration of the warranty deed, subject of this suit for cancellation

of public land sale deed. There being no resistance to said withdrawal, it is hereby ADJUDGED that this case be and the same is hereby withdrawn. And the clerk of this Court is hereby ordered to send a mandate to the Monthly and Probate Court of Montserrado County ordering it to resume jurisdiction and admit into probate the deed of Francis H. Lewis. Given under our hands and the seal of the Supreme Court of Liberia, this loth day of May, 1963. [Sgd.] A. DASH WILSON, SR., Chief Justice, Supreme Court of Liberia. [Sgd.] DESSALINE T. HARRIS, Associate Justice, Supreme Court of Liberia. [Sgd.] JAMES A. A. PIERRE, Associate Justice, Supreme Court of Liberia.

Ashkar v Badio et al [1984] LRSC 39; 32 LLR 294 (1984) (29 June 1984)

FOUAD ASHKAR, Petitioner, *v.* **HIS HONOUR HALL W. BADIO**, Assigned Circuit Judge, Sixth Judicial Circuit, Montserrado County, **SAMUEL JOHNSON et. al.**, Respondents.

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

Heard: June 6, 1984. Decided: June 29, 1984.

1. Prohibition is a special proceeding to obtain a writ ordering the respondent to refrain from further pursuing a judicial action or proceeding specified therein.
2. Three things are necessary to justify the issuance of a writ of prohibition: that the court, officer or other person against whom it is directed has no jurisdiction to exercise judicial or quasi-judicial power; that the exercise of such power by such court, officer, or other person is unauthorized by law; and, that it will result into injury for which there is no other adequate remedy.
3. A writ of prohibition will issue only in cases of manifest, extreme, absolute, great, or unusual necessity, or great urgency, or in case of a special emergency.
4. Where an attempt is made to levy execution against the property of a nonparty to a judgment, the court which rendered such judgment must pass upon a claim of title by the nonparty to the

property in question.

5. The due process right of a petitioner is violated when a judge issues a writ of possession in an ejectment action without first disposing of a pending bill of information filed by the petitioner, relating to the same matter.

6. Prohibition will lie to prevent the execution of a judgment in ejectment by writ of possession directed to property held by a person who was not a party to the ejectment action where, although the parties to the action have taken appeals from the judgment, no proceeding has been instituted to correct errors of the trial court and no other remedy is available to the affected property holder.

7. Prohibition will lie to give relief whenever a subordinate court proceeds in the hearing of a case in a manner which is contrary to known and accepted practices and in violation of proper and ethical procedure.

A writ of execution growing out of a matter to which petitioner was not a party was served upon him. When the petitioner, who had leasehold interest in the subject matter of the proceedings, failed to obey the writ, contempt proceedings were instituted against him. Upon his appearance, he was advised by the trial judge to file a bill of information in regard to his interest in the property against which execution was ordered. Although he filed the bill of information, as directed, the trial judge nonetheless issued a writ of possession in favor of the buyer of the property at an earlier judicial sale without a prior hearing of the bill of information.

The petitioner then applied to the Justice in Chambers for a writ of prohibition to prevent his ouster from the premises. The petition for the writ of prohibition was heard and denied by the Justice in Chambers on the grounds that he cannot solely issue said writ against an act which had already been finally adjudicated by the Supreme Court *en banc.* The Chambers Justice had reference to the fact that an action of ejectment against Igal Ammons, lessor of the petitioner, had earlier been determined by the Supreme Court en banc, and therefore a single Justice of the Supreme Court could not properly restrain its execution.

The Supreme Court reversed the ruling of the Chambers Justice, granted the writ of prohibition, and ordered the respondent judge to refrain from issuing a writ of possession against the petitioner's leasehold rights, and to hear and determine the bill of information.

Ephraim Winfred Smallwood appeared for petitioner/ appellant. *M. M. Perry* for respondent/appellee.

MR CHIEF JUSTICE GBALAZEH delivered the opinion of the Court.

The present suit grows out of attempts by the sheriff of Montserrado County to effect a writ of execution against petitioner predicated upon an earlier judgment against the latter's real property to which he was not a party. When the petitioner, who had leasehold interest in the property in question, refused to cooperate with the ministerial officer, contempt proceedings were instituted against him in the Sixth Judicial Circuit, and he was cited to appear. When he finally appeared with counsel, he was advised by the trial judge to file a bill of information regarding his interest in the property against which execution was ordered. Said bill of information was seasonably filed, but before hearing could be had thereon, His Honour Judge Hall Badio issued a writ of possession in favor of the buyer of the property at an earlier judicial sale.

At this juncture, petitioner fled to the Justice in Chambers on a writ of prohibition against the judge and the ministerial officers to restrain them from ousting him from the premises while the bill of information was still pending before that Court. The petition for the writ of prohibition was heard and denied by the Justice in Chambers on the grounds that he cannot solely issue the writ regarding a matter which had already been finally adjudicated by the Supreme Court *en banc*. The Justice in Chambers specifically meant that the judgment of ejectment against one Igal Ammons, pertaining to the same property, had earlier been determined by the Supreme Court *en banc*, and therefore a single Justice of the Supreme Court could not properly restrain its execution. It is against this judgment of the Justice that the petitioner in prohibition has now appealed to this Court *en banc*.

The main issues on this appeal are the following:

1) Whether or not there was a final adjudication by the Supreme Court affecting the property which petitioner claims have been leased from Igal Ammons against which a writ of possession was being brought?

2) Whether or not the act of the trial court complained of by the petitioner warranted a restraining order to prevent any injury or hardship?

In disposing of the first issue, it is clear from the records in this case that the judgment of the Supreme Court in the case of *Perry v. Azango and Ammons*, [1965] LRSC 11; 16 LLR 268 (1965) affected property other than that of the petitioner. Even though the leasehold property of petitioner is owned in fee by the said Igal Ammons, it is merely proceeded against in order to

satisfy costs and damages awarded in the earlier judgment, since other properties owned by Igal Ammons were inadequate to satisfy the judgment in the case. Prohibition is sought by petitioner in this case against the writ of possession which the judge below sought to issue against another property of Igal Ammons leased to the petitioner. The Justice in Chambers was therefore in error when he denied the petitioner the writ on the ground that the Supreme Court *en banc* had passed on the matter.

Proceeding to the second issue concerning whether or not the act of the trial court was injurious to the petitioner for which prohibition will lie, we will first of all resort to our statute on the subject. The statute defines prohibition as "a special proceeding to obtain a writ ordering the respondent to refrain from further pursuing a judicial action or proceeding specified therein" Civil Procedure Law, Rev. Code 1: 16.21.

Other authorities share the view that in general three things are necessary to justify the issuance of a writ of prohibition: 1) that the court, officer, or person against whom it is directed has no jurisdiction to exercise judicial or quasi-judicial power; 2) that the exercise of such power by such court, officer, or person is unauthorized by law; and 3) that it will result into injury for which there is no other adequate remedy. 73 C. J. S., *Prohibition*, § 8. Said authority further maintains that a writ of prohibition will issue only in cases of manifest, extreme, absolute, great, or unusual necessity, or great urgency, or in cases of a special emergency. 73 C. J. S., *Prohibition*, § 9.

This compels us to find out whether or not there was such an act, or pending act, which would have done serious hardship to the petitioner, and which was therefore such an emergency, urgency or unusual necessity for which prohibition would lie. The petitioner had first appeared in the court below in contempt proceedings, and was instructed to file a bi1l of information to explain his case. While the bill of information was yet to be heard, the respondent judge threatened to issue a writ of possession in favor of the purchaser at the judicial sale, which would have, no doubt, affected the petitioner's leasehold interest. According to Black's Law Dictionary, "a writ of possession is the writ of execution employed to enforce a judgment to recover the possession of **land**. It commands the sheriff to enter the **land** and give possession of it to the person entitled under the judgment." BLACK'S LAW DICTIONARY 1786 (4th ed). In this case, there was a writ of possession pending against petitioner, which would have forcefully removed him from his leasehold and put the judicial buyer in possession when, in fact, petitioner was never a party to the action in the court below. Moreover, the judge was threatening to issue a writ of possession, knowing fully that the petitioner had filed a bill of information in respect of the said property, which had not been heard. The petitioner had no means of appeal against the judgment necessitating the execution on his leasehold since he was not a party below. The petitioner had no other way open to him by which he could have stopped the issuance and service of a writ of possession, but by the remedial process of prohibition.

It has been held in several cases, that "where an attempt is made to levy execution against the property of a nonparty to a judgment, the court which rendered such judgment must pass upon a claim of the nonparty with title to the property in question." *Jantzen et al.* v. *Modern Housing Construction Company[1961] LRSC 30;* , 14 LLR 508 (1961). In another case, *Davies-Johnson* v. *Alpha et. al.*, it was also held that "prohibition will lie to prevent the execution of a judgment in ejectment by writ of possession directed to property held by a person who was not a party to the ejectment action where, although the parties to the action have taken appeals from the judgment, no proceeding has been instituted to correct errors of the trial court and no other remedy is available to the affected property holder." 13 LLR 573 (1960).

In the instant case, the petitioner had no means of appeal or other means by which the court could afford him an opportunity to establish his leasehold interest in said property. The bill of information was filed, but remained unheard, when His Honour Hall W. Badio threatened to issue a writ of possession which, it goes without saying, would have done serious injustice and hardship to petitioner. In our opinion, the respondent judge had a duty to first dispose of the application before him, the bill of information, and rule thereon either for or against petitioner, before proceeding to issue a writ of possession against the petitioner, a person with leasehold interest. By denying the petitioner the right to have his application heard, the respondent judge had thus denied the petitioner due process of law. The "due process of law" has been described as synonymous with the "law of the **land**" and it seeks to give a hearing before it condemns; it proceeds upon inquiry and renders judgment only after trial. *Wolo* v. *Wolo* [1937] LRSC 12; 5 LLR 423 (1937).

Black's Law Dictionary states that, "the essential elements of 'due process of law' are notice and opportunity to be heard and to defend in an orderly proceeding adapted to the nature of the case, and the guarantee of the process requires that every man will have protection of his day in court and benefit of general law." BLACK'S LAW DICTIONARY 590. Further, it is the law in this jurisdiction that prohibition will lie to give relief whenever a subordinate court proceeds in the hearing of a case in a manner which is contrary to known and accepted practice, and in violation of proper and ethical procedure. *Montgomery v. Findley and Haddard,* [1961] LRSC 27; 14 LLR 463 (1961); *Tubman* v. *Murdoch*[1934] LRSC 26; , 4 LLR 179 (1934).

We feel there was such violation of proper and ethical procedure when the respondent judge neglected the petitioner's bill of information, and when, thereafter, he threatened to issue a writ of possession in respect of the petitioner's leasehold interest which would have caused the latter great injustice and hardship against which there was no other remedy but prohibition.

Consequently, even though the issuance of the writ lies in the sound discretion of the Justice in Chambers, yet for all the acts done or threatened against the petitioner in the lower court, and in consideration of the relevant laws cited above, we have thought it fit to overrule our colleague, being convinced beyond an iota of doubt that the petitioner's situation in the court below was a proper ground for the issuance of a writ of prohibition.

Therefore, the writ of prohibition sought is hereby granted, and the respondent judge is ordered to refrain from issuing a writ of possession against the petitioner's leasehold, and to promptly proceed to hear and determine the bill of information. Costs to abide final determination. And it is hereby so ordered.

Petition granted.

Kamara et al v Kindi et al [1996] LRSC 10; 38 LLR 235 (1996) (25 January 1996)

ARMAH KAMARA AND HENRY KOLLIE, Informant, *v.* **BINDU KINDI et al.**, Linear Heirs of the Late FAHN KINDI, Respondents.

PETITION FOR RE-ARGUMENT.

Heard: November 6, 1995. Decided: January 25, 1996.

1. Whenever two judgments are given in favor of the same party to an action of ejectment, the matter is conclusive.

2. A declaratory judgment as to titular rights to real property is analogous to an action of ejectment.
A motion for re-argument cannot be entertained after two judgments are given in favor of the same party.

3. A motion for relief from judgment growing out of an action over which the Supreme Court exercises only appellate jurisdiction, cannot be properly venued in the Supreme Court.

At the close of its October Term A.D. 1987, the Supreme Court handed an opinion affirming and confirming the judgment of the Civil Law Court in an action of declaratory judgment. Subsequent to the opinion, appellants filed a motion for relief from judgment before the Supreme Court.

The Supreme Court denied the motion, holding among other things, that a motion for relief from judgment is not cognizable before the Supreme Court and that the petition for declaratory judgment having been decided twice by the court, a motion for relief from judgment is without the pale of the court's jurisdiction.

Molley Gray appeared for the movants. *James N. Jones* of the Toye C. Bernard Law Firm appeared for the respondents.

MR. JUSTICE YANCY delivered the opinion of the Court.

This matter has been before the Supreme Court several times from as far back as the October Term, A.D. 1983 when a ruling in favour of the petitioner was delivered, and re-argument granted in which Mr. Justice Jangaba, speaking for the Court, reversed the lower court's judgment.

Then in the March Term, 1988, a motion was filed in the Honourable Supreme Court for relief from its own judgment which had been rendered on 25th February, 1988. Mr. Justice Azango, speaking for the court, affirmed the original judgment of the circuit court.

In the interim, each party had its counsel to file bills of information: one on the 13th day of January by Counsellor M. Fahnbulleh Jones in favour of the respondents, Amara and Kollie, and one on the 18th day of February, 1989, by Counsellor Toye C. Bernard in favour of the petitioners Kindi et. al. No record is found as to either one of these bills of information being resisted or controverted. For the record, we quote verbatim the two bills of information.

CLLR. F. B. JONES INFORMATION OF FEB. 18, 1985

1. “That informants are appellants/petitioners in the motion for relief from judgment, out of which this bill of information grows.

2. That while the petition for declaratory judgment was pending before this Honourable Court on appeal, on December 20, 1989 by directive of His Honour Frank W. Smith, then Justice presiding in Chambers, the Acting Clerk of this Court, Mrs. Veronica L. Corvah wrote His Honour Hall W. Badio, Assigned Circuit Judge presiding over the December Term, A. D. 1985 of the Civil Law Court, Sixth Judicial Circuit, Montserrado County, commanding him to instruct the Sheriff for Montserrado County to collect all monies which were being collected by one of the parties to the action for the use of the road built on the **land** and hold said amounts in escrow pending the final determination of the petition for declaratory judgment by the Supreme Court of Liberia. Copies of said letters were sent to the counsels for both informants and respondents herein. Copy of the said letter is hereto attached and marked exhibit “INF/1".

3. Your informants say that there is pending before this Honourable Court a motion for relief from judgment, growing from the final judgment of this Honourable Court on the petition for declaratory judgment and it is out of which, this bill of information grows. But despite the fact that Judge Badio summoned the both parties and read the letter/mandate “INF/1" of this bill of information and instructed the sheriff to collect the monies as stated in said letter/mandate, the respondents herein harassed the lady bailiff assigned by the sheriff to the area so that she was compelled to quit the scene or action to the great disadvantage of your informants and have been collecting the monies for the use of the road and taking of sand from the area since the year 1986, without reporting the same to the sheriff.

4. Your informants say that these acts of the respondents herein are detrimental and disadvantageous to their interest in the matter and it is also prejudicial to their interest because the monies collected by the respondents are not being accounted for nor deposited with the sheriff to be kept in escrow since the subject matter has not been finally determined and is still pending before this Honourable Court.”

COUNSELLOR BERNARD’S INFORMATION OF FEB. 18/89

“1.That informants are appellees in a petition for declaratory judgment which was appealed before this Honourable Court by respondents, Armah Kamara and Henry Kollie.

2. That on February 25, 1988, this Honourable Court during the close of the October Term, 1987, handed down its opinion and rendered final judgment affirming and confirming the decision of the lower court.

3. That on the 17th day of March A. D. 1988, appellants, Armah Kamara and Henry Kollie filed a motion for relief from judgment before this Honourable Court which has been resisted by appellees, now informants, and is still pending before this Honourable Court.

4. That despite the pendency of the petition for declaratory judgment, by virtue of the motion for relief from judgment, co-appellant/movant now respondent Armah Kamara, is continuing the sale of the property subject of the litigation pending before this Honourable Court. He has sold among others to Messrs. Mike Dickson, Junior Ranyeh and Boakai Kalbah.

5. That your informants are of the strong feeling and fear that if respondent, Armah Kamara, is not stopped by this Honourable Court from selling any portion of the **land**, subject of the litigation before this Honourable Court, he would have sold all by the time the matter is finally determined by this Honourable Court and he would have no money to refund to the purchasers should he not be successful in the litigation.”

It is now clear from these two bills of information that something must have been going on, that the circuit court was not informed about, since indeed the matter had been remanded to it for execution.

No further papers have been filed since the last two mentioned above. When this case was called for hearing on the 6th day of December, A. D. 1995, Counsellor Molley Gray of the Jones & Jones Law Firm appeared for the movants and Counsellor James E. Jones appeared for the respondents.
The contents of the two bills of information were not considered; instead, the court entertained arguments on the motion for relief from judgment.

Counsel for movant argued strenuously without citation of any supporting references, that the Honourable Supreme Court should grant relief from its final judgment in the **land** dispute the case originating in the Circuit Court, Sixth Judicial Circuit, Montserrado County, Liberia.

Counsel for respondent in resisting said motion, advanced the proposition that a motion for relief from judgment is cognizable before a trial court in matters of original jurisdiction; and that since the Honourable Supreme Court of Liberia exercises only appellate jurisdiction over real property matters, after judgment, only a motion for re-argument is available to the losing party. See *Revised Rules of the Supreme Court, JULY 1972, Section IX, Parts 1 - 3,* page 43.

From the records, as stated above, this matter has had two (2) Supreme Court opinions. One by Mr. Justice Jangaba during the 1986 March Term, and one by Mr. Justice Azango in 1989, during the October Term. In the former, the lower court judgment was reversed; in the latter, the Supreme Court reversed itself and confirmed the judgment of the lower court. In *Karnga v. Williams et al.[1949] LRSC 9;* , 10 LLR 114, 122 (1949), and *Karnga and Karnga v. Williams et al.[1952] LRSC 28;* , 11 LLR 299, 308 (1952), the Supreme Court held that whenever two (2) judgments are given in favour of the same party to an action of ejectment, the matter is conclusive. In the opinion of the court, a declaratory judgment as to titular rights to real property is analogous to an action for ejectment. Hence, under the doctrine of *res judicata* and under the principle of *stare decisis*, a motion for re-argument itself ought not be entertained.

The novelty of the application to the Supreme Court for relief from judgment in a case not of original jurisdiction makes it necessary to point out that the Honourable Supreme Court is created by the Constitution of the Republic of Liberia. LIB. CONST., *Art.* 65. Its jurisdiction is also conferred by the Constitution, *Id., Art.*66, which provides *inter alia,* that the Supreme Court shall have ".... appellate jurisdiction in all cases...except in cases involving ambassadors, ministers or cases in which a county is a party; in all such cases the Supreme Court shall exercise original jurisdiction..."

In view of the above, the petition for declaratory judgment for titular rights to real property, emanating from the Circuit Court, Sixth Judicial Circuit, Montserrado County, being twice decided by the Honourable Supreme Court, is without the pale of the Court's jurisdiction to grant any relief from judgment. The motion for relief from judgment should therefore be and the same is hereby denied and dismissed. The Clerk of this Court is ordered to send to the court below a mandate to resume jurisdiction and conclude the enforcement of its judgment. Costs are ruled against the movants. And it is hereby so ordered.

Motion denied.

Cooper-King v Cooper-Scott [1963] LRSC 38; 15 LLR 390 (1963) (9 May 1963)

JEANETTE L. COOPER-KING, Substituted for her Late Husband, CHARLES E. COOPER, Deceased, Appellant, v. FLORENCE COOPER-SCOTT, by her Husband, HUGH R. D. SCOTT, Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued April 1, 2, 1963. Decided May 9, 1963. 1. The rules which apply to withdrawal of pleadings, and to amendment before pleadings are rested, do not control mandates of the Supreme Court contained in orders which command the parties to replead on remand; and such orders are to be executed strictly as they are given. 2. The withdrawal of a complaint does not deprive the court of jurisdiction so long as the writ which was issued, served and returned, and which brought the parties before the court, remains undisturbed. 3. Joint tenancy with right of survivorship can be created only when property is conveyed by grant, and is not created when property descends by intestacy. 4. A plaintiff in ejectment must recover upon proof of title, which must be evidenced by a continuous and consistent chain. 5. A plaintiff in ejectment must recover unaided by any defects or mistakes of the defendant ; and proof of the plaintiff's title must be beyond question. 6. In an ejectment action, the plaintiff's title is not presumed, but must be established. 7. Neither ejectment nor any other action at law can undo what a probate court has done in respect to the probation of wills or deeds for real property ; and only a court of equity, where a bill is filed within proper time, can review or cancel conveyances after title has passed and vested. 8. The essential issue in an ejectment action is not ties of blood, but title. 9. There would be untold disturbance to society if unduly belated claims were allowed to defeat long-established vested titles to real property ; especially where the silence of claimants for long periods of time could be presumed as acquiescence in previous dispositions of the property, and where the status quo, having been long-established, could not be disturbed without hurt to rights of innocent parties. 10. It is a well-established practice of this Court not to countenance unreasonable delays of parties in seeking relief ; for, without discouragement of slothful indifference to property rights, there would be no end to litigation.

On appeal from a judgment in an ejectment action after trial on remand under instructions by the Supreme Court on prior appeal (Cooper v. Cooper-Scott[1954] LRSC 14; , 12 L.L.R. 15 [1954], reversing I I L.L.R. 7 [I954]), the judgment was reversed.
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Lawrence A. Morgan for appellant.
and D. C. Caranda for appellee.

T. Gyibli Collins

MR. JUSTICE PIERRE delivered the opinion of the Court. Charles E. Cooper, defendant in the court below having died, his widow, Jeanette Cooper-King, has been substituted as the appellant in this case which was remanded to the court below in the March, 1954, term, with instructions that the parties on both sides replead ab initio. That was the second time it was sent back by this Court, having been remanded once before in the March, 1951, term. The exact words in which the order for remand was given are as follows : CC . . . 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." Cooper V. Cooper-Scott, [1954] LRSC 14; 12 L.L.R. 15, 19 (1 9.54) · Subsequently, Florence Cooper-Scott, the plaintiff, filed a withdrawal of her complaint in the case which had been remanded, and gave notice that she reserved the right to file an amended complaint. It is to be remembered that the mandate of the Supreme Court required that both parties replead. If the intent of this mandate was to be obeyed, strictly followed, as should have been done, the Supreme Court's directive left literally nothing to withdraw or amend, since the Court did not order the filing of amended pleadings as is usual in cases of voluntary withdrawals of particular pleadings. This point was raised by the appellant, and was very heatedly argued before us in the hearing on appeal. The rules which apply to withdrawal of pleadings and to amendments before pleadings are rested do not control mandates of the Supreme Court contained in orders which

direct the parties to replead on remand ; and such orders are to be executed strictly as they are given. When the Court ordered that the parties replead, the order was intended to be executed literally. Hence, it was error for the plaintiff to file a withdrawal of a complaint which had already been nullified by order of the Supreme Court; and it was also error for her to file an amended complaint instead of the new complaint which this Court had ordered. Before leaving this point, there is another question which we would like to settle. It was contended by the appellant's counsel that, since the plaintiff had withdrawn her complaint, the parties were no longer under the jurisdiction of the trial court, and that therefore the judge should have abated the action. We would here remark that the Supreme Court instructed the trial court to "resume jurisdiction so that the parties may replead." Consequently, irrespective

of the statute controlling the commencement of actions, the parties remained at all times under the jurisdiction of the trial court.
The withdrawal of a complaint does not deprive the court of jurisdiction over the parties or the case, so long as the writ which
was issued, served and returned, and which brought the parties before the court remains undisturbed. In the present case, the writ
which brought the defendant into the circuit court was still in effect and had not been vacated either by the trial court or by the
mandate of the Supreme Court; and consequently the parties to this action were still under the trial court's jurisdiction. Therefore,
the judge did not err when he refused to abate the action after the Supreme Court had ordered him to resume jurisdiction so that
the parties might plead again. Plaintiff's complaint alleges that she is a legatee under the will of the late James B. R. McGill,
and that she has been devised Lot Number 235 on Water Street in Monrovia. The complaint also alleges that this property was

formerly owned by the late Edward J. Roye who died intestate leaving five children, one of whom was Matilda Roye
McGill, mother of the said testator. She annexed to her complaint, as Exhibit B, the will directing the said devise in its fourth
clause, and endorsed as admitted to probate on June 3, 1918. Also made profert, annexed to the complaint, and marked Exhibit C is
an executor's deed issued to the plaintiff by the executor of the will of James B. R. McGill, deceased, conveying the property which
had been willed to her. It is peculiar that, although James B. R. McGill's will which directed the devise to the plaintiff was admitted
to probate in 1918, the executor's deed in implementation of the fourth clause thereof was not issued until August, 1940, more than
22 years later. This point assumed great significance, and became the subject of heated contention in the arguments before this Court.
The complaint also alleged that, since the late James B. R. McGill was the last surviving heir of the late Edward J. Roye, whose
property Lot Number 235 had originally been, the plaintiff was entitled to it per stirpes. The fourth clause of the will reads 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." In conclusion, alleging that possession of the said Lot Number 235 on Water Street in Monrovia had
been wrongfully withheld from her by Charles E. Cooper, whom she had named as the defendant in her action of ejectment, the plaintiff
prayed that judgment should be rendered in her favor and against him. The defendant appeared and filed an answer, the first three
counts of which dealt with the plaintiff's withdrawal and refiling of the amended complaint, which question has already been settled
in this opinion. The

remaining r 5 counts raised several points in defense against the complaint; and
although pleadings in the case went as far as the surrebutter, and beyond, to include a new and unheard-of pleading termed "No-Name
Pleading No. 1," the issues which were raised in the complaint and answer were only strengthened and insisted upon in subsequent
pleadings; that is to say, those which we think are material to the proper determination of this case. When the issues of law were
passed upon by Judge Dennis, he made the following ruling sending the facts to trial by jury: "The cause is ruled to trial upon the
issues of facts in Counts 1, 2 and 3 of the complaint; counts 4, 5, 6 and 7 of the answer, and the issue of facts raised in the surrejoinder."
Since the complaint contained only three counts it proceeded to trial by jury in its entirety, pursuant to the above ruling. The
18 counts of the answer, when taken together, and without the first three, which have already been passed upon, set forth substantially
the following allegations: T. That the complaint is indistinct and uncertain in that it fails to state what portion of the said lot
descended to James B. R. McGill, grandchild of one of the five children of the late Edward J. Roye, whose property the lot in question
originally was. Besides, the will of James B. R. McGill under which plaintiff lays claim to the lot, did not specify any particular
piece of the Roye property as devised to the plaintiff. 2. That the late Edward J. Roye died intestate, but no record was made profert
with the complaint to establish that his intestate estate was ever administered, so as to show what real property was left to his
five children, or what portion of the same fell to his daughter under whom the plaintiff claims; nor is there any evidence that the
said estate of the

late E. J. Roye was ever divided among said children. Therefore, the executor's deed
which sought to transfer James B. R. McGill's right, share and interest in Roye's estate to the plaintiff is uncertain and should
be regarded as a nullity in so far as plaintiff's title to Lot Number 325 is concerned. 3. That for more than ioo years, the late
Charles E. Cooper, defendant's husband, whose substitute she is in this case, and those under whom he had held the property by successive
purchases, as shown by valid deeds made profert with her answer, had enjoyed undisturbed possession of the said lot. Defendant denied
that she was withholding possession of the property mentioned in the plaintiff's complaint, which property is Lot Number 235, in
some instances referred to as Lot Number 225, and even as only "P." Defendant alleged that the lot which is in dispute, and which
her late husband owns, is Lot Number 325; that the uncertainty as to the identity of the lot claimed in the complaint, renders the
plaintiff's position confusing and uncertain; and that therefore the plaintiff's case should be dismissed. The case came on for trial
before Judge James W. Hunter and a jury which heard evidence and returned a verdict for the plaintiff. Judgment was rendered thereon;
and from this judgment the defendant appealed to the Supreme Court. The briefs on both sides, together with the documents filed with the pleadings, relate

the circumstances out of which this case has grown. For the proper determination of the issues appearing therein, we think it necessary to review the history of the case. The late Edward J. Roye purchased from the estate of the late Hilary Teague Lot Number 325 on Water Street in Monrovia. The deed transferring title to Roye was signed by Dixon B. Brown, trustee of the Teague estate, January 17, 1847. That deed is filed with the defendant's

answer, marked Exhibit 1, and made to form a part thereof. As stated hereinbefore, E. J. Roye died intestate and left this Lot Number 325 among the property he died seized of; and it, together with all of his other earthly possessions, descended in common to his five children at his death. These five children were : Johnny Roye, who left the country and never returned; Lionel E. Roye; Victor L. Roye; Matilda Roye, who married a Urias McGill; and N. E. Roye, who married a Mr. Carter. On August 17, 1888, Victor Roye executed a quitclaim deed for his portion of Lot Number 325 to his brother, Lionel, in consideration of the sum of $57.6o paid to him by the said Lionel Roye. This deed, signed by Victor and his wife, was probated with objection on October 1, 1888; a copy of it has been made profert, and filed with the defendant's answer, and is marked Exhibit 2. It reads, in its body, as follows : "Know all men by these presents, that we, Victor L. Roye of Millsburg, in the County of Montserrado and Republic of Liberia, and Affiah E., his wife, in consideration of the sum of fifty-seven 6o/loo dollars to us in hand paid by Lionel E. Roye of Monrovia in the said County and Republic, the receipt whereof we do hereby acknowledge, have bargained, sold and quitclaimed, and by these presents do bargain, sell and quitclaim unto the said Lionel E. Roye, and to his heirs and assigns forever, all our and each of our right, title, interest, estate, claim and demand, both at law and in equity, and as well in possession as in expectancy, in the City of Monrovia, on the waterside, and bearing in the authentic plot of the said City the number three hundred and twenty-five (325) with all and singular the hereditaments and appurtenances thereunto belonging." On September 3, 1888, N. E. Roye-Carter also executed a quitclaim deed for her portion of the said lot, to her

brother, Lionel, for a consideration of $20. This second quitclaim deed is also in the record, marked Exhibit 3, as annexed to the defendant's answer and made a part thereof. Thus Lionel held his one-fifth interest, together with the two-fifths he had purchased from his brother, Victor Roye, and his sister. N. E. Roye-Carter; and subsequently Lionel also died intestate, leaving his three-fifths interest in Lot Number 325 to be administered by his brother, Victor L. Roye, who was appointed administrator of his estate. On January 2, 1893, Victor Roye, in his capacity as the administrator of his brother's estate, put up Lionel's threefifths

share in the lot for sale at public auction. It should be borne in mind that there were only two portions of the whole Lot Number 325 which Lionel did not hold at the time of his death : ( ) the portion belonging to his absent brother, Johnny; and (2) his sister, Matilda McGill's share; but since the absent brother never returned to dispose of his share or contend for it, and Matilda is not shown to have parted with her share, these, with Lionel's three shares now made up the whole of Lot Number 325. Thomas Mitchell bought Lionel's three shares for $1,090 at the auction held on January 2, 1893. The administrator's deed passing this title to Mitchell, executed and signed by Victor, as probated without objection on April 3, 1893, and as annexed to the defendant's answer and made a part thereof, is in the record in this case, marked Exhibit 4. On the same day that Thomas Mitchell bought the property, he sold it to Victor Roye. That deed was also probated without objection, and is marked Exhibit 5 as filed with the defendant's answer. Thus, from April, 1893 when he purchased from Thomas Mitchell, up to his death, the date of which is not mentioned, Victor Roye owned by purchase threefifths portion of Lot Number 325, which had belonged to his brother Lionel Roye. The validity of these transactions, which appear to have given Victor legitimate title

to three shares, was never questioned by anyone up to the time of his death ; so we must assume that his brothers and sisters, their descendants and/or privies, must have acquiesced and approved the manner in which Victor acquired his title. Upon the death of Victor Roye, the property descended to his one son, Victor Roye, Jr. In the meantime, Matilda Roye, who had married Urias McGill, and unto whom had been born James B. R. McGill, also died. Matilda's son, James B. R. McGill,. and Victor's son, Victor Roye, Jr., as the only known survivors, were now entitled to proportionate shares of the lot in question. The record does not show that McGill did anything about his mother's share of the lot until 1918 ; and we shall see later what effect this act of his in 1918 was to have. In 191o, Victor Roye, Jr., made a will in which he left his property to his brother, Robert Smith, and his uncle, Richard Mitchell. This will, as admitted to probate without objection on October 2, 1911, is annexed to the defendant's answer and made a part thereof. It must again be remarked that from 1893, when Victor Roye bought the property from Thomas Mitchell, up to 1911, when his son, Victor Roye, Jr., willed it to Robert Smith and Richard Mitchell, no objections had been raised to any of the several transactions which took place in respect to the lot in question. So Robert Smith and Richard Mitchell were allowed to enjoy the lot unmolested up to the time when they sold it. One wonders why James B. R. McGill, who was alive in 1911 when Victor Roye, Jr.'s will was offered for probate, took no steps to protect his mother's interest which had descended to him. But let us look closer into the pages of this old family history, and see what happened next. On January 3o, 1918, James B. R. McGill executed his will, in the fourth clause of which he devised to the present appellee all of his right, share and interest in the estate of the late E. J. Roye, his grandfather. From

everything that has been recited hereinabove, one-fifth part of Lot Number 325 was definitely part
of that interest, growing out of his mother's share. So in 1918, when he wrote his will, he must have known that he had an interest
in E. J. Roye's property; and this makes his silence in 1911 all the more pronounced. In the same year, 1918, and upon his father's
death, James Boyer McGill, as the executor of his father's will, must also have known of the property, devised in the will, which
had come down from the Roye estate. Proof of this can be seen in his execution of the executor's deed to the plaintiff in 1940. Yet,
from 1918, when he took over execution of the terms of his father's will, up to 1940, when he executed the deed to the plaintiff,
although he had, all of this time, been saddled with the responsibility of dividing the legacies, he allowed 22 years to roll by
without any move on his part to protect the legacy devised in Clause 4 of the will. During all these years of inactivity, Charles
E. Cooper, and those from whom he had acquired his title, were not only enjoying uninterrupted occupation and possession of the lot,
but time was also running in their favor. After James B. R. McGill's death in 1918, the Mitchells and Robert Smith still held the
lot under the terms of Victor Roye, Jr.'s will, probated in 1911. On June 1927, Richard Mitchell concluded a lease agreement for
the lot with Paterson, Zochonis & Company, an English mercantile firm. This agreement was to expire on January 7, 1938. On January 12, 1933, Tony Mitchell sold
his interest in the lot to Charles E. Cooper, the original defendant, in whose stead the present appellant is now substituted. The
deed was probated without any objections on June 27, 1935, although James Boyer McGill, executor of his father's will was alive.
But, on November I, 1932, Robert Smith, Tyler H. G. Mitchell and S. T. A. Mitchell had parted with their respective interests in
the said lot to the same grantee, Charles E.

Cooper. These two deeds are marked Exhibits 8 and 9, and
are filed with the defendant's answer. Attention must be called to the peculiar silence on the part of the descendants of Matilda
Roye-McGill during the transfer of title to the various portions of the lot in 1932, and again in 1933, knowing full well that Matilda
Roye-McGill should have had, and her descendants should have enjoyed, a one-fifth interest in the said lot. It was not until Charles
E. Cooper had bought and taken possession of the lot that James Boyer McGill, in 1940, executed the deed which gave the present appellee
the ground upon which to assert her claim 22 years after the will which had devised Matilda's share of it to her had been probated.
What unexplained and colossal neglect! We come now to consider the allegations of the complaint which were held to be proved on the
trial. As stated before in this opinion, the entire complaint was ruled to trial. It alleges that a one-half portion of Lot Number

235 descended to James B. R. McGill as his mother's share of E. J. Roye's lot on the waterside in Monrovia; and the other half of the said lot descended to the said James B. R. McGill by virtue of the fact that he was the last surviving grandchild of E. J. Roye.

I have not been able to understand why the principle of survivorship was sought to be brought into this case which involves an intestate estate wherein joint tenancy cannot exist. Joint tenancy with right of survivorship can be created only when property is conveyed by grant, and is never created when property descends by intestacy. There are two peculiarities about the claim to the whole of the lot made by appellee in her complaint, especially if we look at this claim in the light of the circumstances recited earlier in this opinion. In the first place, the number of the lot which E. J. Roye bought from the Teague estate was not 235, as alleged in the complaint: the appellant, in her answer, has shown it to be 325 and has made profert, in proof thereof, five documents, respectively

marked Exhibits I, 2, 3, 4 and 5. Whereas the appellant has adduced proof of the number of the lot to which she claims title the appellee has merely alleged in her complaint that the number is 235 without any offer of proof thereof, even though the correctness of this number was denied in the answer. Applying the ordinary principle of burden of proof in ejectment, one wonders how strong the appellee's position can be shown to be, without proof of said allegation, as against five documents which the appellant made profert with her answer to prove the strength of her contention and the correctness of the number of her late husband's lot. The second peculiarity about the appellee's claim to the whole lot is that it completely ignores the quitclaim deeds which Victor Roye and his sister, N. E. RoyeCarter, executed to their brother, Lionel, which, when added to his own one-fifth portion, gave him three-fifths of the whole lot. It also ignores the sale at auction of Lionel's property, and Victor's subsequent purchase of it, although these transactions were legalized by action of a court of competent jurisdiction, and without objections. Since E. J. Roye died intestate, his property descended to his five children, and should have been enjoyed in common by them all. (See 1956 Code, tit. 9, § 2.) This naturally gave each the legal right to dispose of his share or interest as he felt minded to ; hence Victor and his sister acted within their legal rights when they sold their shares to their brother, Lionel. Even if it were argued that they had acted without an order of the probate court, as was legally correct for them to do under such conditions in an intestate estate, it must be remembered that the same probate court which had not ordered them to sell admitted the transfer documents to probate, and thereby gave validity to them. But can the legality or illegality of this act of the probate court be questioned in an ejectment action? With the acquisition of his brother's and sister's shares, Lionel held legitimate title to three-fifths of the

whole lot under authority of
the orders issued by the probate court in 1888 with respect to the quitclaim deeds. Up to this time, no suit had been brought, nor
has any bill been filed to set aside the order of the probate court in respect to the two quitclaim deeds; so their validity must
be conceded. Appellee has based her claim of title to E. J. Roye's lot on descent per stirpes. She has not denied that she only claims
under one of Roye's five children; nor has she denied that, when two of the said five children voluntarily disposed of their respective
shares of the lot during the lifetime of her predecessor in interest, no objections were raised ; nevertheless she claims the whole
lot by descent from the last surviving grandchild. This claim is legally untenable because Matilda Roye's descendant could not be
entitled to more than was legally her share in equal proportion to her other sister and her three brothers. In an effort to prove
her claim to the whole lot, the appellee herself took the stand as plaintiff in the trial court, and testified as follows : "Q. Will
you please tell the court and jury, since you are the plaintiff in this case, what is the quantity of land you are claiming? "A.
This estate has been from court to court, and back in the circuit court from the Supreme Court; and on account of the travel, I do
not know; the quantity is in the deed. "Q. Did I understand you to say that this suit is based on the will of the late James B. R.
McGill, willing his share and interest in the Roye property? If so, please look at the document marked Exhibit C-1 and say whether
it is the will you referred to. "A. Yes. "Q. You said that this action is based on the will of James B. R. McGill; may we understand
that you referred to the entire will?

"A. Only a certain clause in said will carries the things that
were willed to me. "Q. Then please name this particular clause. "A. The fourth paragraph." The fourth clause of the will has already
been quoted in this opinion; and we know that it devised to the plaintiff the right, share, and interest of Matilda Roye's son in
E. J. Roye's waterside lot. We have said that, since Matilda was one of five children, and was one of the only two who did not dispose
of their shares, it appears to us to be impossible for her to have acquired title to the whole of her father's lot by descent. We
cannot conclude, therefore that this phase of plaintiff's complaint, in so far as it asserted a claim of title to the whole lot in
question, has been proved. No witness came to the stand to show how it could have been possible for the appellee to establish her
title to the whole of the lot in dispute; and not a single document was made profert with the complaint to show any basis of claim
to their particular lot of land, except the executor's deed, issued in 1940, which is based on the fourth clause of a will which
does not name any particular piece of property which could, with any certainty, vest title to a particular tract of land in the plaintiff.
In ejectment, the plaintiff must recover upon the strength of title, which must be evidenced by a continuous and consistent chain

of valid conveyances, and not upon mere speculation or presumption. Appellee has contended that E. J. Roye's intestate estate was never administered, and that no division
of his property was made so as to give each of his five children their one-fifth share and that, therefore, the quitclaiming of Victor
and his sister was without legal authority, as was the sale at auction of Lionel's accumulated shares of the lot. We have already
settled these points in this opinion; but what does seem very strange, is that appellee now seeks, by ejectment, to set aside transactions
which the probate court validated in 1888, and at the same time, establish a claim of title to property which has rested in

quiet and uninterrupted repose for more than fifty years. We shall come back to this point later. In ejectment,
the plaintiff must recover unaided by any defects or mistakes of the defendant; and proof of the plaintiff's title must be beyond
question. The plaintiff's title is not presumed, and must be established affirmatively. Looking at the position of the appellee through
her pleadings filed in the court below, we find that the basis of her claim began with E. J. Roye's purchase of the lot in 194.7.
As privy of Matilda, one of Roye's five children, appellee claims to be legally entitled to Matilda's share of the lot under James
B. R. McGill's will. She made profert documents to prove these two links of her chain; but in proving these two links, she also strengthened
similar links in her adversary's chain, since both the appellant and the appellee claim that E. J. Roye was the source from which
they took, and that Matilda was one of five children entitled to benefit equally from his intestate estate. This, in itself, shows
that, instead of being entitled to the whole, the plaintiff could only have claimed the one-fifth portion which was legally Matilda's.
Therefore, when she admits that Roye died intestate and left five children, and then argues that, holding under one of those five,
per stirpes, she is entitled to the whole lot, it becomes quite clear why her claim was not sustained by the evidence in the case,
or by any testimony which she could have produced at the trial. Now, let us see whether the appellee's chain of title includes any
more connecting links. Matilda Roye, under whom the appellee claims, also died intestate; but the record does not show, nor were
any documents made profert with the complaint to show, that her intestate estate was ever administered, or that the probate court
took any action in respect to her one-fifth share of the lot in question. So, upon what legal authority did her son, James B. R.
McGill, provide in his will the devise which

was intended to give title to the appellee? Remember, this
was the same point raised by the appellee concerning Victor's and his sister's quitclaims to their brother, Lionel, and concerning
Victor's subsequent purchase of Lionel's shares. Appellee contended that these acts were without legal authority because they were

not authorized by the court. If that contention holds good with respect to Lionel's estate, which was intestate, then it is only fair that it should also hold good with respect to Lionel's sister's estate, which is also intestate. The difference between the two is that whereas, in. Lionel's case, the probate court validated the documents by probating them, there is no record that the probate court gave any such orders in respect to Matilda's intestate estate. Under these circumstances, the question is again presented : could appellee's chain of title be said to be stronger than the appellant's with such an empty legal void appearing in her chain between Roye's title deed of 1947 and the fourth clause of James B. R. McGill's will which sought to give appellee a right to claim under Roye's deed? As we have said before, no documents have been made profert, and no suggestion has been presented as to how this long gap in the appellee's chain--a gap of 71 years from 1847 to i9t8--could be closed. This ejectment action was instituted by the present appellee as plaintiff; and if she is to recover, then she must do so upon the strength of a chain which is consistent and continuous, and in which each link can stand by itself. If appellee had sued for Matilda's one-fifth share of the lot only, could she recover in ejectment in view of the facts appearing in the record? It is our opinion that neither ejectment nor any other action at law can undo what a probate court has done in respect to the probation of wills or deeds for real property; and only a court of equity, where a bill is filed within proper time, can review or cancel conveyances after title has passed and vested. So, in order to set aside the several transactions respecting

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the lot, as those transactions affected Lionel's shares, or Victor's sale of them to Mitchell, who sold to Charles E. Cooper, timely action should have been instituted in a court of equity. Appellee's counsel contended that appellant's title does not connect her or her late husband with the common source; and that her title is derived from the Mitchells and Robert Smith, who were not connected in blood with E. J. Roye. This is strange reasoning, and stranger still when it is raised in an ejectment action. The essential issue in an ejectment action is not ties of blood, but title. A plaintiff in ejectment may recover property which descended to him, if the title was legally vested in him. On the other hand, in an ejectment action, a plaintiff who bears no blood relationship to the original owner may also recover if he took the proper legal steps to secure his title from attack, even against those of the bloodstream of the original owner. All the more do we feel confirmed in our views on this point when we consider Count 17 of the answer, which reads, word for word, as follows: "And also because defendant denies that she withholds possession of Lot Number 225 or any portion thereof from plaintiff, and she avers that she is the bona fide owner, through her late husband, Charles E. Cooper, for whom she substitutes, of Lot Number 325, Monrovia, which premises she and her direct privies have

occupied and held undisturbed possession of, for a period of over ioo years, by the following conveyances, herewith filed and marked Exhibits 1, 2, 3, 4, 5, 6, 7, 8 and 9, and forming a part of this answer; which possession should not be disturbed." An inspection of the documents referred to in this count of the answer will reveal the following facts: i. In 1888, all five of the Roye children were alive, and two of them quitclaimed their shares of the lot to Lionel, their brother, without objection from Matilda, their sister, under whom the plaintiff now claims.

2. In 1893, Victor Roye, as administrator of Lionel's estate, sold at public auction Lionel's share in the said lot, and then bought it from the highest bidder, without any objections from either Matilda Roye or her descendants, who had public notice of the transactions, since the sale and resale were legalized by court action. 3. In 191o, Victor Roye, Jr., willed the lot to his brother, Robert Smith and his uncle, Richard Mitchell; and his will was admitted to probate in October, 1911, without objection from James B. R. McGill, who was still alive, and who knew of his mother's interest in the lot, and who also had notice of the probation. 4. In 1927, Richard Mitchell upon the strength of his title to the lot under his nephew's will, leased it to Paterson, Zochonis Sr. Co. without objection from James Boyer McGill, although he was alive and was executor of his father's will, and therefore should have protected his father's one-fifth interest which had descended from Matilda Roye McGill. 5. In 1932, Robert Smith, one of the joint owners of the lot under Victor Roye, Jr.'s will, probated in 1911, T. S. A. Mitchell and Tyler H. G. Mitchell, parted with title to a portion of the lot to Charles E. Cooper; and in 1933, Tony Mitchell also sold his portion of the said lot to the same grantee, Charles E. Cooper. These deeds were probated without objection, even though James Boyer McGill was still alive, and as executor of his father's will, should have protected the legacies therein. Thus, from 1888, when Lionel Roye bought his brother's and sister's shares and added them to his own, up to the time of Charles E. Cooper's final purchase from Tony Mitchell in 1933, there is a continuous and unbroken chain of undisturbed title to the major portion of this lot. Hence, Charles E. Cooper's title had already vested, and he had held quiet and uninterrupted possession for more

than so years, including the time his privies held it before him, when plaintiff brought her suit of ejectment after execution of the deed to her in 1940. It is settled law that : "A party who, being under no legal disability at the time, stands by and permits property, which he claims, to pass into the possession of another without objecting thereto at the time, is presumed to have assented to the transaction and is estopped

from afterwards raising claims thereto." McAuley v. Madison, i L.L.R. 287 (1896), Syllabus 5. There would be untold disturbance to society if unduly belated demands were allowed to defeat long-established vested titles to real property, especially where the silence of claimants for long periods of time could be presumed as acquiescence in the previous disposition of the property, and where the status quo, having been long-established, could not be disturbed without hurt to the rights of innocent parties. Most especially are we so minded when there does not appear to be any known hindrance which could have prevented such claims from being asserted earlier. In the instant case, no legal disability existed to impede prior assertion of the claim based upon assertion of Matilda Roye-McGill's rights. It is a well-established practice of this Court not to countenance unreasonable delays of parties in seeking redress or relief; and delays which amount to laches have been consistently discouraged in the past. But for discouragement of slothful indifference to property rights, there would be no end to litigation. Mr. Chief Justice Toliver dilated upon this question as follows in Vietor & Huber v. Thatcher, 2 L.L.R. 8o, 8z (1912) : "There should be limit in point of time in which actions should be brought to this court, and such time

depends upon the facts in each case. And it may be said, that where the parties cannot be placed in the status quo existing at the time of the action or proceed-

ings by the court to which the appeal is taken, the action of the court below will not be disturbed." In the present case, more than so years after the probate court validated the various instruments passing and repassing the title which finally vested in Charles E. Cooper, we are reluctant, and do indeed refuse, to disturb a title which seems to have been so well established, which is so continuous and consistent, and which has been undisputed for so long a period of years. In support of this position, we look to what Mr. Justice Barclay said in Smith v. Faulkner, [1946] LRSC 5; 9 L.L.R. 161, 175 (1946) : "In such cases the courts often act upon their own inherent doctrine of discouraging for the peace of society antiquated demands by refusing to interfere where there has been gross laches in prosecuting rights or long acquiescence in the assertion of adverse rights." In view of the foregoing, we have no alternative but to reverse the judgment of the court below with costs against the appellee.
Reversed.

Toles v Williams [1963] LRSC 34; 15 LLR 357 (1963) (9 May 1963)

J. LAFAYETTE TOLES, Appellant, v. C. L. WILLIAMS, Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued April 1, 1963. Decided May 9, 1963. 1. If a plaintiff is absent from Liberia when or after a cause of action accrues, calculation of the time within which the statute of limitations requires that action must be commenced should exclude time during which the plaintiff was absent ; but the statute of limitations begins to run again whenever he returns to Liberia. 2. The fact that a plaintiff in an ejectment action, who interrupted a protracted absence from the country by a short visit, did not visit the particular county where his property was located does not excuse his failure to take proper steps to protect his property rights.

On appeal in an ejectment action, judgment reversed.
C. L. Simpson and Tellman Dunbar for appellant. William N. Witherspoon for appellee.
MR. JUSTICE PIERRE delivered the opinion of the

Court. In 1959, C. L. Williams brought an action of ejectment against J. Lafayette Toles, alleging that Toles was withholding from him a portion of Lot Number 349 in the City of Monrovia, which land was lawfully his. Defendant Toles appeared and filed answer in which he pleaded the statute of limitations. He alleged that he had purchased the whole of Lot Number 349 from Simpson in 1929; and he set forth his chain of title by annexing to his answer the deeds under which he claimed said title. He contended that from 1929, when he acquired his title to the property, up to August, 1959, when plaintiff brought his suit, he had been in continuous, notorious and exclusive possession of the said lot of land. Toles argued

that, tacking to the 3o years during which he himself had possessed the lot, the time which his privies before him had had possession of it, there were 43 unbroken years up to the time that plaintiff filed his complaint; therefore he relied exclusively upon the statute of limitations as defense against the plaintiff's case. From the record before us, Williams purchased onehalf of Lot Number 349 in Monrovia from Gabriel D. Potter in October, 1904, and retained possession and ownership of it until the year 1915, when he left Liberia and went abroad. He returned to Liberia in 1947 and has not left this country since. It was alleged that he made several visits to Liberia before 1947, when he finally returned to stay; but although he might not have come back till 1947, and must have noticed his property being occupied by the appellant, he did not bring action to evict him until August, 1959.

When the case came on for trial before a jury in the Circuit Court of the Sixth Judicial Circuit, Montserrado County, several witnesses testified that Williams had been seen in Monrovia at one time or another between his departure and return dates, that is to say, between 1915 and 1947. In no instance of such alleged return is there any corroboration to establish the truthfulness of the allegation. However, of the several witnesses who testified in the case, we are most concerned with the testimony of the plaintiff himself; and for the benefit of this opinion we quote the following portion thereof : "I left Monrovia in 1915. I came back to Monrovia in 1947. I visited Cape Palmas in 1927 on special business for my company, which took me up the Cavalla River in the interior for about eight to nine days. I returned to Cape Palmas and waited a few days for a boat to take me back to the coast. I might point out that, at that time, I was not in touch with Monrovia, and I did not know that Mr. Toles was claiming my property."

It is an elementary principle of the law of statutes of limitations that absence from the realm, and sojourn beyond the territorial jurisdiction of the country in which the action, is sought to be brought, tolls the statute of limitations in favor of the absent party. In some jurisdictions, it tolls local absences as well as those occasioned by stay abroad in a foreign country. In some countries, there is much controversy as to who should benefit from such absences, the plaintiff or the defendant; and in some states of the United States of America, there is also a difference of opinion as to whether such benefits should be extended to absences from a particular state of the union, or confined to absences beyond the territorial limits of the United States. But the language of our statute of limitations dispels all doubt as to what is meant by absence from the Country: "If any party to an action is absent from the Republic of Liberia . . . when or after a cause of action accrues, the calculation of the time within which the action must be commenced shall exclude the period when the party is absent from the Republic. . ." 1956 Code, tit. 6, § 51. In the instant case, Williams has made record that he left Liberia in 1915, and was away from that time until 1947 when he returned to stay permanently; but in 1927, he concededly visited Cape Palmas on business. Cape Palmas being a part of the Republic of Liberia, we hold that his return there terminated any prior tolling of the statute in his favor, since he was again within the jurisdiction of the courts of Liberia. According to our statute quoted supra, all of the period when a party is away from Liberia must be excluded from the time within which he could bring action against a defendant; but the statute begins to run again as soon as he sets foot on Liberian soil. The fact that he did not visit the particular county where the property was located, as Williams contended, would not justify his failure to

take proper steps to protect his property rights in any part of Liberia once he was in the country. This view is supported by the following authorities : "The moment plaintiff comes or returns into the jurisdiction, the operation of the saving clause ceases and that of limitation begins and continues irrespective of subsequent absences, if the debtor also is present at the time, and if the statutory [sic] disability is absence from the United States, a return to any part of the United States removes the disability and puts the limitation in operation. It does not lie in plaintiff's mouth to say that he did not remain in the jurisdiction long enough to sue, for that was his own choice." 25 CYC.
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Limitations of Actions.

"Under some statutes if a person be out of a state when a cause of action accrues to him, the limitation does not begin to run until he comes into the state, at which time it immediately attaches. And, generally, a disability is removed within the purview of the statute when it no longer exists and that of absence from the state ends when the personal presence of the person whom it affects begins therein." 17 R.C.L. 844.-845
Limitation of Actions § 205. If the property in question had descended, or had been willed to Williams during his absence from the country, and if he did not know that he owned it when he came to Cape Palmas in 1927, we might have been minded to accept some argument which would give him credit up to the time that he admits permanent return in 1947. Under such circumstances, his ignorance might have cured any failure on his part to have acted within statutory time. But such is not the case. Williams admits having bought the property, and having owned it for i r years prior to his departure from Liberia. What legal excuse could he have, then, for failing to protect his rights to the property when he returned to Liberia in 1927, at which time someone was trespassing on and had taken possession of his half lot, and was in occupation thereon?

Under the circumstances, and in keeping with the law cited and quoted, supra, we are unable to agree that appellee could legally recover in face of the appellant's plea of the statute of limitations which began to run in his favor with his departure in 1915, and continued to run against him on his return in 1927. It is therefore our opinion that the judgment of the court below should be reversed, and appellant be allowed to continue to enjoy undisturbed possession of the lot in question.
Reversed.

Smith v Stubblefield [1963] LRSC 32; 15 LLR 338 (1963) (9 May 1963)

A. C. SMITH, Appellant, v. WILMOT D. STUBBLEFIELD and Associate Stipendiary Magistrate, JAMES W. BROWN, Appellees.
APPEAL FROM THE
CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued April 22, 1963. Decided May 9, 1963. 1. In a summary ejectment action where no issue of fact is raised, no affidavits are required. 2. Title to real property cannot be determined in a summary
ejectment action before a magistrate. 3. A plaintiff in a summary ejectment action before a magistrate need not necessarily show
title to the property in question. 4. A magisterial court may entertain and deny a demurrer in a summary ejectment action. 5. Dismissal
of a demurrer in a summary ejectment action is not a ground for summary investigation of the magistrate who dismissed the demurrer.
6. Summary investigation is a remedial process whereby circuit courts may review irregularities of magisterial courts and justice
of the peace courts. Absent such irregularities, a summary ejectment action cannot be maintained.

On appeal from a judgment of the
circuit court dismissing a judgment in a summary investigation of a summary ejectment action in a stipendiary magistrate's court,
judgment affirmed.
Joseph F. Dennis for appellant. appellees.
MR. JUSTICE WARDSWORTH

Samuel Cole for

delivered the opinion of

the Court. This case is on appeal from a judgment of the Circuit Court of the Sixth Judicial Circuit, Montserrado County, in a matter
of summary investigation growing out of a summary ejectment action filed by one of the parties in the magistrate's court in Monrovia.
The summary ejectment action is still pending before the stipendiary
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magistrate's court, to be heard
and determined after our decision in the summary investigation matter. It would appear that Wilmot D. Stubblefield brought a summary
ejectment action to evict A. D. Smith from property alleged to be
Stubblefield's. When the defendant appeared in the magistrate's
court, he filed a demurrer to the writ, and contended, in substance, that: 1. Plaintiff in summary ejectment had failed to file his
title with his complaint, or to give defendant notice that he was legal owner of the **land** on which defendant was residing. 2. Defendant
was attempting to get a deed from the Republic of Liberia for the lot of **land**, but had not succeeded, and as far as he knew, no one

had ever surveyed the land, or obtained a deed therefor. 3. In reference to some documents exchanged between the Department of Justice and Mr. Stubblefield, said department was not a proper forum before which summary ejectment matters could be determined. The magistrate denied the demurrer, and ordered the case assigned to be heard on December z8, 1961. Instead of appearing for hearing of the case in keeping with assignment, defendant filed a complaint in summary investigation against the magistrate for having dismissed the demurrer. The complaint was filed in the Circuit Court of the Sixth Judicial Circuit, Montserrado County, and contains four counts, three of which restate the same grounds laid in the demurrer before the magistrate, and concludes that the magistrate should have dismissed the complaint on those grounds. The fourth count of the complaint in summary investigation is important to the determination of this matter on appeal. It reads as follows : "And said petitioner further complains that although, under the law, he would have, a right t6 regular appeal upon judgment in the said action, yet

it must be realized that, by such irregular ruling of the magistrate, should the case be permitted to proceed up to the stage of judgment in face of his appeal, he would be ejected and be out of the legal possession of his property during the pendency of the appeal, to his injury and damage; and this is the intention of the plaintiff, now one of the respondents. Petitioner, therefore, is compelled to resort to these proceedings to avert further injury should the cause proceed to the stage of judgment, and has no other adequate remedy under the circumstances." We have given special attention to the ground for summary investigation laid in this count of the complaint; and we wish to observe that counsel, by his own admission in the said count, has recognized the irregularity of his procedure in attempting to question the magistrate's right to deny his demurrer. We note that he claims that his reason for taking the position is to avert judgment in summary ejectment, which would be enforced without regard for the announcement of appeal. In other words, he has recognized the irregularity of his complaint in summary investigation growing out of a matter which had not yet been heard, but in which he must have been aware that his defense was groundless and that judgment was bound to be rendered against him; therefore, in an effort to have the circuit court assist him in his irregularity, he has sought shelter behind a judicial proceeding. Such procedure, when adopted by a counsellor of this bar, gives us great alarm; and our concern increases when counsel attempts to defend such an irregular practice. The plaintiff in summary ejectment filed answer to the complaint in summary investigation. Judge D. B. Morris heard and denied the complaint, and ordered the matter sent back to the magistrate's court to be heard on its merits. Because we are in accord with said ruling, we are quoting it in this opinion, word for word. It reads :

"While the court was about to consider the submission in summary proceedings and
the resistance as filed, the petitioner filed an answering affidavit this morning, attacking the affidavit of respondent's returns,
which respondent resisted on the records. "The summary proceedings, as filed, and all the relevant motions and resistance, raised
a legal question as to the authority, under the law, of the magistrate's assuming jurisdiction and trying said summary ejectment.
In the arguments on both sides, it was agreed that the question raised is a purely legal one. This being true, the court feels that
an affidavit was not necessary on either side; for such an affidavit only verifies factual or mixed causes. "As to the merits of
the submission made by petitioner against the magistrate, he has not supported said submission by any citation of law to convince
the court that the plaintiff in summary ejectment before the magisterial court must produce title deed to establish his rights to
the property in question. It is the opinion of the court that, if summary ejectment were based on title deed on both or either sides,
only courts of record would have jurisdiction. "The court feels that the magistrate was correct in requiring evidence on aspects
of the matter other than title covered by deed to the property in question; and it was within his authority to do so in summary proceedings.
The submission is therefore dismissed and the parties ordered to return to the magisterial court for the purpose of hearing the matter
as the magistrate has ruled it to trial. The clerk of this court is ordered to send down a copy of this ruling with the court's order;
costs to abide final determination of the matter. [Sgd.] "D. W. B. MORRIS, Assigned Circuit Judge."

A stipendiary magistrate has
jurisdiction over summary proceedings to obtain possession of real property. (See 1956 Code, tit. i8, § 577 [a) Therefore, it was
within

the proper jurisdiction of the magistrate to hear the demurrer growing out of the case filed
before him. Dismissal of a demurrer leaves the case in status quo; hence a ruling dismissing the same is not final, nor is it so
irregular as to form the basis of complaint in summary investigation. Summary investigation is a remedial process whereby the circuit
court reviews alleged irregularities of the magisterial and justice of the peace courts ; and unless there is irregularity, there
is no basis for maintaining it before the circuit judge. Hence we are in agreement with the position taken by the trial judge in dismissing the summary investigation,
and ordering the summary ejectment resumed by the magistrate's court for hearing and determination. The ruling of Judge Morris is
therefore affirmed with costs against the appellant. And it is hereby so ordered.
Affirmed.

Gwenigale et al v Pelham [1996] LRSC 12; 38 LLR 246 (1996) (25 January 1996)

MICHAEL GWENIGALE AND THE DIRECTOR OF THE CHURCH WORLD SERVICES, Appellants, *v.* **JEROME G. PELHAM**, Appellee.

MOTION TO DISMISS AN APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: December 20, 1995. Decided: January 26, 1996.

1. The Civil Procedure Law provides that an appeal bond securing an appeal should contain a description of the property sufficient to easily identify same.

2. Where the description of the property securing a bond is vague and uncertain, thus making the location of the property on the ground difficult, the bond is defective.

3. If the description is sufficient to identify the particular piece of property intended to be encumbered by the bond, the appeal shall not be dismissed.

4. A sufficient description of realty in the affidavit of sureties means that the property is so described as to make finding it on the ground an easy exercise.

5. If property pledged is so described as not to make finding it an easy exercise, it will be deemed inadequate and the appeal will be dismissed.

6. A motion to dismiss an appeal should be granted where the appeal bond is incurably defective. But where extrinsic factors can assist in establishing sufficiently the property pledged, the bond is deemed sufficient.

From the final judgement of the Civil Law Court of the Sixth Judicial Circuit, defendant/appellant appealed to the Supreme Court. When the notice of completion of appeal was served on the appellee, he moved the Court to dismiss the appeal on grounds that the property offered as security for the bond is not sufficiently described.

The Supreme Court stated that a sufficient description of realty in an affidavit of sureties requires that the property be so described as to make finding it on the ground an easy exercise; and that if the description is such as to make finding the property difficult, the bond will be deemed inadequate and the appeal will be dismissed. In the instant case, the Supreme Court, upon review of the records, found that the description of the property given was vague and uncertain, which made the location of the property on the ground difficult. Accordingly, the Court held that the bond was defective in keeping with statute, and decided cases, and therefore *granted* the motion to dismiss.

G. Wiefueh Sayeh appeared for movant/appellee. *Elijah Garnett* and *Flaagwaa R. McFarland* appeared for appellant.

MR. JUSTICE YANCY delivered the opinion of the Court.

The records indicate that on the 15th day of December, A. D. 1991, at about 10:30 p.m., an accident occurred on the Gardnerville highway near the area known as Chocolate City, in which appellee/movant's vehicle bearing license number 7654 was damaged by another vehicle, bearing license number GP-114, owned by the appellant/respondent Church World Services, and driven by Michael Gwenigale.

The Traffic Court for Montserrado County found the appellant/respondent guilty of reckless driving resulting in property damage. The judgment was appealed to the Criminal Court 'B' of the First Judicial Circuit, Montserrado County, and Monrovia, where the matter was left in limbo, as the appellants/respondents did nothing to have their appeal heard.

On March 30, 1992, appellee/movant, commenced a civil action of damages for wrong in the Civil Law Court, Sixth Judicial Circuit Court, Montserrado County, praying for nine-teen thousand five hundred Liberian dollars (L$19,500.00) as special damages, calculated on the average earnings of the taxi for the period of time from the accident up to the commencement of the action, and general damages for the inconvenience and hardship suffered by the loss of the use of the taxi in transporting the children to and from school etc., in the sum of forty thousand Liberian dollars (L$40,000.00), or a total damages award of fifty nine thousand Liberian dollars (L$59,000.00).

The defendant filed an answer denying liability and at the same time moved the court to dismiss the complaint on the grounds that the driver of the Church World Services, being an employee of said church, is not the owner of the vehicle; and the Church being the owner, enjoys diplomatic immunity.

The motion was resisted by the plaintiff, heard, and denied. Further, the court ordered the assignment of the case for disposition of law issues, at which hearing, the defendant now appellant/respondent, was ruled to bare denial, on grounds that although the answer was filed with the Clerk, it was not served on the plaintiff within statutory time.

At the trial, plaintiff was required to prove his case and the defendant to cross examine plaintiff's witness. Being on bare denial, no allowance was given for the introduction of any affirmative matter by the defendant, which is in keeping with the rules of evidence in vogue in this jurisdiction. Civil Procedure Law, Rev. Code 1: 9.1(2).

The plaintiff produced witnesses and after examination, arguments *pro et con* were heard and the jury duly charged. Returning from their room of deliberation, a verdict of "liable" was brought against the defendant, appellant/ respondent herein in the amount of fifty nine thousand Liberian dollars (L$59,000.00), of which nineteen thousand Liberian dollars (L$19,000.00) were for special damages, and forty thousand Liberia dollars (L$40,000.00) for general damages.

Defendant, appellant/respondent excepted to the verdict and filed a motion for retrial, which was heard and denied. From a final judgment rendered on February 4, 1995, defendant announced an appeal which was granted. Defend-ant/appellant's duly approved bill of exceptions was filed; appeal bond filed and notice of completion of appeal duly served on the appellee/movant by

March 28, 1995. There the matter rested until April 6, 1995 when counsel for appellee/ movant dispatched a letter to counsel for appellant rejecting the notice of completion of appeal in that the requirements for the completion of appeal had not been fully satisfied. The records reveal that there was no response from the appellant/respondent to this timely notice until the appellee/movant filed the motion to dismiss the appeal on 18th October, A. D. 1995.

Appellant/respondent resisted the said motion by filing a bond on 15th December, A. D. 1995. The motion to dismiss is on the grounds of defects in the certainty of the description of the demised property in the bond. Appellant contends that the requirements of the Civil Procedure Law, Rev. Code 1:63.2(3) has been fully satisfied. On this defect in the sufficiency of the description of the demised property in the appeal bond, rests the crux of the matter as to whether an appeal may be dismissed for reasons thereof.

The statutes clearly provide the several grounds for the dismissal of an appeal: *Id*, 1:63.2(3). More importantly, the statute provides when the sufficiency of an appeal bond may be tested: *Id.*, 1:63.6.
The statutes provide that an appeal bond should contain a description of the property sufficient to easily identify same; *Id.*, 63.2(c).

The description in the appeal bond is herein below quoted in toto:

Property of surety James E. Summerville, located in Paynesward, Montserrado County, R.L., lot nos. 1, 2 and 3, valued at $75,000.00 area; one acre:

a. “Commencing at the southwestern corner of said one acre block marked by a concrete monument and running on magnetic bearings North 36 degrees 30 minutes East 264 feet; thence running South 53 degrees 30 minutes East 165 feet; thence running South 36 degrees 30 minutes 264 feet parallel with a 264 feet alley; thence running North 53 degrees 30 minutes West 165 feet to the point of commencing, and containing one acre of **land** and no more.”

From the above, it is clear to any casual observer that the point of commencement is not referenced to any other point or points but to itself. Furthermore, there is no adjacent owner named on any of the sides, but the **land** is described as running parallel with a 264 feet alley. Now the highways are in the hundred of feet, but alleys are usually from 16 to 25 or 30 feet in

width. Hence a 264 alley is an innovation. But more important, the resistance to the motion to dismiss, has the alley as being 264 feet, whereas the description contained in the statement of property evaluation as filed has a 246 feet alley. A doubt and uncertainty therefore exists patently on the face of the bond.

The second piece of property proferted is allegedly owned by one Peter N. Shan, located in Duala, Bushrod Island, valued at L$35,000 containing 1/4 of an acre which is described as follows:

b. "Commencing at the corner block of a half lot and running thence North 54 degrees East 99 feet to the river; thence running North 36 degrees West 55 feet parallel by the river; thence running South 54 degrees West 99 feet to the edge of the river thence running parallel by the alley; thence running South 36 degrees East 55 feet to the place of commencement and containing one lot or 1/4 acre of **land** and no more."

Note here that the metes and bounds filed with the bond is written on Ministry of Finance headed official paper and signed by the "Property Owner" and is undated. Also the description gives lines running from the edge of the river and parallel "by the alley". The length or distance of this portion of the property that runs from the edge of the river parallel by the alley is omitted as well as the width of the said alley. Hence, if the figure is a rectangular one, bounded 99 feet by 55 feet, where does the portion running by the alley from the edge of the river fit into the plan? This also is an ambiguity.

It is clear from these descriptions that the property can not easily be located, since the description is vague and uncertain; hence the bond is defective in keeping with statute, and decided cases. *Id.*, 1: 63.2(c); *West Africa Trading Corpo-ration v. Alraine (Liberia) Ltd.*, [1975] LRSC 16; 24 LLR 224 (1975), *Zayzay v. Jallah*, [1976] LRSC 6; 24 LLR 486 (1976); *Kerpai v. Kpene*, [1977] LRSC 4; 25 LLR 422 (1977).

In the above cited cases, it is held that if the description is sufficient to identify the particular piece of property intended to be encumbered by the bond, the appeal shall not be dismissed. In *Kerpai v. Kpene*, [1977] LRSC 4; 25 LLR 422 (1977); *West Africa Trading Co., v. Alraine (Liberia) Ltd.*, [1975] LRSC 16; 24 LLR 224 (1975), and *Zayzay v. Jallah*, [1976] LRSC 6; 24 LLR 486 (1976), the Supreme Court held that a sufficient description of realty in the affidavit of sureties means property so described as to make finding it an easy exercise. Further it is held that

if property pledged is so described as not to make finding it an easy exercise, it will be deemed inadequate and the appeal will be dismissed.

In *Everyday v. Due*, [1978] LRSC 53; 27 LLR 291 (1978), this Court held that a motion to dismiss an appeal should be granted where the appeal bond is incurably defective. But where extrinsic factors can assist in establishing sufficiently the property pledged, the bond is deemed sufficient.

From the description given herein above, no extrinsic factors could be applied without admitting oral testimony to replace a written one. The origins of the survey description being vague, uncertain and indistinct, the bond is incurably defective and the appeal should be, and is hereby dismissed. Civil Procedure Law, Rev. Code 1:25.9.

In view of the above, the appeal is hereby dismissed, and the Clerk of Court ordered to send a mandate to the Civil Law Court ordering the presiding judge thereof to resume jurisdiction over the case and enforce the judgment. Costs are assessed against the appellant. And it is hereby so ordered.

Motion granted; appeal dismissed.

Lerchel v Eid et al [1988] LRSC 12; 34 LLR 648 (1988) (25 January 1988)

MARY E. LERCHEL, Plaintiff/Appellant, v. **FAUZI & NEHMA EID**, Defendants/Appellees.

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

Heard: October 15, 1987. Decided: January 25, 1988.

1. The best evidence which a case admits of must always be produced; that is, evidence is not sufficient which supposes the existence of better evidence.

2. A bill of exceptions is a specification of the exceptions made to the judgment, decisions, orders, rulings, or other matters excepted to at the trial and relied upon for the appeal, together with a statement of the basis of the exceptions. Accordingly, where a party in a count of the bill of exceptions fails to comply with the provisions of the statute, the count with be denied or overruled.

3. All evidence produced at a trial must be relevant to the issue in dispute, and must have the tendency to establish the truth or falsehood of the allegations or denials of the parties, or, in an action of damages, it must relate to the extent of the damages. Rev. Code 1:25.4.

4. Courts will only decide issues joined between the parties and specifically set forth in the pleadings.

5. It is a general principle of law that when the estate of a landlord is leased, the tenant becomes the absolute owner of the demised premises, for all practical purposes, during the existence of the lease and for the term granted, and the landlord's right is confined to a reversionary interest.

6. Where a landlord has a reversionary interest in an estate, he may maintain an action on the *case* for injuries to the demised premises which affect his reversionary rights, no matter how inappreciable the injury may be.

7. A reversion is the residue of an estate left in the grantor to commence possession after the determination of some particular fate granted by him; it is further defined as an inheritable estate which descends to the heirs of the creator of the particular estate upon which it descends, immediately upon his death. The rule of reversion obtains when one owning a fee simple conveys or devises it to another for life and the remainder to a third person in fee.

8. The Court cannot go beyond the terms of a contract to enforce an understanding therein.

9. Special damages must be specifically pleaded in the complaint and proved at the trial, and they will not be awarded or recovered where not specifically alleged and proved.

10. Damages, to be recoverable, must be certain, both in their nature and in respect to the cause from which they proceed.

The appellant and appellees had entered into a lease agreement under the terms of which, in return for a grant to them of twenty (20) years certain and an optional period of an additional twenty (20) years, the appellees agreed to pay the appellant sums certain and to construct on the premises an apartment building and other structures. Under the terms of the agreement also, the appellees were granted the right to terminate the lease upon giving to the appellant one year's notice or making payment of one year's rent in lieu of such notice. When the appellees encountered economic difficulties, they gave the appellant notice to terminate the agreement within one year from the date of the notice.

Upon receipt of the notice of termination, the appellant demanded compensation from the appellees due to the failure of the appellees to construct the apartment building on the premises as was stipulated in the lease agreement. When the appellees refused to provide the compensation demanded, the appellant commenced the current action of damages.

After a trial in the Sixth Judicial Circuit Court for Montserrado County, a verdict was returned in favour of the appellees. A motion for a new trial having been denied, judgment was rendered confirming and affirming the verdict. From this judgment, an appeal was taken to the Supreme Court.

The Supreme Court rejected the contentions set forth by the appellant in the bill of exceptions and argued before the Court. On the trial court's sustaining of objections to certain questions propounded to the appellees and their witnesses, the Court said that some of the issues raised by the questions had not been raised in the pleadings and were therefore not relevant to establishing the truth or falsehood of the allegations or denials of the parties; and that as to others, the witnesses to whom the questions were asked were not the best evidence. The Court noted that under the best evidence rule, no evidence is sufficient which supposes the existence of better evidence.

With respect to the appellant's claim that she was entitled to damages since she and the appellees had agreed that the apartment building to be constructed was to cost between $50,000.00 and $75,000.00, the Court said that no such amount was stated in the lease agreement, and that it, the

Court, did not have the authority to go beyond the terms of the contract entered into between the parties or to add to the terms thereof. The Court observed that the costs stated by the appellant as constituting the value of the building which the appellees had allegedly failed to construct was an estimated cost arrived at by the appellant and not contained in the agreement. The Court held therefore that the amount stated by the appellant was speculative and uncertain, and that under the law of damages, special damages had to be specifically alleged and proved. The Court said that the appellants has failed to meet that standard and therefore could not recover the special damages demanded by her.

Finally, the Court opined that as the appellees had complied with the terms of the lease agreement in terminating the lease, the appellant could not demand damages, especially since she did not have a reversionary interest vested in her, at the time of the termination, which had been injured and which injury was necessary for any recovery. In view of the foregoing, the Court *affirmed* the judgment of the trial court.

Nelson W. Broderick appeared for appellant. *Joseph A. Dennis* and *John Mathis* of the A. Amos George Law Firm appeared for appellees.

MR. JUSTICE AZANGO delivered the opinion of the Court.

On the 24th day of June, 1976, plaintiff/appellant and defendants/appellees signed a lease agreement for the premises of plaintiff/appellant, known as lot Nos. 11 and 13, located in blocks 5 and 15, and situated and lying in Sinkor, City of Monrovia. The lease, for valuable consideration, was to last for a duration of twenty (20) years. Clause three (3) of the lease agreement provided that the LESSEES agreed to build on the demised premises, at the LESSEES' own cost and expense, apartment buildings with one or more stores, as determined by the LESSEES. The buildings were to be constructed of concrete and reinforced steel, in accordance with the plans and specifications to be approved by the Ministry of Public Works or such other agency of the government responsible for such matter. It was further expressly stated that at least one of such apartment buildings should be completed within five (5) years from the effective date of the agreement and that the remaining structures should be built at such times as determined by the LESSEES, according to their financial capability during the life of the agreement. The LESSEE were also responsible to make such further improvements on the said premises as they deem necessary.

In count five (5) of the lease agreement, it was provided that in the event the LESSEES found themselves unable to continue with the obligations of the lease, either during the original term of the agreement or during the optional period thereof, the LESSEES had the right to terminate the lease by giving the LESSOR one (1) year's written notice, or alternatively, by the payment of one year's rent.

Prior to the end of the first five (5) year period, the plaintiff/ appellant, together with her legal counsel, visited the defendants/ appellees at their place of business. During the visit, the appellees intimated their intention to terminate the lease agreement, as per clause five (5) of the said agreement. In addition to this notice, the defendants/appellees paid One Thousand ($1,000.00) dollars as one year's rent.

On the 25th day of June, 1981, counsels for plaintiff/ appellant wrote to appellees, wherein they acknowledged the conversation that ensued between the appellant and the appellees during the visit of the appellant to the appellees' place of business, and with specific reference to the termination of the contract due to economic reasons and by virtue of clause five (5) of the lease agreement.

Regarding the defendants/appellees' letter under reference, the appellant claimed that it was understood during the negotiation of the contract that the cost of the buildings to be constructed on the premises by the defendants/appellees was estimated to be between Fifty Thousand ($50,000.00) and Seventy-Five ($75,000.00) thousand dollars. She stated therefore that since the appellees intended to terminate the contract without constructing the buildings, she had suffered damages. She noted, however, that in view of the economic situation prevailing in the country, she (appellant) had claimed the nominal sum of Ten Thousand ($10,000.00) dollars as settlement for the damages she had incurred and suffered, in consequence of appellees failure to comply with the agreement and their notice to pursue the cancellation of the lease agreement.

On the 29th day of May, 1981, counsel for defendants/ appellees wrote counsel for plaintiff/appellant wherein he referred to the letters of June 25, and July 9, 1981 concerning the lease agreement between the parties, and appellant's claim of Twenty-Five Thousand ($25,000.00) dollars as damages, including the Ten Thousand ($10,000.00) dollars mentioned herein before, and an additional sum of two thousand ($2,000,00) dollars as counsel fee, as settlement of the damages alleged by the appellant. In the letter, the appellees' counsel reiterated that because of the economic situation in the country, as well as other unavoidable circumstances, the appellees were compelled to terminate the lease agreement. He therefore suggested that he and the appellees meet with the appellant at her earliest convenience, with a view to amicably settle the matter and thus avoid unnecessary court litigation.

Obviously, the communications exchanged between the parties were unsatisfactory to the appellant. As a result, she instituted this action of damages, claiming as special damages between Fifty Thousand ($50,000,00) dollars and Seventy-Five Thousand ($75,000,00) dollars, as well as general damages to compensate her for the loss and damage she allegedly sustained as a direct result of the alleged refusal and failure of the defendants/appellees to build the apartment buildings.

The defendants/appellees filed an eight (8) count answer in response to the complaint. In count two (2) thereof, they contended that in keeping with clause five (5) of the lease agreement, they had the unrestricted right to terminate the said agreement by giving the plaintiff/appellant one year's written notice or by the payment of one year's rent in lieu of such notice. They contended that in conformity with clause five (5) of the agreement, they had on June 25, 1982, given written notice to the appellant of the termination of the same, to take effect one year from the date of the aforesaid notice; that is, June 25, 1981 and July 2, 1982, respectively.

In count six (6) of the answer, the defendants/appellees categorically denied that the plaintiff/appellant had suffered great loss and damage to her reversionary interest, or that she had any right to an apartment building estimated at the cost of between Fifty Thousand ($50,000,00) Dollars and Seventy-Five Thousand ($75,000.00) Dollars, as contended in the complaint. The defendants/appellants asserted further that the amount between Fifty Thousand ($50,000.00) Dollars and Seventy-Five Thousand ($75,000.00) Dollars claimed by the plaintiff/appellant in the complaint was uncertain, contingent and speculative. They contended that clause 3 of the Lease Agreement, relied on by the appellant in making the claim to the aforesaid amount, did not state the estimated cost of the building or buildings which were to be erected. The amount between Fifty Thousand ($50,000,00) Dollars and Seventy-Five Thousand ($75,000.00) Dollars, they said, only partially meets the requirement of the law since the amount, having been specifically pleaded in the complaint, was susceptible of definite proof. That issue, as well as the many other legal issues raised, and which were resolved by the trial court, were ruled to jury trial.

During the December, 1985 Term of the Civil Law Court, Sixth Judicial Circuit, the trial commenced. After the production of witnesses by both parties, the trial culminated in favour of the defendants/appellees, with the jury returning a verdict of not liable on the 24th day of December, 1985. A motion for a new trial was filed, resisted by the defendants/appellees, argued, and denied by the court. Thereafter, the court entered a final judgment confirming and affirming the verdict of not liable. To this judgment, the plaintiff/appellant excepted and announced an appeal. The appeal having been perfected, the case is now before this august Body for its final adjudication.

In count one (1) of appellant's bill of exceptions, she contended that the trial judge erred in sustaining the objection of counsel for defendants/appellees to the following question propounded by the empaneled jury to co-defendant Nehme Eid:

"Ques: You said that the amount of Fifty Thousand ($50,000.00) Dollars was not included in the agreement. In other words, you did not mention the cost of 654 the building to be fifty or seventy-five thousand dollars. Please tell us if you had planned to build the house how much you think it would have cost?

To which question defendants/appellees object on the grounds:

1. Not the best evidence and the witness is not a builder, (2) hypothetical; (3) opinionative."

The court sustained the objection without indicating the grounds. The plaintiff/appellant argued however that the question propounded by the jury was well taken and should have been allowed since defendants/appellees' bone of contention throughout the trial was that the cost of the apartment building which was to be constructed on the leased premises was not stated in the lease agreement. The appellant argued further that if codefendant Nehme Eid had the genuine desire to construct the apartment building(s) on the leased premises, he was the best evidence to say what he intended the cost of the apartment building to be. The question, she said, was therefore not hypothetical or opinionative. Rather, she maintained, it was designed to elicit the true intent (or motive) of the defendants as to whether they in fact intended to construct an apartment building on the leased premises or not. Counteracting this argument, the appellees counsel maintained that the trial judge correctly sustained the objection on the grounds given. The counsel also asserted that as a matter of law, a point of contention must be first raised during the trial, passed upon by the trial court, and exceptions noted thereto before it can legally be included in a bill of exceptions for appellate review. They said that in count one (1) of the bill of exceptions, the appellant claimed that she noted exceptions to the court's ruling sustaining the objections of the appellees to the question propounded to the witness, but there is no indication in the records of exceptions having been taken to the ruling. If the trial court refused to note the exception, appellees argued, appellant should have called the court's attention to the alleged refusal in order for the trial court to pass upon it, so as to have same included in the bill of exceptions. Concluding, the appellees maintained that as the point was not passed upon by the trial court, count one (1) of the bill of exceptions did not meet the requirement for appellate review.

According to our Civil Procedure Law, 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. Rev. Code 1: 25.6 (1). Also, according to the same statute, a bill of exceptions is a specification of the exceptions made to the judgment, decisions, order, ruling, or other matter excepted to at the trial and relied upon for the appeal together with a statement of the basis of the exceptions. Rev. Code I: 51.7. The appellant, not having complied with these provisions, count one of the bill of exceptions is overruled.

In count two of the bill of exceptions, the appellant contended that the trial judge erred in overruling a question propounded to defendants' witness. The appellant stated in the said count that on the cross-examination of co-defendant Nehme Eid, he said that the lease agreement was signed by them in their individual capacities, and that the agreement had nothing to do with the corporation; yet, he also said that the business (corporation) was running. The appellant noted also that the defendants' witness, B. S. Chaugancy, had testified on the direct that whenever the annual rental was due, he, as comptroller, usually issued the check and paid same to the plaintiff. This, appellant said, necessitated her counsel putting the question to the witness on the cross-examination, to wit: "Ques: Please tell us against what account the checks were drawn that you prepared for the payment of the annual lease, that is to say, whether the check was prepared to be drawn on the account of the business for which you were comptroller or drawn from the personal account of Nehme Eid?" Counsel for defendants/ appellees objected to the question on the grounds: "(1) Entirely irrelevant and immaterial and not the issue raised in the pleadings and ruled to trial". The objections were sustained by the trial judge. Appellant contended that since co-defendant Nehme Eid has placed on record that the lease agreement was signed by them in their individual capacities and had nothing to do with the corporation, and witness B. S. Chaugancy had testified that he was Comptroller for the business (corporation) in which he was employed and was the one who usually issued the check for the payment of the annual lease money to plaintiff, it became necessary, under cross-examination, for witness B. S. Chaugancy to say on what account the check for the payment of the lease was drawn, i.e., whether from the account of the business (corporation) or from the personal account of co-defendant Nehme Eid. This question, appellant argued, was to test the truthfulness of co-defendant Nehme Eid's testimony as to whether the annual lease money was paid by the business corporation or by the individual defendants. The issue was therefore relevant and material to test the credibility, motive, inclination, interest and bias of co-defendant Nehme Eid.

Opposing count two (2) of the appellant's bill of exceptions, the defendants/appellees contended that issues that are not raised in the pleadings and passed upon by the trial court should not be introduced during the trial because they are irrelevant and immaterial to the points raised in the pleadings. Appellees argued that there was no question raised in the pleadings with respect to what account the checks issued by the appellees were charged, or whether said checks were charged to the personal account of the business or the private account of co-appellee Nehme Eid.

They contended, therefore, that the issue not having been raised in the pleadings and ruled to trial, the trial judge did not commit a reversible error in sustaining the objection on grounds of irrelevancy and immateriality.

The Civil Procedure Law provides 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. Civil Procedure Law, Rev. Code 1:25.4. In addition, this Court held in the case *Clarke v. Barbour*, 2 LLR 15 (1909) that courts will only decide issues joined between the parties and especially set forth in their pleadings. After reviewing the records and the questions propounded at the trial, it is our view that the contention of the defendants/appellees in count two (2) of their brief are well taken and therefore sustained as against count two of appellant's brief.

In count three (3) of plaintiff/appellant's brief, she contended that the trial judge erred in overruling a question propounded to defendants' witness B. S. Chaugancy. The records reveal that the appellant's counsel had asked the witness to state whether or not defendants had built and constructed one apartment building on the leased premises, in keeping with clause 3 of the lease agreement. However, counsel for defendants had objected to the question on the ground that he was not the best evidence, and that the defendants would be. The plaintiff/appellant maintained that the witness was competent to say whether or not the apartment building was built and constructed on the leased premises, or if he did not know, to say that he did not know, since he was under cross-examination. The question, appellant argued, was relevant and within the *res gestae* of the case, but that notwithstanding this, the court had sustained the objection, to the prejudice of the plaintiff/appellant.

In opposing this contention of plaintiff/appellant, defendant/ appellees argued that counsel for appellant has posed the following question to the witness: "Are you telling this court and jury that the lessees/defendants did build and construct the one apartment building on the said lease premises in keeping with clause three of the said lease agreement". The defendant/ appellees contended that the witness to whom the question was put was neither a party to the suit nor the lessee of the premises, and that therefore he was not the best evidence to say whether lessees had built the apartment building in keeping with clause three of the lease agreement.

Our statute states that the best evidence which the case admits of must always be produced, and that no evidence is sufficient which supposes the existence of better evidence. Rev. Code 1:25.6. It is our view that the objection being well taken, the ruling thereon, made by the trial judge should be sustained. Count three of appellant's brief is therefore overruled as against count three of defendants/appellees' brief.

In count four of appellant's bill of exceptions, she contends:

1.That it was improper for the trial judge to again orally charge the jury after charging them in his written charge on the minutes/records of the trial thereby rendering it impossible for counsel for plaintiff to except specifically to that portion of the charge prejudicial to plaintiff.

2. Since the lease agreement provided in clause five that notice of termination of the lease agreement must be in writing; counsel for plaintiff requested the trial judge to so charge the jury, but the trial judge failed and refused to do so, to the great prejudice of plaintiff.

3. Counsel for plaintiff requested the trial judge to charge the jury on which of the parties to the lease agreement terminated the agreement but the judge failed and refused to do so.

4. In their oral argument before the jury, counsels for defendants argued that the cost of the one apartment building that was to be built on the leased premises was not stated in the lease agreement and that therefore the plaintiff could not recover the cost of the said apartment building that was to have been built on the leased premises. The trial judge so charged the jury, although the estimated cost of the apartment building to be constructed on the leased property was stated at between Fifty Thousand ($50,000.00) and Seventy-Five Thousand ($75,000.00) Dollars in plaintiffs complaint, testified to by plaintiff and her witness, and never denied in defendants answer. The trial judge's charge to the jury on this request was prejudicial to plaintiff and constituted a reversible error together with the refusal of the trial judge to charge the jury on the concept of a breach of contract to build.

5. Counsel for plaintiff requested the trial judge to charge the jury on the ruling of his colleague, His Honour J. Henrique Pearson, in the disposition of the law issues and motion for summary judgment, wherein Judge Pearson ruled the case to trial by jury to determine the amount of damages plaintiff is entitled to. But the trial judge disregarded and ignored the request of plaintiffs counsel and the ruling of Judge Pearson and neglected and refused to charge the jury thereon to the great prejudice of plaintiff thereby committing a reversible error.

Continuing, appellant argued that the trial judge had erred in sustaining the appellees' contention that because the cost of one apartment building to be built and constructed on the leased further erred, she said, in charging the jury to that effect and in reiterating the same in his ruling on plaintiffs motion for a new trial and in the court's final judgment, in all of which the trial judge emphasized that the cost of the apartment building, estimated as between Fifty Thousand ($50,000.00) and Seventy-Five Thousand ($75,000.00) Dollars was uncertain, conjectural and speculative. The appellant contended that she and her witness had testified to the estimated cost of the building as being between fifty thousand ($50,000.00) and seventy-five thousand ($75,000.00) dollars and that the said estimate was based on clause three (3) of the subject lease agreement wherein it was stated that the subject apartment building was to be constructed on "concrete and reinforced steel and such other standard building materials, in accordance with plans and specification to be approved by the Ministry of Public Works, etc."

Against this argument, defendants/appellees contended that the appellant's allegation that the trial judge made an oral charge to the jury after he had given a written charge was false. They argued that the entire charge was written and clearly supported by the records of the trial court; and that in any case, the appellant had not stated what the contents of the oral charge to the jury were so as to afford the court the premises was not stated in the lease agreement, plaintiff could not recover. The trial judge opportunity to decide whether the alleged oral charge was prejudicial to the interest of the appellant. The appellees therefore maintained that the appellant, not having stated expressly the contents of the oral charge and the consequences thereof to the appellant, there was absolutely no controversy presented to this Honourable Court to pass upon. Further, the appellees asserted that count four (4) of the bill of exceptions was false, arguing that the trial judge had charged the jury appropriately with respect to the requirement of the law and to the effect that notice for termination of a written agreement must be in writing.

Moreover, they said, the contention that the trial judge had failed to indicate to the jury which party terminated the agreement was without legal merits, as it was solely within the province of the jury, who were the sole judges of the facts to make that determination. It was not the function of the court, they said, to dictate to the jury which party terminated the agreement in the action of damages for breach of contract, for to do so would have been a usurpation of the function of the jury. They argued therefore that the contention that the court should have instructed the jury which party terminated the contract was untenable.

The appellees further argued, regarding the allegations in count four (4) of the bill of exceptions, relative to the denial of the cost of the building, that the trial judge did charge the jury on the point in these words:

"However, during argument, defendants' counsel read a portion of his answer which denied the cost of the building. The maxim *falsus in uno falsus in ominibus* (means false in one false in all".)

Finally, also with reference to count four of the bill of exceptions, plaintiff/appellant argued that while on the witness stand as a witness in her own behalf, she testified that at the negotiations for the lease of the **land**, it was established that the apartment building would cost between Fifty Thousand ($50,000.00) and Seventy-Five Thousand ($75,000.00) Dollars, that this was corroborated by plaintiff's witness, and that the same was never denied by the defendants in their answer. Moreover, she said, clause three (3) of the Lease Agreement provided that the buildings shall be constructed of concrete and reinforced steel and such other standard building materials, in accordance with plans and specifications approved by the Ministry of Public Works or such other agency of the government thereafter having responsibility for such matters. This, she said, clearly indicated that the apartment building would be a substantial building. She therefore argued that since the cost of the apartment building, which was to be built at the lessees' expense, was not stated in the lease agreement, the estimated cost of the building, as stated in plaintiffs complaint and testified to by plaintiff and her witness, should be the basis for or criterion to use in determining the cost of the building and assessing the measure of damages. She asserted that she did not know of any lease agreement which provided for a building to be erected on the leased property at the lessees own cost and expense to state that the cost of the building to be stated in the lease agreement. Thus, she argued, the jury should have returned a verdict in her favour in a sum certain not less that Fifty Thousand ($50,000,00) Dollars and not exceeding Seventy-Five Thousand ($75,000.00) Dollars, as they may have determined.

Having stated the facts, as they appear to us from the records, the law and circumstances, and studied the plaintiff/ appellant having prayer to this court to reverse the judgment of the trial court, render final judgment in her favour, and awarding her a sum certain not less than Fifty Thousand ($50,000.00) Dollars to compensate for her reversionary interest and right in and to the apartment building which the lessee had failed, refused, and omitted to build and construct on the leased and demised premises, we must decide whether the appellant can recover under the legal principle of reversion at this point in time.

Taking recourse to the lease agreement, subject of this action, we note that the contending parties agreed, as to count two (2) of the said agreement, on the following:

1. To have and to hold the above described and demised premises unto the said lessees jointly and severally, with all rights, easements, and appurtenances thereto and otherwise appertaining unto the said lessees, for the full and complete period of twenty (20) years certain, commencing

from the 24th day of June, A. D. 1976, and including the 23rd day of June, A. D. 1996; yielding and paying there for unto lessor the rental of one thousand ($1,000.00) dollars per annum for the first ten (10) years and One Thousand Five Hundred ($1,500.00) dollars per annum for the second ten (10) years, to complete the twenty calendar years certain, granted under this lease agreement; it being expressly understood that at and upon the signing and in sealing of this agreement, lessees will pay unto lessor the full sum of One Thousand ($1,000.00) Dollars as rental payment in advance for the first year of the first ten (10) years of this agreement, the receipt whereof lessor doth thereby acknowledged; and thereafter lessees will pay unto lessor annually in advance the annual rental payments for the remaining first ten (10) years and thereafter, also annually in advance, the annual rental payments for the second ten (10) years, thereby completing the annual rental payment for the twenty (20) years certain, granted under this agreement, with an optional period of twenty (20) calendar years, hereby granted by lessor unto lessees, after the completion and termination of the twenty (20) calendar years period certain granted under this agreement, beginning from the 24th day of June, A. D. 1976 up to and including the 23rd day of June, A. D. 1996, up to and including the 23rd day of June, A. D. 2016; yielding and paying therefor unto lessor the rental of Two Thousand Five Hundred ($2,500.00) Dollars per annum for the first ten (10) years and Three Thousand Five Hundred ($3,500.00) Dollars per annum for the second ten (10) years, all payable annually in advance during the life of this agreement.

If by operation of law and logical conclusion, the terms and conditions of the present lease agreement would not expire until 1996, with a possible inclusion for consideration, the optional terms that will commence on the 23r d day of June, 1996, and end on the 26th day of June, 2016, we wonder whether plaintiff/ appellant's claim for damages, based upon a reversionary interest could be maintainable at this juncture? Certainly not, but especially when there is no reversionary lease agreement duly executed by the parties and put into operation.

It is a recognized general principle of law that when the estate of a landlord is leased, the tenant becomes the absolute owner of the demised premises, for all practical purposes, during the existence of the lease and for the term granted, and that the landlord's right becomes confined to a reversionary interest. it is also a recognized principle of law that a landlord may maintain an action on the case for injuries to the demised premises which affect his reversionary rights, no matter how inappreciable the injury may be. However, in the instant case there is no reversionary interest between the contending parties which have been breached and upon which this action would lie. Indeed, the injury to a reversionary interest which is complained of must be of such a character as to affect the reversion. In other words, the injury to the reversion must have been sufficiently disclosed by the pleadings which averred acts done by the defendants constituting an injury to the freehold. In such a case, there need not be any formal statement that the reversion was injured.

Reversion is the residue of an estate left in the grantor to commence possession after the determination of some particular fate granted by him. It is the return of **land** to the grantor and his heirs after the grant is over. The reversion is a vested interest of estate and arises by operation of law only. BOUVIER'S LAW DICTIONARY 2954.

A reversion is an inheritable estate which descends to the heirs of the creator of the particular estate upon which it descends, immediately upon his death. 77 ALR 324, text at p. 326; *see* also 9 R.C.L. 39, 40 and 65.

The rule obtains when one owning the fee simple conveys or devices it to another for life, and the remainder to a third person in fee. Since, in such a case, the owner has parts with all his interest, the estate cannot under any circumstances return to him. 9 R.C.L., § 32.

"A reversion is the remnant of an estate continuing in the grantor indisposed of after the grant of a part of his interest. It differs from a remainder in that it arises by act of the law, whereas a remainder is by act of the parties. A reversion moreover is the remnant left in the grantor. . ." 77 ALR 1005.

A remainder is defined as what is left of an entire grant of lands or tenements after a preceding part of the same grant or estate has been disposed of in possession, and whose regular expiration the remainder must await. (77 ALR 324, text at p. 330, quoting 1 MINOR ON REAL PROPERTY (2nd. ed,) § 702. Reversions are always vested estates corresponding to vested remainders. *Ibid.*

This Court has held that all deeds, agreements or contracts relating to the sale, transfer, mortgage, exchange or otherwise of real property shall be in writing, and our statute provides that such documents shall be registered and probated within four (4) months from the date of execution. *Massaquoi and Massaquoi v. Republic et. al*, 8 LLR 115 (1943). If any property deed is not probated and registered as provided by law within four (4) months after its execution, the title of the owner to such real property shall be void. *Shell Company Limited v. Ghandour*, [1968] LRSC 17; 18 LLR 298, 306 (1968).

This Court has also held that special damages must be specifically pleaded in the complaint and proved at the trial. *Firestone Plantations Company v. Greaves,* [1947] LRSC 5; 9 LLR 250

(1947); that special damages cannot be awarded unless alleged and proven. *Townsend v. C. V. Dyer Memorial Hospital, [1952] LRSC 26; 11* LLR 288 (1952); that uncertain, contingent or speculative damages cannot be recovered, and that special damages must be specifically alleged and proved. *Franco Liberian Transport Company and Sautet v. Bettie,* 13 LLR 318 (1958); and that special damages must be specifically pleaded and proved at the trial to justify a recovery therefor, and that damages to be recoverable must be certain both in their nature and in respect to the cause from which they proceed. *Brant, Willig & Company v. Captan*, [1974] LRSC 29; 23 LLR 98 (1974). We have also said that the Court cannot go beyond the terms of a contract to enforce an understanding therein. *Collins v. Elias Brothers, [1952] LRSC 21; 11* LLR 258 (1952).

In view of what we have observed from the records and the briefs of the contending parties, including the arguments, and in consideration of the facts, circumstances and the laws applicable herein, none of which we have inadvertently overlooked, it is our considered opinion that the verdict of the empaneled jury and judgment of the lower court, being sound, and the trial being regular, same should not be disturbed. Hence we hereby confirm and affirm same to all intents and purposes.

The Clerk of this Court is hereby ordered to send a mandate to the court below informing it of this judgment and instructing it to resume jurisdiction over the cause of action and enforce its judgment. Costs are hereby ruled against the appellant. And it is hereby so ordered.

Judgment affirmed

Jackson et al v Richards [1972] LRSC 46; 21 LLR 328 (1972) (24 November 1972)

ELIZA JACKSON, EDITH HERRON, NETTIE BETES, RICHARD HOFF, and T. A. CAPEHART, by and through EDWIN L. MORGAN, LAURA KING, and EMILY JACKSON-WILLIAMS, Administrator and Administratrixes of the Estate of Z. A. JACKSON, deceased, Appellants, v. J. C. IRONS, S. PETER WILSON, J. BENEDICT MASON, EDWARD McCLAIN, WILLIAM H. KETTER, and JAMES L. YORK, Trustees and Members of the African Methodist Episcopal Church of Monrovia, CHARLES HANSFORD, JEREMIAH HANSFORD, and SAMUEL RICHARDS, Appellees.
APPEAL FROM THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued November 8, 1972. Decided November 24, 1972.

1. An attorney of record for one party may sign the pleadings for all joint parties when no hostile interests exist among them. a Since a defendant enjoined by a preliminary injunction may move at any time to vacate or modify it, mislabeling such motion to vacate is not a ground for its denial. 3. An application to modify or vacate a judgment is always addressed to the judicial discretion of the court. 4. When the principal action to try title is withdrawn, the injunction proceedings ancillary to the action of ejectment cannot stand alone. 5. When injunctive relief relating to realty is sought, title must be clearly established as well as the irreparable nature of the injury to be thus avoided for which the remedy at law is rendered inadequate. 6. The granting of injunctive relief rests within the judicial discretion of the judge applied to for relief.

Appellants instituted injunction proceedings and an action of ejectment but in the same term of court withdrew their ejectment action. The appellees soon thereafter moved to dismiss the injunction since it was only

ancillary to ejectment proceedings. Appellants thereupon reinstituted the action in ejectment. The lower court granted the motion and after some legal maneuvering, including a motion to vacate the decree, appellant in effect appealed from the court's decree. The decree was affirmed. Dessaline T. Harris for appellants. Moses K. Yangbe

for appellees. MR. JUSTICE HENRIES delivered the opinion of the Court. The appellants filed an action of injunction, along with an action of ejectment, in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, sitting in its June 1972 Term, averring that they are the legal heirs of the late A. Z. Jackson of Monrovia, and owners of Lot Nos. 13, 14, and is, located in the City of Monrovia, and that the appellees are collecting rents from the tenants occupying these premises. They, therefore, requested the court to enjoin the appellees from collecting and receiving any rental and other moneys accruing from the property, and asked that such moneys be collected by the sheriff and held in escrow until title to the properties is settled. On June 16, 1972, the appellants withdrew their action of ejectment, and on June 21, 1972, the appellees moved to dismiss the injunction on the ground that since the ejectment action to which the injunction was ancillary had been withdrawn, the injunction proceedings had no legal or factual basis, and was intended to embarrass them indefinitely. The motion was resisted on July 15 by the appellants who, on July 24, refiled the ejectment action. The judge granted the motion on August 2, exceptions were taken and an appeal announced by counsellor Joseph Findley in the absence of appellants' counsel. On Au-

gust 3, appellants requested the judge to rescind his ruling on the motion, since it appeared that he was unaware of the refiling of the ejectment suit on July 24. When this procedure was attacked by the appellees, the appellants withdrew their announcement of an appeal and, after the judge had denied the request, announced an appeal again. It is from this reaffirmation of the court's decree that the appellants have appealed. The appellants contended that there were two parties defendant, one being the trustees of the African Methodist Episcopal Church, and the other being Charles and Jeremiah Hansford ; and since they filed separate answers, the motion to dismiss, which was signed by counsel for the Church, was not the joint act of the defendants, even though the Hansfords had filed and later withdrawn a motion for severance. The manner in which the pleadings were signed appears below. ( ) "The A.M.E. Church, et al., Defendants, (Sgd.) M. K. YANGBE, Co u nsello r-at-Law." (2) "Charles Hansford and Jeremiah Hansford, Co-defendants, by and through the Dukuly & Perry Law Association, (Sgd.) M. M. PERRY, Co unsellor-at-Law." After the withdrawal of the motion for severance, a motion for modification and a motion to dismiss were filed, signed by M. K. Yangbe. "The above-named Defendant, by and through their counsel, (Sgd.) M. K. YANGBE, Co unsello r-at-Law." The record also shows that both lawyers jointly announced their representation of all of the defendants in arguing the two motions. It is clear to us that the withdrawal of the motion for severance indicated a desire on

the part of the Hansfords to be heard jointly with the other defendants, and that the motions filed subsequent to the withdrawal showed that the defendants had consolidated or merged their defenses. It is not necessary that all the lawyers representing parties sign the pleadings to indicate that it is their joint act. The Civil Procedure Law requires that at least one attorney of record sign the pleadings, L. 1963-4 ch. III, § 9o4.(4), and that is true for whatever paper is filed. Id., § 8oi (4) . It does not appear that the interests of the appellees are hostile, or that the action against them is not based on the same legal liability. The Civil Procedure Law covers such situations. "When actions involving a common question of law or fact are pending before a court of record, the court, upon motion by any party or sua sponte, may order a joint trial of any or all the matters in issue or the consolidation of the actions; and it may make such other orders concerning proceedings therein as may tend to avoid unnecessary costs or delay." Id., § 603 (1) . "The court in which the actions are consolidated or issues or claims tried together may make such orders concerning the proceedings therein as may tend to avoid unnecessary costs or delay." Id., § 6o3 (2). In view of the record before us and the authority cited, the contention of the appellants is held not to be tenable. The appellants also argued that the motion to dismiss the injunction should have been denied because it did not state any of the statutory grounds

for dismissal of an action and cited the Civil Procedure Law in support of their position. IC I. Time; grounds. 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 : (a) That the court has not jurisdiction of the subject matter of the action; (b)

That the court has not jurisdiction of the person ; (c) That the court has not jurisdiction of a thing involved in the action; (d) That there is another action pending between the same parties for the same cause in a court in the Republic of Liberia; (e) That the party asserting the claim has not legal capacity to sue." Id., § IO2 (1). However, the section of the Civil Procedure Law controlling preliminary injunctions provides that "a defendant enjoined by a preliminary injunction may move at any time on notice to the plaintiff to vacate or modify it." Id., § 765 ( ). It is clear that section 11oz applies generally to all actions, while section 765 relates specifically to injunctions and, therefore, is more applicable to the question in issue. The fact that appellees' motion to dismiss was not designated as a motion to vacate the injunction is in our opinion insufficient to have deterred the trial judge from dismissing or vacating or dissolving the injunction if he thought it proper to do so. Cf. Wahab v. Adorkor, [1954] LRSC 30; 12 LLR 152 (1954.). The provisions of the Civil Procedure Law are to be construed to promote the just, speedy, and inexpensive determination of every action. Civil Procedure Law, supra, § 4. Moreover the incorrect designation of the kind of motion applied for shall not be ground for its denial. Id., § loos. Under the circumstances, appellants' contention is not sustained. The appellants also argued that since the trial judge granted the motion on the ground that the main ejectment suit had been withdrawn, he should have rescinded his ruling after having been informed that the action had been refiled and, therefore, his refusal to do so was error. In order to properly determine this issue, it is necessary to put the facts in their true perspective. The motion to dismiss was filed on June 21, arguments by both parties were heard twenty-four days later, on July 15; the main action of ejectment was refiled on July 24, nine days after appellants had resisted and argued the motion; the judge

ruled on the motion on August 2, nine days after the refiling date; and on August 3, appellants informed the judge of the , refiling of the main suit. It seems clear to us that the appellants did not act with reasonable diligence in either refiling their action or informing the judge of the refiling. Furthermore, the withdrawal of the ejectment action was only one of the grounds upon which the motion was dismissed. A judge's decision on a motion must be based on the issues raised and the circumstances existing at the time the motion and resistance

were argued and submitted for ruling. Issues which were never raised during a trial cannot be considered after the rendition of a judgment. The fact that appellants' counsel was not present when the ruling was given does not justify the rescission of the decree. In the absence of newly discovered evidence, all he could have done if he were present was either to acquiesce in, or to except to, and announce an appeal from, the ruling; and the latter was done by the counsel who took the ruling. Furthermore, the granting or refusal of an application to open, modify, or vacate a judgment is within the judicial discretion of the trial court. 3o A AM. JuR., Judgments, § 632. The final issue raised by the appellants was that the judge's ruling on the motion was erroneous. The ruling was based on the ground that an action of injunction is ancillary and that one who applies for an injunction in connection with realty must stand on the strength of his title in a suit separate from the ancillary injunction action. Where the principal action to try title is withdrawn, the ancillary action must fall. Equity will not grant an injunction to prohibit an invasion of real property where the petitioner's title is uncertain. Johnson v. Powell, [1934] LRSC 32; 4 LLR 221 (1934) ; Moore v. Mensah, i i LLR 339 (1 953). Let us examine the situation in which the appellants have come to equity, for he who comes to equity must

come with clean hands. At the outset of the case appellants claimed that they were the heirs of Z. A. Jackson, who died intestate in 1918, and who acquired title to several parcels of land in the City of Monrovia from T. N. Watson, J. F. Poindexter, and J. H. Watson. The deed upon which the appellants claim ownership to the property occupied by the A.M.E. Church of Monrovia, and its tenants whom they seek to enjoin, is essential. "Know all men by these presents, That we, T. N. Watson, J. H. Watson, J. F. Poindexter, heirs of the late Colonel T. Watson, of the County of Grand Bassa and Republic of Liberia, heir of Ex-President D. B. Warner and Rachel Warner late of the City of Monrovia in the County of Montserrado and Republic of Liberia, for and in consideration of the sum of twelve hundred fifty dollars ($125o.00) paid to us by Z. A. Jackson of the City, County, and Republic aforesaid (the receipt is hereby acknowledged) do hereby give, grant, bargain, sell and convey unto the said Z. A. Jackson, his heirs and assigns all our rights and titles in Lot Nos. is, 16 in Kru Town, Lot No. R. and S. on Water Street, (2) Two Town lots Nos. 295 and 296 on Front Street, Lot No. 317 adjoining the lot of the late Henry Cooper Farm, Lot Nos. 13, 14, 15, situated on Benson Street and all other lots situated in the City of Monrovia that we have any right and title to with the buildings thereon and all the rights, privileges and appurtances to same belonging, situated in the City of Monrovia in the County of Montserrado and Republic of Liberia, and bearing the authentic records of said City the Nos. 15, 16, R. and S., 295, 296, 317, and Nos. 13, 14 and 15 and bounded and described as follows: Commencing at the junction of Benson and Clay Streets thence running in a line North 54' West 715 feet to a point; thence running in a line South 36' West 1,220 ft. to a point; thence running in a line South 54' East 715 ft. to a point;

and thence running in a line North 36' east 1 220 ft. to the place of commencement and
containing 20 acres (972,3oo sq. ft.) of land and no more. "To have and hold the above granted premises to the said Z. A. Jackson
his heirs and assigns to his and their use and behoof forever. "And we the said T. N. Watson, J. H. Watson and J. F. Poindexter,
heirs of the late Colonel T. Watson and our heirs, executors, and
administrators do covenant with the said Z. A. Jackson his heirs
and assigns that we were lawfully seized in fee simple of the aforegranted
premises; that they are free from all encumbrances; that
we have good right to sell and convey the same to the said Z. A. Jackson his heirs and assigns forever as aforesaid ; that we will
and our heirs, executors and administrators shall warrant and defend the same to the said Z. A. Jackson his heirs and assigns forever
against the lawful claims and demands of all persons. "True and certified copy, J. WONGBE. "In witness whereof we have hereunto set
our hands and seal this fourth (4th) day of December, 19o8. "T. N. WATSON, J. F. POINDEXTER, J. H. WATSON. "Signed, sealed and delivered
in the presence of, CHAS. INNIS W. N. SCOTT JOHN A. Sims." The grantors, according to the deed, were heirs of President Daniel B.
Warner, yet, in the history of the case appellants declared that President Warner died leaving two daughters, Mary Schweitzer and
Rebecca

Demery; that Rebecca had only one issue, Gussy, whom Z. A. Jackson married. Gussy Jackson predeceased
her husband, and he in turn died before his mother-in-law. Before their deaths Rebecca, in 1904, sold the lot on the corner of Benson
and Clay Streets to Z. A. Jackson, and later sold the same lot to the late Colonel Isaac Whisnant. There is no indication as to how
the grantors became heirs of President Warner or how they acquired title to the various properties which they sold to Z. A. Jackson.
Perhaps this was done in the ejectment action which is now pending. In any event, the second paragraph of appellants' summary of
the case concluded : "All in all, when Z. A. Jackson died, he was possessed of the several pieces of landed properties in his deed,
the deed on which this action was instituted." The properties to which reference was made are lots 15 and 16 in Kru Town; lots R
and S on Water Street, two town lots 295 and 296, on Front Street; lot 317 adjoining the lot of Cooper's farm ; lots 13, 14, and
15 situated on Benson Street; and all other lots situated in the City of Monrovia. It is important to observe that all of these lots
were described in, and conveyed under, a single deed. Diligent research has revealed that this is the first time in the history of
this Court that such a deed has been exhibited to it. It is not certain whether the lot sold to Z. A. Jackson by Rebecca Demery is
included among the lots described in the deed, but appellants' counsel in his argument before this bar did attempt to trace the area

comprising the property allegedly owned by Z. A. Jackson from the lot situated on the corner of Benson and Clay Streets, previously owned by Mrs. Demery. As for the appellees, A.M.E. Church, they exhibited deeds for : Lot No. 20, from B. J. K. Anderson, dated 1921; Lot No. Is, from E. A. Snetter, dated 1922; Lot No. 21, from Geo. H. Vanjah Dimmerson, dated 1924; Lot No. 14, from F. E. R., Gabriel M., and Elijah H.

Johnson, dated 1924; Lot No. 19b from Robert Johnson, dated 1924; Lot No. 19, dated 1925, from John W. Pritchard. Appellees' total acreage under these deeds is 45% acres. They have no deed for Lot No. 13, one of the lots which appellants are claiming, and there is no indication that their lots numbered 14 and 15 are the same as appellants' lots numbered 14 and 15, especially since there are two lots numbered 15 in appellants' deed. Thus we have a situation in which appellants, on the one hand, claimed ownership without alleging the nature and character of their ownership of several parcels of land, located in different areas of Monrovia, and conveyed in one deed, asserting that the action of injunction was confined to lots 13, 14, and 15, but being unable to say definitively who the occupants are of these lots, or showing with any degree of certainty where the lots began and where they ended. On the other hand, appellees have produced deeds to the property which they allegedly own and of which they have been in open and notorious possession for about forty years. After the main action of ejectment had been withdrawn there was nothing which tended to establish appellants' ownership of the realty referred to in the action of injunction. Where the complainant fails to proceed with diligence with the action at law in aid of which the injunction has been granted, the writ may be dissolved. 28 AM. JuR., Injunctions, § 16. For "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." Moore v. Mensah,ii LLR 339, 344 (1953). Injunction will issue only at the instance of a party possessing right or title to the interest to be protected." Pennoh v. Pennoh, 13 LLR 5o4 (196o). Where realty is involved, the essential element of title, not ties of blood, must exist to warrant the granting of injunctive relief. Given the doubtfulness of appellants' title, their in-

ability to locate with certainty Lot Nos. 13, 14, and i 5, and the uncertainty of their occupants, the trial judge did not err in vacating the injunction where the complainants' right or title was doubtful or disputed. 28 AM. JuR., Injunctions, see § 26. And neither will equity interfere where there is an adequate remedy at law. Nimley v. Cole, 13 LLR 356 (1959). There has been no proof that the injury threatened to be done is irreparable. The mere assertion that apprehended acts will

inflict irreparable injury is not enough. The complaining party must allege and prove facts from which the court can reasonably infer that such would be the result. 28 AM. JuR., Injunctions, § 47. Finally, injunctive relief is not given as a matter of course. The granting of it rests in the sound discretion of the court to be exercised in accordance with well-settled equitable principles and in the light of all the facts and circumstances in the case. 28 AM. JuR., Injunctions, § 35. And the exercise of such discretion by a court of equity in granting or denying injunctive relief will not be disturbed on appeal unless an abuse of such discretion is established. Coleman v. Beysolow, [1955] LRSC 8; 12 LLR 234 (r955). There has been no indication of abuse of judicial discretion. In view of the foregoing, the decree of the trial judge dissolving the injunction is affirmed, with costs against the appellants. And it is so ordered.
ziffirm ed.

Hill et al v Parker [1960] LRSC 24; 13 LRSC 556 (1960) (15 January 1960)

I. J. HILL and PATRICIA M. HILL, Named Executrices of an Instrument Offered for Probate as the Last Will and Testament of the Late Jestina A. Jackson Hill, Appellants, v. SELINA. MALINDA PARKER, Appellee. APPEAL FROM THE PROVISIONAL MONTHLY AND PROBATE COURT, MONTSERRADO COUNTY.

Argued November 17, 18, 1959. Decided January 15, 1960. 1. Entry of a caveat against the probation of a will does not authorize the suspension of proceedings for probate of the will pending the filing of objections thereto. 2. When a caveat has been entered against the probation of a will, probate proceedings may not properly be conducted without affording objectants an opportunity to appear. 3. A conveyance with unity of interest, time, title and possession will be construed as creating a joint tenancy among the grantees. 4. A joint tenancy cannot be partitioned solely by testamentary disposition of a tenant thereof. 5. Undue influence in the making of a will is influence which compels the making of a testamentary provision through inducing an emotion which the testator is unable to resist. 6. No prescribed form of phraseology need be adhered to in objections to the probate of a will.
7. Courts should not decide substantial issues upon immaterial technicalities. 8. A witness cannot be questioned as to credibility on direct examination unless an issue has been raised as to the credibility of the witness. 9. A hypothetical question may not ordinarily be asked of a non-expert witness on cross-examination. 10. Before a witness may properly be questioned concerning a particular business transaction, a foundation of proof must be established to show the existence of a business relationship between the parties thereto.

11. Notice is required as a prerequisite to the recall of a witness to the stand. 12. After both parties to a trial have concluded presentation of testimony and rested thereupon, the court, in the exercise of sound discretion, may properly deny an application to recall a witness to the stand.

On appeal from a judgment upon a jury verdict denying admission to probate of an instrument offered as a will, judgment affirmed. R. F. D. Smallwood Cooper for appellee.

for appellants.

Momolu S.

delivered the opinion of the

Court. From the records certified before us, Jestina A. Jackson Hill of the Township of Arthington, Montserrado County, Republic of Liberia, is purported to have executed a last will and testament on March 16, 1939, on which instrument the names of M. J. Moore and Lilian G. Taylor appear as attesting witnesses. It appears further that the said purported testatrix also executed two codicils to the aforesaid will on the same day and date; and a third one was executed in the month of January, 1948. For reasons unknown, neither of these codicils shows the names of any attesting witnesses. Jestina A. Jackson Hill departed this mortal life in the month of August, 1957. Following her demise, Selina Malinda Parker, daughter of S. M. Parker and niece of the decedent, filed a caveat in the Provisional Monthly and Probate Court, Montserrado County, against any court action on any instrument offered thereat for probate purporting to be the last will and testament of the deceased. In September of the same year, I. J. Hill and Patricia M. Hill, both of Montserrado County, petitioned the Probate Court for permission to prove and probate instruments purporting to be the last will and testament of Jestina A. Jackson Hill, deceased, which instruments were sealed in two envelopes. Selina Malinda Parker was advised by the court of the petition thus made, but before the objectant filed her objections according to the caveat, the court undertook to proceed by a method altogether strange in the sight of the law by attempting to prove the now contested will in the absence of the caveator ; and on November 20, 1957, one James E. Moore was called to the stand and testified to the genuineness of the signatures of the testatrix and M. J. Moore, one of the attesting witnesses. Proof of the will stopped there because no other

witness was available. It seems to be a novelty to observe such procedure in the face of the caveat thus filed
and the strong language employed by this Court in Caranda v. Fiske, 13 L.L.R. 154 (1958)--a case from the same Probate Court. Yet the same Probate Commissioner had the audacity to disregard the principles of law
so recently laid down by this Court in that opinion. Still no one knows what effort would have been employed to prove the signatures
and handwriting of the purported testatrix and attesting witnesses to the will, who had all died before this time, if the petitioners
had been privileged to produce the complement of witnesses required according to law. The further proving of the will being suspended,
remained suspended up to the filing of objector's objections, the subject of this case. Such procedure has no authority whatever
in our law. However, under our statutes, even if proof of the will had been completed, the objectant would have still enjoyed the
right to file objections before the instrument was offered in probate; and if that right was not granted to her, and no fault was
laid at her door, the possibility would have still existed for her to enjoy her right under the law by recourse to this Court. Since
the proving of a will against a caveat filed would serve no benefit if the will could be subsequently contested and declared invalid,
it makes no sense to have it proved by witnesses before objections are filed and the contest determined. After the filing of the
objections, pleadings progressed up to the surrejoinder, and the case took its ingress into the Circuit Court of the Sixth Judicial
Circuit, Montserrado County, for trial by a jury. Law issues were disposed of, and the jury returned a verdict setting aside the
will and declaring it invalid. A motion for new trial was thereafter filed by respondent Patricia M. Hill, and was denied by the
court. Respondent noted exceptions, and after rendition of judgment affirming the verdict of the jury, the case came before us on
a bill of exceptions con-

taining seven counts which we shall deal with later in this opinion. In our review of the records in this case, a document has claimed our attention
which is not a part of the bill of exceptions ; but because
of the importance which we attach to the said document, we have felt it necessary to make some comments thereon before going further,
since it seems to comprise the ground of the said objections. That document is the last will and testament of the late Randolph H.
Jackson. According to it, Randolph H. Jackson, the father of the purported testatrix and the grandfather of the objectant, now appellee,
devised his property to his three daughters in strong and unambiguous words as follows : "Second : I give and bequeath to my three
daughters, S. M. Parker, Jestina 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 Leymore Jackson as a homestead for them. "Third : I give and bequeath
all my real estate not disposed of during my lifetime to my three daughters. The real estate at Monrovia, that is, the store on waterside
now occupied by P. Z. Company and the retail shop occupied by R. & H., are to be kept rented and proceeds equally drawn after the

expense of keeping up the places are deducted. "Fourth : I give and bequeath to my two daughters, S. M. Parker and Jestina A. Hill, my house on Broad Street known as Jessie Sharpe's house." The will embodying the foregoing bequest was duly registered and probated without objections on March 2, 1914, in the Provisional Monthly and Probate Court, Montserrado County. It created an estate in joint ten-

ancy because all of the unities required by law to coexist were formed at one and the same time.
"To create a joint tenancy there must coexist four unities : (t) unity of interest; (2) unity of title; (3) unity of time ; (4) unity of possession ; that is, each of the owners must have one and the same interest, conveyed by the same act or instrument, to vest at one and the same time, except in cases of uses and executory devises ; and each must have the entire possession of every parcel of the property held in joint tenancy as well as of the whole." 23 CYC. 484-85 Joint Tenancy. Thus, by the will of Randolph H. Jackson, Jestina A. Jackson Hill, S. M. Parker and Eliza R. Jackson enjoyed devises under the same right and title and became joint tenants of the whole property. After a period of time, Eliza R. Jackson died without heir, and S. M. Parker also died leaving one heir, Selina Malinda Parker. But this heir could exercise no absolute claim in the estate because Jestina A. Jackson Hill still survived ; and under the right of survivorship, as the only surviving tenants, she and her niece, Selina Malinda, became possessed of the whole estate. Again, we cite an authority in support of this principle : "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 conveyed 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." 23 CYC. 485 Joint Tenancy.

In joint tenancy we have a very peculiar estate, so peculiar that common law writers exercise every degree of diligence in differentiating the close and technical difference between this estate and one held by tenants in common, and for no other purpose than to clarify the niceties of the law so that the interest of the parties concerned may be conserved to the fullest extent. But estates held by

tenants in common are not so strange because, in them, the right of survivorship does not exist. At the death of Jestina A. Jackson Hill, she attempted to devise the property held in joint tenancy under the will of her late father, Randolph H. Jackson, to separate and distinct persons, not heirs in any form of any of the tenants in the estate; whereas, Selina Malinda Parker survives

her as the only heir to Randolph H. Jackson's estate. Because of this attempt on the part of the testatrix, the objections were raised against the probate of the said last will and testament. But it is well settled that where a joint tenancy exists, on the death of one of the joint tenants, the survivors take the whole estate free from any charges on the property made by the deceased tenant; and on the death of the last survivor, the whole goes to his heirs or personal representatives. It is also settled law that a joint tenancy cannot be severed by will of one of the tenants. It was our endeavor to clear away all of the ambiguities which may have surrounded the question of the property that was attempted to be devised by the testatrix, and we feel that in our effort to explore all of the phases in connection therewith, we have not failed to make it clear that the property in question was originally owned by Randolph H. Jackson, the grandfather of Selina Malinda Parker, who is now the only surviving heir of the said late Randolph Jackson. Jestina A. Jackson Hill, Randolph Jackson's daughter, and an heir of his estate, did not have the legal right to devise the said property by will so long as her co-tenant, Selina Malinda Parker, survives. Her said will therefore became the proper subject for objections. The next question that has aroused interest and concern and which we feel should also be considered before entering upon review of the bill of exceptions, is the question of the answer filed by. I. J. Hill, one of the respondents to the objections, and one of the petitioners who offered the will in question for probate. The records show substan-

tially that respondents below filed separate answers. Respondent I. J. Hill averred in her answer that, because the allegations set forth in the objections are sound in fact and law, she could not support the purported will, regardless of the fact that she had been nominated therein as an executrix to defend the same. She also alleged in her said pleading that, before the demise of the purported testatrix, she called respondent Patricia M. Hill, and requested her to produce her last will and testament that she had taken away unsolicitedly from the home ; and this she alleged further that Patricia M. Hill refused to do until after the demise of the testatrix. Pleading further, she alleged that such an act on the part of the respondent, Patricia M. Hill, convinced her that the will which they had presented to the court for probate, was not the original will of the testatrix, and that she had every right to believe the fact that the signature appearing thereon was not the genuine signature of the purported testatrix. Continuing, she alleged that she is aware of the fact that the homestead property thus attempted by the said will to be devised is the property of the late Randolph H. Jackson, and could not be willed to anybody by the testatrix ; and that the fact that testatrix, knowing this particular homestead to be the homestead of her late father, nevertheless attempted to devise the same, is evidence of the fact that undue influence was exercised over her by Patricia M. Hill, one of the devisees under the fraudulent will. Concluding her answer, she further alleged that, since Patricia M. Hill was not related by blood to the

purported testatrix, she could not be preferred in law against the legal rights and title of the objector, Selina Malinda Parker, decedent sister's child, who holds equal right, title and possession to the property in question, as the only surviving heir since the demise of the testatrix. Finally, she alleged that, upon those premises, she felt justified to state that the purported will was made under undue influence--especially so when, during the natural

lifetime of the testatrix, respondent Patricia M. Hill made known the contents of said will to other persons including I. J. Hill. The answer of I. J. Hill, thus filed, forms a part of the records of this case and therefore should not be disregarded in the consideration of the case ; and for that reason we have taken the pains to review the allegations made therein, so that a complete outline of the facts surrounding would be made more apparent. At the hearing of the case below, I. J. Hill took the witness stand for the objectant; and in her statement in chief, testified in these words : "Mrs. Jestina A. Jackson Hill was the half-sister of mine. After she moved to Monrovia and was down here for one or two years, she went to my home and said that she had something to tell me. There she took me in the room and told me that she made a will. 'I left you as executrix with Passie M. Hill to assist you. I know that Passie cannot fight against the estate for the Jackson's property, because she is not a Jackson ; she is a Hill ; but I am leaving a Jackson to fight for my will to be probated. You and Passie must not fall out; you all must not make any palaver, I am telling you the evidence that witnesses my will because I know Malinda is going to protest against that will and she is going to give you all Hell. She is going to throw that will out of court; you and Passie must not fuss.' I in return said to her : 'Ma, why not divide the property and give Malinda her share?' She said : 'I will not divide my father's property.' So we left the conversation. After a length of time, again she went back to me. She said : 'I have asked Passie for my will ; Passie said that the will is in the bank, and she can't get it out of the bank.' She then asked me: 'When you put a will in the bank, you can't get it?' She said to me : 'Since Passie refused to deliver the will, let her keep it; but I know that Malinda will give you Hell. Whenever a will is carried to court and is not signed

by June Moore and Madison J. Moore, it is not my will.'" This statement of I. J. Hill is in complete harmony with the answer she filed in the Probate Court against the probate of the purported will, and is also corroborated by the following testimony of witness Louise Hill : "Some time ago I was staying with the late Jestina A. Jackson Hill. She got sick. Before she went to the hospital, she called Patricia Hill and told her she must go up river and bring all of her important things down. `Bring my deed box, my will and all in it.' Patricia went up the

river and brought the things down. She did not carry it to the house. Mrs. Jestina A. Jackson Hill called me and said : 'I sent for all of my important things, and when Patricia brought them she never reached here with them.' She said : 'Whenever I ask for my things she gets angry with me. Sometimes for three days she does not put her foot upstairs.' Then she said to me : 'I don't know why she is keeping my things, because they are the Jackson's property, and she is not a Jackson.' She said : `Malinda is the heir ; if she keeps these things I can trust Malinda on her.' She said : 'I tried to make some kind of will ; I did not put your name in there, Louise.' She said : 'While I was making this will you were gone to see your people, and Patricia Hill told me that you were dead.' Then she said : 'Of all the children that I reared, none worry me as much as Patricia Hill. All the time she is asking me to adopt her like my own child. If I don't do that, she gets angry.' Then Patricia said one day to me, after she had everything in her hands : 'Every nigger ass will be outside ; it is for my daughter and Gwendoline.' Malinda Parker wanted to build a house in the yard, and Patricia said Malinda should not build the place there because the place is belonging to her." These are the two statements of the half sister of Jestina

A. Jackson Hill and Louise Hill, a girl reared by the testatrix. That is some of the evidence in the records which has not been refuted or negatived by the testimony of any of the witnesses for the respondent, except the respondent's own statement, which also corresponds in some respects. Now, let us see what Rev. Moore testified to. When on the stand, and asked if he ever signed testatrix's will as an attesting witness, he testified as follows : "A. I remember, some years ago, when I was passing her residence, she called me in and requested me to sign a document that she said was her last will and testament. "Q. Say, if you can, whether there was any other attesting witness with you at the time you witnessed said instrument; and if so, who was she or he? "A. When she showed me this instrument, she told me that my brother, Madison J. Moore, had signed the will, and she requested me to also witness the said will." The foregoing testimony forms a strong link in the chain of evidence adduced at the trial to establish that the said purported will was not the valid will of the late Jestina A. Jackson Hill. But, before arriving at any conclusion, let us refer to the testimony of respondent Patricia Hill, and of her witnesses before we draw a comparison in the sight of the law, and before we make an effort to determine the rights and wrongs in connection with either of the parties concerned in the contested will proceedings. Respondent Patricia Hill testified that the late Jestina Hill was her stepmother, who sponsored her schooling, and did other good things for her; and that she told her that she (decedent) was sick and did not know when she would die or whether she would recover from the sickness and go back up the river.; therefore she requested respondent to go up the river with her keys, bring her trunk from

under the bed with her deeds, and search in her bed mattress ; and there she would find her will wrapped in a piece of cloth. She further testified that she went, and that the first document she brought was not the will, and that her stepmother told her to go back and search until she found the exact will ; that she retraced her steps, found the will and brought it down; and that both the will and the deeds were given to her for safekeeping. She testified, further, that on one occasion Malinda Parker went to her and told her she heard that she "had the old lady's will and deeds," and warned her to keep them securely because her interest was also involved. Continuing, she testified that her stepmother also gave her the will of her late father, as well as the agreement for a tract of land on which respondent had a house, admonishing her that, if she did not recover from her state of illness, the will and bank book should be delivered to her lawyer. On cross-examination, the respondent, Patricia Hill, testified as follows : "Q. Among the many grounds of objections to the probation of the last will and testament of the late Jestina A. Jackson Hill is one in which it is alleged that you influenced the writing of the will now before the court; you will please state for the benefit of the court what you know about this. "A. I don't know anything about it because I did not know the will was made until I heard it was read in court; Mrs. I. J. Hill came to the house and informed me about the reading thereof in court. After being queried she said that it was the deceased's own writing. She said Attorney Thorpe had a job reading the will because of the writing. "Q. Please state for the benefit of the court and jury who was present, as you say, when I. J. Hill stated' that the will was in the handwriting of the late Jestina A. Jackson Hill, the purported testatrix. "A. Mrs. Irene Macintosh, Mr. James E. Moore and Mrs. Ray Hill Horton."

We are wondering now why respondent did not bring to the stand one, if not all, of those persons she testified were present when I. J. Hill intimated to her that the purported will was in the actual handwriting of the late Jestina A. Jackson Hill ; especially when I. J. Hill had alleged in her answer that the will in question was not the genuine will of the purported testatrix, and had testified to the same effect on the witness stand. Under those circumstances, it does seem to our minds that the calling of Irene Macintosh, James E. Moore or Mrs. Ray Hill Horton, who were alleged to have been present, surely would have had a considerable degree of weight in the minds of the court and jury to clear away every hypothesis to the contrary. But, as closely as we have perused the records, it is nowhere shown that any one of these three named persons came to the stand as a witness. The records certify that C. Abayomi Cassell took the stand as a witness for the respondent and identified the signature of the purported testatrix. She had been his client; he knew her handwriting and had seen her write ; and, as far as the records

go, he was the only witness who identified the signature as such. Moreover, another witness for respondent, one Harold Thomson, Acting Manager of Paterson, Zochonis & Company, took the stand ; but it is not shown by the records that he identified the signature of the testatrix as her genuine signature attached to the purported will. He merely identified testatrix's signature attached to a lease agreement which was not the subject matter before the court. That was the record which went before the trial jury in the case which we have endeavored to summarize, and having made this summary, we shall now proceed to consider appellant's bill of exceptions. Count "r" of the bill of exceptions states that, in Count "t" of respondent's answer, she raised an issue of law which the trial Judge ruled out in ruling on the law issues, to which she excepted. Refreshing our memory on this point from the records, respondent averred that the ob-

jectant had breached the statutes on pleading and practice by commencing the first count of her objections with the words : "Because said will," and by commencing each succeeding count with the words : "And the said objector," instead of commencing the first count with the words : "Objector objecting to the will," and each succeeding count with the words: "And objector further objecting to the will."

On this count, we find ourselves compelled to harmonize our views with those of the trial Judge. The grounds laid are immaterial to the soundness or unsoundness of the objections which go exclusively to attack the validity of the will, especially since there is no set form to be strictly conformed to in matters of the kind. This Court has said : "The object of courts of justice is to avoid the turning out of litigants upon immaterial technicalities." Liberty v. Horridge, 2 L.L.R. 422, 423 (1923).

Count " t" therefore is not sustained. In consideration of Count "2" which refers to an exception noted on the Judge's ruling sustaining objections interposed by objectant's counsel to a question put to Patricia Hill requesting her to name the persons present when I. J. Hill said that the will was in the handwriting of the deceased, we are of the opinion that the trial Judge correctly sustained the objections taken, because the witness was testifying in her own behalf, and the question did have the nature of cross-examining one's own witness as to credibility when no issue had been raised as to the witness's credibility. Such a question would have been suited on crossexamination. This count is also not sustained. With respect to Count "3," appellant contends that the trial Judge erred by refusing to sustain her objection to the question put to witness C. Abayomi Cassell, to wit: "I presume that you are one of the legatees under the will which you have just identified; is my presumption correct?" Under our law a witness may be cross-examined on all matters touching the cause or likely to discredit

himself, but he cannot be asked hypothetical questions. Such a question, in the opinion of this Court, did not touch the cause because it did not have a tendency to prove or disprove the contested will; hence, objections were properly taken thereon, and should have been sustained. We cannot favorably consider Count "4" because a foundation should have first been laid to establish that there did exist a business relation between the testatrix and Paterson, Zochonis & Company, before a question could be rightly put soliciting an answer concerning any business transaction. The court therefore, in our opinion, correctly sustained the objections; and Count "4" is not sustained. It is the duty of any party before court who intends to recall a witness to the stand to give timely notice thereof and of what he intends to have him prove, so that his adversary may be furnished with sufficient notice as the law requires; and also to obviate a surprise on the opposite party. Taking a recourse to the records, it is apparent that respondent in the first instance requested the recall of witness I. J. Hill, which request the objectant resisted, but which permission the court granted. But after the sheriff made returns that the said witness could not be found, respondent sought to have Patricia Hill's name substituted for I. J. Hill, which request was made after the resting of oral testimony on both sides. The court, conceding the application to be without legal support, rightly denied the application so made. It is our opinion that to grant the application would have been to trifle with justice and the interests of the parties concerned, as well as a dangerous practice that would have a tendency to continue cases on hearing indefinitely; therefore, in the absence of any rule of court authorizing the privilege at that stage, the court below, in the exercise of its sound discretion, correctly ruled denying the said application, which ruling this Court upholds and dismisses Count "5" of the bill of exceptions.

Counts "6" and "7," respectively, being exceptions taken to the verdict of the empanelled jury, the ruling on the motion for new trial and the judgment confirming the verdict, we shall address our attention to these later in this opinion. When this case was argued before this bar, counsel for appellant, in his very extensive and interesting argument, said that it had not been established in the lower court that the contested will was invalid because of undue influence exercised over the testatrix; nor had the objectant sought to have the entire will vacated because her objections only went to allege that the testatrix had no color of right to devise the homestead property of her late father, Randolph H. Jackson. He also argued that, out of fair legal reasoning, he admitted that the homestead exemption of Randolph H. Jackson, testatrix's father, should not have been included in the will of Jestina A. Jackson Hill, and requested this Court to have the same precluded and the judgment of the court below reversed with that exception; that is to say, with such judgment as should be given in the premises. He argued further that, respondent not being a beneficiary under

the contested will, there was no consistency in the objectant's allegation that respondent exercised undue influence over the testatrix. Objectant's counsel argued that the entire will is the subject of the contest because all of the property purported to be devised therein is not the property in fee simple of the purported testatrix, in that all except one tract of land devised to Phebe Branch was held in joint tenancy and the records in the case show convincingly that undue influence was exercised over the testatrix. At first blush, the argument of appellant's counsel would seem meritorious to the minds of laymen, but another glance might induce a contrary view. Louise Hill testified that Patricia Hill told her: "Every nigger ass will be outside. . . ." She also put in evidence that Jestina A. Jackson Hill told her that, whenever she asked Patricia

for her things, that is to say, her deeds and will, Patricia would get angry with her, the testatrix. And I. J. Hill testified that Jestina A. Jackson Hill, her half sister, told her : "I have asked Passie for my will; Passie said that the will is in the bank and she.can't get it out of the bank." She testified further : "She said to me: 'Since Passie has refused to deliver the will, let her keep it, but I know that Malinda will give you Hell.' " Undue influence is defined by legal authorities as that influence which compels a testator or testatrix to do something against his or her will, from fear, the desire for peace or some feeling which he is unable to resist. If there was no undue influence, then why did the respondent in this case retain testatrix's will without her consent? Moreover, if there was no undue influence, then why did the respondent get angry with the testatrix whenever she called for her deeds and will? And, finally, why did respondent place the will in the bank without the consent of the testatrix? All these are questions which present themselves and must arrest the attention of this Court in passing upon the records before us. Then again, where is that will which a prelate of the Gospel of Christ, and an honorable gentleman, testified that he signed as a witness upon the request of the testatrix, and which she told him his brother had also signed? On the other hand, the will in contest neither carries the signature of Rev. Moore as an attesting witness, nor does it show on its face that it is in cancellation of any other. Moreover, who testified to prove the handwriting of Lillian G. Taylor, whose signature appears on the contested will, both attesting witnesses having died before the will was offered for probate? To our minds, in the attempt of respondent to prove the signature of the purported textatrix, the handwriting of both witnesses should have also been proved to be genuine by persons who knew the said handwritings and/or had seen them write. All of these are missing links in the chain of

evidence that would go to satisfy us that the will is

the genuine will of the testatrix and that she executed it without undue influence. Taking the circumstances together, we are of
the opinion that the objectant built a strong chain of evidence, well connected in all of its aspects ; and having carefully scrutinized
the evidence submitted and the law controlling, we have arrived at the conclusion that the verdict of the jury submitted in the case
was strictly in harmony with the evidence adduced at the trial, and that the judgment confirming the same is sound and well taken.
It is therefore our bounden duty to affirm the said judgment with costs against the respondent; and it is hereby so ordered.
Judgment affirmed.

Thompson v Cooper [1959] LRSC 3; 13 LRSC 348 (1959) (24 April 1959)

PATERSON, ZOCHONIS & CO., Ltd., a British Firm Transacting Mercantile Business in Liberia, by and through its Agent, H. THOMPSON,
Appellant, v. CHARLES H. COOPER, et al., Appellees.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued March 19, 1959. Decided April 24, 1959.

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1. Only such points of law as are expressly raised by an appellant will be considered
in determining an appeal. 2. An equitable remedy will be granted only where no adequate remedy exists at law. 3. A trial court is
not necessarily required to specify, in its written opinion, all the grounds upon which its decision is based. 4. Equity will not
grant an injunction with respect to a matter under litigation in a court of law unless irreparable injury would otherwise ensue.
5. Equity will not consider as irreparable any injury subject to legal redress or compensable by an award of damages by a court of
law.

Appellant instituted an action of ejectment against appellees in the court below. During the pendency of the ejectment action,
appellant applied for an injunction restraining appellees from occupation of the real property in dispute. Appellees obtained a decree
from the court below dissolving the injunction. On appeal from the decree of dissolution, the decree was affirmed.
Albert D. Peabody
for appellant. M. M. Johnson for

appellees. MR. CHIEF the Court.*
JUSTICE WILSON

delivered the opinion of

Asserting lease hold

rights to Lot Number 253 of the City of Monrovia, held under a contract executed on February 28, 1954, appellants in these proceedings first insti. Mr. Justice Pierre was absent because of illness and took no part in this case.

tuted an action of ejectment against the appellees in an effort to evict them from a portion of said lot on which the appellees were charged with erecting a building. Appellants claimed this to be encroachment on the property in question, being that of the late Juah Weeks Wolo, from whom the appellants had leased the same. It appears from the answer filed in the ejectment suit that appellees claimed ownership to said property, thereby joining issue as to who is the rightful owner. The answer of appellees to the complaint in injunction, as well as their application for dissolution, not having disclosed the filing of an action of ejectment by appellant as a basic action to which these injunction proceedings is ancillary, we assume that such an action at law had been filed before the filing of the action on injunction. Let us now see why, before the termination of the ejectment suit, appellant invoked the extraordinary jurisdiction of a court of equity to restrain appellees from continued occupation of piece of property, the rightful ownership of which being in dispute was still sub judice. Counts "z" and "3" of appellant's complaint in injunction, setting forth the reasons why, read as follows : "And the plaintiff further complains that defendant and/or their agents have undertaken to erect a building thereon, and the erection of said building has encroached upon plaintiff's premises ; and despite the fact that their attention has been called to said encroachment, they have, in flagrant defiance of plaintiff's right, continued the erection and construction of said building without making settlement of the issue of dispute between plaintiff and themselves, and have undertaken to continue said operation in flagrant disregard of plaintiff's right and title." And in Count "3," appellant further alleged "And plaintiff further complains that he leased said premises for his business purposes, and that the construction of a building not conducive for the operation

of his business would work a serious hardship against his business, and he fears that, without the injunction, he would have no relief." Appellees, having appeared on record, filed an answer consisting of five counts. In Count "1" the validity of the title which appellant is claiming is attacked. In Count "2" they set up that, even if appellant has a valid title, theirs, the appellee's on which they claim, is an older one. In Count "3" they contend that the parcel of land on which appellant is claiming, as the metes and bounds show on the face of the documents made profert with appellant's complaint, is not identical with that of appellees. Count "4" alleges

that the title of Juah Weeks Wolo, on the strength of which she is alleged to have leased said property to appellant, had, prior to the execution of said lease agreement, been alienated to Mr. P. G. Wolo in the form of a deed of gift by the said Juah Weeks Wolo, and that subsequently he, the said P. G. Wolo, conditionally sold said property to the J. J. Roberts Educational Fund of the First Methodist Church of Monrovia. In Count "5" appellees set up a bona fide right and title to said property against the adverse claim of the appellants, as seen from an exhibit made profert with their said answer. Appellants made reply to said answer succinctly reviewing and denying the sufficiency of appellees' answer to defeat their right of action. Appellees then moved for the dissolution of said injunction, predicating this motion on the answer filed, and upon appellees' absolute obedience to the condition set forth in the restraining order of the court below, but also contending that, since the institution of said injunction proceedings, appellants had repeatedly done everything on said premises prejudicial to their interest and in violation of the spirit and intent of the law in such cases. On October 9, 1956, His Honor, William E. Wardsworth, then presiding over the Circuit Court of the Sixth Judicial Circuit, Montserrado County, made ruling. dis, .

solving said injunction; to which ruling appellants excepted and brought the matter to this Court for review. Appellants filed a bill of exceptions consisting of only one count. The Revised Rules of the Supreme Court provide as follows : "V. Bills of Exceptions r. Contents of--The appellant shall state in his bill of exceptions the points of law to be especially relied upon in support of his appeal ; and the bill of exceptions shall contain only such statements of facts and only such papers as may be necessary to explain the rulings upon the issues or question involved, and the appellant shall state distinctly the several matters of law in the charge of the court below to which he excepts." R. Sup. Ct. V, (2 L.L.R. 665).
The provision of this rule has been religiously upheld in many opinions handed down by this Court, and we find

ourselves in complete agreement in upholding the interpretation that only such points of law as are specifically relied upon in support of an appeal, and stated in the bill of exceptions, can have the consideration of this Court in final determination of an appeal. Moreover, it is well settled that the powers of a court of equity are exercised only if the remedy sought is not possible to be obtained in a court of law; and where an action in law has been filed to determine rightful ownership to property in dispute, the powers of a court of equity can be successfully invoked only if the property or thing in dispute is in danger of irreparable loss. We will, later in this opinion, cite law in support of this principle. Turning to the bill of exceptions, we have the following: "i. Because plaintiff says that, after hearing arguments on both sides of defendants' motion and the resistance to said motion of September 27, 1956,

Your Honor on October 9, 1956, entered final judgment or court ruling dissolving the injunction, which said final judgment or court ruling is expressly in opposition and contrary to the law and legal procedure which prescribes the legal grounds upon which an injunction may be dissolved. Plaintiffs submit that, although the motion filed by the defendants is entitled : 'Defendants' Application for the Dissolution of the Injunction,' nowhere therein did they state any legal grounds to support the title of the said motion or application ; nor is a request to dissolve the injunction made in any of the counts or prayer of said motion or application. Instead, the court undertook to give the defendants that which they, the defendants, did not even attempt to do for themselves or ask for. To which plaintiffs duly excepted." This count is subdivided into two parts. We will treat them separately. The part more fully elaborated on in appellants' brief, and in his argument before this Court, contends that not only did the court below illegally dissolve said injunction on an application which did not set up sufficient grounds justifying said decree, but that the trial Judge should have stated the grounds on which the decree of dissolution was based. We will therefore recite word for word the ruling of the trial Judge as complained of by appellants : "Application for the dissolution of the writ of injunction herein had the attention of the court; and upon hearing counsel for defendants in favor of said application, and counsel for plaintiffs in opposition thereto, it is hereby ordered that said writ of injunction be, and the same is hereby discharged without prejudice to the final decision of the above-entitled cause." The contention of appellants that it was imperative on the part of the trial Judge to have stated in his ruling rea-

sons for dissolving the injunction, apart from being ordinarily reasonable, is legally meritorious; but would such an error or omission be grounds for reversal of said ruling where the facts and circumstances involved in the issue on which the ruling is based do not effect the substantial rights of the parties? A ruling of a trial Judge, in form or substance, merely expresses an opinion on the issue presented by the parties ; and where it is not contended or disclosed by the record that either of the parties was prevented from putting in evidence the facts or law on which they relied in support of their respective positions, as in the instant case, the error complained of by appellant does not exist; however, in the case under review, the ruling of the Judge just recited states in its essential part: ``... and upon hearing counsel for defendants in favor of said application, and counsel for plaintiffs in opposition thereto, it is hereby ordered. . . ." This goes to show that the contention, raised in said application, and contested by the appellants had the consideration of the trial court before the ruling granting said application was made. Coming to

appellant's contention that it was error for the Judge to rule on grounds not raised in the answer of appellee, though he did not specifically state said grounds we quote the following: "It has been held, however, that if the court, in looking at the proofs, found none of the matters which would make a proper case for equity, it would be the duty of the court to recognize that fact and give it effect, though not raised by the pleadings nor suggested by counsel." 14 R.C.L. 337 Injunctions § 40. Taking together the contentions of both parties, the issue would seem to center around one point, on consideration of which alone this appeal can be legally determined, namely: after the filing of a basic action at law, that is to say, that of ejectment, would the encroachment of the

appellees on the property in question as charged, by erecting a building on said property, they the appellants being in adverse possession, threaten irreparable injury to the property rights of the appellants not possible to be redressed in a suit at law? Though not particularly set out or sufficiently stated in argument before this Court, no specific act of trespass threatening damage or loss to said property is complained of, except that appellants had leased a piece of property, Lot Number 253 in the City of Monrovia, for the purpose of constructing buildings thereon, and that appellee Benjamin Garnett, on the claimed title of appellee Charles H. Cooper, was erecting a temporary building on said land, thereby encroaching and trespassing on said land. As to the sufficiency or insufficiency of appellants' claim to justify equitable interposition, we quote the following : "In cases of threatened irreparable injury courts of equity assume jurisdiction to grant an injunction on the ground of the inadequacy of the remedy at law. In

fact the converse of this proposition ordinarily determines the right to grant this relief. It must, as a general rule, appear to the satisfaction of the court that the injury, for the prevention of which equitable aid is invoked, is of such a character. Thus, where the question is one of damage to individual or property rights, the damage, in order to warrant the court of equity in the assumption of jurisdiction, must be in its nature irreparable, or coupled with some other independent matter of equitable cognizance. Courts do not enjoin the construction or use of public utilities and improvements at the suit of private individuals unless the damage is both serious in amount and irreparable in character. Where an injury is in its nature irreparable, no allegation of insolvency is necessary in the complaint. "The term 'irreparable' has acquired in the law of injunction a meaning which, perhaps, is not quite in

keeping with the derivation of the word or its literal signification. There are injuries incapable of being repaired which a court of equity does not regard as irreparable. And, on the other hand, there are injuries which may be repaired which it will nevertheless treat as irreparable, if the person inflicting or threatening them be insolvent or unable to respond in damages. As ordinarily used the term means that which cannot be repaired, restored, or adequately compensated for in money, or where the compensation cannot be safely measured. . . . Where, however, there is a full, complete and adequate remedy in a court of law for an injury, it is not irreparable; and if full compensation can be obtained by damages in an action in that form, equity will not apply the extraordinary remedy by injunction." 14 R.C.L. 345-47 Injunctions §§ 47, 48. We could quote many other authorities at common law, as well as opinions handed down by this Court in support

of this principle. However, the foregoing would seem to suffice in interpreting the functions of injunction proceedings and the circumstances under which a party is entitled to invoke the powers of equity. Finalizing this opinion, and predicated on the law as shown above, as well as upon a fair and equitable consideration of the contentions raised in the pleadings certified to us from the court below, we are of the unanimous opinion that the ruling dissolving said injunction should be, and the same is hereby affirmed with costs against appellants. And it is so ordered.
Decree affirmed.

Zayzay v Jallah [1976] LRSC 6; 24 LLR 486 (1976) (2 January 1976)

GABRIEL ZAYZAY, Appellant, v. ZONDELL B. JALLAH, et al., Appellees.
APPEAL FROM THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued November 27, 1975. Decided January 2, 1976. 1. If the description of property pledged can be established sufficiently by extrinsic factors, even though the description of the property is vague, the description will be deemed adequate to establish the lien of the appeal bond. 2. But if property pledged is so described as to not make finding it an easy exercise, it will be deemed inadequate and the appeal will be dismissed on motion by reason of a defective bond.

An appeal was taken from the judgment of the lower court and appellees moved to dismiss the appeal on the ground that the property pledged was not sufficiently described so as to establish the lien of the appeal bond. The property was merely described as being on UN Drive, Monrovia. The Supreme Court stated

that property should be so identified as to make finding it an easy exercise. The motion was granted and the appeal was dismissed.
0. Natty B. Davis for appellant. for appellees. Moses K. Yangbe

MR. JUSTICE AZANGO delivered the opinion of the Court. When this case was called, appellees moved for its dismissal on procedural grounds. The motion to dismiss the appeal was opposed by appellant.
Closely examining the Civil Procedure Law relating to appeals, affidavits of sureties, and the required certificate of property valuation, we find that it is incumbent upon every appellant to "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." Rev. Code i :51.8. 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. . . . A bond upon which natural persons are sureties shall be secured by one or more pieces of real property located in the Republic, which shall have an assessed value equal to the total amount specified in the bond, exclusive of all encumbrances. Such a bond shall create a lien on the real property when the party in whose favor the bond is given has it recorded in the docket for surety bond liens in the office of the clerk of the Circuit Court in the county where the property is located. Each bond shall be recorded therein by an entry showing the following: (a) the names of the sureties in alphabetical order ; (b) the amount of the bond ; (c) a description of the real property offered as security thereunder, sufficiently identified to clearly establish the lien of the bond ; (d) the date of such recording; (e) the title of the action, proceeding or estate. . . . 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 bond shall also be accompanied by a
"

certificate of a duly authorized official of the Ministry of Finance that the property is owned by the surety or sureties claiming

title to it in the affidavit and that it is of the assessed value therein stated." Rev. Code :63.2 (1, 2, 3, 4) . Appellee has laid emphasis upon the failure to describe the property sufficiently so as to establish the lien of the bond as required. On the other hand, appellant's counsel has urged that the purpose of description in the sureties' affidavit, has been fully met. From our point of view, we do not find it necessary to engage ourselves into research in order to determine the spirit and intent of the lawmakers, when they declared in the statutes, that each bond shall be recorded by an entry sufficiently describing the real property offered as security thereunder to clearly establish the lien of the bond. Rev. Code i :63.2. 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 the 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. Additionally, Mr. Chief Justice Pierre addressed himself to this point in West Africa Trading Corp. v. Alraine, Ltd., decided in our March 1975 Term. "[I]n 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. "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." Inspecting the certificate of property valuation from the Ministry of Finance, we hold that there is no reasonable certainty and particularity of description for the properties offered by appellant, which leads to the identification of the property. That is, with reference to the alleged property of the sureties, the certificate has failed to give the lot number. The location of the aforesaid property alleged to be on UN Drive, Monrovia, is indistinctively described. In view of the foregoing, the motion to dismiss the appeal is granted and the appeal is hereby dismissed. It is so ordered.
Motion granted; appeal dismissed.

Dennis et al v Dennis et al [1971] LRSC 30; 20 LLR 290 (1971) (27 January 1971)

SAMUEL FORD DENNIS, MABEL DENNISMANN, JEANETTE DENNIS-PRATT, and ESTELLA LOUISE DENNIS, surviving heirs of Wilmot F. Dennis, Informants,
v. HON. JOHN A. DENNIS, presiding judge for the Sixth Judicial Circuit, June Term, 197o, ANGELA DENNISBROWN, LOUISE DENNIS-ALSTON,
HENRY DENNIS, and THELMA T. REEVES, legal representatives of the heirs of Gabriel L. Dennis, and C. C. DENNIS, SR., and LOUISE RICKSSAMUELS,
surviving heirs of Georgianna Dennis-Railey, Respondents.
BILL OF INFORMATION IN CONTEMPT PROCEEDINGS.

Argued March 24, 1971. Decided
May 27, 1971. 1. When a suit is begun with veiled intent to frustrate a mandate of the Supreme Court in another proceeding, counsel
involved will be adjudged in contempt of the Supreme Court and punished accordingly.

An appeal brought by the defendants in cancellation
proceedings had been dismissed by the Supreme Court. Thereafter, the defendants therein brought a suit in injunction, involving one
of three blocks in the cancellation proceedings, predicated upon a copy of the same deed, otherwise identical in description except
for bearing a different block number. Counsel for respondents in the information proceedings to punish for contempt, could not account
for the obvious duplication of description and admitted the description covered the same parcel. The Supreme Court held that a design
had been evinced to frustrate its mandate in the cancellation suit, adjudged counsel in contempt for such tactics, and ordered the
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lower court to enforce the order served upon it in the cancellation suit. Macdonald Acolatse, for
informants. and Joseph F. Dennis for respondents. Momolu Perry

MR. Court.

JUSTICE SIMPSON

delivered the opinion of the

During
the March Term, 1970, of this Court, a motion to dismiss the appeal was entered on our docket in a case involving Angela Dennis-Brown
et al., appellants, v. Samuel Ford Dennis et al, appellees, arising from a bill in equity brought for the cancellation of a warranty
deed because of fraud. The motion to dismiss the appeal was granted, with an order concurrently to the Clerk of the Supreme Court
ordering that the lower court be informed of this Court's judgment and that it resume jurisdiction and proceed immediately to enforce

its judgment. Thereafter, on June i 1, 1970, a mandate was sent to Hon. John A. Dennis, assigned circuit judge presiding over the Sixth Judicial Circuit Court, commanding him to immediately execute the aforementioned judgment and file a return to the mandate as to how the same had been executed by him. Subsequent to receipt of the mandate of this Court, an action of injunction was filed in the same circuit court during its June Term, in which the defendants in the injunction proceedings, and informants at this bar, were enjoined, prohibited and restrained from further entering upon and in any way interfering with one hundred acres of land, being block three, until a certain basic suit had been determined. Upon the issuance of the preliminary injunction, plaintiffs in the lower court, in the cancellation proceedings, found that they were unable to have the mandate of this Court enforced, for the reason that the initial cancellation

proceedings had included three blocks of land, meaning thereby, blocks one, two and four. The cancellation decree they sought to enforce made no mention of block three, however. Upon close scrutiny, it was discovered that the area described in block one was the identical area described in block three. Additionally, the original deed for block one was produced, whereas the deed to block three was but a certified copy of a deed, and there was a variation between the certified and the original copy. In the circumstances this Court Was left with no alternative but to hold the original genuine and refrain from giving legal credence to the certified document. We should observe here that during argument before this bar, counsel for respondents was pointedly asked whether there existed any variation in the property described in blocks one and three, and he had to admit that there was no variation and that they were identical. With this admission on the part of counsellor Joseph F. Dennis, counsel for respondents, the veil was lifted and it was clearly seen that the filing of the injunction suit in the lower court was designedly for the purpose of thwarting the enforcement of the mandate of this Court. This is precisely the point, since by restraining informants from entering upon the area described in block three they were at once and the same time precluded from entering upon the area described in block one which had been decreed as their property and ordered enforced by the mandate of this Court. We find ourselves unable to characterize the position of Counsellor Joseph F. Dennis as the sort of ethical behavior that is required of counsellors practicing before this, or other courts, in this land. In the circumstances, counsellor Dennis is hereby adjudged guilty of contempt and fined in the amount of $200.00 to be paid to the Marshal of this Court within seventy-two hours of the time of rendition of this judgment. And the Clerk of this Court is hereby ordered to

send a mandate to the court below commanding the assigned judge to immediately proceed with the execution of our mandate. Costs are ruled against respondents.
Contempt of Court adjudged; enforcement of decree ordered.

Washington v Dennis et al [1971] LRSC 29; 20 LLR 285 (1971) (27 January 1971)

CASES ADJUDGED
IN THE

SUPREME COURT OF THE REPUBLIC OF LIBERIA
AT THE

MARCH TERM, 1971.

MABEL WASHINGTON, Appellant, v. HON. JOHN A. DENNIS, Assigned Circuit Court Judge presiding over the June Term, 1970, of the Sixth Judicial Circuit, Montserrado County, and FRANKLIN N. BORBOR, Attorney-in-fact for Teetee Borbor, Appellees.
Argued March 29, 1971. Decided May 27, 1971. 1. 2. In actions of ejectment, before default judgment can be obtained on defendant's failure to appear, the summons must first be reserved. A circuit court judge has no authority to extend the term of court to which he has been assigned, and any judgment of his court based on such illegal extensions will be reversed by the appellate tribunal and a new trial ordered.

This appeal was heard on a writ of error.
In an action of ejectment begun in July, 1970, plaintiff served and filed his complaint. His written directions noticed the case for the September Term, 1970. Subsequently, on August 14, 1970, the third day of the chambers session, after the jury session had ended, the judge empowered to preside over the June Term that year, upon application of the plaintiff, ordered a jury to be selected and the plaintiff's case submitted to it ex parte, resulting in a verdict for plaintiff, awarding him possession of the land at issue and damages. It also appeared that no
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notice of assignment had ever been served on defendant, who first obtained knowledge of the proceedings when the sheriff served her with a writ of possession. Defendant appealed from the judgment on a writ of error.
Judgment reversed, case remanded. John W. Stewart, Sr., for appellant. Sr., for appellees.
MR. JUSTICE ROBERTS

Alfred L. Weeks,

delivered the opinion of the

Court. According to assignment, the June Term, 1970, of the Sixth Judicial Circuit
Court was presided over by Hon. John A. Dennis. During this Term of Court and in the month of July, Teetee Borbor, alias Kruman,
of Bushrod Island, Monrovia, filed a complaint in an action of ejectment against Mabel Washington, also of Bushrod Island, Monrovia.
The case though filed during this Term, was docketed for the September Term. For some unexplained reason, the case was heard in the
June Term, contrary to statute as well as the plaintiff's written directions. In accord with directions, the writ of summons was
accordingly issued, served and returned, and on July 20 defendant/plaintiff in error filed her formal appearance. Searching carefully
through the record, we fail to discover what led to the abrupt change in the proceedings in the court below. The record reveals that
on August 14, the third day of the chamber session, obviously after the jury session had ended, the case was called and plaintiff/defendant
in error stated for the record : "Plaintiff says that because of the absence of the defendant and her counsel who only filed a formal
appearance and the assignment having been made and served on defendant, and the both of them not having appeared, nor answered, plaintiff
prays for the appli-

cation of Rule 7 of the Circuit Court Rules and submits." The application was granted
and upon the request of plaintiff a jury was empanelled. After a brief ex parte hearing, the jury returned a verdict in favor of
the plaintiff, awarding him possession of the land in litigation, together with $27,5oo.00 damages. Apart from other irregularities
during the trial, we are at a loss to know what authority the judge had to try a jury case when, in fact, the jury session had been
closed. There is no indication in the record that he received authority from the Chief Justice enpowering him to hold a special trial
or extending his jurisdiction. Perusal of the judgment affirming the verdict of the jury discloses no explanation. In the assignment
of errors, various irregularities have been complained of, the case docketed for September Term and tried in the expired June Term,
being thus denied a day in court, nor having notice of the assignment until after the writ of possession had been served on her. In addition, we find in
the record a certification from the court clerk that no notice of assignment appears in the lower court's file. In ejectment actions,
the sheriff's return of service should show that the statutory procedure for service of process was completed. For this Court in
Karnga v. Williams et al., io LLR 114 (1949), held that since the Constitution of the Republic guarantees to each citizen the right
to acquisition, protection, and defense of property, the legal procedure to contest this right should be meticulously and jealously
prescribed and guarded. Therefore, the statutes also provide that there shall be placed upon the property, the subject of the action,

copies of the summons and resummons as further assurance that the defendant or defendants will have due notice of the pending action.
For this reason where a defendant in an

action of ejectment is returned summoned but fails or refuses to appear, the plaintiff is not thereby, as in other cases, immediately entitled to a judgment by default. The striking aspect of the case is the injudicious conduct of the judge in exercising jurisdiction that was not conferred on him. It is a well-known principle of law, that "jurisdiction is given by law and cannot be conferred by consent of the parties," so that after a circuit court judge's assignment has expired, the judge lacks capacity to try an action in the assigned circuit unless the assignment has been extended. "When the jurisdiction of a circuit judge assigned to preside within a given circuit shall have expired either by his adjournment before the term normally expires, or by effluxion of time, he loses trial jurisdiction except for the purpose of hearing motions arising out of cases already determined and giving judgments thereon, or approving bills of exceptions, all of which should be concluded within ten days." Sherman v. Clarke, [1965] LRSC 8; 16 LLR 242, 247 (1965); Thomas v. Dennis [1936] LRSC 5; 5 LLR 92 (1936). It is our opinion that the trial was a complete denial of justice. Judges ought never to hurry nor be overanxious to dispose of causes, if so doing will be prejudicial to the interest of the parties. It is expected that a judge learned in the law is dedicated and consecrated to the adjudication of the rights of litigants, and, hence, will avoid any course of conduct which would cause his impartiality to be questioned. The principles of impartiality, disinterestedness, and fairness on the part of the judge are as old as a history of courts ; in fact, the administration of justice through the mediation of courts is based upon this principle; the learned and observant Lord Bacon well said that the virtue of a judge is seen in making inequality equal, that he may plant his judgment as upon even ground. The honor, liberty and lives of the citizens and inhabitants of this Republic should be secure in the hands

of its judges and they should see to it that the scales in which the rights of parties are weighed are nicely balanced. The judgment of the court below is hereby reversed, and the case remanded for a new trial. Costs against defendant in error.
Reversed and remanded.

Gooding et al v Wright et al [1992] LRSC 2; 37 LLR 14 (1992) (4 September 1992)

EMMETT A. GOODING, Substituting for NAOMI GOODING (deceased), Manager, MIM'S PIGS PART, and **A - Z SUPERMARKET**, represented by KAMAL MERHI, Petitioners/ Informants, v. **HIS HONOUR M. WILKINS WRIGHT**, Resident Circuit Judge, Sixth Judicial Circuit, and **THE INTESTATE ESTATE OF THE LATE THOMAS T. TOOMEY**, represented by JOSEPH G. TOOMEY, et al., Respondents.

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

Heard: May 20 & 21, 1992. Decided: September 4, 1992.

1. No court has authority to render judgment against a party who has not been served with process to bring him under its jurisdiction or who has not voluntarily appeared, and any judgment rendered contrary to this rule is void as to the party against whom it is rendered.

2. Day in court is defined as the time appointed for one whose rights are called judicially in question, or likely to be affected by judicial action, to appear in court and be heard in his own behalf.

3. An appeal taken by a defendant or a plaintiff operates as a supersedeas and stays the enforcement of the judgment until the appeal is finally decided. Thus an appeal taken and perfected by a defendant or plaintiff as the law requires does by its own force, or by its intrinsic meaning stay proceedings under the order appealed from.

4. Prohibition will issue to prevent a trial tribunal from enforcing its judgment where there has been a notice of appeal therefrom.

5. Prohibition will lie to give relief whenever a subordinate court proceeds in the hearing of a case in a manner which is contrary to known and accepted practice and in violation of proper and ethical procedure.

6. Although prohibition is usually used as a remedy where a tribunal has unwarrantedly assumed or exceeded its jurisdiction, it will also lie when a tribunal has proceeded by rules contrary to, or different from those which regularly obtain in the disposition of such cases.

The A-Z Supermarket was an assignee of a lease agreement that had passed through several assignments since its initial execution in 1968 between Thomas Toomey, as lessor, and Mounir Nahra, as lessee.

After the death of the lessor, his son, Joseph G. Toomey brought an action to cancel the lease, which was then held by Emmett Gooding and his wife, Mimi Gooding. The lower court ruled to cancel the lease and the defendant appealed. While the appeal was pending, the trial court judge, M. Wilkins Wright, ordered the enforcement of his judgment, which involved the eviction of the current assignee/tenant, A-Z Supermarket. It is noteworthy that A-Z Supermarket was never a party to the cancellation proceedings and was the current occupant of the premises. The assignor, Mim's Pig Parts, represented by its manager, Emmett Gooding, petitioned the Chambers Justice for a writ of prohibition.

The Chambers Justice confirmed the ruling of the trial court judge, maintaining that A-Z Supermarket had knowledge that the cancellation proceedings was pending and that the defendant/ assignor had the duty to bring in A-Z Supermarket as a party to the suit.

The Supreme Court reversed the ruling of the Chambers Justice, holding that it was not convinced that A-Z Supermarket had actual knowledge of the pendency of the cancellation proceedings and that a judgment is not binding "upon a party who has neither been duly cited to appear before the court nor afforded an opportunity to be heard". *Prohibition was therefore granted.*

Joseph P. Findley of Findley & Associates appeared for petitioners. *H Varney G. Sherman* of Sherman & Sherman in association with *David D. Kpomakpor,* appeared for respondents.

MR. JUSTICE SMALLWOOD delivered the opinion of the Court.

During the lifetime of a Mr. Thomas T. Toomey, he purchased a tract of **land** "out of lot No. 118", situated on Center Street in the City of Monrovia, County of Montserrado, Republic of Liberia. On the 26th day of March, A. D. 1968, Thomas T. Toomey leased the tract of **land** to Mounir Nahra, a Lebanese National, for a period of twenty calendar years, at an annual rental of one thousand ($1,000.00) dollars. On January 10, 1973, an addendum to the lease agreement of March 26, 1968, was executed between the lessor, Thomas T. Toomey, and lessee Mounir Nahra, granting an additional period of fifteen years, to commence upon the expiration of the twenty years certain. Exercising his rights to sublet or assign the leased property, lessee Mounir Nahra, on the 5th day of October, A. D. 1973, assigned his rights in and to the leased property to Hage Brothers Supermarket under an assignment of lease probated and registered in Vol. 30-75, pages 310-314. Thereafter, on the 2nd day of February, A. D. 1977, the lessor, Thomas T. Toomey, executed another addendum to the original agreement of lease, this time with the assignee to the assignment of lease, Hage Brothers Supermarket, Inc., represented by its President, Eshaia J. Hage. This addendum was the result of an approach made to the Hage Brothers Supermarket, Inc. by Thomas T. Toomey for re-consideration of the addendum to the lease agreement dated January 10, 1973. In this addendum of February 2, 1977, the lessor, Thomas T. Toomey, re-affirmed his desire to further lease his property and honour his signature under the addendum of January 10, 1973. The lessor, Thomas T. Toomey, also in this addendum of February 2, 1977 extended the period by two years to April 15, 2005, thereby making the optional period seventeen years instead of fifteen years as mentioned in the addendum of January 10, 1973. It was also agreed that Hage Brothers would be responsible for and would pay all Government taxes, including real estate and coast guard taxes, without deduction from the lease money. It is worthy to mention that in the original lease agreement it was provided that the lessee will pay all taxes and deduct the same from the lease money. The addendum of January 10, 1973 is silent on the question of taxes. Further, in the addendum of February 2, 1977, subject of the cancellation proceedings, it is provided:

"That with the exception of count five of the original lease agreement which placed the tax burden on lessor, all other terms and conditions contained in the original lease agreement dated April 15, 1968, shall remain the same and the same is hereby incorporated into this addendum and covers the entire new terms granted as per addendum dated January 10, 1973."

Hage Brothers Supermarket, Inc. assigned its leasehold right in the subject property to Mim's Pig Parts on the 8 th day of December, A. D. 1983. On the 3' day of March, A. D. 1984, an agreement of lease was executed between Mim's Supermarket, Inc., represented by its Manager, Emmett A. Gooding, and A-Z Corporation, represented by its General Manager, Kamal Morhi, for a period of five years from March 5, 1984 to March 4, 1989, with an optional period of five years. Again, on the 29 th day of January, A. D. 1988, an addendum to the lease agreement of the 3' day of March, A. D. 1984, was entered into by and between Mim's Supermarket, Inc., represented by its Managing Director, Naomi A. C. Gooding and A-Z Corporation, granting the corporation two optional periods of five years each, thereby extending the optional period provided for in the lease agreement of March 3, 1984 to ten years, which would end on March 4,

A.D. 1999. The lessor, Thomas T. Toomey, died and his property, the subject of these proceedings, is being administered by one administratrix and two administrators, one of whom, Joseph G. Toomey, is the plaintiff in the cancellation proceedings and corespondent in these prohibition proceedings.

Co-respondent Joseph G. Toomey, on behalf of the Intestate Estate of the late Thomas T. Toomey, instituted a bill in equity for the cancellation of the addendum to lease agreement for fraud. That addendum is the one dated February 2, 1977, between his father Thomas T. Toomey, as lessor, and Hage Brothers Supermarket, Inc., as lessee. The petition for cancellation was filed in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, in the March 1990 Term of the said court. Trial was conducted by His Honour M. Wilkins Wright, presiding over the March 1992 Term of the court.

On March 12, 1992, the presiding judge rendered his final judgment granting the petition in cancellation, ordering the addendum of February 2, 1977 between Thomas T. Toomey and Hage Brothers cancelled and "respondent evicted and ousted from the subject premises and the petitioner repossessed of his property". The judge relied on the case *Liberia Fisheries, Inc. v. Badio et al.[1989] LRSC 18;* , 36 LLR 277 (1989). From this final judgment the defendant, Naomi A. Gooding, substituted by her husband, Emmet C.A. Gooding, excepted and announced an appeal to the Supreme Court of Liberia in its March, A. D. 1992 Term. The exception was noted and the appeal granted as a matter of right. After granting the appeal, the trial judge proceeded to have his judgment enforced as follows:

"In the meantime, and since the Supreme Court might not likely sit in its March Term, the court orders that the premises being vacant should not be left unattended and therefore the petitioner may take possession of the same; in this connection, the clerk will issue a writ of possession against the respondent ordering the sheriff to place the petitioner in immediate possession of the subject premises at this point, since title to the premises is no longer in issue, pending the disposition of the appeal by the Supreme Court. And it is so ordered." (Emphasis ours)

We should like to mention here that we have two final judgments in this case which we consider to be strange in this jurisdiction. One is a prepared judgment which the judge read in open court and the other is found in the records of the court, sheet seven, 12th day's chambers session, March, A. D. 1992 Term, Thursday, March 1992, which the judge dictated into the minutes of court after reading the prepared judgment.

For the benefit of this opinion, we quote hereunder the concluding portion of the prepared judgment and the entire judgment as given on sheet seven of the minutes of court. The concluding portion of the prepared judgment reads as follows:

"Wherefore and in view of the foregoing, it is the final judgment of the court that the petition has been sufficiently established in law and fact; therefore, the petition is hereby granted. The court hereby orders that the addendum of February 2, 1977 between Thomas Toomey and Hage Brothers be and the same is hereby cancelled, set aside and declared null and void to all intents and purposes. In consequence of the above cancellation, the court hereby orders the respondent evicted and ousted from the subject premises and the petitioner repossessed of his property. For reliance, see the case *Liberia Fisheries, Inc. v. Radio et al.[1989] LRSC 18;* , 36 LLR 277 (1989). The Clerk of this Court is hereby ordered to issue a writ of possession and place same in the hands of the sheriff for service on respondent and placing petitioner in possession. Costs of these proceedings are ruled against the respondent. And it is hereby so ordered."

The following is the text of the judgment recorded in the records of court, sheet seven, Thursday, March 12, 1992. "COURT'S FINAL JUDGMENT "The judgment in this case is separately written and for the details of that judgment see the said judgment itself; however, and in summary, the court held that the petition had been sufficiently established in law and in fact in consequence of which the petition was granted and the addendum dated February 2, 1977 ordered cancelled and set aside and declared null and void to all intents and purposes; and in consequence of that cancellation, the court ordered the respondent evicted and ousted from the subject premises and the petitioner repossessed of his property. The court relied upon the *case Liberia Fisheries, Inc. v. Radio et al.[1989] LRSC 18;* , 36 LLR 277 (1989). Also the clerk of this court is hereby ordered to issue a writ of possession and place same in the hands of the sheriff for service on respondent, ordering the sheriff to evict the respondent and place petitioner in possession. Costs of these proceedings are ruled against respondent. And it is hereby adjudged." The writ of possession was accordingly issued on the 13th day of March, A. D. 1992. It was during the service of the writ of possession that A-Z Supermarket came into the picture of the case, as A-Z Supermarket was in possession of the subject property and was actually the one being evicted according to the "inventory report of May 6, 1992 signed by Samuel E. Moore, Deputy Sheriff, Montserrado County, R.L. and witnessed by Emma K. Johnson, a bailiff of the Civil Law Court, Sixth Judicial Circuit, Montserrado County, and Joseph G. Toomey, as owner and the plaintiff in the cancellation proceedings, even though A-Z Supermarket was not a party to the cancellation proceedings.

It is because of the trial judge's attempt to enforce his final judgment that the petitioner herein fled to the Chambers of Associate Justice Boimah K. Morris for relief by the filing of a petition for a writ of prohibition. The alternative writ was ordered issued on March 17, 1992, and served. After the issuance and service of the alternative writ of prohibition, the petitioner again fled to

the Chambers Justice and filed a bill of information. For the benefit of this opinion, we quote hereunder counts three and four of the bill of information, as follows:

3. "That after service of the alternative writ on the respondent, Co-respondent Judge M. Wilkins Wright delivered the keys.to the Marshal who removed the locks from the building and kept the keys. Later on Judge Wright ordered the co-respondent sheriff of the Civil Law Court to put new locks on the premises as a means of enforcement of his original orders given on the 12 th day of March, A. D. 1992, after he had noted petitioners' exception and appeal from his final decree that the premises be turned over to Co-respondent Joseph G. Toomey, and after the judge had notice of the prohibition proceedings.

4. Informants submit that the judge was right in the first instance when he had the locks removed after the alternative writ was served on him because prohibition does not only stay further action but will also revoke all irregular and non jurisdictional acts pursuant thereto. Therefore, the fact that the judge resumed jurisdiction after the writ had been served by the Marshal, by sending the sheriff to put new locks on the premises and turn same over to Co-respondent Toomey, is certainly contemptuous on the part of the respondents."

Respondents in this information countered these two counts of the information in counts six and seven of their amended returns, the original having been filed by Counsellor Joseph B. Sando and withdrawn by additional Counsel David D. Kpomak-por, which reads as follows:

6. "That further to counts three and four of the information, with particular reference to the allegations that Judge Wright delivered keys to the sheriff who removed locks from the building in question, and that the judge later ordered the co-respondent sheriff of the Civil Law Court to put new locks on the premises, respondents categorically deny the truthfulness of the averments in said counts three and four of the information.

7. "And also because respondents say that from the listing of the events shown in count five of these returns, it is clear that the informants are attempting to mislead this Honourable Court and, of course, they want this Court to do for them that which they have failed to do for themselves; that is to except to the final decree of Judge Wright when he granted the appeal but ordered enforcement of his judgment immediately. This they cannot do at this stage".

We shall now turn our attention to the petition in prohibition and the returns thereto. Petitioners filed a six-count petition and, for the benefit of this opinion, we shall give consideration to only counts three, five and six.

Petitioners maintained in count three that the final decree ordering Co-respondent Joseph G. Toomey to be put in possession of the property would affect Co-petitioner A-Z Supermarket and its rights of possession under the sublease with the addendum. Petitioners maintained in count five, that notwithstanding the exceptions noted and appeal announced and granted, the judge proceeded to order the clerk to issue a writ of possession ordering the sheriff to put Co-respondent Joseph G. Toomey in immediate possession. In count six, petitioners maintained that the judge, in his ruling putting Co-respondent Joseph G. Toomey in immediate possession of the property, exceeded his jurisdiction and proceeded by rules contrary to those that should be observed at all times.

On the 24th day of March 1992, respondents filed a six-count returns signed by Counsellor-at-Law Joseph B. Sando, which was withdrawn by additional counsel, Counsellor David D. Kpomakpor, and an amended returns filed on March 31, 1992, containing nine counts. For the benefit of this opinion, we will consider only counts one, three, four and seven.

In count one, the respondents maintained that counts one to five of the petition deal with the facts, evidence and procedures followed by the judge in reaching his final decree, to which decree an appeal had been announced and granted; and that any review of the issue raised in the said counts must be by the Supreme Court sitting *en bane.*

In count three the respondents admit that petitioner did except to the final decree and announced an appeal from the decree to the Supreme Court of Liberia, sitting in its March Term, A. D. 1992.

In count four the respondents admitted that the trial judge noted the exception made by petitioner's counsel and granted the appeal but, nevertheless, ordered the clerk to issue a writ of possession against the petitioner herein, which was executed.

In count seven, the respondents maintained that count six of the petition should be overruled because petitioner, being present, did not except to the judge's orders to enforce his final judgment after granting the appeal.

Our distinguished colleague, the Chambers Justice, combined both the prohibition and information in a single ruling which he delivered on the 5th day of May, A. D. 1992, and from which an appeal was taken to this Court *en banc.*

The Chambers Justice, in his ruling, said the prohibition and information presented two main issues on which he ruled. They are:

1. Whether the contention of petitioners/informants that the trial judge committed a reversible error when he granted the appeal announced and then ordered his final decree enforced and, therefore, the records in this case and laws of this jurisdiction support a petition for a writ of prohibition?

2. Whether or not the final decree of Judge Wright is binding upon Co-petitioner A-Z Supermarket, although this company was not a party to the cancellation proceedings?

We are in full agreement with the two issues but we have not been able to reconcile our answers to these two questions with that of our distinguished colleague. He resolved the two issues in the reversed order. On the question of whether the final decree of Judge Wright is binding on A-Z Supermarket, although not made a party in the cancellation proceedings, this is what the Chambers Justice said:

"This Court is convinced that the answer to the second question is in the affirmative."

However, he contended that A-Z Supermarket and their lawyer knew of the pendency of the cancellation proceedings but chose to wait until final judgment had been rendered before seeing "prohibition". He based his assertion on the fact that, according to him, "both A-Z Supermarket and their lawyer knew that the lease agreement between the Toomeys and Naomi Gooding had expired since 1988 and, therefore, if Naomi Gooding had no vested legal and equitable interest

she could give nothing to A-Z Supermarket". It is to be remembered that A-Z Supermarket was and is in possession of the subject property and therefore all of the agreements, including the original lease of 1968 now belongs to it. Further, the addendum of 1977 between Hage Brothers Supermarket and Thomas T. Toomey granted a further two years optional period to the fifteen years granted in the lease of 1968, making the optional period a total of seventeen years, to expire in the year 2005. We shall not pass on the legality or illegality of the addendum of 1977 since it is the subject of the cancellation proceedings which is already on appeal.

The Chambers Justice further asserted: "A recourse to the records revealed again that as far back as August 1986, Findley and Associates offered for probate an addendum to agreement of lease, assignment of lease between Hage Brothers Supermarket, Inc. and Mim's Pig Parts, by its Manager, Naomi Gooding". These are separate and distinct documents. The assignment of lease between Hage Brothers Supermarket, Inc. and Mim's Pig Parts was executed on December 8, A. D. 1983. The addendum of lease was not executed between Mim's Supermarket, Inc., and A-Z Corporation until the 29t h day of January A. D. 1988. The records reveal that Counsellor Joseph Findley was acting as counsel for Mim's Pig Parts and A-Z Supermarket when he probated the assignment of lease between Hage Brothers Supermarket, Inc., and Mim's Pig Parts. The Chambers Justice went on to assert that another point which convinced him that Naomi Gooding and her lawyer, Counsellor Joseph Findley, were aware of the pendency of the cancellation proceedings was the fact that in count five of the petition in the cancellation proceedings, it was stated that instead of the respondent, meaning Naomi Gooding, performing by signing the said addendum, she proceeded to erect an additional storey to the building on the demised premises. The Justice contended that the petition in cancellation was sufficient to put Naomi Gooding and her lawyer, Counsellor Joseph Findley, on notice "that they must ask the trial court for A-Z to be joined in the action or to intervene". He concluded his ruling on the second issue in these words:

"If anybody owes a duty to have brought in A-Z in the cancellation proceedings, it was Naomi Gooding and/or the legal counsel or both of them. Therefore, the contention of their legal counsel that the final decree in the cancellation proceedings should not effect A-Z Supermarket is rejected and overruled by this Court."

We are not convinced that A-Z had knowledge of the pendency of the cancellation proceedings, for knowledge by defendant Naomi Gooding and her lawyer should not be taken to mean that A-Z had actual knowledge of the pendency of the cancellation proceedings. If Naomi Gooding and her counsel did not bring the corporation, A-Z Supermarket, into the cancellation proceedings, that should not be considered a waiver on the part of A-Z Supermarket or as warranting its eviction from the premises which it is in possession of, even though it had not been served with process to appear and defend its right of occupancy. It should be remembered that the action was a cancellation proceedings, an action in equity, and not one of ejectment. Furthermore, A-Z Supermarket is not a signatory to the addendum sought to be cancelled but it is in actual

possession of the premises covered by the said addendum under a different agreement. This Court has held that a judgment is not binding upon a party who has neither been duly cited to appear before the court nor afforded an opportunity to be heard. See *Gbae v. Geeby,* [1960] LRSC 50; 14 LLR 147 (1960). It is a settled rule that no one shall be personally bound until he has had his day in court, by which is meant until he has been duly cited to appear and has been afforded an opportunity to be heard. *Id,* at 150. Again, this Court held a similar position in the case *Gabbidon v. Flomo et al.[1977] LRSC 36;* , 26 LLR 214, 218 (1977), when it said: "No court has authority to render judgment against a party who has not been served with process to bring him under its jurisdiction, or who has not voluntarily appeared, and any judgment rendered contrary to this rule is void as to the party against whom it is rendered. `Day in court' is defined as the time appointed for one whose rights are called judicially in question, or liable to be affected by judicial action, to appear in court and be heard in his own behalf." This phrase "day in court", as generally used, means not so much the time appointed for hearing as the opportunity to present one's claim or rights in a proper forensic hearing before a competent tribunal. BLACK'S LAW DICTIONARY 507 (3rd ed. 1933). A litigant has his "day in court" when he has been duly cited to appear and has been afforded an opportunity to appear and be heard.

The Chambers Justice, in his ruling on the first issue as to whether prohibition will lie because Judge Wright granted the appeal and ordered his decree enforced, answered the question in the "negative". He went on to say "while it is true in this jurisdiction that the announcing and granting of an appeal serves as a stay of further proceedings, Civil Procedure Law, Rev. Code 1:51.20, *Effect of Appeal as a Stay,* it is also true that if an adverse ruling is made against a party who is under no disability and he fails to except to such ruling, that party *acquiesces* and must forever hold his peace". Let us now consider the adverse ruling referred to by the Chambers Justice.

As stated earlier in this opinion, the trial judge in his prepared final judgment ordered the respondent/petitioner evicted and ousted from the subject property and ordered a writ of possession issued. After the noting of exceptions and the granting of the appeal from these two final judgments, the trial judge, for the third time, ordered the respondent evicted, the issuance of a writ of possession and the putting of the petitioner/respondent in immediate possession of the subject property. It is this third order of the judge, ordering the enforcement of his final judgment, the very things against which he had granted an appeal, that the Chambers Justice contends the petitioner did not except to, even though an appeal had been announced by the petitioner herein and granted by the trial judge.

The judge based his attempt to enforce his decree on three things: Firstly, that "the Supreme Court might not likely sit in its March 1992 Term". One is left to wonder how many others of Judge Wright's final judgments he ordered enforced because he felt that the Supreme Court might not sit in the March 1992 Term of Court. So far, none has been brought to our attention.

However, it is important to state that whether or not the Supreme Court sits is no justification for a judge to violate the law which makes the right of appeal mandatory. Furthermore, we cannot accept the implication that Judge Wright felt the Supreme Court might not sit in March 1992, when on March 10, 1992, there was a press release issued by the Minister of Justice, Counsellor Philip A. Z. Banks, III, of the Interim Government and Counsellor J. Laveli Supuwood, of the NPRAG, informing the public that the present members of this Court had been recommended and accepted and that they were to meet March 10, 1992, for the purpose of deciding on a Chief Justice, the time of induction, and the opening date of Court. Further, it was announced that a Justice would be designated to serve in Chambers immediately following the swearing in of the Justices. It is the very Judge Wright who had been performing the duties of a Chief Justice, and who made all the preparations for the sitting of this Court. The swearing in of the Justices was performed on March 16, 1992, and the seating of the Court and the opening of the March 1992 Term was on March 23, 1992.

Secondly, Judge Wright ordered his judgment enforced on grounds that since "the premises were vacant, they should not be left unattended." That assertion is not supported by the records, as we shall show later in this opinion.

Thirdly, the judge further asserted that his action was predicated on the fact that "title to the premises is no longer in issue." One is left to wonder why the judge would make such assertion, especially when the cancellation proceedings was contested before him and he had granted an appeal from his decree ordering the cancellation of the addendum of February 2, 1977.

The respondent before this Court refused to address the central issue in the prohibition and information, that is, whether the trial judge's action in ordering the enforcement of his decree after he had granted an appeal therefrom was in keeping with law. The amended returns to the petition for prohibition, as well as the amended returns to the information have nine counts each, and in no count did they attempt to support the judge's action in enforcing his final judgment after granting an appeal taken from said final judgment. They have contended, instead, that because the petitioners/informants did not again except to the judge's orders enforcing the judgment from which an appeal had been taken and granted, prohibition will not lie. To support this contention of respondent's counsel, as well as that of the Chambers Justice, would be giving sanction to the judge's action in violating the law that prohibits a judge from enforcing his judgment against a defendant who has announced an appeal from his final judgment.

According to the marshal's returns to the writ of prohibition, Judge Wright was served on March 17, 1992. Nevertheless, notwithstanding the delivery of the keys to the A-Z Supermarket and to

the marshal, the judge later ordered the sheriff of the Sixth Judicial Court to put new locks on the doors.

Our distinguished colleague, the Justice presiding in Chambers, rendered his ruling on the 5t h day of May, A. D. 1992 upholding Judge Wright's ruling. In the said ruling, the Chambers Justice also ordered that the keys to the building be given immediately to the respondents. Exceptions were noted and an appeal prayed from his ruling. Here is what the Justice said:

"Appeal being a matter of right under the law, same is hereby granted. However, since the ruling of the co-respondent judge, Micah Wilkins Wright, to the effect that the keys to the building be immediately turned over to the respondent was not excepted to in the lower court, same is hereby ordered enforced immediately. And it is hereby so ordered".

The circumstances in the case *Gaiguea v. Morris*, [1971] LRSC 3; 20 LLR 163 (1973), cited by the Chambers Justice, and the circumstances in the present case, on the question of the noting of exceptions, are not analogous. In the *Gaiguea v. Morris* case, the defendant did not except to, nor announce an appeal from a judgment of the stipendiary magistrate adjudging him liable and ordering his immediate eviction. In the present action the defendant had noted an exception and prayed for an appeal from the final judgment of the trial judge, which was granted. However, on the 6 th day of May, A. D. 1992, the day following the ruling of the Chambers Justice, Judge Wright again ordered his sheriff to return to the subject property, A-Z Supermarket on Center Street, and to take an inventory. The inventory report, dated May 6, 1992, states as follows: "By directive of His Honour M. Wilkins Wright, Resident Circuit Judge, presiding, ordering that I take an inventory of the premises of Thomas T. Toomey, Joseph G. Toomey, versus Naomi Gooding, Emmett C. A. Gooding, Manager, Mim's Pig Parts and A-Z Supermarket, Monrovia, Liberia." The items were listed and the end the inventory closed in these words: "We now make this as our official returns to the office of the clerk of this Honourable Court this 6 th day of May, A.D. 1992." It is signed by Samuel E. Moore, Deputy Sheriff, Montserrado County, R.L. and witnessed by Emma K. Johnson and Joseph G. Toomey, as owner. These actions were undertaken even though the writ of prohibition ordered the judge to "stay all further proceedings until otherwise ordered." The judge's behavior in exercising jurisdiction over the matter after being served with the writ of prohibition is reprehensible and therefore contemptuous. We have, however, refrained from holding him in contempt at this time because of a letter found in the records before us. The said letter is quoted hereunder verbatim:

"May 6, 1992 His Honour M. Wilkins Wright Resident Circuit Judge Sixth Judicial Circuit Montserrado County

May It Please Your Honour:
You are hereby mandated to enforce the attached copy of minutes of the judgment entered by this Court for the immediate turning over of the keys of the building to the respondent in these proceedings pending the appeal announced therefrom.

By orders of the Justice presiding in Chambers, His Honour

Boimah K. Morris.
And have you there this mandate.
Respectfully submitted:
Sgd. Samuel Bedell-Fahn
Samuel Bedell Fahn
ASSISTANT CLERK, SUPREME COURT

Mr. Justice Mitchell, speaking for the Court in the case *Shilling & Company, et al, v. Tirait and Dennis*, [1965] LRSC 3; 16 LLR 164 (1965), text at 171-172 said: ". . and although the records before us establish that an appeal was granted to the October Term, 1964, of this Honourable Court, yet on the selfsame day and date on which the aforesaid ruling was made, the Chambers Justice ordered his said ruling completely enforced by dispatching the necessary mandate to the lower court commanding immediate action thereof."

"It is obvious that such procedure presents a strange drift from our prescribed provisions of law with regards to the rights of parties desiring to appeal for further review and, if accepted by this Court, would evidently be a dangerous procedure of denying parties their rights of an appeal in contravention of the provision of the statute. . . ."

Also, Mr. Justice Harris, speaking for the Court in the case *In re: James Doe Gibson[1965] LRSC 4;* , 16 LLR 202 (1965), text at 206, said: "The act of the Chambers Justice in enforcing his ruling, sentencing Counsellor James Doe Gibson to a fine of three hundred ($300.00) dollars for contempt of court, or imprisonment upon failure to pay, when notice of appeal was announced and granted from said ruling, was arbitrary, oppressive and an abuse of the rule cited in this opinion; hence, it is hereby declared illegal and a misinterpretation of the rule."

Mr. Justice Morris, also speaking for this Court in the case *Doe et al. v. Ash-Thompson, The Proposed Liberia Action Party, et al.[1985] LRSC 39; ,* 33 LLR 251 (1985), said: "an appeal taken by a defendant or a plaintiff operates as a supersedeas and stays the enforcement of the judgment until the appeal is finally decided. Thus on appeal taken and perfected by a defendant or plaintiff as the law requires does by its own force, or by its intrinsic meaning, stay proceedings under the order appealed from."

The Liberian Constitution of 1986, at Article 20(b), states: "The right of appeal from a judgment, decree, decision or ruling of any court or administrative board or agency, except the Supreme Court, shall be held inviolable. The Legislature shall prescribe rules and procedures for the easy, expeditious and inexpensive filing and hearing of an appeal."

In the Civil Procedure Law, Rev. Code 1: 51.20, chapter 51, at pages 254-255, under *"Effect of Appeal as a Stay,"* we have the following:

"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 be in force pending decision on the appeal." (Emphasis ours).

In addition to a preliminary injunction, we also have appeals from judgment for summary proceedings to recover possession of real property when the action is filed before the circuit court. Civil Procedure Law, Rev Code 1:62.24. The action on which the final judgment was rendered by the judge in the court below was neither a preliminary injunction nor summary proceedings to recover possession of real property. It was an action for the cancellation of an addendum to a lease agreement.

We shall now consider whether prohibition would lie to prevent a judge of a lower court from enforcing his final judgment from which an appeal has been taken and granted. Mr. Justice Tubman, speaking for the Court in the case *Fazzah v. National Economy Committee, etc.*, said: "Prohibition will issue to prevent a trial tribunal from enforcing its judgment where there has been a notice of appeal therefrom." [1943] LRSC 2; 8 LLR 85 (1943). Also, in the case *Sadatonou et al. v. Bank of Liberia, Inc.*, this Court held that: "An appeal, when announced, serves as a supersedeas to any further disposition of the particular matter by the court from whose judgment an appeal has been so announced." [1971] LRSC 69; 20 LLR 512 (1971) , This Court further said that where a judge can obey the writ by undoing what he has ordered done,

prohibition will lie and the judge of the lower court shall be held accountable for disobeying such order even if the writ issues from the Chambers of a Justice of the Supreme Court and not the Full Court. [1971] LRSC 69; 20 LLR 512 (1971).

In the case *Montgomery v. Findley and McGill-Haddad,* [1961] LRSC 27; 14 LLR 463 (1961), text at 476, Mr. Justice Pierre, speaking for the Court, said:

"Prohibition will lie to give relief whenever a subordinate court proceeds in the hearing of a case in a manner which is contrary to known and accepted practice and in violation of proper and ethical procedure".

Three years later, in 1964, in the case *Dweh v. Findley et al.*, Mr. Justice Pierre said again: "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." Continuing, he said: "Although prohibition is usually used as a remedy where a tribunal has unwarrantedly assumed or exceeded its jurisdiction, it will also lie when a tribunal has proceeded by rules contrary to, or different from those which regularly obtain in the disposition of such case. Prohibition is principally directed against a tribunal, rather than against the party to the present case." 15 LLR (1964) 638, text at 645-646.

The counsellors on both side of this matter were very eloquent in their arguments before this Court and, in doing so, they argued all of the issues in the cancellation proceedings such as title, consideration, and privity of contract. Petitioners/ appellants have, on the other hand, asked us to reverse the ruling of the Chambers Justice and to stay the execution of the orders given by both the Chambers Justice and trial judge. The respondents/appellees, on the other hand, have asked us to affirm and confirm the ruling of the Chambers Justice, deny the petition and bill of information, and order the enforcement of the judgment of the trial judge.

We have refrained from ruling on the cancellation proceedings as we feel that the issues therein should be passed on in a separate opinion of this Court. The trial judge cited *Liberia Fisheries, Inc. v. Radio et al.* Consideration will be given to that opinion when the appeal case is decided.

In view of the foregoing, we are of the opinion that the peremptory writ of prohibition should have been ordered issued. The ruling of the Chambers Justice in the prohibition and information

proceedings are hereby reversed and the peremptory writ of prohibition is therefore ordered issued. The locks placed on the supermarket upon orders of the trial judge are ordered removed and A-Z Supermarket is to continue its occupancy thereof until the appeal in cancellation is determined by this Court. 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 enforce this judgment. Costs are ruled against the respondents. And it is hereby so ordered.

Prohibition granted.

Gray v Crump-Macauley [1966] LRSC 1; 17 LLR 157 (1966) (20 January 1966)

CASES ADJUDGED
IN THE

SUPREME COURT OF THE REPUBLIC OF LIBERIA
AT

OCTOBER TERM, 1965. MARY GRAY and VARNIE PASSAWE, Appellants,
v. ROBERTETTA CRUMP-MACAULEY, by and through her Husband, J. S. D. MACAULEY, and His Honor, RODERICK N. LEWIS, Assigned Judge Presiding
over the Circuit Court of the Sixth Judicial Circuit, Montserrado County, et al., Appellees.
APPEAL FROM RULING IN CHAMBERS ON APPLICATION
FOR WRIT OF ERROR TO THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued October 30, 1965. Decided January
20, 1966. 1. A writ of error will not lie after complete execution of the judgment of the court below.

On appeal, a ruling in Chambers
denying appellants' application for a writ of error was affirmed.
D. Bartholomew Cooper and J. Dossen Richards for appellants. Albert Peabody, P. Amos George and Macdonald C. Acolatse for appellees.

MR. JUSTICE Court.

SIMPSON

delivered the opinion of the 157

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LIBERIAN LAW REPORTS

On May 6, 1964, Robertetta Crump-Macauley et al filed an action of ejectment against Mary Gray and Varnie
Passawe in the Circuit Court of the Sixth Judicial Circuit, Montserrado County, sitting in its law division. The action was filed

for the recovery of Lot. No. 55 situated on Gurley Street in the City of Monrovia, Montserrado County, to which plaintiffs claimed title by a warranty deed from Joseph S. Dennis to Emma Porter dated November 26, 1924. The defendants in the ejectment action, after having been served with the writ of summons, a complaint, and allied documents, filed an answer alleging that no land could reasonably be in dispute between the parties in that their deed made profert was from S. J. Grigsby to Mary Gray dated June 2, 1939, and conveyed Lot No. 45. Count 6 of the answer alleged, and we quote : "And also because defendants say that plaintiffs fail to show ownership to property in Block 45 where defendants occupy by warranty deed mentioned and exhibited in Count 5 of this answer and map submitted as Exhibit A with plaintiffs complaint; the legend says plainly that the deed calls for block 55." After the filing of this answer of May 15, 1964, plaintiffs filed a notice of withdrawal of the ejectment action reserving unto themselves the right to renew and refile said action should they find it necessary to do so. Thereupon the present appellees proceeded to file a petition in the equity division of the Circuit Court of the Sixth Judicial Circuit, Montserrado County, for correction of deed. The petition sought correction of the deed conveying Lot No. 45 to Emma Porter in 1924; in other words the lot number was now to be changed from 55 to 45. After this petition had been granted and the lot number duly changed, a renewed action of ejectment was filed in the Circuit Court of the Sixth Judicial Circuit, Montserrado County, during its March 1965 term, predicated upon the changed lot number, which change had

been effected by decree of the equity division of the aforesaid Circuit Court on October 6, 1964. When the present appellants discovered that the lot number of the present appellees was the same as theirs, and after a search of the records of the Circuit Court of the Sixth Judicial Circuit they further found out that this change was predicated upon a decree in equity, they hastened to the Chambers of Mr. Justice Mitchell and therein applied for the issuance of a writ of error. They strongly contended that they should have been made parties to the petition that had been filed in equity in view of the fact that their interest might have been involved and that this not having been done deprived them of their day in court. They further asserted that, not having been made a party litigant in the petition for correction of deed, they were not seasonably notified of the court's rendition of its final decree in the correction matter, and therefore they were unable to except to the decree and come before this Court by means of a regular appeal. Appellees as defendants in error filed elaborate ninecount returns, Count 1 of which reads : "Because the statutes of Liberia in defining the writ of error prescribe that a writ of error is a writ by which a superior court calls up for review a judgment, decree or decision of an inferior court which has not been reviewed on appeal and which has not been completely executed, defendants in error submit that the decree which has caused the plaintiffs in error to file the application for the issuance of a writ of error was entered by His Honor Roderick N. Lewis, while he presided over the September 1964 Term of the Circuit Court of the Sixth Judicial

Circuit, Montserrado County, by asignment; the said decree is dated October 6, 1964, and the orders of His Honor Judge Lewis contained in said decree have all been corn' pletely executed in that the number of the deed has not only been changed by the registrar of deeds at the

Department of State, but a copy of the deed as corrected has been furnished defendants in error by the Department of State as may be seen from a copy of the decree issued by Judge Roderick N. Lewis on October 6, 1964 (quite 6 calendar months ago), and a copy of the deed as corrected, all of which are herewith made profert and marked Exhibits A and B respectively to form a part of the returns. Defendants in error repectfully say and submit that because of the foregoing reasons the application of plaintiffs in error for a writ of error should be denied and defendants in error so pray." A copy of the final decree of the lower court sitting in equity was also made profert with the returns. It also showed thereon that the registration had been effected in accordance with the final decree, and allegedly all that the decree required to be done had in fact been done as heretofore mentioned. A portion of the ruling of the Justice presiding in Chambers is herein included : "Defendants in error, in their returns, have raised several issues which they contend should rightly preclude the granting of the writ of error. Foremost among the contentions of defendants in error was what they termed the strict application of Section 1231 (c) of our Civil Procedure Law which states that the application for the issuance of the writ of error shall contain an allegation that the execution of the judgment has not been completed. To buttress this contention, the defendants in error contended that there has been complete execution of the decree to the extent that the number of the deed has not only been changed by the registrar of deeds at the Department of State but a copy of the deed as corrected has been furnished defendants in error by the Department of State. "The Court will at this juncture diverge for a moment to mention that the allegation as contained in Count r of the returns was not substantiated by the

making profert of and production of a copy of the corrected deed as furnished defendants in error by the Department of State. However, since the plaintiffs in error refrained from filing an answering affidavit denying the factual correctness of this assertion as made, and further realizing that the law considers done that which ought to have been done, we shall deem the actions completed as alleged in the returns. "The other points raised in both the petition and returns dealt mainly with factual averments that were of no consequential legal import except for legal issues dealing with the title of the action and the heading of the minutes as transcribed in the court below which gave the impression that the court was sitting at law instead of in

equity. Before delving into these and other issues raised, the Court feels that it must first pass upon the question relating to the essential averments statutorily required to be included in an application for issuance of a writ of error. "In reviewing the judicial and legislative growth of this particular remedial writ, this Court has held that: `The passage of the statute of 1894 providing the steps to be taken in removing a cause to the Supreme Court, is jurisdictional and must be strictly complied with; hence it abolished, even though by implication the comman law mode of procedures with respect to writs of error.' Wodawodey v. Kartiehn, 4 L.L.R. 102 (1934) Syllabus 2. "In the premises, it must be held to be the position of this court that the issuance of an alternative writ of error shall be granted only upon the strict compliance with the statutory promulgations of our Legislature in respect of invoking the use of this writ. Statutes in derogation of the common law must be exposed to strict construction; therefore, in determining whether the writ of error may properly issue, this Court must be satisfied that the several jurisdictional steps as re-

quired by law have been fully complied with. In accordance with the 1956 Code 6 :123 (c), there must be an allegation of fact in the application for the issuance of the writ to the effect that the judgment has not been fully executed. "A writ of error is a substitute for a direct appeal and the reason for the rule permitting the use of the writ clearly demonstrates that the Legislature intended to impose certain conditional limitations upon the issuance and applicability of the writ. It is for this reason that the writ may not issue subsequent to the expiry of 6 months next following the rendition of final judgment. Furthermore, if all that the judgment or decree requires to be done shall have been completely done, the judgment is said to have been fully executed, precluding the probable issuance of the writ. "The law is a growing science; it would be sheer folly to think of it as an epitome of perfection ; we as interpreters of the law must at times give a deaf ear to our personal convictions in respect of what the law should be when the Legislature has been outspoken and unambiguous in respect of a particular law. Where deficiency exists, we must turn to the Legislature for the necessary cure; for this we cannot ourselves do in the particular circumstances. "Since it has been stated in unequivocal terms that nothing else is left to be done in respect of executing the final decree of the lower court, we find ourselves forestalled due to these statutory requirements that preclude us from acting under these circumstances." In view of the above, the ruling of the Justice presiding in Chambers is hereby affirmed. Costs in these proceedings are ruled against appellants. And it is hereby so ordered.
Ruling affirmed.

Togbe et al v Cooper et al [2003] LRSC 8; 41 LLR 403 (2003) (9 May 2003)

AKAPOE A. TOGBE and GEORGE TOGBE, Plaintiffs-In-Error, *v.* HIS HONOUR VARNEY D. COOPER, Assigned Circuit Judge, Civil Law Court, Sixth Judicial Circuit, Montserrado County, and THE INTESTATE ESTATE OF THE LATE VOLDER L. MILLER, represented by and thru its Administrator, JAMES S. MILLER, Defendants-In-Error.

PETITION FOR A WRIT OF ERROR AGAINST THE CIVIL LAW COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: March 26, 2003. Decided: May 9, 2003.

1. A writ of error is a writ by which the Supreme Court calls up for review a judgment of an inferior court from which an appeal was not announced on rendition of judgment.
2. The specific purpose of a writ of error is to review a judgment, decree, or decision of a trial court from which an appeal has not been announced at the time of rendition of judgment.
3. The writ of error is the proper remedy for a party seeking relief from a judgment rendered in his absence.
4. A petitioner for a writ of error must always be able to show that due to no fault or neglect on his part, his absence from court at the time of rendition of judgment against him was unavoidable.
5. A party who was never made a party to an action in a lower court, either by the service of summons or by his personal appearance as to have the court acquire jurisdiction over him is not entitle to any relief by a writ of error; the appropriate remedy in such a case being prohibition and not error.
6. As a prerequisite to the issuance of a writ of error, the persons applying for the writ shall be required to pay all accrued costs, and may be required to file a bond.
7. The statutory provisions for payment of accrued costs by a petitioner for a writ of error as a prerequisite for the issuance of the writ is mandatory.
8. The taking of exceptions to a judgment by a court-appointed attorney in the absence of the defaulting counsel weighs as a factor against the issuance of a writ of error.

Petitioners filed a petitioner for a writ of error, alleging that the trial court had rendered judgment against them without appointing an attorney to take and except to the judgment for the purpose of enabling them to appeal the judgment to the Supreme Court, thus denying them of their day in court and due process of law. The Supreme Court, however, denied the petition and the issuance

of the writ, holding that the records showed that as to one of the plaintiffs-in-error the lower court had appointed counsel to take the judgment and that exceptions had been taken thereto and an appeal announced therefrom; and that as to the other plaintiff-in-error, he was never made a party to the action nor had a writ of possession been issued against him. If he felt therefore that the judgment was affecting his interest, the proper and appropriate remedy was prohibition, not error. Moreover, the Court held that as the records revealed that no accrued costs had been paid by the petitioners, as mandatorily required by statute, the writ could not be granted.

Charles Abdullah of the Watch Law Chambers, Inc. ap-peared for plaintiff-in-error. *James W. Zotaa* of the Liberty Law Firm appeared for defendants-in-error.

MR. JUSTICE SACKOR delivered the opinion of the Court.

This case is before us on a petition for a writ of error filed by Akapoe A. Togbe and George Togbe, praying this Honour-able Court to review and reverse the final judgment of the trial court rendered on October 16, 2000 in an action of ejectment.

According to the certified records before us, co-defendant-in-error herein, the Intestate Estate of the late Volder L. Miller by and thru its administrator, James S. Miller, instituted an action of ejectment on February 4, 1999 against George Togbe and Edwin Freeman in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County. A writ of summons was served and returned served.

The records also revealed that the defendants, plaintiffs-in-error herein, filed a motion for enlargement of time which was resisted, heard and granted, thereby giving them the grace period of 45 days to file their answer. However, they failed and neglected to file their answer within the time granted. Hence, they were ruled to a bare denial. When this case was assigned for hearing on October 6, 2000, the plaintiffs-in-error and their counsel failed to appear for hearing. The trial court, upon application of the co-defendant-in-error, granted a default judgment which was made perfect by the co-defendant-in-error upon the production of evidence.

The empanelled jury brought a verdict in favor of the co-defendant-in-error, adjudging the Co-plaintiff-in-error Akapoe A. Togbe liable and awarding the co-defendant-in-error the sum of L$15,000.00 as general damages. On the 16th day of October, A. D. 2000, His Honour Varnie D. Cooper, Sr. Assigned Circuit Judge, presiding over the September, A. D. 2000 Term of the trial court, confirmed the verdict of the trial jury to eject and oust the co-plaintiff-in-error and place the co-defendant-in-error in possession of the subject property. A writ of possession was duly issued, served and returned served. The sheriff's returns indicate that Co-plaintiff-in-error George Togbe was ousted and that the co-defendant-in-error was placed in possession of the premises. However, Co-defendant-in-error George Togbe repossessed himself of the disputed property.

On the 19th day of March, A. D. 2001, Plaintiffs-in-error Akapoe A. Togbe and George Togbe

filed a 6-count petition for writ of error wherein Co-plaintiff-in-error Akapoe claimed ownership of 4.5 acres of **land** in Jacob Town, Paynesville City. We deem count 6 of the petition germane to the determi-nation of this case and hereunder quote same for the benefit of this opinion.

"That because and since Co-plaintiff-in-error Akapoe A. Togbe was not named in the complaint of co-defendant-in-error, summoned by the Civil Law Court, named in the court's October 16, A. D. 2000 final judgment and neither is the name of Co-plaintiff-in-error Akapoe A. Togbe found anywhere on the face of the writ of possession of the Civil Law Court. A writ of error, as a matter of law shall and must lie against defendant-in-error and dispossess it from the lawful property of co-plaintiffs-in-error, being 4.5 acres of **land**. Hence, error shall lie."
The defendants-in-error contended in count 4 of their returns and also argued in their brief that a petition for a writ of error is not the proper remedy for a person who has not been made a party in the court below. They argued that prohi-bition should have been the proper remedy to restrain the enforcement of the final judgment of the trial court. Our statute clearly provides that "A writ of error is a writ by which the Supreme Court calls up for review a judgment of an inferior court from which an appeal was not announced on rendition of judgment." Civil Procedure Law, Rev. Code I: 16.21(4). Thus, this Court says that the specific purpose of a writ of error in this jurisdiction is to review a judgment, decree, or decision of a trial court from which an appeal has not been announced at the time of rendition of judgment. The extraordinary writ is the proper remedy for a party seeking re-lief from a judgment rendered in his absence. *Union National Bank, Inc. v. Hodge*, [1971] LRSC 78; 20 LLR 635 (1971). Also, in the case *Nigerian Ports Authority v. Brathwaite*, [1977] LRSC 55; 26 LLR 338 (1977), Syl. 6, this Court held that a "petitioner for a writ of error must always be able to show that due to no fault or neglect on his part, his absence from court at the time of rendition of judgment against him was unavoidable." We perceive no parity of legal reason to grant the relief sought by the petitioner who, during the trial of this case, was never made a party in the court below, either by the service of summons or by his personal appearance to acquire jurisdiction over him. The appropriate remedy in such case is prohibition and not a writ of error.

Another important argument made by the of defendants-in-error that had claimed our attention is that the plaintiffs-in-error have failed to pay accrued costs. A careful perusal of the records before us indicates that the said records clearly support the said argument. There is no showing that the plaintiffs-in-error in these error proceedings paid the accrued costs, a prerequisite for the issuance of the writ or error. The relevant portion of our Statute provides that "as a prerequisite to issuance of the writ, the person applying for the writ of error, to be known as plaintiff in error, shall be required to pay all accrued costs, and may be required to file a bond. Civil Procedure Law, Rev. Code 1: 16.24(d). This Court held in the case *Nigerian Ports Authority v. Brathwaite*, [1977] LRSC 55; 26 LLR 338 (1977), Syl. l, that 'the statutory provision for payment of accrued costs by a petitioner for a writ of error as a prere-quisite to issuance of the writ is mandatory." The plaintiffs-in-error were statutorily required to pay all accrued costs, failing which this Court must decline to grant the relief sought by them in their petition.
It was also argued by the defendants-in-error that Co-plaintiff-in-error George Togbe cannot apply for a writ of error on the ground that he was a party to the proceedings and the trial court had appointed counsel who had excepted to the court's judgment and announced an appeal therefrom to this Court. The records show that Co-plaintiff-in-error George Togbe was one of the

defending parties in the trial court against whom final judgment was rendered, and that an appeal was taken to this Court from the said judgment. In *Mulba et al. v. Dennis et al.*[1973] LRSC 33; , 22 LLR 46 (1973), Syl.3, this Court held that "exceptions to judgment by court-appointed attorney, in the absence of defaulting counsel, weigh as a factor against the issuance of a writ of error." The Supreme Court cannot grant a writ of error when a court-appointed counsel excepted to and appealed from a final judgment of an inferior court in the absence of a defaulting counsel, as in the instant case.
Wherefore, in view of the facts and the controlling law, it is the holding of this Honourable Court that the petition for a writ of error is hereby denied, the alternative writ quashed, the peremptory writ denied, and the judgment of the lower court confirmed. 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 plaintiffs-in-error. And it is hereby so ordered.

Petition denied.

Tubman v Westphal et al [1900] LRSC 6; 1 LLR 367 (1900) (1 January 1900)

J. H. TUBMAN, Appellant, vs. **WESTPHAL**, **STAVENOW & CO.**, Appellees.

[January Term, A. D. 1900.]

Appeal from the Court of Quarter Sessions and Common Pleas. Maryland County.

Injunction.

Landlord and tenant.

An action for the violation of contract is the proper action to bring against a tenant who has made default in the payment of rent; ejectment will not lie and if brought may be enjoined.

In an action of ejectment brought by the landlord against his tenant for the violation of the covenants and agreements of the lease, in which he sought to eject the lessee, it was held that an action for the violation of contract was the proper action, and an injunction on the ejectment suit was sustained.

This case was tried and determined in the Court of Quarter Sessions and Common Pleas, Maryland County, sitting in equity, at its November term, A. D. 1899. It is brought up to this court upon a bill of exceptions by the appellant, for review and final disposition. The record in the case is most voluminous, and therefore most fatiguing and distressing to review, but the court, after a careful and most laborious reading, has deducted the following summary as the gist of the case, which it will here give before concluding.

It appears that in the year A. D. 1897, J. H. Tubman, appellant, leased by agreement certain premises in the County of Maryland, City of Harper, to Westphal, Stavenow & Co., a German mercantile house doing mercantile business in the said county, for a term of ten years, to end A. D. 1907, for the consideration of three hundred dollars available money per year. It also appears that appellant opened an account business with appellees to a large amount, and was then indebted to appellees in the sum of twenty-five hundred dollars. Appellant applied to appellees for his lease money (three hundred dollars), when appellees informed him that they had placed the sum of three hundred dollars to his credit on their books. To this arrangement appellant dissented, and at once gave notice to appellees to vacate the said premises in question within fifteen days, or he, the appellant, would eject them by law. Appellees, to prevent the ejectment, sued out a writ of injunction against appellant, and in the meantime deposited in the custody of the court three hundred dollars, one year's lease money, and prayed the court to compel appellant to take the said sum of money, which appellant refused to do, alleging that appellees had violated the conditions of the agreement.

The injunction was tried by the court below, sitting in equity, and judgment was rendered in favor of appellees, perpetuating the injunction. To this judgment appellant took exceptions and appealed to the Supreme Court.

After a careful survey of the circumstances in connection with the case, this court says that appellant was wrong to order appellees to vacate the said premises and to give them notice that he would eject them if they failed to comply with the order to vacate said premises within fifteen days; for if appellees had violated the terms of the agreement he, appellant, should have entered an action against appellees for breach of contract. Appellant neglected to enter such an action, which he had a legal right to enter if proof was manifest that the appellees had violated the terms of the agreement; but instead, he took an unjustifiable course. Therefore this court says that to secure themselves against unlawful ejectment appellees were justified in enjoining appellant.

Reviewing all the circumstances that govern the case, this court further says that the court below did not err in rendering judgment to perpetuate the injunction; for it is equitable and just that men should do unto others as they would have others do unto them. The perpetuating of the injunction

simply enjoins appellant from further molesting appellees by unlawful ejectment in this particular case, and does not vitiate and make void the terms of the agreement made and subscribed to by the contracting parties. And the court further says that it is unwilling, as the last legal and equitable resort for justice, to lay a precedent on account of technicalities that will prevent all men from enjoying their full rights under the law of the **land**, be they Liberians or foreigners. The court knows no north, no south ; no rich, no poor ; no Liberian, no foreigner; and it can guarantee no rights or privileges other than what the Constitution and the laws of the **land** guarantee to each. Its motto is, "Let justice be done to all men." And the court will not lend its aid to men who seek to take advantage of others by evading a righteous and equitable course of conduct, however adroitly they may endeavor to cover their intentions, for equity is righteousness.

The court therefore affirms the judgment of the court below and adjudges that appellant shall pay all legal costs in this action. The clerk is hereby ordered to issue a mandate to the judge of the court from which this action emanated, to the effect of this judgment.

Gbartoe et al v Doe [2000] LRSC 15; 40 LLR 150 (2000) (21 July 2000)

JOSEPH GBARTOE, DUNBAR GBARTOE, and WARNIE CHEA, Appellants, v. WASHINGTON DOE, Appellee.

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

Heard: May 24, 2000. Decided: July 21, 2000.

1. The failure of an appellant to file an approved appeal bond and to serve and file a notice of the completion of an appeal deprives the appellate court of jurisdiction over the case and is cause for the dismissal of the appeal.

2. The sole object of a general bond is to secure the appearance of the defendant.

3. The amount of an appeal bond shall be fixed by the trial court, and secured by two or more legally qualified sureties for the purpose of indemnifying the appellee from all costs and injury arising from the appeal, if unsuccessful, and to have the appellee comply with the judgment of the appellate court or any other court to which the case is removed.

4. The sureties to an appeal bond remain obligated and responsible, singular and jointly, to enure that the appellant complies with the court's judgment and pays all costs and expenses if the appeal is unsuccessful.

5. The sureties to an appeal bond are deemed to pledge that the appellant shall indemnify the appellee from all costs, injury, and damages which the appellee may sustain should the judgment be rendered against the appellant.

6. The sureties to an appeal bond are joint and severally liable for the amount specified in the bond plus interest, and the appellee has a remedy against such sureties in damages for breach of contract should the sureties default in satisfying the judgment.

7. When the appellee does not challenge the capability of the sureties to pay the sum of the appeal bond or attack the sufficiency of the bond, the bond will be deemed enforceable.

8. A bond which is sufficiently descriptive in its construction to make its condition clear and intelligible, and capable of enforcement, although lacking in other respects, is nevertheless legal.

9. An appellee suffers waiver in failing to file any objections to the sureties to an appeal bond within three days, upon notice of the filing of the said bond.

10. The failure of an appellee to except to the financial sufficiency of the sureties to an appeal bond within three days of receipt of notice of the filing of the bond constitutes a waiver of his objections and warrants the denial of the motion to dismiss the appeal.

11. The clerk of the trial court from whence an appeal is taken is required by statute to transcribe and transmit to the Supreme Court the certified records of the trial within ninety days of the rendition of the trial court's final judgment.

12. The failure and neglect of the clerk of the trial court to transmit the certified records of trial, where the appellant has superintended his appeal, does not constitute a legal ground for the dismissal of the appeal.

Appellee Joseph Doe filed a petition for declaratory judgment against the appellants to have the rights of the parties declared to a parcel of **land** which the appellants also claimed title to by virtue of a lease agreement. From a judgment entered by the trial court in favor of the appellee, the appellant appealed to the Supreme Court. The appellee filed a motion to dismiss the appeal,

alleging (a) that he was not served with a notice of the completion of the appeal to bring him under the jurisdiction of the Supreme Court; (b) that the appellants' approved appeal bond was defective, in that the bond was without an affidavit of sureties and lacked a clear description of the property offered as security, as required by law; and (c) that the appellants had failed and neglected to transmit the certified trial records to the Supreme Court within ninety (90) days, as required by the appeal statute.

The Supreme Court disagreed with the appellee and denied the motion to dismiss the appeal. The Court held, with regards to first contention, that the records showed that the notice of completion of appeal was received and signed for by the appellee. Regarding the contention that the appeal bond was defective, the Court held that although there was no affidavit of sureties, the bond was still sufficient and fulfilled the requirements of the statute since the bond and the statement of property valuation contained the description of the properties offered as security to the bond and the assessed value of such properties. The purpose of the bond, the Court said, was to indemnify the appellee from harm and injury, and that the appellee had not alleged that the sureties were incapable of paying the amount of the bond or that they were not liable to the ordinary process in damages in the event of default in satisfying the judgment.

With respect to the contention that the properties offered were not sufficiently described, the Court asserted that not only was the description sufficient, but also that the appellee had waived his right to challenge the bond by his failure to object to the bond within three days of receipt of the notice of the filing of the bond in the trial court.

Finally, on the issue of the failure of the appellants to have certified copies of the records transmitted to the Supreme Court within ninety days of the judgment of the trial court, the Court opined that it was the responsibility of the clerk of the trial court, and not the appellants, to transcribe and transmit the said records, and that the appellant having superintended the said records, they could not be held for the failure of the clerk. The Court therefore denied the motion to dismiss and ordered the case heard on the merits.

J. D. Baryougar Junius of the Legal Clinic appeared for the appellants. Charles K. Williams of the Dugbor Law Firm appeared for the appellee.

MR. JUSTICE SACKOR delivered the opinion of the Court.

During the October Term, A. D. 1997 of this Court, Mr. Justice Wright, presiding in Chambers, granted a petition for a writ of prohibition filed by Joseph Gbartoe, restraining and prohibiting His Honour Varnie D. Cooper, Assigned Circuit Court Judge for the Sixth Judicial Circuit Court,

Montserrado County, from evicting the petitioner from a parcel of disputed property. The then Chambers Justice granted the prohibition upon the strength of a lease agreement entered into and executed on October 1, 1982 between Chea Warnie, as lessor, and Joseph Gbartoe, as lessee, for a twenty (20) year period, beginning from October 1, 1982, up to and including October 1, 2002.

The appellee, Washington Doe, filed an action for a decla-ratory judgment against Joseph Gbartoe, Dunbar Gbartoe and Warnie Chea, appellants, in the Sixth Judicial Circuit Court, Montserrado County, claiming ownership to a certain property situated and lying in Old Krutown, West Point. The appellants also claimed title and possession of the selfsame property by virtue of a lease agreement. The appellants also alleged that they constructed two houses on the parcel of **land** pursuant to the lease agreement and lived therein up to 1990 when they fled from Monrovia due to the Liberian civil conflict.

His Honour Joseph W. Andrews, Assigned Circuit Court Judge presiding over the Sixth Judicial Circuit Court, heard the action for declaratory judgment and rendered a final judgment in favor of the appellee. Counsel for appellants excepted to the judgment and announced an appeal to this Court of denier resort.

The records in the case show that the appellants perfected their appeal to this Court within the period prescribed by statute, and duly paid the clerk of the trial court the required fees for the preparation and transmission of the records of the case to this Court.

When this case was called for hearing, counsel for appellee informed the Court of the filing of a motion to dismiss the appellants' appeal. The appellee raised and argued three issues before the Court. The first contention of the appellee was that the ministerial officer of the trial court did not serve him with a copy of the notice of the completion of the appeal to bring him under the jurisdiction of this Court. The appellants, on the other hand, contended that the appellee did receive and sign for the notice of completion of appeal, as shown by "Exhibit S/1 ", and that as a result of said service the appellee was placed under the jurisdiction of this Court.

Our Civil Procedure Law provides that the clerk of court, upon request of the appealing party, shall issue a notice of completion of appeal, a copy of which shall be served by the appellant on the appellee. The law also provides that the appellant shall file the original of such notice in the office of the clerk. Civil Procedure Law, Rev. Code 1:51.9. In the case Marh v. Sinoe, [1978] LRSC 58; 27 LLR 320, Syl. l (1978), text at pages 320 and 326, this Court held that "failure of an appellant to file an approved appeal bond and to serve and file a notice of comple-tion of the appeal deprives the appellate court of jurisdiction and is cause for dismissal of the appeal."

It is clear from the statutory provision and the decisions of this Court, cited supra, that the appellant shall serve the appellee with a copy of the notice of completion of the appeal, and that the appellant shall file with the clerk of the trial court the original of such notice. Also," Exhibit S/1" shows that the appellee received and signed for the notice of completion of appeal on

August 4, 1999. Thus, he was brought under the jurisdiction of this Court. The contention by the appellee that he was never served with copy of the notice of completion of appeal by the ministerial officer of the trial court is therefore not sustained.

The appellee's second contention was that the approved appeal bond filed by appellants was legally defective, in that the said bond was without an affidavit of sureties, as required by law. In their counter argument, the appellants contended that they had filed an approved appeal bond for the amount of L$80,000.00, that the bond showed a clear description of the property offered as security to the bond, and that a copy of the said bond was served on appellee without any objections to the sureties within the three-day period allowed by law. Thus, they asserted, appellee suffered a waiver.

Chapter 63 of our Civil Procedure Law refers to general security or bonds other than an approved appeal bond. The sole object of such general bonds is to secure the appearance of a defendant in court. Section 51.8 of the Civil Procedure Law specifically provides that the amount of an appeal bond shall be fixed by the trial court, with two or more legally qualified sureties, for the sole purpose of indemnifying the appellee from all costs and injury arising from the appeal, if unsuccessful, and complying with the judgment of this Court or of any other court to which the case is removed.

A careful perusal of appellants' appeal bond reveals that the sureties on said bond remain obligated and responsible, jointly and severally, to ensure that the appellants shall comply with the judgment and pay all costs and expenses if the appeal is un-successful; and further, that the sureties shall remain obligated until judgment is satisfied and they are thereafter discharged. The sureties pledged in the approved appeal bond that the appellants shall indemnify the appellee from all losses, injuries and damages that appellee may sustain should judgment be rendered against the appellants by this Court.

A financial sufficiency of an approved appeal bond in civil cases is a prevailing feature, in that, the objects of the appeal bond in such cases are the indemnification of the successful party and the payment of all costs arising from the appeal. Both the appeal bond and the statement of property valuation con-tained the assessed value of the property pledged as security and a sufficient description of the said property to easily identify it. Yet, the appellee contended that the appellants' appeal bond was fatally defective because of the failure of the appellants to accompany the bond with an affidavit of sureties pursuant to section 63.2 (3). Civil Procedure Law, Rev. Code 1:63.2.

Section 63.7 of the Civil Procedure Law provides that sureties to a bond are jointly and severally liable for the amount specified in the bond plus interest, and that the appellee shall have a remedy against the sureties on a bond for damages for breach of contract, should the sureties default in satisfying a judgment. In the case at bar, it is not the argument of the appellee that the appellants are not liable to the ordinary process of the court, or that they are not capable of paying the sum of L$80,000.00 set forth in the approved appeal bond. It follows therefore that as

the financial sufficiency of the appeal bond has not been attacked by the appellee, the bond is, in our opinion, enforceable.

As to the description of the property, this Court has held that "a bond which is sufficiently descriptive in its construction to make its conditions clear and intelligible, and capable of enforcement, although lacking in other respects, is nevertheless legal". Williams v. Johnson et al., l LLR 247 (1893); Van Ee v. Gabbidon, 11 LLR, text at 72 (1951). We therefore deem the appellants' appeal bond legal, since the bond is sufficiently descriptive and its conditions are clear, intelligible and capable of enforcement. The attack upon the appeal bond in this respect is not sufficient to justify dismissal of the appeal.

We are also in agreement with the contention of the appel-lants that the appellee suffered a waiver because of his failure to file any objections to the sureties to the appeal bond within 3 days of receipt of the notice of the filing of said bond, as required by law. This Court held in Kerpai v. Kpene that the "failure of appellee to except in the court below to the financial sufficiency of the sureties to an appeal bond within 3 days after receipt of notice of the filing of the bond constitutes a waiver of his objection and warrants denial of a motion to dismiss the appeal." Kerpai v. Kpene, [1977] LRSC 4; 25 LLR 422, Syl. 6 (1977).

The third and final argument of the appellee is that the ap-pellants had failed and neglected to transmit the records in the case to the Supreme Court within the 90 day period required by the appeal statute and, consequently, that they had abandoned their appeal to this Honourable Court. The appellants, on the other hand, vehemently contended that the clerk of the trial court is statutorily required to transcribe and transmit the records in this case to the Honourable Supreme Court. They maintained that they paid the necessary fees to the clerk for the preparation and subsequent transmission of the records to this Court, and that the failure of the clerk to perform his duty is not ground for the dismissal of their appeal.

We are in agreement with the contention of appellants that the clerk of the trial court from which the appeal is taken is required by statute to transcribe and forward to this Court certified trial records of a case on appeal within 90 days after the rendition of a final judgment. The appellee did not deny the averment of the appellants that they had paid the necessary fees to the clerk of the trial court to perform his statutory duty. The appellants superintended their appeal to this Court, and the failure and neglect of the clerk of court is not a legal ground for dismissal of appellants' appeal.

Wherefore, in view of the foregoing, the motion of appellee to dismiss the appellants' appeal is hereby denied and the appeal ordered heard on its merits. Costs are to abide the final determination of the case.

Motion to dismiss appeal denied.

Timber Corp. v Agriculture [1978] LRSC 20; 27 LLR 9 (1978) (28 April 1978)

THE LIBERIAN EASTERN TIMBER CORPORATION, Appellant, v. THE LIBERIAN LOGGING AND WOOD PROCESSING CORPORATION and THE MINISTRY OF AGRICULTURE, Appellees.

APPEAL FROM THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT, GRAND GEDEH COUNTY.

Argued April 4, 1978. Decided April 28, 1978.

1. A judge should never hasten to dispose of a matter if so doing would be prejudicial to the interests of the parties.
2. The Ministry of Agriculture cannot grant a corporation which has been given permission by a logging concessionaire to construct a right of way through its property, the right to cut timber a half mile on each side of the right of way, for any such grant is contrary to the spirit of the provisions of the Constitution of Liberia forbidding the Legislature to pass any law impairing the obligation of contracts, Article I, Section 10th, and preventing the taking of private property for public use without just compensation. Article I, Section 13th.

Appellant, the holder of a logging concession in Grand Gedeh County, agreed with the appellee corporation, holder of a neighboring concession area, to permit appellee to construct a right of way across appellant's concession area. The cost was to be borne equally by both parties. Appellee proceeded to construct a ten-to-twelve-mile road through appellant's concession area, but also felled timber for one-half mile on each side of the road. Appellant contended that it had not agreed to this operation, and seeks to recover the profit realized therefrom by appellee. Appellee Corporation and the co-appellee Ministry of Agriculture answered that it was the established practice of the Ministry of Agriculture, of which appellant had been notified, to permit extraction of logs half a mile on both sides of a road being constructed through a concession area.

The case reached the Supreme Court on appeal from a decision of the Circuit Court affirming a ruling by the Minister of Agriculture that appellee corporation was entitled to extract logs half a mile on each side of the right of way it was constructing. The Supreme Court held that the contractual right of the appellant under its logging concession was protected by the Constitution of Liberia, and therefore the Minister of Agriculture was without power to violate those rights by establishing a policy permitting another concessionaire to take property belonging to appellant under its concession agreement with the Government. The Court adjudged appellant entitled to the net profit from the sale of the timber felled by appellee corporation less the amount

representing appellant's share of the cost of constructing the right of way. The *judgment* of the Circuit Court was *reversed.*

Toye C. Barnard and *Moses K. Yangbe* for appellant. *Harrison Grigsby* and *MacDonald Krakue* for appellees.

MRS. JUSTICE BROOKS-RANDOLPH delivered the opinion of the Court.
The Liberian Logging and Wood Processing Corporation, co-appellee in these proceedings, requested the Ministry of Agriculture to approach appellant, the Liberian Eastern Timber Corporation, to grant appellee a right of way through appellant's concession at the Konobo Area, Grand Gedeh County.
The Ministry of Agriculture by its letter of March 5, 1974, from the Honorable Anthony T. Sayeh informed the Liberian Eastern Timber Corporation of the request of co-appellee, and indicated further that in keeping with government policy the requesting company would have the right to log a half-mile distant on each side of the right of way.
On March 12, 1974, appellant wrote to the Assistant
Minister of Agriculture informing him that the request of co-appellee for a right of way through appellant's concession was unacceptable because there were alternative routes available to appellee by which it could reach its concession. Appellant pointed out that co-appellee maintains a concession area in the eastern section of Liberia, east of Grebo Forest, and that co-appellee could use that route to reach its Konobo area; furthermore, that co-appellee operates another concession area north of the Maryland Logging Concession Area and thus for all practical purposes it could construct its road from the southeastern section of the Maryland Logging Concession area.
It may be noted that the matter was not pursued further until September 1974. Appellant addressed a letter on September 3, 1974, to the successor of Mr. Sayeh, former Assistant Minister of Agriculture, reiterating its objections to granting co-appellee a right of way through appellant's concession.
On September 1o, 1974, the Honorable James T. Philips, Minister of Agriculture, addressed the following letter to appellee:

"Republic of Liberia,

Dept. of Agriculture,

Monrovia.

"10 September 1974.

"Office of the Secretary,

M/74/2117.

"Mr. Rafic Charafeddine,

President,

Liberian Logging & Wood Processing Corp.,

Monrovia, Liberia.

"Mr. President:

"In keeping with the policy of right of way, the

Ministry hereby grants you said right under said

policy to construct a road to your concession in the

Glaro Forest.

"You may therefore log within one-half mile and

no more along each side of the road being constructed to

assist you in deferring construction costs.

"Please adhere to these conditions.

"Very truly yours,

"[Sgd.] JAMES T. PHILIPS, JR.,

Minister of Agriculture."

The right of way through the concession of the Liberian Eastern Timber Corporation having been granted by the Minister of Agriculture over its objections to the Liberian Logging and Wood Processing Corporation, a conference was held in the office of the Superintendent for Grand Gedeh County with the management of both corporations, when Superintendent White stated that advantages would accrue to citizens of the area, and the adjacent areas as well, from use of the road to be constructed. Thereupon it was agreed by both parties that the project of building the road would be undertaken jointly, with a view to linking the villages and towns within the area of the road. This agreement has been referred to by co-appellee in stating the history of this case. The willingness of appellant to jointly construct the ten to twelve miles of road is borne out by its dispatching a D-7 Caterpillar to the site which worked for ten days until a mechanical breakdown when appellant discontinued its assistance.

Up to this point it can be seen that upon persuasion of the Superintendent of Grand Gedeh County in the interest of citizens of the area an agreement was formed to jointly construct ten to twelve miles of road through appellant's concession. The point of disagreement is that appellant contends that there was never any agreement nor was there an authorization by appellant to co-appellee to fell logs on its concession one-half mile on each side of the road under construction. Furthermore, appellant in its complaint to the Ministry of Agriculture against the co-appellee for

felling logs in its concession area, brought to the attention of the Ministry
that co-appellee logged 6,250 acres of forest from appellant's concession area, and extracted 4,636 cubic meters of logs valued at $529,200, which amount after taxes and other production costs gave the co-appellee a net profit of $251,040. Further, that the total cost of construction of the road was $60, 000, of which appellant was willing to reimburse appellee the sum of $30, 000. This allegation was never denied at the Ministry of Agriculture by co-appellee, nor in the trial court, and when counsel for co-appellee was asked by one of the members of this bench what was the income from the sale of the timber which they admitted they had sold, and what was the cost of constructing the road through appellant's concession which co-appellee said is ten miles long, counsel replied on behalf of his clients they did not know.

It seems rather irregular that the Ministry of Agriculture was unwilling to look into the merits of the question raised by appellant, since there had become involved a matter of misuse of private property granted under the laws of this Republic by the Government of the Republic of Liberia to appellant when the Ministry itself was representing the Government.

What is more, it seems rather strange that the Liberian Logging and Wood Processing Corporation, which has been granted a forest concession by the Government of the Republic of Liberia, has been unable to give any information concerning the timber which it admits selling or information concerning its cost expenditure for construction of a ten-mile road through the concession area of the Liberian Eastern Timber Corporation.

The information forwarded to the Ministry of Agriculture, which was never denied, is in Exhibit "B," referred to above. It gives details of number, species,volume of timber felled, the purchase price, and the
income of the Liberian Logging and Wood Processing Corporation. It indicates that 4,636 cubic meters of logs

felled realized a gross income of $529,200, and that after taxes and production costs of $278,160, the net profit received was $251,040.

It was on May 11, 1976, that Assistant Minister of Agriculture for Forestry, Melvin Thornes, with both parties represented, ruled that co-appellee had the right to extract logs within a half-mile on both sides of the road being constructed by it within the concession area of the appellant. From this adverse ruling of Assistant Minister Thornes, appellant excepted and appealed therefrom to the Minister of Agriculture, who after hearing both parties on May 20, 1976, affirmed the decision of his Assistant Minister. Thereupon, appellant filed a petition to the Civil Law Court, Seventh Judicial Circuit, Grand Gedeh County, for a judicial review of the Minister's final administrative ruling.

During the November 1976 Term of the Civil Law Court of the Seventh Judicial Circuit, Grand Gedeh County, Judge Alf red B. Flomo, who was presiding, after hearing arguments submitted by the parties, ruled in favor of the appellee corporation and the Ministry of Agriculture on December 22, 1976. Appellant again excepted and announced an appeal to this Court for review and final adjudication.

The petition filed by appellant in the court below alleged and contended among other things: That there are no written regulations or rules of the Ministry of Agriculture which make it the absolute privilege of the requesting company to extract logs half a mile on each side of any road constructed through another's concession area.

"2. That the Liberian Logging and Wood Processing Corporation requested permission to construct the

road through appellant's concession because it is necessary for the purpose of reaching its own concession area. Petitioner was willing therefore, and since the

road would be used by the public, to reimburse to correspondent half of the cost of constructing the road.
"3. That the Minister of Agriculture did not require the respondent to file an indemnity bond before entering upon petitioner's premises as required by Article VI of the concession agreement between petitioner and the Government.
"4. That although petitioner previously disagreed and objected to the respondent's constructing an access road to their concession area through petitioner's concession area or to extract logs half a mile from the road in petitioner's concession area, yet subsequently a conference was held by and between the two parties before Honorable Albert T. White, Superintendent of Grand Gedeh County, where both parties agreed to jointly undertake the construction of the access road through petitioner's concession area, and at this conference certain understandings were reached between the parties, but the agreement incorporating the terms of understanding was never signed by the parties. Notwithstanding, co-respondent Liberian Logging and Wood Processing Corporation continued the construction of the road and completed it.
"5. That the purpose for permitting the extraction of logs from both sides of any road constructed is to compensate the party that constructed the road for some if not all of the expenses incurred in constructing the road, and that if the objective of co-respondent, the Liberian Logging and Wood Processing Corporation, is to have access to its own concession area granted to it by the Government and not to extract logs from petitioner, the said co-respondent should be willing to be compensated with half of its total cost for constructing the road, since the original intent was to construct the road jointly.

"6. That not only did co-respondent fail under
Article VI of the concession agreement between petition

and the Government of Liberia to file an indemnity bond in an amount to be designated by the Minister of Agriculture prior to entry upon the petitioner's premises, but also illegally extracted logs from the petitioner's concession area and exported same to countries abroad.

"7. Petitioner further submits that between 1974 and I975, the Matro Logging Corporation appealed through the Ministry of Agriculture, co-respondent herein, to Vamply of Liberia Inc., to permit the said Matro Logging Corporation to open a road through the Vamply concession area to Matro Logging Corporation. Vamply flatly refused to permit Matro Logging Corporation to build the road through Vamply's concession area. Up to this date, the road has not been constructed. Thus, a precedent has been established which shows that there are no rules and regulations compelling any concessionaire to permit other companies to construct roads over the objections of the concessionaire owning the concession through which the proposed road is to be constructed. In the instant case, co-respondent Liberian Logging and Wood Processing

Corporation had alternative routes."
The respondent, the Liberian Logging and Wood Processing Corporation, and the Ministry of Agriculture filed separate answers to this petition. In its answer respondent admitted all of the factual allegations of the petitioner with exception of the case of Vamply and Matro Logging Company which petitioner relied upon as a precedent for the position they have assumed. The respondent contended in its answer that (t) the letters of former Assistant Minister Anthony Sayeh and of petitioner were mere correspondence which presented no disputed fact which the court could pass upon; (2) the ruling of the Assistant Minister of Agriculture as confirmed by the Minister was in keeping with accepted policy of Government which is a practice of long standing and should not be
disturbed; (3) petitioner is estopped from raising the issue of a failure to file an indemnity bond before commencing to extract logs a half-mile on each side of petitioner's concession area following the construction of the road, as the petitioner participated in the arrangement and accepted the proposal before the Superintendent of Grand Gedeh County and that an indemnity bond may be filed at any time to continue operation in a disputed area or pending an appeal. Co-respondent Minister Russ in also answering the petition contended that the appeal should be dismissed in that (I) the final ruling appealed from having been rendered on July 20, 1976, petitioner should have filed its petition on August 19, 1976, and not August 21, 1976, which is more than thirty days after the final ruling contrary to the statute governing appeals from administrative agencies; (2) the policy of the Ministry of Agriculture to allow extraction of logs half a mile on both sides of the road being constructed is equitable and not in conflict with any existing law or policy of the Government, and this policy having been accepted and observed by other concessionaires over the years should not be disturbed, especially so in the case of the petitioner herein, who had accepted the policy or precedent and permitted the respondent to construct the said road.
To these answers and contentions petitioner joined issue with the respondents by filing replies respectively in which petitioner substantially contended : (r) that the petition was filed within the statutory time since the final ruling of the Minister was received on July 23, 1976; (2) that the answer of co-respondent Minister Russ should be dismissed because the said answer was venue in the November 1976 Term of Court before Judge A. Benjamin Wardsworth instead of the August 1976 Term in which the petition was venue contrary to law and procedure; (3) that the fact that petitioner authorized and agreed for the respondent corporation to construct the said road jointly with petitioner does not authorize the
respondent to extract logs a half -mile on each side of the road and that such extraction of logs without the consent and authorization of the petitioner is illegal, and no policy of the Minister can authorize the respondent to do so in the absence of express statutory provision. These are the contentions and arguments of the parties.
The lower court judge maintained that there were two issues for his considerations: (1) Does the Ministry of Agriculture have the right to set policy regulating the conduct of concessionaires engaged in forestry and agricultural operation in Liberia? (2) Was there an agreement between the parties by which the petitioner agreed to reimburse the respondent corporation to the extent of one-half of the total cost of the construction independent of the policy ruling of the Ministry of Agriculture prior to the commencement and completion of the construction project?
Taking the questions in the reverse order of the sequence in which the lower court judge has dealt with them, this Court does not consider that there exists the issue: Was there an agreement between the parties by which the petitioner agreed to reimburse the respondent corporation to the

extent of one-half of the total cost of the construction independent of the policy or ruling of the Minister of Agriculture prior to the commencement and completion of the construction project? Put in its proper context, the appellant corporation was persuaded by the Superintendent of Grand Gedeh County to assist in developing the area by permitting the co-appellee corporation to build a ten-to-twelve-mile road through appellant's concession area which it needed to reach its concession and from which the citizens within the adjacent areas would derive social benefits. Appellant thereupon agreed that the road should be constructed jointly, and dispatched a Caterpillar to the site which worked ten days but because of mechanical breakdown discontinued its assistance. Appellant subsequently offered
to make good this commitment to assist in building the road by an offer of one-half of the construction cost. Is this to be considered an issue of whether or not appellant agreed in advance to pay one-half of the construction cost? We think not.

We are led from the reasoning of the lower court judge to believe that he has misconceived the true issues involved. The question is not whether the Ministry of Agriculture has the right to set policy regulating the conduct of concessionaires engaged in forestry and agricultural operation in Liberia. We recognize that the Chief Executive has invested the Ministry of Agriculture with certain powers and functions relating to the operation of the Ministry; what the Court must determine is whether such powers extend to or can supersede the contractual rights of parties as protected under the Constitution of this Republic. This issue will be dealt with later in this opinion.

Turning now to counts 1 and 2 of the bill of exceptions we must uphold the principle that judges ought never to hurry to dispose of a matter if so doing would be prejudicial to the interest of the parties, for judges of lower courts are required to respect the established principles of the Supreme Court.

Service of assignments should necessarily be made on counsel who will appear and represent their clients' interest in the cases. Due diligence therefore should be taken by sheriffs to have the assignments served on the counsel, for even where the litigants are present, the court will not proceed without legal representation of the parties unless

they waive their right of representation by counsel. The judge therefore erred in proceeding hastily to dispose of the matter, disregarding the interest of appellant who had requested a postponement so that proper legal representation would be made in its interest. Minutes of

Circuit Court, 25th day's session, Wednesday, December 8, 1976, sheet 3, Court's Ruling; *Morris v. Saad*, 13 LLR 135 (1958) ; *Davies* V. *Yancy[1949] LRSC 4;* , 10 LLR 89, 96 (1949).

The lower court judge has stated that under the Administrative Procedure Act "our duty as a court of appeal is to review the matter upon the records certified to us from the trial agency and not to entertain any other evidence." Disregarding the fact that the "substantial evidence rule" is broad enough and capable of sufficient flexibility in its application to enable the reviewing court to correct whatever ascertainable abuses may arise in administrative adjudication, 2 AM. JUR. 2d, *Administrative Law, §* 621 (1962) and *King v. Moore* [1968] LRSC 4; 18 LLR 231, 236 (1968), the lower court judge failed to consider and dispose of the legal issues in accordance with the record certified to the court. Under normal circumstances this court would remand this case for new trial in accordance with the long line of cases which states that where issues of law and fact are raised by the pleadings, the issues of law must be decided before trial of the issues of

fact, *Wright v. Richards*, 12 LLR 423 (1957), but the flagrant abuse of justice in the handling of this case requires the court to make a determination of the matter.

It is evident that the party litigants were both granted concessions or entered into concession agreements with the Government of the Republic of Liberia, under which exclusive rights were given to the concessionaires to harvest, process, transport, and market timber and other forest products and to conduct other timber operations within the exploitation area.

The Ministry of Agriculture did not proffer any copy of policy regulations by which it granted one-half mile along each side of the road being constructed on the concession of appellant to assist the appellee corporation.

Over the objections of the appellant, the Minister of Agriculture permitted the appellee corporation to fell logs one-half mile on each side of the road constructed. There is no question regarding the logs felled on the road itself, since appellant had agreed to jointly build the road. Whether or not there exist regulations allowing the grant of a right of way through a concession area, does the Agriculture Ministry have the right to violate the provision of the Constitution of this Republic, Article I, Section l0th, which states among other things that the Legislature shall not make any law impairing the obligation of contracts, or Article I, Section 13th, that private property shall not be taken for public use without just compensation? If the Legislature is barred under the Constitution of the Republic to pass a law with these effects, can a Ministry in carrying out its duties and functions override this basic law of the Republic? We think not.

Both the Agriculture Ministry and the lower court judge ignored the submission of appellant that co-appellee had sold logs amounting to more than $200,000; although co-appellee admits that they did sell timber from appellant's concession area. Further, that the ten-mile road constructed cost $60,000 was not denied.

In count 9 of the bill of exceptions, appellant contends that appellee is entitled to $30,000 which is one-half the cost of constructing the road through appellant's concession area, since the construction of the road was primarily for the appellee corporation's own convenience and advantage; that appellee corporation should therefore pay to the appellant the amount of $221,040 of the net profit.

If there had been no timber to fell in constructing the road, co-appellee would have nevertheless built the road, but it was advantageous as a shorter distance to reach its concession and perhaps avoid a more costly route; it is difficult therefore to see why appellant should not be compensated to the extent which it requests for the felling and sale of its private property.

It is no secret that the concession agreements of this

Republic provide that compensation shall be paid to the

owner or occupant of **land** for loss of the right to use the

land for the period of a lease, or for a right of way or easement; and this is in harmony with the rights established under Article I, Section 13th, of the Constitution.

If the Supreme Court should neglect to uphold the fundamental law of the nation and thereby deprive parties of rights guaranteed there under, be they citizens or expatriates, it will reflect discredit on the Government of Liberia, and with respect to the rise at bar, discourage investors in a country where they are not sure that a written contract means truly what it says.

Because neither of the parties to the dispute has proffered a copy of its concession agreement

with the Government, this Court will not pass upon the question of indemnity bond raised by the appellant in connection with its agreement.
In view of the foregoing, the judgment of the lower court, Seventh Judicial Circuit, Grand Gedeh County, is set aside or reversed.
Co-appellee is entitled to $30,000 as offered by appellant for its contribution to the construction of the road which appellant corporation began to assist in building. The appellant's request for $221,040 representing the net profit from the sale of timber felled from its private property is hereby granted, and co-appellee is hereby ordered to satisfy this judgment within ten days after its rendition, with costs against the appellee corporation. And it is ordered.

Judgment reversed.

East African Co. v Dunbar [1895] LRSC 5; 1 LLR 279 (1895) (1 January 1895)

EAST AFRICAN COMPANY, late Hendrik Muller of Rotterdam, Appellants, vs. **HARRIET F. DUNBAR**, Appellee.

[January Term, A. D. 1895.]

Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.

Ejectment.

1. The plea of estoppel is a good plea and will prevent a party from denying his own acts, if well founded; neither law nor equity will permit a party to disclaim his own acts as unlawful. The same rule applies to privies.

2. In ejectment, where damages are sought, the complaint must be so constructed as to put in issue this point; where it is not so framed it is error to award damages, and where under such circumstances the jury allowed damages, and a motion for a new trial on this ground was rejected by the lower judge, it is an error which the appellate jurisdiction will take cognizance of.

3. The Constitutional inhibition with respect to citizens only holding free-hold estates, does not preclude foreigners from holding leaseholds. The legal term of a lease to foreigners is twenty years, but it will be a good lease if it contains a provision for renewal after the expiration of the term granted. A conveyance made transferring the fee in certain lease-hold estate, but subject to

the terms of the lease, creates a future estate, and where the consignee, acting in the dual position of assignee and administratrix for the lessee, conveys a title in the same estate to another party, she is estopped from raising any objection to the original lease and in denying the rights granted therein.

This is an appeal case that was tried in the Court of Quarter Sessions, Sinoe County, at its November term, A. D. 1894, and is brought to this court upon a bill of exceptions for review.

In considering this case we regret that the issues presented in the exceptions did not claim more of the attention of the counsellors in the case, as that would have enabled this court to see better the point aimed at by the parties. Such have been the irregularities in this case, in nearly every stage of its proceedings, that only after hard labor are we enabled to get the case into such a form as to apply the law and facts to the proceedings below. It may be well for us to remark just here, that the law makes no distinction between men when before it; the high and the low here are both on a level. The law, while just, has no sympathy; it neither makes men rich nor poor; hence the claim to be rich can have no influence with it, and to plead poverty can awaken no sympathy.

This is an action of ejectment and consequently subject to the law governing the proceedings in such actions. We will here repeat the rule of universal acceptance in such cases: The plaintiff must not only show in himself title, but lawful title to the lands in dispute, and also the right of entry at the time of purchase, or his legal claim would, if a remainder-man, be reduced to an equitable claim, until the happening of the contingency then effecting his right of entry. The exceptions taken in this case are many, and are so taken as to enter into two or three points, upon which the proceedings must tumble for the want of legal foundation; hence this court will notice only such as will enable it to arrive at a just determination of the case.

The first exception claiming the immediate attention of this court, is the second found in the bill of exceptions, and is as follows: "Because the court overruled the plea of estoppel set up in the defendant's answer." The plea of estoppel is among the pleas calculated to prevent one from denying his own acts or deeds, and when founded in truth must meet the sanction of the courts of law. Nothing would work greater injustice than for a man to execute a note or deed in favor of another, and then attempt to prove its unlawfulness. In law he would be estopped, or hindered from doing it, and if such acts committed by any party, no matter in what capacity acting, becomes a question of lawfulness, neither the party himself, nor any one representing him, should be allowed to impeach his own deed, note or acts. In this the court below greatly erred. The court should have sustained the plea and abated the suit in its very commencement, it appearing in the record that the plaintiff below, with others, sold and supported the entry of the defendant below in all the rights of the original lessee, for whom she acted as executrix.

The fourth exception taken is as follows: "Because the court sustained a motion opposed by appellant, to order a jury to assess damages, the verdict of the ejectment case having been rendered in favor of the plaintiff below." This irregularity tended not only to greater confusion, but to a direct violation of universal law. To make plain the meaning of this court we remark, that the forms laid down in the statute are but outlines or models and are to be modified to suit particular cases. In ejectment, where damages are also craved, the complaint should be so modified as to show damage, thereby giving notice to the defendant of the fact plaintiff intends to prove (Stat. 1st Book, page 4s, sec. 8), otherwise a separate action for damage would be the only means whereby damage could be recovered. The complaint not being thus modified, the court erred in sustaining the petition.

The eighth exception is: "Because the court refused, on a motion of defendant below, to set aside the verdict of the jury returned and awarding damages to the plaintiff below." Nothing constitutes a more glaring wrong than this act of the court below, because the verdict on its face shows that it is returned in an action of damages, whereas the action of damages was never entered and tried by the court. Therefore in this the court below erred, and the verdict should have been set aside.

Before proceeding further we take occasion to say that to hold property and to enjoy leasehold are two distinct things in law: the former none but citizens of Liberia may enjoy, under the Constitution; the latter anyone may enjoy, without respect to race or nationality. A lease may be for any term not exceeding that which may put the estate out of market, or in perpetuity. This term is limited by the decision of this court to twenty years, which this court in this present decision does not feel authorized to overthrow or to disturb. However, as the decision referred to does not annunciate the doctrine that a lease would be illegal if it contained a term of years, subject to a renewal of said term after the expiration of the first, this court is of the opinion that the lease in question for twenty years, to be renewed after the expiration of the first term, is not against the Constitution of Liberia nor the decision of this court referred to, and such leases may be made by the owners of lands to suit their own convenience; otherwise owners would not have absolute right to property in their own hands, but would be merely trustees of the same.

We shall now briefly consider the facts in this case. In the record it appears that one Mrs. E. M. Morris, the owner of lots numbered 59 and t io, in the city of Greenville, Sinoe County, by deed, leased said lots to one Jose B. Oliver, his heirs, administrators, executors or assigns, for a term of twenty years, for five hundred dollars, being the lease money. Said lease was to be renewed at the will or desire of the said Oliver after the expiration of twenty years, he paying all the taxes and giving one dollar, and further delivering up all improvements at the end of the second term,

to the lessor. That this covenant not only bound the parties to the transaction, but all claiming under them, is the opinion of this court.

It appears that soon after the transaction referred to, the said Mrs. E. M. Morris sold to plaintiff below her fee titles to the said lots numbered 59 and no, but in her deed to the plaintiff points out the lease of the said Oliver, so as to convey to her a future estate. This in the first instance constitutes a bar to an entry, and also admits the right of entry of the said Oliver, upon the terms and recitals in both his and her deed. And it further appears, that shortly afterwards both Mrs. Morris and Oliver died, and this event placed Mrs. Dunbar, the plaintiff below, in a dual position, first as assignee of Mrs. Morris, and secondly, Oliver leaving her executrix of his will, which appointment she accepted, thereby representing Oliver also.

And it further appears that the said Mrs. Dunbar and her co-executor sold unto one N. J. A. Maarschalk, agent of H. Muller & Company, his heirs and assigns, all the rights, titles and interests of the said Oliver in the lots now in dispute, one term having nearly expired, before which, it appears, those holding under the claim of Oliver tried by all means to secure an express renewal of the lease for the second term. But those claiming under Mrs. Morris' right failed to do as provided in the covenant, by remaining dormant and allowing over five years of the second term to expire. This silence on the part of plaintiff is, in the opinion of this court, equal to an implied ratification of the second term, the assent being equal to consent.

Considering this case from every reasonable and honorable standpoint, this court adjudges that the judgment rendered by the court below be and is hereby reversed, to all intents and purposes, both as to the ouster until the expiration of the time limited in the covenant, and as to the damages awarded, and that the appellant recover from the appellee all legal costs of this action. Further, the clerk of this court is hereby directed to issue a mandate directed to the Court of Quarter Sessions, Sinoe County, to the effect of this judgment.

Abi-Jaoudi & Aazar Trading Corp. v Pearson et al [1990] LRSC 7; 36 LLR 712 (1990) (9 January 1990)

ABI-JAOUDI & AZAR TRADING CORPORATION, by and thru its General Manager, Petitioner/Appellant, v. **HIS HONOUR J. HENRIC PEARSON**, Judge Presiding over the March Term of the Civil Law Court, Sixth Judicial Circuit, Montserrado County, and **JOHN H. RICHARDS**, Respondents/Appellees.

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

Heard: October 30, 1989 Decided: January 9, 1990.

1. A writ of certiorari cannot be granted where relief can be obtained through a regular appeal.

2. A writ of certiorari cannot be granted where the ruling of a lower court during the pendency of a cause is not manifestly prejudicial to the rights of a party.

Co-appellee John H. Richardson instituted an action of ejectment against the appellant in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County. The trial judge, in ruling on the law issues, dismissed the appellant's answer and ruled the facts to trial by jury. The appellant excepted to said ruling and filed a petition for the writ of certiorari before the Chambers Justice, contending that the ruling on the law issues was erroneous and that certiorari would lie to correct same. The Chambers Justice heard the petition and denied it. The appellant then excepted to the ruling of the Justice in Chambers and announced an appeal to the Bench *en banc.*

On appeal, the Supreme Court affirmed the Chambers Justice's ruling denying the peremptory writ and ordered the trial court to resume jurisdiction over the matter and proceed with the trial on its merits.

S. Raymond Horace appeared for the petitioner/appellant. *Joseph Findley* appeared for the respondents/appellees.

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

This is an appeal from a ruling by the Justice in Chambers denying the petition for the issuance of a writ of certiorari, filed against the presiding judge of the Civil Law Court, Sixth Judicial Circuit, Montserrado County.

Petitioner is defendant in an action of ejectment pending in the lower court. Co-respondent John H. Richards, plaintiff in the trial court, brought the said action in the December A. D. 1986 Term of court, to evict petitioner/appellant, a renowned business house from premises it presently occupies on Randall Street in Monrovia, claiming legal ownership and alleging petitioner's repeated refusal to remove therefrom or enter into a lease agreement with appellee. For this persistent refusal, Co-appellee Richards sought to evict petitioner and recover damages for unlawful possession of co-appellee's **land**. Petitioner, on the other hand, maintained that its possession of said property was based on a lease agreement it earlier concluded with the Government of Liberia as owner of the said piece of **land** in question.

In ruling on the law issues, the trial judge dismissed petitioner's answer and ruled the facts to trial by jury as is required by our procedure in such cases. The petitioner excepted to the said ruling, intending to proceed on appeal at the conclusion of an adverse judgment. However, petitioner decided to resort to a petition for a writ of certiorari before the Chambers Justice of this Court, contending that the ruling on the law issues, to which it had excepted, was erroneous. Petitioner therefore prayed that the trial judge be ordered to disregard the said ruling and to hear the law issues anew, observing all applicable laws made and provided in such cases. Specifically, petitioner contended that the trial judge's ruling on the law issues had failed to consider important legal issues raised by petitioner and that the judge had even distorted some of the issues, such as whether or not the Government of Liberia can be sued in ejectment.

On the other hand, respondents responded that the petition was merely intended to delay the trial since appellant had noted exceptions to the ruling of the judge and therefore had available to it the use of the appeal mechanism to correct any errors that the judge might have committed. Respondents concluded that in any case, certiorari, being an extraordinary writ, could not be issued by this Court to correct a ruling on the issues of law, pending trial of the facts.

After hearing the petition in Chambers, with counsels on both sides being present, the Justice in Chambers, our judicial colleague, denied the peremptory writ of certiorari and ordered the trial court to resume jurisdiction over the case and proceed with the trial of the cause. Petitioner, being dissatisfied with the ruling, filed this appeal before the Full Bench of this Court.

The Justice in Chambers gave as reasons for the denial of the writ the fact that this Court cannot grant the writ of certiorari to correct rulings on law issues, and that petitioner had raised issues in its petition which were proper subjects for appellate review and not otherwise.

From the records before us and the arguments of counsel on this appeal, we are certainly compelled to side with our colleague in Chambers, and to uphold his ruling on this petition in view of several opinions of this Court in the past which, we are convinced, remain the law on this subject.

The ruling against which petitioner seeks the writ of certiorari is a ruling on the law issues, which left trial of the cause before a jury as our laws require in such cases. Having found said ruling to be contrary to the law petitioner, defendant in the lower court, duly noted exceptions. The matter was then to proceed to a jury trial to determine the truth of the allegations set forth in the complaint. If, at the conclusion of said trial, the petitioner was still dissatisfied, because of an adverse judgment, it had the right to appeal to this Court for a final appellate review. We are not convinced that the ruling against which the writ was sought was prejudicial to the rights of the petitioner or was one which could not be reviewed on regular appeal and corrected, if it was erroneous or prejudicial. Having noted exceptions to the ruling, petitioner also legally noted a right to appeal later at the conclusion of the trial. Therefore, to resort to certiorari was merely intended to delay the regular proceedings.

The issues which petitioner wishes to see reviewed here are, to all intents and purposes, fit for appellate review, especially so when exceptions were properly taken to the ruling.

In a long line of opinions on the subject of certiorari, this Court has repeatedly held that it cannot grant the writ where relief can be obtained through a regular appeal. In like manner, this Court has said that it cannot grant the writ where the ruling of a lower court, made during the pendency of a cause, is not manifestly prejudicial to the rights of a party. *Morris v. Flomo,* [1977] LRSC 52; 26 LLR 314 (1977); *Karout v. Flomo and Peal,* [1978] LRSC 25; 27 LLR 60 (1978); *Bailey v. Kandakai et al.[1972] LRSC 62; ,* 21 LLR 556 (1972); *Raymond Concrete Pile Company v Perry and Hamilton,* 13 LLR 522 (1960).

We notice in all its pleadings that petitioner seeks, by its arguments and the issues discussed in this petition, to use the writ of certiorari to perform the functions of an ordinary or regular appeal before us. This Court, however, does not countenance such attempts and, therefore, cannot allow the writ of certiorari to be used in the place of a regular appeal for review. *The Bassa Brotherhood Industrial And Benefit Society v. Dennis et al.[1971] LRSC 60; ,* 20 LLR 443 (1971).

Hence, we uphold our colleague's ruling, made in Chambers, denying the peremptory writ. The trial court is therefore ordered to resume jurisdiction in this matter and to proceed with the trial of this cause on its merits according to law. Costs are to abide final determination. And it is hereby so ordered.

Petition denied

Williams v John et al [1894] LRSC 3; 1 LLR 259 (1894) (1 January 1894)

H. A. WILLIAMS, Appellant, vs. **M. J. JOHN** and **LAURA ALLEN**, Appellees.

[January Term, A. D. 1894.]

Appeal from the Court of Quarter Sessions and Common Pleas, Grand Bassa County.

Ejectment.

1. An answer which is general in its character and which does not raise specially some question of law precludes the defendant from raising legal questions, and the court from deciding same at the trial. Courts of justice will only decide questions of law when properly raised in the answer and pleadings.

2. The phrase, "free and voluntary consent," in the Constitution involves facts which require proof of their existence before courts will take notice thereof; the term "otherwise" in the organic law relates also to facts which must be proven.

3. The private acts of a husband done in that capacity, are separate and distinct from his acts as a co-administrator of his wife's estate, and where in the latter capacity he makes a sale and transfer of a part of the estate of his wife, he is estopped from setting aside his own act for any cause whatever.

This is a case brought up on a bill of exceptions from the Court of Common Pleas and Quarter Sessions, Grand Bassa County, tried and determined at its June term, A. D. 1893, and brought to this court for review.

In reviewing this case the court finds that the case rests entirely upon the defendants' (now appellees) denial of the allegations of the plaintiff (now appellant) as laid in the complaint; for the answer of the defendant is a general one, which precludes him from raising any question of law not specially raised in said answer. The fundamental principles upon which all complaints, answers or replies shall be construed, 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 consistent with the present existence of such facts, admit or imply their former existence, or show that existing, they can have no legal effect. It must be remembered that when a defendant denies both the law and the fact, the question of law shall first be disposed of. This does not appear to have been done in this case, and the reason why is very obvious; the defendant neglecting to state in his answer what issue of law he intended to raise, the court could not determine upon the same. For courts can only decide law issues when raised in the pleadings. Much credit, however, must be given to the counsellors on both sides in this case, for the argument adduced in support of the positions they took, particularly the counsellor for the appellees, who ingeniously and skillfully presented points in his arguments not raised in his answer, for the hearing of the court, notwithstanding the disadvantages under which he labored to make good the same. In traversing his brief he referred to the Constitution of Liberia, Article V, Sec. 10, a part of which reads, "otherwise than by her husband." The term "otherwise than by her husband" involves a fact which requires proof as to whether the property referred to was secured to her by her husband, or not, which proof does not appear to the court. The phrase "free and voluntary consent," also involves facts which require proof as to whether Marshall Allen has had the free and voluntary consent of his wife, previous to her decease, to sell said property after her death, which proof does not appear upon the record in this case.

The last clause for our consideration comprises these words: "And such alienation may be made by her, either by sale, devise or otherwise." Here the word "otherwise" involves a question of fact, which requires proof as to whether Ellenorah J. Allen, at any time before her death, had requested her husband to sell and convey away said lot of **land** in question, to him, her husband, in support of their children, as in very many cases a faithful wife would do. We are compelled also to say that no proof on the record does appear in support of the position taken by the appellee, even if the argument could be admitted as having any legal weight; but it cannot be so considered, it being predicated upon points of law and facts which are raised contrary to the statute, which declares that the fundamental principle upon which all complaints, answers and replies shall be made, etc., shall be that of giving notice to the other party of all new facts which it is intended to prove, etc. (See Lib. Stat., Bk. i, p. 45, sec. 8.)

As to the evidence given in the court below by witness Worrell, stating that he had informed Mr. Williams of something, and that he having some misgiving, at the first possible chance got his bond out of court,—this statement being founded upon hearsay, was inadmissible and ought not to have been allowed, on the objections of plaintiff.

The objections made to the questions asked witness Worrell, "Was Ellenorah in debt?" or "Was Marshall Allen in such a state of poverty that he could not support his children?"—the objections of plaintiff to these questions were well founded, and ought to have been allowed, because Marshall Allen did not act in the capacity of a husband of Ellenorah J. Allen, but was acting as co-administrator with J. W. Worrell, as administrator of Ellenorah J. Allen's estate, and therefore they represented her, they being the administrators of her estate; and their bond was responsible to her heirs and creditors for any mismanagement that might have occurred in the administration of the estate.

Notwithstanding that Marshall Allen was the husband of Ellenorah J. Allen, his private acts as her husband and father of their children could not legally be blended with his acts as co-administrator of the aforesaid estate. Such acts are separate and distinct, and this is very obvious from the fact that Marshall Allen's bond was only responsible for his acts as co-administrator, and not for his acts as father. Every purchaser is supposed to be innocent unless he has been legally warned. In this case it does not appear that the appellant was legally warned before he purchased the said piece of property.

Acts of courts against which no protest has been entered, or from which no appeal has been taken, are presumed to be founded in reason and therefore are legal, for reason is the soul of the law. The principle is applicable in this case to the act of the said Monthly and Probate Court, with respect to the sale of the said lot now in dispute, in that the deed executed is evidence against all parties to the same,—Marshall Allen and J. W. Worrell, co-administrators of the estate of Ellenorah J. Allen on the one part, and H. A. Williams, purchaser of said lot in the town of Edina, Grand Bassa County, on the other part, as contracting parties,—and by which the parties are estopped from alleging anything contrary to the terms therein expressed. The court simply passed upon these points, not because they could have any legal effect, they not having been raised in the defendant's answer.

Therefore the court adjudges that the judgment of the court below is hereby reversed, and that the appellant recover from the appellee the said lot of **land** as described in appellant's transfer deed, and all costs in this action.

Kromah v Pearson et al [1987] LRSC 3; 34 LLR 304 (1987) (22 January 1987)

MAMADEE KROMAH, Informant, v. **HIS HONOUR J. HENRIC PEARSON**, Assigned Circuit Judge, Sixth Judicial Circuit, Montserrado County, September Term, A. D. 1984, the Sheriff of Montserrado County and all those serving under his authority, and **BRITISH PETROLEUM MED WEST AFRICA (LIBERIA) LTD.**, Respondents.

INFORMATION PROCEEDINGS.

Heard: November 5, 1986. Decided: January 22, 1987.

1. The relationship of licensor and licensee or the license accruing thereunder is no defense to an action of summary ejectment and hence cannot justify a judgment for the defendant in such summary ejectment proceedings.

2. Where the Supreme Court reverses a judgment of the lower court without ordering a retrial of the case, a remand of the case is solely for the purpose of satisfying the conditions stated in the opinion, and not for a retrial.

3. It would be an injustice to evict a licensee holding property under a summary ejectment proceeding, without compensating him for improvements made on the property.

4. A license is not a legal defense to an action of summary ejectment, because a failure to evict the licensee will create a permanent interest in the property, contrary to the basic elements of a license.

5. Where a judge still has jurisdiction over a matter decided by him, he remains clothed with the authority to modify, correct or rescind his decision or judgment in the identical case decided by him. However, he must do so upon proper notice to all the parties concerned.

6. It is a reversible error for a trial judge to rescind an order previously given in the absence of and without notice to the parties concerned.

7. Where the writ in information proceeding remanded by the appellate court fails to specify that the property in question be placed in possession of the informant, it is error for the trial judge to place such informant in possession of the property from which he had been previously evicted, and such action is a legal nullity.

8. Where a licensee has been compensated for losses he might have sustained growing out of improvements made upon the property from which he has been evicted, he cannot occupy the identical property without the expressed consent of the owner/licensor.

In an action of summary ejectment instituted by the correspondent, BP Med West Africa (Liberia) Ltd., against the informant, Mamadee Kromah, a licensee of the co-respondent, the trial court entered judgment in favor of the informant. On appeal, the Supreme Court reversed the judgment, holding that the mere fact that the informant held a license granted by the co-respondent was no defense to an action for summary ejectment. The appellate Court therefore remanded the case to the trial court. However, prior to the reading and enforcement of the

mandate, the informant instituted an action of damages against the co-respondent for breach of contract. In this latter case, judgment was entered in favour of the informant for $45,000.00, from which no appeal was taken. Instead, the judgment was fully satisfied by the co-respondent.

Thereafter, following the reading of the Supreme Court's mandate, the trial court judge, in enforcing the said mandate, ordered the informant evicted from the premises. Whereupon, informant filed a bill of information with the Supreme Court, alleging that the Supreme Court's mandate had been violated by the trial court since the Supreme Court, in remanding the case, intended that a new trial would be conducted by the trial court and not that the informant should be ejected from the premises. Growing out of the bill of information, a writ was issued and served on the trial court judge. The trial judge, upon receipt of the writ, reversed his previous ruling and ordered that the informant again be placed in possession of the premises.

In disposing of the information, the Supreme Court ordered that the co-respondent be placed in possession of the premises. The Court held that the trial court judge, in evicting the informant from the subject premises, had not violated the Court's mandate, noting that in remanding the case, it had not intended that a new trial be conducted in the summary ejectment proceedings. The Court observed that the informant had not requested that he be granted repossession of the premises, and that neither the bill of information nor the writ issued and served on the trial judge instructed that the corespondent be dispossessed of the premises or that possession thereof be given to the informant.

The Court expressed its agreement with the judgment in the damages case, stating that it was fair that the co-respondent compensate the informant, its licensee, for losses sustained by virtue of improvements made to the premises from which he had been ejected. The Court opined, however, that it would be an injustice to the co-respondent to place the informant in possession of the premises or to permit him to occupy the said premises, after he had been compensated by the co-respondent for the losses he had sustained. The Court therefore *dismissed* the information.

No one appeared for informant. *The Maxwell & Maxwell Law Offices* appeared for respondents.

MR. JUSTICE BIDDLE delivered the opinion of the Court.

The co-respondent in these information proceedings, British Petroleum Med West Africa (Liberia) Ltd., instituted an action of summary ejectment against the informant, Mamadee Kromah, in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, during its March Term, A. D. 1983. In keeping with the statute governing summary ejectment cases, the hearing of this case was conducted without a jury. Following the conclusion of the evidence, the trial judge rendered final judgment in favor of the defendant, now informant. The plaintiff/co-respondent excepted to this final judgment and perfected an appeal to this Court.

During its March Term, A. D. 1984, this Court, upon hearing the appeal, reversed the lower court's judgment. For the benefit of this opinion, we hereunder quote the relevant portion of the opinion. It reads thus: "In many jurisdictions where a licensee has entered under a parole license and has expended money or itsequivalent in labor, it becomes irrevocable and thelicensee 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; and the principle of equitable *estoppel* is invoked to prevent what would work a great hardship in many in-stances. 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 accepts the benefits of the licensee's labor and expense." 33 AM. JUR., *Licensee, §* 103.

The exposition made above clearly explains the law of license in real property where expenditures are made by licensee. Then they become irrevocable and special means have to be resorted to for terminating them. 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 as well as just compensation. Therefore, the judgment in this case is hereby reversed and the case remanded. Costs to abide final determination. IT IS SO ORDERED."

It is from the above quoted opinion and judgment that the parties have come back to this Court for redress, each endeavoring to interpret the opinion and judgment to suit their respective views. The mandate from this Court in the action of summary ejectment commanded and authorized the judge presiding in the court below to "execute the foregoing judgment immediately" and file returns as to how said mandate was executed.

Appellee/defendant, now informant, filed an eight-count bill of information before the Court *en banc,* substantially alleging that this Court, in reversing judgment of the trial court, remanded the case for a new trial. Counts 3, 4 and 5 of the bill of information, which we consider relevant to the determination of this case, are summarized thus:

(3) That the Honourable the Supreme Court, during its March A. D. 1984 Term, heard the appeal and in reversing the judgment of the court below, "remanded the case to the court below".

(4) That the court below, after reading the mandate of this Court, issued a notice of assignment for a hearing of the case, meaning retrial.

(5) That instead of conducting a new trial as understood and argued by informant, the respondent judge proceeded to read and enforce a mandate of the Supreme Court in said case, informant contending that there was no mandate to be read let alone to be enforced, and according to informant only a retrial was ordered by this Court.

On the other hand, and countering the bill of information, respondents filed 19-count returns. However, for the benefit of this opinion, we shall consider only counts 2, 3, 11, 14, 17 and 19 thereof. They are summarized as follows:

(2) That by reversing the judgment of the lower court in the said ejectment case, the court, as a matter of law and by implication, did hold that respondent British Petroleum Med West Africa (Liberia) Ltd. be put in possession of the disputed premises.

(3) That the only purpose for remanding the case after reversing the judgment of the lower court was for the latter to determine what compensation could be recovered by informant for improvement made on the premises.

(11) That had the Supreme Court intended to have the case retried, it would have so stated in the opinion as is traditionally done when a case is remanded for new trial. And that even though the Supreme Court decided that "great injustice will be done to appellee (informant herein) if he were to be evicted without notice as well as just compensation", yet the very court did opine that the legal relationship between the informant and respondent British Petroleum Med West Africa (Liberia) Ltd. was that of a licensor-licensee and that such relationship was not a valid defense in an action of summary ejectment, because, according to the court, failure to evict informant/appellee will create a permanent interest in the property, contrary to the basic elements of a license.

(14) That no claim of compensation was raised in informant's pleading (answer) in the court below, and that only during the trial did the informant/defendant mention or testify to the effect that he was retaining possession of said premises because he had not been compensated for some alleged damages sustained by him as a result of a wrongful entry of, and damage done by, respondent British Petroleum Med West Africa (Liberia) Ltd., as well as compensation for improvements carried out by informant. And informant, having been compensated for improvement made on the co-respondent's aforesaid premises in an amount of $45,000.00, through an action of damages, a condition laid down by the Supreme Court, informant can no longer retain said premises when the condition has been satisfied.

(17) That the writ of possession was served and returned served and informant ousted and evicted from the premises, and co-respondent placed in possession of its said premises.

(19) That the trial judge's act of rescinding the writ possession and returning said premises to informant, in other words ousting co-respondent BP without notice to the parties on account of a bill of information before the bench *en banc,* while said bill of information was still undecided, was a reversible error.

Lest we forget, the bill of information, subject of these proceedings, in its prayer, does not contain any request to this Court to have the lower court put the informant in possession of the premises in dispute pending disposition of the information proceedings; nor did the citation from the office of the Clerk of this Court contain any provision to put the informant in possession of the premises from which he had already evicted, pending the disposition of the information.

From the records certified to this Court, the summary ejectment case was finally decided by this Court during its March A. D. 1984 Term. In that opinion, the judgment of the trial court, dismissing the complaint in the ejectment suit instituted by the co-respondent, British Petroleum Med West Africa (Liberia) Ltd., was reversed. But in reversing said judgment, this Court did not specifically order a new trial.

However, in the last concluding sentences of the opinion, it was stated: "Therefore, the judgment in this case is hereby reversed and the case remanded. Costs to abide final determination. IT IS SO ORDERED."

Before the enforcement of the Supreme Court's mandate by the lower court, the informant instituted an action of damages for breach of contract against co-respondent BP growing out of the trial-dealership relationship between the informant and the respondent, BP. In an exhaustive 18 page findings, the trial court, although having observed that plaintiff Mamadee Kromah had failed to prove any breach of contract on the part of defendant BP, nevertheless ruled that:

"The defendant BP's manager having admitted cutting the hose of the pump cannot escape liability completely because the act complained of did not only violate our criminal statute but did impose some damage on the plaintiff, however minimal. And while the plaintiff has been unable to determine the extent and quantum of damages, this court is of the opinion that a reasonable amount as compensation to the plaintiff is warranted, if for no other reason than to serve as a deterrent to others.

"It is therefore the judgment of this Honourable Court that the defendant BP pay to plaintiff Kromah the amount of $45,000.00 (forty-five thousand dollars) as damages."

This finding or judgment was apparently entered in contemplation of the Supreme Court's opinion, reversing and remanding the summary ejectment case, to the effect that the defendant ought to be compensated for improvements done on plaintiffs (BP) premises. It is interesting to note that BP did not except to this judgment awarding plaintiff Kromah the amount of $45,000.00 (forty-five thousand dollars) as damages. Instead, it satisfied the judgment of the trial court, as evidenced by the bill of costs taxed by both parties, and exhibited by the respondents as exhibit R/10. The said judgment was satisfied on August 2, 1984.

Subsequently, on August 23, 1984, the mandate of the Supreme Court was ordered read but it was not enforced until October 22, 1984, after several delays by informant. The lower court, in enforcing the mandate, placed the co-respondent in possession of the premises. *(See* Respondents' exhibit D/11).

Thereafter, on October 23, 1984, informant Kromah filed the instant bill of information before the full Bench. Upon receipt of the bill of information, the co-respondent Judge, His Honour J. Henric Pearson, had this to say:

"THE COURT: In re the case BP Med West Africa, plaintiff versus Mamadee Kromah, defendant, action of summary ejectment. The court received a writ from the Honourable Supreme Court of Liberia on an information filed against the writ of possession ordered issued from this court in favor of the plaintiff, commanding the sheriff of the county to dispossess Defendant Mamadee Kromah of the further use of the gas station in question and to place same in possession of the plaintiff. This writ of possession was served and returned served, and in view of the writ served against this court's order, the court hereby rescinds its orders of possession in favor of the plaintiff pending determination of the information filed with the Honourable Court *en bane.* It is the order of this court, therefore, that the sheriff of this court will repossess the property, BP Gas Station, Jamaica Road, Bushrod Island, unto defendant Mamadee Kromah to take full possession thereof until the final determination of the information proceeding by the Honourable Supreme Court of Liberia. This rescinding order takes effect immediately and the sheriff will proceed to place defendant in possession of said gas station. Copies of this rescinding order is hereby ordered dispatched to all parties concerned for their information. AND IT IS SO ORDERED."
"Given under our hand in open court this 26th day of October, A. D. 1984, at the hour of 11:55 a.m.
/s/ J. Henric Pearson
/t/ J. Henric Pearson
ASSIGNED CIRCUIT JUDGE PRESIDING"

In other words, the trial judge, upon receipt of the citation in the bill of information, *sua sponte* rescinded his previous decision, dispossessing the co-respondent BP, rightful owner of the premises in question, of the possession of said premises, thereby nullifying his own act or judgment.

Three issues are presented in this case for our determination, all of which are centered around whether or not the trial judge acted correctly. They are:

(1) Whether or not the co-respondent judge was legally correct to rescind his decision as he did after the filing of the bill of information by informant?

(2) What is the office or function of a bill of information and when does it lie?

(3) Whether or not the remand of the case by this Court after reversing the judgment, but without specific instruction, was intended to have the summary ejectment suit retried?

We shall traverse the issues in the reverse order.

The Supreme Court, in reversing the trial court's judgment in the ejectment proceedings, emphatically stated that there existed a licensor-licensee relationship between the informant, defendant in the summary ejectment suit, and co-respondent BP Med West Africa (Liberia) Ltd., plaintiff in the said ejectment suit. This Court also held in that opinion that the relationship of licensor and licensee, or license accruing thereunder, was no defense to an action of summary ejectment and hence could not justify confirming the lower court's judgment. We now hold that by that reversal, without ordering a retrial, this Court intended to put BP, co-respondent herein, in possession of its rightful property, and that the remand of the case was intended solely to satisfy the condition of compensation mentioned in the opinion, even though the issue of compensation was not raised in the informant/defendant's answer to the summary ejectment complaint. This was based on the Court's conclusion that it would be an injustice to evict informant from the premises without justly compensating him for the improvements made on the premises. That compensation was paid as directed.

Coming now to the second issue, we note that this Court has since laid down the rule governing information. In *Raymond International (Liberia) Ltd. v. Dennis,* [1976] LRSC 35; 25 LLR 131 (1976), then Assigned Circuit Judge, Sixth Judicial Circuit, Montserrado County (now Mr. Justice Dennis), this Court, speaking through Mr. Justice Horace, said:

"when an issue had reached the point of executing a mandate of the Supreme Court, a remedial writ was out of the question. If anything went wrong at that stage, it was the duty of the party who felt he was being wronged to in some way bring the action of wrong against whoever was committing the wrong to the attention of the Court *en banc.*

. . . From time immemorial, it has been tile practice to come by bill of information to this Court in cases like these, and therefore 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 to the court." [1976] LRSC 35; 25 LLR 131,140 (1976).

Hence, the informant was not without legal authority in instituting the information proceedings.

We now come to the first issue since we are treating the issues in reverse order, and that is, whether or not the corespondent judge was legally correct in rescinding his decision as he did, upon receipt of the citation in the information proceedings?

As we have stated earlier in this opinion, the co-respondent judge, upon receipt of the citation in the information proceedings, immediately rescinded his decision in these words:

" . . . The court received a writ from the Honourable Supreme Court of Liberia on an information filed against the writ of possession ordered issued from this court in favor of the plaintiff, commanding the sheriff of the county to dispossess defendant Mamadee Kromah of the further use of the gas station in question . . . and in view of the writ served against this court's order, the court hereby rescinds its orders of possession in favor of plaintiff pending the determination of the information. This rescinding order takes effect immediately. . . Copies of this rescinding order are hereby ordered dispatched to all parties concerned for their information. . . ."

Because of the wording of the judgment of the Supreme Court, as contained in its opinion in the summary ejectment proceedings, which simply used the phrase "reversed and remanded" without giving specific instructions, we strongly believe that the co-respondent judge was under the impression that portion of the opinion which stated 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 . . . contrary to the basic elements of a license. . . ." was intended to put co-respondent BP in possession of the property. This probably led to the issuance of the writ of possession in favor of co-respondent BP, which we believe was proper. This conclusion is supported by law. In Ballentine's Law Dictionary, 3rd ed., at p. 1088, we have the following: *"Remand:* The return of a case by an appellate court to the trial court for entry of a proper judgment."

We therefore hold that the proper judgment, within the meaning of the law cited as regards remand, especially when the Court reversed the judgment of the lower court without specific instructions, was to put the plaintiff, BP Med West Africa (Liberia) Ltd., now co-respondent, in possession of its rightful property, subject of the summary ejectment suit.

What is the legal effect of the co-respondent judge's recission of the judgment?

The records reveal that the judge was still in jurisdiction when the bill of information was filed. Hence he was still clothed with the authority to modify, correct or rescind his decision or judgment in the identical case decided by him. However, under the law, he must do so upon proper notice to the parties concerned. (See *Raymond International (Liberia) Ltd. v. Dennis,* cited *supra,* text at 142). It was therefore a reversible error for the co-respondent judge to rescind his order in the absence of the parties or without notice to the parties concerned. And since the instructions in the information proceedings did not contain an order to the co-respondent judge to place informant Mamadee Kromah in possession of the premises in question pending the disposition thereof, the co-respondent judge's act in placing the informant in possession of the premises from which he had already been evicted was a legal nullity.

Furthermore, informant Mamadee Kromah, having already instituted an action of damages against the co-respondent BP and received an amount of $45,000.00 as compensation for losses he might have sustained by improving the said premises, the condition precedent laid down by this Court for his eviction in the ejectment action, he cannot now be permitted to occupy the identical premises without the expressed will and consent of co-respondent BP, the rightful owner of the premises.

Wherefore, and in view of the foregoing facts, circumstances and laws cited, the bill of information is hereby dismissed, with costs against the informant. And it is hereby so ordered.

Information dismissed

Morris v RL [1935] LRSC 28; 5 LLR 3 (1935) (13 December 1935)

CASES ADJUDGED
IN THE

SUPREME COURT OF THE REPUBLIC OF LIBERIA
AT

NOVEMBER TERM, 1935.

FRANCIS W. M. MORAIS, Appellant, v. REPUBLIC
OF LIBERIA, Appellee.
APPEAL FROM CONVICTION OF SEDITION.

Argued May 20, 21, and November 25, 1935. Decided December 13, 1935. 1. In order that a trial may be continued because of the absence of material witnesses, such witnesses must have been subpoenaed. 2. Even then the continuance may be denied if the opposite party admits the facts the applicant shall have sworn that he intended to prove by the absent witnesses. 3. Nor will the continuance be granted even then if it is conjectural whether the testimony of the witnesses can be procured. 4. An ex post facto law is one which inflicts a punishment for an act which was not punishable at the time it was committed, or imposes a punishment in addition to that which was prescribed at the time the act was committed. 5. Among the definitions of sedition is that of writing to any native tribe or the chief thereof any matter imputing to the Government of Liberia unfairness in its treatment of such tribe; or the act of one who, with intent to stir up rebellion, shall seek to create among any tribe disaffection to the Government of Liberia. 6. Writing to a foreign state or any official thereof, proposing the dismemberment of the Republic, or presenting to such official a complaint against the Republic properly the subject of domestic inquiry and adjustment with intent to overturn, subvert, or affect the stability of the Republic, is also sedition. 7. Should there exist two laws, the one prior, and the other subsequent, to the commission of an offense with which a party is charged, the courts will uphold the conviction if it be shown that the mode of trial and the punishment inflicted were both in accordance with the law already in vogue when the crime was actually committed.

On appeal to this Court from a conviction for sedition, judgment affirmed.

The defendant acted for himself, although he did not personally appear to defend. The Attorney General for appellee. MR. CHIEF JUSTICE GRIMES delivered the opinion of the Court. Until the quadrennial election of May, 1931, Francis W. M. Niorais, appellant in the above entitled cause, had been, upon the recommendation of the Greboes in Maryland County, elected by the majority of all the people of

said County as a member of the House of Representatives of the Republic of Liberia and served out his full term of four years. At the aforesaid election, however, he was not returned, but another member of the Grebo tribe was chosen in his place. For some reasons not explained in the record, he began thereafter compassing the overthrow of constituted authority as the documents admitted in evidence, and oral testimony given, tend to show. His letter written to Messrs. Chas. B. Sancea, S. M. Sanyene, J. J. Wotterson, Jas. T. Nimley and others dated 15th July, 1931, admitted in evidence and marked by the court "2" reads as follows: "MONROVIA, LIBERIA, 15th July, 1931. "MR. CHAS. B. SANCEA, MESSRS. S. M. SANYENE, J. J. WOTTERSON, JAS. T. NIMLEY AND OTHERS, GRAND CUSS, MARYLAND COUNTY. "GENTLEMEN:
"I write the present letter to inform you that my presence in Monrovia is considered optimistic for God has seen fit to have brought me here. I came just in time to put our case before these Experts who, in turn, are rather fortunate to obtain desired information from me any time they need it.

"Because Mr. Edwin G. Hodge is going to give you all the current news of Monrovia, I pass on to mention the reason of his urgent visit to Cape Palmas. "The fact that I hasten and send down this young man Mr. Hodge one of the worthy sons of this country indicates the urgency of the step I am taking this moment with a view of placing before you the subject of serious yet interesting moment for your prompt action while the opportunity lasts. "My mission to Monrovia is well known to you and needs not repetition here. You, your wives, children and all your people have suffered and are still suffering to this day. I have explained your situation and submitted your case to Committee of Experts sent to Liberia by the League of Nations and I have this guarantee from them to the effect--thanks be to God --that to make Liberia exist as a Republic on this West Coast of Africa all the troubles of the natives must end and your Tribal authority must be restored. "Furthermore, they have given this guarantee on this assurance that the Government of Liberia must restore your lands to you, and slavery and forced labour cease forever. "Now, the interesting part of this mission lies in the fact that these Experts have increased my vision to the extent of making me realize the necessity of my going first to London to see the Council of the League and then to Geneva to complete the business when the League meets. "Another feature, and perhaps the most important, is that they want the League of Nations to realize and see in person and not by proxy a typical Grebo leadership, the identity of the man who was unwilling to receive bribe when the chances of the natives were weighing in the balance of international sympathy. "You have to raise money to pay my passage to Europe and America and this business must be at-

tended to without minimum delay, as the Council will meet in London to determine

and pass upon the report of the Experts before going to Geneva for September meeting. "We want to raise an amount sufficient and not less than XI 19--and we must do it now--today, no time to waste. "Now, while you hand to Mr. Hodge your subscription please do not forget to keep this business entirely secret not public to all intents and purposes. "It is very interesting to add that the other Day, Vai and Kroo people at this end are doing their part to go to it helping forward this cause, again I must repeat: PLEASE KEEP THIS SECRET TILL I LEAVE THE SHORES OF LIBERIA. "In conclusion, I beg to inform you that the Experts have advised me to approach you with a view that you will go to work and raise money for this great work. "I have the honour to be, Sirs, Your obedient servant, [Sgd.] F. W. M. MORAIS." A second letter written to Mr. Chas. B. Sancea, dated July r9th, admitted in evidence and marked by the court "1" reads: MONROVIA, LIBERIA,
"

19th July, 1931.

"MR. CHAS. B. SANCEA, GRAND CESS AND DISTRICT, MARYLAND COUNTY, LIBERIA. "MY DEAR MR. SANCEA, "Enclosed I am sending you a specimen letter addressed to the King and their Chiefs under them in the County of Maryland, Republic of Liberia. As

you observe from the reading of this typical letter I have not included the civilized element; I have reserved that part for your discretion, it is for you to tell whether there is necessity on your part to ask subscription from them or not. However, I have not said anything as the probability of their inability to contribute toward this cause is very great. And as I have said in the letters addressed to the Kings, the interest there involved is general and not sectional so that all persons standing for reformation and reorganization are bound to come forth regardless of caste, rank, creed, dogmas, petty jealousies, chronic prejudices, and petty formulas. "I was sending Mr. Edwin G. Hodge, but he is not here: he has gone to Cape Mount without telling me anything. This business is very urgent; therefore, I hasten to despatch 1\4r. Samuel Sie Collins, the bearer of this letter. The letters as sent to the Kings should not be transmitted or despatched to them, let Mr. Collins and someone--possibly you and Mr. Nimley or Sanyene carry the letters in person with detailed information concerning the whole affair so that the necessary explanation may be given followed by delivery of letter or letters. Where it is possible not to send Mr. Collins, let an equally confidential person be selected to bear the letter or letters--that is to say a letter must not be sent through the medium of an irresponsible person. "I am sending papers down for the Kings and Chiefs under them to sign, documents must be signed promptly for we have no time to lose or waste; it will be necessary to let some of our prominent and conspicuous civilized men of both elements sign these documents. This is the time for this country to be truly and entirely redeemed. This is the only chance offered us by the Great I AM THAT I AM--THE

INFINITE AND UNIVERSAL MIND of which you and I are a part. "Mr. Collins is to collaborate with you. "And with kind regards, Yours very truly, [Sgd.] F. W. M. MORAIS." It will be observed from the following that not only were certain members of the Grebo tribe fostering the movement originated by Dr. Morais, but certain persons of the civilized element as well. There was a third letter admitted in evidence and marked by the court "3" addressed to King Yide Teba under date zoth July, 1931, which reads: "MONROVIA, LIBERIA, loth July, 1931 "KING YIDE, TEBA, ROCKTOWN AND INTERIOR, MD. CO. "DEAR KING, "The fact that I hasten and send down Mr. Samuel Sie Collins, one of your own worthy sons, indicates the urgency of the step I am taking this day as a result of the meeting of which I wrote you lately. This special meeting of Natives called at Monrovia by Vai and Kroo people was very interesting and resulted in a determination to send you a list of subscription for each tribe in Maryland County. "Based upon recommendation and suggestion of the Experts sent to Liberia by the League of Nations, all the natives of Liberia are agreed and have decided to send me to Europe and America for the purpose of approaching the Council and the League with a view to ultimate rehabilitation of native policy in Liberia; our lands ought to be recovered and our native customary laws respected. "While you are sending your quota, please do not forget this step and our business is to be kept ex-

clusively to yourselves. The movement, however, is not entirely private as I am going to submit a Memorandum to President Barclay informing him of the step we are taking. SUBSCRIPTION LIST.
s. d.

Webbo and District River Cavalla and District Governor Toby and people Grand Cavalla and District Whole Graway and District Big-Town and Dependence Rocktown and Interior Fishtown and Middletown Garraway and District Wedabo Beach and District Grand Cess and District Tops, Sweah, and Flemsidobpo

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Let it be borne in mind, dear King and people, that this matter is not sectional--no Whig, no People's party affair; it is the interest of all the natives of Liberia, hence its universally superlative importance. Give it your prompt attention while the opportunity lasts. "I have the honour to be, Sir, Your obedient servant, [Sgd.] F. W. M. MORAIS." There can be no doubt but that as the result of the writing of these letters, and the use made of them as directed by the appellant, a great spirit of unrest began to prevail in Maryland County, and those persons who could be influenced thereby began to show a marked tendency to rebel against the constituted authority of the Republic as is shown in the official report of the District

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LIBERIAN LAW REPORTS

Commissioner of the Kroo Coast District, dated December 22, 1931, duly admitted in evidence and marked by the court "A." The sections relevant to this case I shall now proceed to read as follows : "DISTRICT HEADQUARTERS, KR00 COAST DISTRICT, MARYLAND COUNTY, R.L. GRAND CESS, 22nd December, 191. "From: The District Commissioner, Kroo Coast District, Maryland County, R.L. "To: The Honourable Secretary of Interior, R.L., Monrovia, Liberia. "Subject: Report for the Fiscal Year ending December 31, 1931. "Copies to: His Excellency the President of Liberia, and the Honourable Superintendent of Maryland County, R.L. "SIR, "I have the honour to submit to you my Report for the Fiscal year ending December 31, 1931 for your official consideration. "From January to April of the present year, this District was in a peaceful condition: all tribes were apparently loyal to the Government, paid their but taxes and kept up their intra-tribal roads and bridges in passable condition. This continued until after the last Quadrennial Election when these tribes (with the exception of Piccaniny Cess, Barlapho and a part of Grand Cess tribes) became disloyal, disobedient and rebellious to governmental authority owing to a propaganda organised by Mr. F. W. M. Morais, and engineered by Messrs. C. B. Sancea, J. S. Baker, James T. Nimley, G. W. Bedell, J. J. Wotterson and S. M. Sanyenne and many others, which had for its objective the overthrow of the Government. When this propaganda was first organised I thought it was merely political, but I afterwards discovered that it

LIBERIAN LAW REPORTS

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had other sinister motives which if not checked, would prove detrimental to our national interest, hence, I communicated the facts to the Executive Government by radio on May 8th last. "His Excellency the President realizing the seriousness of the situation, at once despatched Colonel T. Elwood Davies, L.A., to this County to adjust these matters. "Having been instructed by His Excellency to proceed to Sasstown as Special Commissioner to investigate certain special matters I was prevented from so doing by the hostile attitude of the natives there, which fact I also communicated to His Excellency by radio. This hostile attitude has resulted in open hostilities towards the Government to the extent that it was necessary for her to resort to military actions. I leave the facts to be reported by the Commissioner of Sasstown. "On account of the hostile attitude of the natives of this District I was compelled to leave the District in May last. On my return early in July, I discovered that the propagandists had so infected the natives of this District, that I was unable to carry out my official duties. This infection was to the effect that the Liberian Government no longer existed; that no more taxes were to be paid and that some white government would take over the country. These facts were reported to me by irresponsible persons and believing that these circulations were merely political, I reserved reporting them to the Department until further evidence could be obtained as to their veracity. After obtaining substantial proofs, you being absent from the Capital, I at once reported same to His Excellency the President who at once ordered the arrest of Sancea and Baker and their detention in the nearest military Camp or Barracks pending his further instructions. When this instruction was received, Baker and Sancea were in the interior of this

District collecting monies and infuriating the natives against the Government, but before I could reach them, they had gone to Harper. I at once advised the Honourable Superintendent re my instructions from the President whereupon he requested me to proceed to Harper with my evidences in order for the parties to be arrested there. On my arrival I informed the Superintendent that the President's instructions to me were that these men should be arrested and confined in the Barracks pending instructions from him and that a summary investigation should be held relative to their activities. Upon the suggestion of Senator Dossen, the Superintendent ordered the investigation to be held by the Municipal Court, although it was against his expressed wishes. "The Superintendent further ordered the arrest of Messrs. Wotterson and Sancea. These men were arrested by Lieutenant J. S. Ricks, Liberian Frontier Force, but the Grand Cess people caused such a riot that I was compelled to allow them bail to proceed to Harper. This was done to avoid blood-shed. The actions of these men as well as the Grand Cess people were reported to the Superintendent whereupon he ordered Sanyene and Wotterson to return to Grand Cess and remain quiet until his arrival. After their return, these men continued their seditious activities; when the Superintendent arrived here

he held an investigation as to their activities after their return to Grand Cess and confined them. I also arrested Emanuel Jaeplay, Baffly Nimley, Isaac Sei, Captain S. M. Mombo, Nortur, Manna Goffa for Sedition and Desecration of the National Flag on the 5th of May and confined them pending the arrival of Colonel Davies. "The Honourable the Superintendent arrived in this District on the 2nd of November in company with Honourable George T. Brewer, sr. On the 3rd

we proceeded to Piccaniny Cess where we were officially received by Paramount Chief Jurry. On the 4th the Superintendent convened his Council for the purpose of carrying into effect His Excellency's decision of the Piccaniny Cess question. On the 5th we proceeded to Kinikadi for the purpose of witnessing the election of a Chief of that town. The candidates were-- Gediken and Nyanti. The election was held without the interference of the Superintendent, the District Commissioner nor the Paramount Chief, and in keeping with their tribal customs for the election of a Chief. Chief Nyanti was elected by an overwhelming majority. On the 6th we proceeded to Grand Cess where the Superintendent organised his Council on the 7th. "On the 20th of November Colonel T. Elwood Davies, Liberia Army, Special Commissioner, arrived here and organised his Council on the 23rd instant. The Paramount Chiefs in whose sections the seditioners had been carrying on their activities were present and explained to the Council that these seditioners had been throughout their sections telling them that the Liberian Government would soon be turned over by some white Government; that they were free from paying taxes that when they come to the polls on election day they should bring their War implements to fight if anything happened. These facts were admitted by the prisoners (except Sancea) whereupon the Colonel sent them to Sasstown in keeping with my instructions from the President. The statement of these Chiefs and prisoners is a subject for the Special Commissioner's report. . . . "Permit me to subscribe myself, Mr. Secretary, Your obedient servant [Sgd.] H. R. W. DIGGS, District Commissioner, Kroo Coast District, Maryland County, RI."

Nor does it appear that his seditious activities stopped here. In order to better impress upon the natives his connection with the League of Nations he asked for a photograph of Lord Cecil's Secretary, and received a letter in reply which was admitted in evidence and marked by the court "7" which reads as follows: "LEAGUE OF NATIONS UNION. Incorporated by Royal Charter. "15. GROSVENOR CRESCENT LONDON, S.W. I. "HONORARY PRESIDENTS: RT. HON. STANLEY BALDWIN, M.P. " J. R. CLYNES, " " `` D. LLOYD GEORGE, 0.M., M.P. "Telegranis: FREENATE, KNIGHTS, LONDON. "Telephone: SLOANE 6161 "In reply please quote: 0. S. 58o/4.618o "Joint Presidents: Rt. Hon. the Viscount of Fallodon. Rt. Hon. the Viscount Cecil, K.G., K.C. Chairman of Executive Committee: Prof. Gilbert Murray,

LL.D. D. Litt. Secretary: J. C. Maxwell Garmest, C.B.E., Sc.D. to whom all communications should be addressed. "14th July, 1932.
"DEAR DR. MORAIS, "It is very kind of you to suggest publishing a photograph of myself. I am afraid, however, that I

cannot comply with your request. My dealings with Liberia as Private Secretary to the Chairman of the Council Committee
have been of an official nature, and it would not be proper to give any personal publicity to me. "With kind regards, Yours sincerely,
[Sgd.] JOHN EPPSTEIN; Assistant Secretary." A letter admitted in evidence and marked by the court "6" indicates to our minds that
appellant was endeavoring to invoke foreign interference in our domestic affairs: "Telegraph: so, CITIZENRY, CHURTON, LONDON. "Telephone:
VICTORIA 6063. "THE ANTI--SLAVERY AND ABORIGINES
PROTECTION SOCIETY--(in which are incorporated the British For-

eign Anti-Slavery Society and the Aborigines Protection Society).
"JOINT PRESIDENTS: The Rt. Hon. THE EARL OF LYTTON, G.C.S.I., G.C.I.E.
cc "

cc

" cc

LORD MESTON, K.C.S.I. LORD NOEL-BUXTON

CHARLES

"Chairman: H. ROBERTS, ESQ. "Vice Chairman:

CHARLES RODEN BUXTON, ESQ. "Hon. Secretary: TRAVERS BUXTON, M.A.
Parliamentary Secretary
: JOHN H. HARRIS.

"Joint Hon. Treasurers: Alfred Brooks, Esq., J.P. Sir T. Fowell Buxton, Bart.
"Dennison House, 296, Vauxhall Bridge
Road, London, S.W. i. (Close to Victoria Station).

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loth August, 1932.
"DEAR DR. MORRIS,

"Thank you very
much for the interesting material you have sent us. This will be most valuable to me when I am in Geneva. Please do not think that
we are going to sleep in any way, we are thinking very deeply about the question of Liberia. "Yours sincerely, [Sgd.] JOHN H. HARRIS.
"DR. F. W. M. MORRIS, MONROVIA, LIBERIA." It does not appear to our minds necessary to quote from the oral testimony which, in our

opinion, supports fully the documents which we have quoted, since indeed said documents being a part of a series of correspondence which had passed between appellant and others constituted a slightly higher degree of proof. After a trial lasting from November 27, 1933, until December 2 of said year, appellant was convicted of the charge of sedition, and on the 7th day of December, 1933 was, by His Honor Aaron J. George, now deceased, sentenced to 'Say a fine of two thousand dollars and to be imprisoned for a term of four calendar years. He accordingly excepted and filed a bill of exceptions praying an appeal to this Court at its April term, 1934. The case having been called at two terms, and appellant not being present, it was postponed until our April term 1935, when it was again called and appellant again having failed to appear the Court had no other option but to grant the application of the Honorable the Attorney General for judgment by default. Our Rule XI, subsection 2 reads : "The following procedure shall be had in the case of the non-appearance of parties, namely ( ) Where no counsel appears and no brief has been filed for the appellant, when the case is called for trial, the appellee may move to dismiss it, or, if the appeal is from a judgment, he may move for affirmance ; but in such

case he shall open the record and submit to the court his grounds for so moving. . . ."
Accordingly, the case was taken up and the records read in open court on the loth and 2 I s t of May, 1935; but owing to the want of a quorum on the Bench when the Chief Justice was suddenly taken ill on the 22nd of May, the arguments were only heard on the 25th of November of this year. It is a source of regret to us that appellant neglected to appear; but, nevertheless, the Court has endeavored to see this case as strongly from appellant's point of view as possible, and has come to the conclusion from a careful study of his bill of exceptions that he came up to this Court praying the reversal of the judgment upon two important points only which we shall now proceed to consider. Count one in the bill of exceptions prays the reversal of the judgment upon the grounds that appellant was not allowed time to procure and produce certain material witnesses. Referring to the records we find that during the trial of the case on the 29th day of November, 1933, the defendant gave notice that he waived the remaining domestic witnesses, and made application for the qualification of the following witnesses, namely: The Council of the League of Nations (Geneva), Henri A. Junod (Geneva), Dr. Mackenzie, League of Nations (Geneva), Lord Astor, Lord Lugard, Sir John H. Harris, and Lady Simon (of London), respectively.
The Court has repeatedly held, as the appellant correctly contended in the court below, that for a court to force a party to trial without having given him the opportunity of obtaining material witnesses is good ground for reversal, and the awarding of a new trial. But nevertheless, said rule, like most other general rules, is subject to certain exceptions, among which are, as this Court has also repeatedly held, the following: Such witness must

have been subpcen2ed, but even then, the opposite party may oppose and prevent [the continuance]
by admitting that certain facts would be proved by such witness. Furthermore, IC . . . the party asking delay is usually required
to make affidavit as to the facts on which he grounds his request; . . . and as to what he expects to prove by the witness ; . .
. and what diligence was used to procure his presence . . . the court is not bound to grant it where it is altogether conjectural
whether the witnesses are alive, and if so where they reside or if their evidence can be procured." B.L.D., "Continuance." In addition
to the ruling of the trial judge that the witnesses whose presence the appellant was insisting upon, and whom he contended should
be present and depose, that said witnesses were in the application of appellant himself shown to be not only without the jurisdiction
of the trial court, but also outside the jurisdiction of the whole Republic, we desire to make the following observations upon the
application of appellant: ( ) His request to have the Whole Council of the League of Nations summoned was too vague. The individuals
whose testimony he desired should have been designated by their proper names. (2) The Council of the League of Nations is composed
of the Ministers of Foreign Affairs of certain governments or their proxies, and it was incumbent upon appellant to show who they
were, and at what session of the Council they had served. (3) That they, and Lady Simon, the wife of Sir John Simon the then Minister
of Foreign Affairs of Great Britain, did not enjoy such diplomatic immunity as to exempt them from being compelled to give testimony
in this case even though letters rogatory had been issued. (4) Inasmuch as the record does not show that any of these persons whose
testimony appellant demanded, with the exception of Dr. Mackenzie, had ever been in Liberia, this Court has been at a loss to conjecture
what sort of evidence appellant was

expecting them to give that could by any possible means have been
of value to him in the prosecution which was built up against him as such upon letters testified to have been written by himself,
or to him, in a regular series as well as upon the oral testimony deposed during the trial of events which transpired within the
Republic of Liberia. We are of opinion, therefore, that the trial judge did not err in ruling substantially that inasmuch as it was
conjectural whether or not the testimony of the said witnesses could be procured, the motion for continuance should not be granted.
The second point upon which appellant seemed to have laid most stress in contending that the judgment of the court below be reversed
is, so far as we have been able to gather from the records, that contained in the fifteenth count of his bill of exceptions based
upon the first count in his motion in arrest of judgment that he was prosecuted and convicted upon a statute that was ex post facto
which is contrary to the Constitutional provision contained in article 1, last part of section To of the Constitution of Liberia.

It is to this contention of his that we have now to address our attention. "An ex post facto law is one which inflicts a punishment for an act which was not punishable at the time it was committed, or imposes a punishment in addition to that which was prescribed at the time the act was committed." i Watson, Constitution of the United States 739. In the case of Calder v. Bull, 3 Dallas (U.S.) 386, 39o, L. Ed. 65o, Mr. Justice Chase, one of the concurring Justices, who filed a concurring opinion at the August term, 1798, that has since been adopted as having stated the principle clearly and succinctly, said inter alia: "I will state what laws I consider ex post facto laws, within the words and the intent of the prohibition. 1st. Every law that makes an action done before the

passing of the law, and which was innocent when done, criminal ; and punishes such action. 2d. Every law that aggravates a crime, or makes it greater than it was, when committed. 3d. Every law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed. 4th. Every law that alters the legal rules of evidence, and receives less, or different, testimony, than the law required at the time of the commission of the offence, in order to convict the offender. All these, and similar laws, are manifestly unjust and oppressive." Cf. also i Watson, Constitution of the United States 740. These are some of the interpretations of the Supreme Court of the United States upon the provision in its Constitution which reads: "No bill of attainder or ex post facto law shall be passed." The somewhat analogous provision in our Constitution, the one obviously invoked by appellant, reads as follows : "Nor shall the legislature make . . . any law rendering any act punishable, in any manner in which it was not punishable when it was committed." Lib. Const., art. r, sec. 1o, last clause. The first sedition law enacted by our own Legislature that we have been able to find is Chapter XXX, page 2 1 , of the Acts of 1915-16, amended by an Act passed November 2, 1916, published on pages 17-18 of the Acts of 1916. This said Act as amended is incorporated in our Criminal Code of 1914; for, although both of said statutes were enacted after the passage of the Criminal Code, yet said Code not having been published until 1919, the Honorable the Attorney General, it would appear, incorporated said act as amended into the Criminal Code when about to publish it; and this fact will be apparent to anyone who will take the trouble to compare the statute as published in the public acts referred to with the Criminal Code of 1914, and then look at the foreword of the Attorney General in the said Criminal Code. By said

Act, being page 29, and Section 107 of the Criminal Code, sedition is defined as follows : "Any citizen of Liberia

who with intent to stir up rebellion and to set on foot, incite or in anywise promote insurrection against the authority and Government of the Republic, shall write * about said Government to any native tribe or tribes within the limits of Liberia, or to any chief or chiefs of such tribes any word or words, phrase or phrases imputing to the Government of Liberia unfairness in its treatment of such tribe or tribes ; or who with similar intent shall create or seek to create among any such tribe or tribes disaffection to the Government of Liberia ; or who with such intent shall counsel or advise or in anywise encourage any such tribe or tribes to renounce their allegiance to the Republic of Liberia ; or who shall write or cause to be written any communication to a foreign state or to any official thereof proposing either the dismemberment of the Republic, or presenting to such foreign government or official any matter of complaint against the Government of Liberia properly the subject of domestic enquiry and adjustment with intent in so doing to overturn, subvert or in anywise affect the stability of the Republic ; or who shall do or cause to be done any act having a tendency to cause discontent among any tribe or tribes within the limits of Liberia and incite them to revolt, shall be guilty of sedition.
"The punishment of Sedition shall be a fine not exceeding two thousand dollars ($2,000.00), and imprisonment for five years and confiscation of all property, real or personal, which the convicted person shall own or possess in the Republic. "N.B. *Copied from the Criminal Code; the Act approved November 2nd 1916, has for example where indicated by the asterisk, `speak or write about.' "
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So long as appellant was prosecuted under the above cited Act, so long as the punishment he was to undergo did not exceed that provided in the above cited Act, this Court fails to see the reasonableness of his contention that the said law enacted in 1916 should be considered as ex post facto with regard to an offense alleged to have been committed in 1931-32. It is true that there exists upon our statute book an amendatory law upon sedition passed at the Extraordinary Session of 1932 (ch. III), and approved on the 11th of August of said year, and which to us appears to extend the scope of the original sedition law, and to increase the punishment up to seven years, together with the confiscation of all property both real and personal. But the letters written, other acts proved to have been done, appear to us to be within the terms of the enactment of 1916 quoted as aforesaid from our Criminal Code, and the punishment to which he was sentenced by the trial judge as already herein quoted appears to us to be within the limits of the provision of the Criminal Code quoted above; hence we do not find it possible , to accept his thesis that he was prosecuted under a statute unconstitutional as to the commission of the acts complained of against him. Hence, in view of the facts found, and the law bearing thereupon and hereinbefore cited, we have reached the conclusion that it is our duty in the administration of justice to declare that the judgment

of the court below ought to be affirmed; and hence it is so ordered. Affirmed.

Woodson v Heuston et al [1954] LRSC 26; 12 LLR 133 (1954) (10 December 1954)

MARIA PAGE WOODSON, Appellant, v. J. SAMUEL HEUSTON and MARY SOLOMON, Appellees.
APPEAL FROM THE PROVISIONAL AND MONTHLY COURT OF
THE TERRITORY OF MARSHALL.

Argued November 9, 1954. Decided December 10, 1954. 1. Probate courts should exercise extreme care and
diligence to follow prescribed procedures in supervising the administration of estates. 2. A motion for continuance should ordinarily
be granted unless the continuance would tend to obstruct or unduly delay the administration of justice.

On petition for accounting
of an estate, the court below awarded petitioners certain rents, and fined the respondents for contempt of court. On appeal, this
Court found that the court below had failed to conduct an adequate trial of issues of fact. This Court reversed and remanded the
cause in order that a proper judicial hearing might be conducted below. Nete Sie Brownell for appellant. for appellees. MR. JUSTICE
Court.*
SHANNON

R.F. D. Smallwood

delivered the opinion of the

The present appellees, J. Samuel Heuston and Mary Solomon, petitioned the court below to compel Maria Woodson, now appellant, to allocate to them their share of rentals accruing from the lease of a certain
parcel of land to which, as heirs of the original owner, they claim part interest and ownership. They charged the said Maria Woodson
with having wrongfully disbursed said rentals. The property in question was originally owned by one
Mr. Chief Justice Russell was
absent because of illness, and took no part in this case.

Solomon Strainge Page. He devised same to
his son, Randall W. Page, who died leaving several persons as heirs. Among them were Maria Page Woodson, now appellant, and Susan
Ann Page Heuston. Petitioners are the heirs of Susan Ann Page Heuston. There is no record that the said Maria Page Woodson was summoned

to appear and show cause why the petition against her should not be granted, or that she was ever furnished with a copy of the said petition. Neither do said records reveal that a thorough, proper, legal or comprehensive hearing of the petition was ever conducted.
The evidence is so conflicting and confusing that it is hardly conceivable how the trial Judge arrived at the decree which he entered.
It was shown that, during some of the period for which claim is made, petitioners were minors living with Maria Woodson who was responsible for their upkeep, and that she gave them money from time to time. If these facts had been established, the respective amounts should have been credited to Maria Woodson. Petitioners introduced a letter wherein they waived all claims against their aunt, Maria Woodson, except for their share of the 1953 rent. Nevertheless the trial Judge entered a decree for the rent for a period covering nine years.
The law controlling the inheritance of real property is rather intricate, so that, in a case of this nature, great care and pains should be taken to avoid miscarriage of justice. Whilst it is true that probate courts are vested with the jurisdiction to handle cases involving estates, and also to supervise their administration, yet in so doing, great care and diligence should be employed in following prescribed modes of procedure. In this case it is not shown that, at the time of the filing of the petition, an estate covering the property in question was under such management and control of the Provisional Monthly and Probate Court as would have war-

ranted said court to call Maria Woodson to account either as administratrix, executrix or trustee.
When a motion is made for continuance of a cause, the court should exercise its discretion in granting it unless the effect is to baffle or stifle justice. Appleby v. Thomas Freeman & Son, 2 L.L.R. 271 (1916). Had the court below given Maria Page Woodson an opportunity to be represented by counsel when she moved for a continuance to enable her to retain one, many irregularities might have been obviated, and this appeal possibly avoided. Because of these irregularities, some of which we have pointed out, and with a view of ensuring a proper judicial determination of the claims of the appellees and against the appellant, it is our opinion that the judgment of the trial court against the appellant, both as to the payment to be made to the appellees and as to the fine for contempt, should be reversed and the matter remanded for a proper judicial hearing to enable the trial court to arrive at a fair, impartial and correct determination. And it is hereby so ordered. Reversed and remanded.

King, lll et al v Cooper-Harris [2000] LRSC 8; 40 LLR 70 (2000) (12 May 2000)

CHARLES T. O. KING, III, and BURGESS HOUSTON, JR., Nephew and Grand Nephew of the Late CECIL D. B. KING, and heirs to Two Pieces of Property of the Late CECIL D. B. KING, Objectors/Appellants, v. ANNA COOPER-HARRIS, Executrix of the Last Will and Testament of CECIL D. B. KING, Respondent/Appellee.

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

Heard: April 12, 2000. Decided: May 12, 2000.

1. Heirs or distributees who have legal capacity may release or relinquish their existing interest amongst one another, provided that such release is effected by the execution and delivery of a formal document, even if the property involved consists entirely of personalty.

2. A party complaining of an instrument made by himself or his privy is estopped from denying the validity of his own act, or the act of the maker of the instrument with whom he is in privity.

3. Objections to the probation of a Will conveying real property, which was transferred to the testator more than twenty years prior to the testator death and the filing of the objections, are dismissible under the statute of limitations.

4. Persons who are not heirs and/or beneficiaries of a testator have no standing to challenge his Will.

5. Where siblings are considered as legitimate, and are recognized and dealt with as co-heirs of their deceased parents, by other siblings who are considered as illegitimate, the legitimate siblings are barred from subsequently refusing to share with the illegitimate siblings the property of the deceased, or to deal with or recognize the illegitimate siblings as heirs of the deceased.

Charles T. O. King, III, son of Charles T. O. King, II, and Burgess Houston, Jr., grandson of Ellen King-Burgess, filed objections to certain provisions of the Last Will and Testament of the late Cecil D. B. King, III, and the codicil thereto, which conveyed two parcels of **land**. The Objectors contended that the properties sought to be conveyed by the testator did not legally belong to the testator since the original conveyances of said properties to the testator by quit-claim and administra-tors's deeds were invalid.

The objectors asserted as reasons for the assertion of invalidity of the deeds that (a) at the time of the conveyance under the quit-claim deed, the grantor, Cecil T. O. King, II possessed no title to the property quit-claimed to his brother, the testator, as the property at the time was part and parcel of the Intestate Estate of the late Charles D. B. King; (b) only Cecil T. O. King, III, one of the three administrators of the Intestate Estate of the late Charles D. B. King had signed the administrator's deed which conveyed the property in question to the testator. And, they noted

that because of the irregularities and invalidity of the conveyances, the properties remained a part of the Intestate Estate of the late Charles D. B. King and should be equally divided amongst the children of the late Charles D. B. King, of which the objectors were grandson and great grandson.

The trial court dismissed the objections and ordered the admission of the Will and codicil into probate and the properties conveyed thereunder distributed. On appeal, the Supreme Court affirmed the ruling of the probate court, holding as follows: (a) that the objectors lacked legal standing to challenge the acts of their forebears who, at the time of the conveyances under the quit-claim and administrator's deeds, were not only the ones that held titled to and interest in the properties, but had made the conveyances without any objections from any persons, including the parents of the objectors and were adults and could have objected had they wanted to; (b) that the objectors were barred by the statute of limitations and had suffered laches, the transactions involving the questioned conveyances having occurred more than thirty-seven years earlier, and the testator having been in open and notorious possession of the same for over twenty-years; and (c) that the objectors were estopped from raising the subject objections, being bound by the acts of their forebears who owned the properties in fee simple, had the legal right and capacity to release and relinquish their interests in the property, and with whom the objectors were in privity. The Court noted that the acts of the ancestors were binding on their heirs, who in the instant case were the objectors.

The Court also rejected the claim by the objectors that they were not barred by the statute of limitations because they were unaware of the transactions until the death of the testator, and it noted that as the objectors were not heirs of the testator, they were precluded from raising a challenge to his Will.

With regard to the respondents claim that Co-objector Houston was without legal standing since his grandmother, under whom he had claimed heirship, was not a legitimate child of the late Charles D. B. King and therefore not entitled to share in the late Charles D. B. King Estate, the Court observed that not only had the late Charles D. B. King recognized the co-objector grandmother as his daughter, had allowed her to live with him, and had married her off, but also that she had received properties from him as well as his Intestate Estate. The Court also opined that as the legitimate siblings had recognized and dealt with the illegitimate sibling as an heir, the legitimate siblings were barred from contesting the heirship of the co-objector's grandmother or dealing with her siblings as heirs, or objecting to having her heirs share in any property to which they would be entitled, the same as the legitimate siblings. The Court nevertheless, on the basis of the rationale set forth earlier, affirmed the ruling of the trial court dismissing the objections and admitting into probate the Last Will and the codicil of the testator.

Joseph Patrick Henry Findley appeared for the objectors. Henry Reed Cooper and M.. Kron Yangbe appeared for respondent.

MR JUSTICE WRIGHT delivered the opinion of the Court.

This case is on appeal from a ruling of the Monthly and Probate Court for Montserrado County, in which the judge denied objections to the probation of certain clauses of the Last Will and Testament of the late Cecil D. B. King, and the Codicil to said Will, and ordered the said instruments admitted into probate. The objectors, being dissatisfied with the probate judge's ruling, announced an appeal therefrom and perfected the same to this Court.

To put this case into proper perspective, we shall first identify the parties. The late Liberian President, Charles Dunbar Burgess King, died intestate in the early 60's, leaving his wife, the late Jeanette L. King, and two "legitimate" lineal heirs, viz, C. T. O. King, II and Cecil D. B. King (Emphasis supplied). The objectors are (1) C. T. O. King III, son of C. T. O. King, II, and (2) Burgess Houston, Jr., grandson of Ellen King-Houston, daughter of President Charles Dunbar Burgess King and sister of the two "legitimate" heirs. The respondent is Anna Cooper-Harris, maternal cousin of Cecil D. B. King and sole executrix of his Will.

From the records in the case file, and from the arguments of counsels for both parties, we find the following facts. After the death of President King in 1961, his intestate estate was closed on January 12, 1962 by Judge J. Gbaflen Davies, then Commissioner of Probate for the Monthly and Probate Court for Montserrado County. In the ruling closing the estate the court ruled that after all debts of the deceased's estate were liquidated, the estate was to be divided between the two heirs of the deceased (i.e. Charles T. O. King, II and Cecil D. B. King), subject to the one-third (1/3) dower right of the widow, Jeanette L. King, as per the agreement of the parties, since the widow had earlier objected to the granting of the petition as made because the two sons and the widow were the three administrators. President King left several pieces of property.

Prior to this time, that is, on December 16, 1961, Charles T. O. King, II had issued a quit claim deed to his younger brother, Cecil D. B. King, for Lots No. 146 and 147, located on Broad Street, Monrovia. The said deed was duly probated on March 6, 1962, and registered according to law. This prior transfer was not objected to by the widow at the time the estate was being closed on January 12, 1962. Moreover, from the date of the issuance of the quit claim deed in December 1961, Cecil D. B. King continued to possess and control these properties without any objections from his brother, Charles T. O. King, II or his step-mother, the widow, Jeanette L. King, until his death in 1998.

Charles T. O. King, II had also on the same day, December 16, 1961, issued to his younger brother, Cecil D. B. King, an administrator's deed for the same two lots on Broad Street, Monrovia, which deed was also duly probated on March 16, 1962 and registered according to law. The two brothers also always treated the Sinkor property, wherein was the residence of their father, as belonging to only the two of them, subject to the widow's dower interest. Cecil

remained in open and notorious possession and control of Lot No. 147, which is now subject of the objection to his Will. Cecil D. B. King signed his Will on December 31, 1997, and thereafter executed a Codicil thereto on July 28, 1998. In his said Will, he named his cousin, Mrs. Anna Cooper-Harris as his sole executrix and he therein directed how his properties should be distributed. He died on August 11, 1998.

Following Cecil's death, Counsellor Henry Reed Cooper, cousin of both the deceased and his executrix, filed a four-count petition praying the Monthly and Probate Court for Montserrado County to break open the seal on a sealed envelope and to read in open court the contents of said envelope, which was purported to be the Last Will and Testament of the Late Cecil D. B. King, and to thereafter issue letters testamentary. The said envelope was accordingly opened and the contents read in open court. The court subsequently ordered that notices be placarded on the bulletin of the court and in other conspicuous places where the properties were located, so as to give notice to would-be objectors that papers purporting to be the Last Will and Testament of Cecil D. B. King had been read in open court and that whosoever had objections thereto should filed the same within the statutory period of thirty (30) days.

On December 7, 1998, Charles T. O. King, III and Burgess Houston, Jr., nephew and grand nephew of Cecil D. B. King, filed a five-count objection in the Monthly and Probate Court for Montserrado County, praying the court to strike out clauses 3 and 5 of the Will and the first part of the Codicil to the Will, as well as to deny the petition seeking admission of the documents into probate.

The essence and basis of the objection was that the proper-ties sought to be distributed under clauses 3 and 5 of the Will and in the first part of the Codicil to the Will, were not properties legitimately owned by the testator, Cecil D. B. King. The objectors contended that the administrator's deed and the quit claim deed, issued and signed by the late Charles T. O. King, II (Father of Co-objector Charles T. O. King, III and grand uncle of Co-objector Burgess Houston, Jr.) were not valid conveyances because the late Charles T. O. King, II had no title to the estate as would vest in him the right to issue the two deeds, and that as such the properties covered thereunder remained a part of the Intestate Estate of the late President C. D. B. King. The objectors maintained that as the properties did not belong to Cecil D. B. King, he could not devise the said properties to anyone.

As to the administrator's deed, the objectors contended that upon the death of President King, his intestate estate was ordered administered by three persons, namely, his two sons, Charles and Cecil, and his widow, Jeanette. Therefore, they said, any conveyance made in respect of the properties of the said Estate should have been signed by at least two of the three administrators. With regard to the quit-claim deed, the objec-tors contended that the transfer under the said deed was incomplete because Cecil had failed to make good on his side of the quit claim bargain by failing to transfer his interest in the Sinkor property, in exchange for which his brother Charles was supposed to have quit claimed his interest in the Broad Street property.

The objectors argued, therefore, that Cecil D. B. King did not legally acquire title to the pieces of property covered under clauses 3 and 5 of his Will and the first part of his Codicil, and hence, that the said properties were not part of his estate to go to his legatees. Instead, the objectors asserted, the pieces of property referred to, being part of the Intestate Estate of the late President C. D. B. King, the same should be distributed to the heirs of his three (3) children, namely: Charles T. O. King, II, Cecil D. B. King, and Ellen King-Houston, in equal proportions of one-third (_) to each set of the King heirs.

The respondent filed her resistance to the objections, raising several important points. Firstly, respondent contended that when the late President C. D. B. King died, his three children were alive and were adults and that as such the objectors have no standing and interest whatsoever to assert the objections since their respective parent and grandparent were adults and alive and were the ones who had interest and standing.

Secondly, respondent contended that the objections were illegal and void under the principle of adverse possession, the same being barred by the statutes of limitation, in that the two sons having acted to divide their late father's estate since the early 1960's, and had done so to the satisfaction of all parties concerned, including the probate court, without any successful challenge to their action, which action was open, adverse and notorious; and further that they, having possessed their respec-tive properties exclusively unto themselves from the time of their father's death to the time of their own respective deaths, Testator Cecil D. B. King's title to all such properties included in his Will was absolute and proper against the whole world, including his brother's son and the grandson of his sister.

Thirdly, and further to the first issue, the respondent con-tended that a grandson or great grandson of a deceased cannot have any interest in the intestate estate of a deceased as long as his parent (i.e. a child of the deceased) is alive. Accordingly, the respondent asserted, the objectors cannot question the issuance of the administrator’s deed and the quit claim deed by C. T. O. King, II to his brother Cecil D. B. King. The respondent said further that when C. T. O. King, II executed the deeds to his brother, Cecil C.D. King and while the former was still alive, Co-objector, C. T .O. King, III had no interest in or title to the subject properties and that as such could not now raise objections. Additionally, the respondent said that when the transactions took place in the early 1960's, both Ellen King-Houston, sister of the two brothers, and her son Burgess Houston, Sr., grandson of President King, nephew of the two King brothers, and father of Co-objector Burgess Houston, Jr., were alive and of adult ages, but raised no issue concerning the conveyances from one brother to the other. Therefore, the respondent stated, the objectors, who at the time of the transactions had no interest in or title to the subject properties, could not now raise objections.

In count six of the resistance, the respondent contended that the three children were adults and alive when their late father died and that they thereafter lived together in peace and harmony until their respective deaths, the first being Ellen King-Houston in the late 1960's or 1970's, then C. T. O. King, II in the 1980's, and later Testator Cecil King in 1998. Further, respondent asserted that upon the death of their father, the three children of the late President Charles D. B.

King divided his properties, as a result of which C. T. O. King, II, father of Co-objector Cecil King, III, was given the property of their father located at the Corner of Gurley and Broad Street, Monrovia; that Ellen King-Houston was given the property of their father on Front Street, Monrovia; and that the two brothers were each given an equal share of the **land** and buildings which was the last home of their late father, located in Sinkor, and which is one of the properties subject of these objections. It is these properties of the late President King that the objectors claimed should be divided into three equal parts, the basis for which they showed no evidence.

In count seven (7) of the respondent's resistance, she contended that the late President King had only two legitimate children by lawful marriage, namely, C. T. O. King, II and Cecil D. B. King, the testator herein, and that by the law of intestate succession, only they were entitled to his property in Sinkor. The resistance noted that it was only those two children who, during their lives and following their father's death, controlled, considered, and treated said property as being in common for the two of them.

The probate court heard arguments on the petition, the objections, and the resistance on February 26, 1999 and thereafter handed down its ruling on April 6, 1999. The court denied the objections and proceeded to approve and probate clauses 3 and 5 of the Last Will of Cecil D. B. King.

Because we are in agreement with the disposition of this matter by of the probate court judge, we hereunder quote the relevant portions of his ruling and incorporate the same as part of this opinion:

This Court has resolved to determine this matter based on the following issues: (1) Whether or not the quit claim deed from Charles T. O. King to Cecil D. B. King, dated the 16th day of December, A. D. 1961, probated on the 16th day of March, A. D. 1962, and registered according to law in Vol. 86-B, page 54, passed title, interest or claim which he had in lot No. 147 to his brother, Cecil D. B. King, and that his heirs are prohibited from inheriting his interest in said property by virtue of said deed? (2) Whether or not the property located and lying on Gardner Avenue, between 13th and 14th Streets, Sinkor, City of Monrovia, and described in clause 5 of the said Will as being leased by the Government of Liberia and utilized as the National Public Health Center and/or Central Office, is to be distributed as contained in said clause, of 1/3 interest each to the heirs of C. T. O. King, II, Cecil D. B. King and Ellen King-Houston, as alleged by objectors?

We shall begin the determination of these two (2) issues by taking up the first one: Whether or not the quit claim deed from Charles T. O. King to Cecil D. B. King dated the 16th day December, A. D. 1961, probated on the 16th day of March, A. D. 1962, and registered according to law in Vol. 86-B, page 54, passed title, interest, or claim which he had in lot No. 147, to his brother C. D. B. King, and that his heirs are prohibited by law from inheriting his interest in said property by virtue of said act? Objectors argued that a quit-claim deed is not necessarily a

conveyance of property, because it purports only to transfer that interest which the grantor has in the property and in fact transfers nothing at all. 7 AM JUR LEGAL FORM 2d, Quit Claim Deeds, § 87.31, p. 264. They further argued that while C. D. B. King's Estate was still in court and not closed, C. T. O. King, II alone issued an administrator's deed to his brother without Administratrix Jeanette King's consent; that the deed being illegal, Cecil D. B. King cannot then will the property in question to his heirs as the conveyance by said administrator's deed is illegal.

Respondent, in arguing her side of the matter stated that firstly Charles T. O. King, II issued both a quit claim deed and an administrator's deed to Cecil D. B. King for the property in question on the 16th day of December 1961, which was probated on the 16th day of March, A. D. 1962, and registered according to law in Volume 86-B, page 54-55, after the closing of the late President King's Estate in January, A. D. 1962; that Burgess Houston has no standing as a party to this suit, and that as his grandmother or father should have brought it, they both waived same, and therefore he is estopped; that C. T. O. King, III cannot also raise a claim, in that it was his very father who was to inherit the interest in said property who willingly gave up his interest in the property, and that since March, 1962, the testator had been openly and notoriously enjoying said property to the extent of collecting the rents up until his death without any interference from C. T. O. King, II and his heirs or from Ellen King-Houston and her heirs. Therefore, the respondent said, the objectors are estopped from doing so now that the testator is dead.

We hold that under the circumstances prevailing in this matter, it would be quite difficult at the this stage to hold that the heirs of Cecil D. B. King should relinquish the interest to the heirs of C. T. O. King, II which had been relinquished to his brother Cecil D. B. King in March of 1962 by virtue of a quit claim deed and an administrator's deed. Further, through out the years, from 1962 until his death sometime last year, the testator had been in open and notorious possession of the property in question (some 37 years) without any interference from the heirs of Ellen King Houston or C. T. O. King, II. They are therefore estopped and barred, under the principle of adverse possession, from now contesting the respondent's right to the property. 'Heirs or distributees who have legal capacity may release or relinquish their existing interest among one another'.

It has been held that such a release must be effected by the execution and delivery of a formal document, and that this is true even where the property involved consist entirely of personalty." 23 AM JUR. 2d. Deeds, § 173, p. 887. Also in the case Cooper v. C. F. A. O., [1972] LRSC 68; 20 LLR 554 (1972), text at 558, this Court said: 'A party complaining of an instrument made by himself is estopped from denying the validity of his own act. The same rule applies when he is in privity with the maker.'

As to the second issue of whether or not the property located and lying on Gardner Avenue between 13th and 14th Streets, Sinkor, City of Monrovia, and also described in clause 5 of the said Will as being leased by the Government of Liberia and utilized as the National Public Health Center and/or central office, should be distributed as contained in said clause of 1/3 interest each to the heirs of C. T. O. King and Ellen King-Houston as alleged by the objectors, the objectors argued that said property should be divided into three (3) parts among the three (3)

children of the late former President C. D. B. KING or their heirs taking one-third (_) interest each. Respondent countered that the late Former President C. .D. B. King left two legitimate heirs: C. T. O. King, II and Cecil D. B. King, which can be seen from the court's Minutes of January 12, A. D. 1962, 5th day's sitting of the Monthly and Probate Court of Montserrado County, Republic of Liberia.

We hold that indeed during the closing of the Intestate Estate of the late President C. D. B. King (See minutes of the 5th day's sitting, January 12, 1962, sheet four (4), the Monthly and Probate Court, Montserrado County, Republic of Liberia, presided over by J. Gbaflen Davies, the then Commissioner of Probate, recognized that beside the widow, Jeanette L. King, there were only two other heirs of the late President (i.e. C. T. O. King, II and Cecil D. B. King). We therefore hold that the house/property on Gardner Avenue should be shared between the heirs of the late Cecil D. B. King and C. T. O. King, II, 50% interest each.

WHEREFORE AND IN VIEW OF THE ABOVE, the object-ions of the objectors are hereby denied and this Court has no alternative but to proceed to approve and probate clauses 3 and 5 of the Last Will, dated July 28th 1998, with costs against the objectors.' See sheets 7 thru 10, inclusive, of the probate court minutes, 3rd day's session, April Term A. D. 1999, Tuesday, April 6, 1999."

This Supreme Court therefore holds, as the probate judge did, that the objectors lack the legal standing to sue out these object-ions. We view the objections as a tacit attempt by the objectors to challenge the acts of their respective forebears who, at the time, were the ones who had the title to and interest in the subject properties, whose acts were not objected to by anyone at the time, and who had the legal right and authority to release or relinquish their existing interests among one another by the execution and delivery of a formal document. 23 AM JUR 2d., Deeds, § 173, p. 887.

Also, their objections are dismissible because the acts were completed more than twenty (20) years prior to the institution of the suit. On this question, being one of adverse possession, objectors argued that they could not have brought the suit earlier than they did because during the life time of the testator (their uncle and grand uncle) they (the objectors) were not aware of the conveyances and did not know until he had died and his Will was offered for probate.

There are two problems objectors have to overcome. They are: (1) If we go back to the dates of the conveyances in 1961 and 1962, respectively, then by effluxion of time the statute has run and adverse possession would lie. (2) If, on the other hand, we go to the date when the Will was offered for probate and the objections were filed on December 17, 1998, then the objections would be barred for laches because the acts complained of were already completed, and, if they were not heirs of the testator, as certainly they are not, then they do not have standing to challenge his Will as they are not his beneficiaries.

The objectors are therefore bound by the acts of their father and grand uncle, who owned the property in fee simple and as such could dispose of it as he wished. Because they are in privity

with their father and granduncle, they are estopped from raising such claims. Jackson v. Mason, [1975] LRSC 7; 24 LLR 97 (1975).

Before closing this opinion, there is one issue we would like to address in passing and that relates to the respondent's reference to Mrs. Ellen King-Houston as being "illegitimate". In her resistance, at clause seven (7), the respondent said that the late President C. D. B. King had only two "legitimate" children, namely, C. T. O. King, II, and Cecil D. B. King. In the written brief, at issue No. 3, at page 4, and during oral argument before this Court, respondent argued that the late Ellen King-Houston was the illegitimate child or foster child of the late former President C. D. B. King. It was contended that he took care of her and did everything for her, including giving her properties, and even to the extent of giving her away in marriage, but that he stopped short of legitimizing or adopting her. The respondent also argued that at the time President King died, Ellen King-Houston was an adult but made no claim to his intestate estate.

In counter argument to this, the objectors said that the claim of respondent is not correct; that the three children of President King lived together in peace and happiness, and that it was respondent who, not being of the King family blood line, sought to drive a wedge among the heirs of the three King children simply for the sake of property. The objectors' argument stemmed from the fact that the late Ellen King-Houston was not legitimized or adopted by the late President King. We note however that although Ellen King-Houston was not legitimized or adopted, she was recognized as President King's daughter, even to the extent that she lived with the Oldman, got some properties from him and from his intestate estate, as admitted by respondent, and was married-off by her father. Yet, when it comes to the Sinkor, property (homestead) and the Broad Street property on which ITC Bank is located, the respondent (representing one of the King brothers) refers to her as "illegitimate".

This Court has held that if the siblings who are otherwise considered "legitimate" have recognized and dealt with other siblings who are otherwise considered "illegitimate" to be co-heirs of their deceased parents, then the "legitimate "heirs are barred from subsequently refusing to share with, deal with, or recognize those "illegitimate" siblings as heir of the deceased. Knowlden v. Johnson et al., 39 LLR 345 (1998). In any event, the probate judge has already addressed the issue and we have already affirmed and endorsed his ruling, which we herewith again re-confirm.

Wherefore, and in view of the foregoing, it is the consi-dered opinion of this Court that the appeal of the objectors be and the same is hereby denied and the ruling of His Honour John L. Greaves, Probate Court Judge for Montserrado County, confirmed and affirmed as made and rendered, the same being sound in law. Accordingly, the Clerk of this Court is hereby ordered to send a mandate to the Monthly and Probate Court for Montserrado County commanding the judge presiding therein to resume jurisdiction over the case and enforce his judgment. Costs are ruled against the objectors. And it is hereby so ordered.

Ruling affirmed; appeal denied.

Brown et al v Simpson et al [1952] LRSC 19; 11 LLR 245 (1952) (12 December 1952)

CASES ADJUDGED
IN THE

SUPREME COURT OF THE REPUBLIC OF LIBERIA
AT

OCTOBER TERM, 1952.

RILL'S BROWN, CHESTERFIELD EDWARDS and G.
C. N. TECQUAH, Appellants, v. SARAH C. E. SIMPSON, ROSE J. R. ABASSIE, CORA CLARKE, and MARY CAPEHART, Appellees.
APPEAL FROM THE
CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued October 23, 1952. Decided December 12, 1952. One not a party to an injunction may be held guilty of contempt for violating it if he has had actual notice thereof.

Appellees Simpson, Abassie,
and Clarke instituted an action of ejectment against appellants, Brown and Edwards. While this action was pending appellants Brown
and Edwards instituted summary ejectment proceedings against Mary Capehart, an appelle herein and a tenant of appellees Simpson,
Abassie, and Clarke, before appellant Tecquah, who as a Justice of the Peace for Montserrado County, decided in favor of appellants
Brown and Edwards. Appellants Brown, Edwards, and a police officer, subsequently evicted Mary Capehart and destroyed her house by
fire. On a complaint by appellees the court below granted an order to show cause, and after a hearing, adjudged appellants in contempt
of court. On appeal to this Court, judgment affirmed.

T. Gyibli Collins for appellants.

R. A. Henries
for

appellees. MR. JUSTICE DAVIS delivered the opinion of the Court. Appellees Simpson, Abassie and Clarke claimed ownership of
and title to three-fourths of town lot number 43, situated in the city of Monrovia. Because of continued disputes over the said property,
appellants instituted an action of ejectment against appellees in the Sixth Judicial Circuit, Montserrado County. As an ancillary

suit they also instituted an injunction proceeding against Brown and Edwards, enjoining and restraining them from carrying on any operations on the said piece of property or in any way disturbing appellees' tenant, Mary Capehart, who was then living on a portion of the said property at appellees' instance. A writ of injunction was duly served upon appellants. While the proceeding was pending, appellants instituted an action of summary ejectment before appellant, J. C. N. Tecquah, a Justice of the Peace for Montserrado County, seeking to evict appellees' tenant, Mary Capehart, from the property in a summary manner, despite the pendency of both the action of ejectment and the injunction proceeding regarding the same property. Appellees' counsel then addressed the following written communication to appellant Tecquah. "We are informed that one Mr. Chesterfield Edwards has brought suit against Mary Capehart, and before you, in an effort to have her leave the premises where she now resides. "We would like to inform you that there are pending before the Sixth Judicial Circuit Court, Montserrado County, two cases--injunction and ejectment--which we instituted against Mr. Edwards, questioning his right to operate and remain on the same piece of land. It would seem that these cases are undecided in a su-

perior court, and until judgment has been rendered in them, no justice of the peace would be acting legally to interfere. "We bring this information to your attention because Miss Capehart lives on our clients' property, and not on any land owned by Mr. Edwards ; until the cases now pending in the Circuit Court have been decided, we would advise that matters remain as they are." Although appellant Tecquah received this communication he ignored the suggestion and notice therein and proceeded to try the action of summary ejectment against Mary Capehart, appellees' tenant. Final judgment against the said Mary Capehart was rendered, and a writ of possession issued in favor of Rillis Brown. Subsequently Rillis F. Brown and Chesterfield Edwards, accompanied by police officer Joseph F. Cooper of appellant Tecquah's court, entered upon the premises in question, then occupied by appellees' tenant, Mary Capehart, put her out of the house, pulled down the house, set fire to it, and burned it to cinders. Appellees, contending that appellants had disobeyed the writ of injunction, promptly brought the foregoing facts to the knowledge of Circuit Judge Dossen Richards in a formal manner by written complaint. Thereupon the circuit judge ordered process issued against appellants to show cause why they should not be held in contempt for disobeying the injunction. They appeared and filed returns embodying fourteen counts. In these returns, besides pleading considerable irrelevant and extraneous matter, appellants endeavored to justify the position taken by appellant Tecquah, setting up as a defense that he, as a justice of the peace, was not a party to the injunction suit; and therefore, although notice was given to him of the pendency of same, he was not compelled to obey said injunction. After hearing the matter the court below held appellants guilty of contempt of court and fined each

of them, except appellant Chesterfield Edwards, one hundred dollars. From this judgment appellants now seek relief. On the record below, we were inclined to believe that appellant Tecquah had been misled to try the ejectment case regardless of the pendency of the injunction. But, as the arguments progressed, appellant Tecquah, who by special permission of this Court had been granted a seat at the counsel table, indicated a desire to address this Court during the argument of his counsel T. Gyibli Collins. We promptly afforded him an opportunity to speak. At this time we learned that appellant Tecquah had acted under the erroneous assumption that, by trying the summary ejectment case in face of the injunction, giving a writ of possession in face of both injunction and ejectment proceedings, and sending to the premises an officer who joined appellants Rillis Brown and Chesterfield Edwards in pulling down appellees' tenant's house, and burning it to cinders, he had participated in legal acts which could be justified because he was not a party to the injunction suit. The barons and people of England in arms wrung from King John on June 19, 1215 the Magna Charta because of their desire to oppose and subdue tyranny, oppression, and unfair treatment. On July 4, 1776 the early American colonists, because of what they considered oppression by their mother country, adopted an immortal document which they styled their Constitution, and on this date declared to the world their sovereignty and independence. Some seventy-one years later, on July 26, 1847, our own sires with an eye single to the causes which motivated their flight across the ocean to this asylum from grinding oppression and tyranny, published to the world that imperishable document known as the Constitution of Liberia. With its adoption came the birth of our courts and the appointment of judges to administer justice to their fellow men. It was never intended that our judiciary should be

tyrants or despots, for the very Constitution which created and brought them into being was designed to abolish such evils. One charged with the sacred trust of judging his fellow man should be calm, sober, and open to reason ; slow to reach conclusions and dispassionate in all matters. Upon the issue of whether one can be held in contempt for disobeying an injunction to which he is not a party, this Court held as follows in Porte v. Dennis, [1947] LRSC 1; 9 L.L.R. 213, 216, 217 (1947) "Whenever an injunction is issued, it is a contempt of court not only for any party who is summoned as a defendant in the cause to disregard it, but also it is as much a contempt of court for any party to disobey who was informed of the issuance of the writ without having actually been served with a copy thereof. As Bouvier puts it, 'To render a person amenable to an injunction, it is neither necessary that he be a party to the suit or served with a copy of it, as long as he appears to have actual notice. . . 2 Bouvier, Law Dictionary 1569, 1578 (Rawle's 3d rev. 1914) ; In re Lennon[1897] USSC 100; , 166 U.S. 548, 554, 41 L. Ed. III() (1897)." In Ruling Case Law the same principle is stated as follows : "Under some circumstances, at least,

a party to an injunction suit may be chargeable with notice of the issuing of the injunction so that his violation thereof will render him guilty of contempt, even though he has no actual notice ; but it is otherwise as to one not a party. . . . It is well settled that actual notice of the injunction is sufficient to render even one who was not a party guilty of contempt in violating it, and that it is not necessary, if he had actual notice, that he should have been served with a copy of the injunction or the writ." 6 R.C.L. 594, Contempt, § 16. We therefore hold that, since appellant Tecquah violated the injunction when, after having received notice of same, he proceeded to try and determine the case of sum-

mary ejectment, he is guilty of contempt. The court below did not err in imposing a fine upon him. Rillis Brown, who was a party to the injunction suit, also violated said injunction and was properly fined. We affirm the judgment of the court below. Costs are to be paid by appellants; and it is so ordered. Affirmed.

Brown v Henries et al [2002] LRSC 25; 41 LLR 221 (2002) (13 December 2002)

ROBERT J. BROWN, Appellant, *v.* **HIS HONOUR WYNSTON O. HENRIES**, Resident Circuit Judge, Civil Law Court, Sixth Judicial Circuit, Montserrado County, and **GENERAL CONSTRUCTION, INC.**, by and thru its General Manager, JACOB D. GBASSANA, Appellees.

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

Heard: October 23, 2002. Decided: December 13, 2002.

1. The trial court commits a reversible error in allowing the respondent only four days within which to file his answer in a declaratory judgment proceeding, rather than the ten days prescribed by statute.

2. It is irregular and erroneous for a trial judge to grant a preliminary injunction to restrain a respondent from collecting rental pending the determination of a declaratory judgment filed by the petitioner to declare the rights and status of the parties to a lease agreement.
3. It is erroneous for a trial judge to deny a party's motion for a trial by jury where the pleadings contain triable issues to be decided by a jury.
4. A motion to dismiss takes precedence over all other pleadings.
5. A motion to dismiss is a pre-trial motion which must be heard and determined by the trial judge before trial of the main action or proceeding out of which it emanates.
6. It is irregular and erroneous for a trial judge to dispose of the main action or proceeding out of which the motion to dismiss grows without first disposing of the motion.
7. A judgment will be reversed and the case remanded to the lower court when a notice of assignment has not been served on counsel for a hearing at which a judgment is rendered against the counsel's client.

The appellant and Co-appellee General Construction, Inc. entered into a lease agreement for the lease by the latter of a certain parcel of **land**, with the buildings thereon, from the former for a period of twenty years, with an option of ten additional years. During the period of the lease, the appellant entered into several other lease agreements, apparently for portions of the same leased premises, the same as did the appellee for other portions. This evolved into a dispute which necessitated the appellee filing a petition for declaratory judgment in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, praying the court to declare the rights and status of the parties to the lease agreement. The appellee also filed a motion for a preliminary injunction. The summons served on the appellant gave him four days within which to respond. In response to the petition and motion, the appellant filed a motion to dismiss the petition for declaratory judgment, contending that the property valuation was defective since the property had already been used in another bond. The trial judge, however, granted the permanent injunction restraining the respondent, appellant herein, from receiving the rents from sub-lessees of the premises. Whereupon the appellant filed a motion for a trial by jury, noting that the matters contained both issues of law and fact. The motion was heard and denied. The trial judge, in his ruling denying the motion for a jury trial also granted the petition for declaratory judgment. From this ruling, the appellant appealed to the Supreme Court.

The Supreme Court noted that the trial court had committed a number of errors which warranted the reversal of its ruling. The Court opined, firstly, that the trial court had committed a reversible error in giving the appellant only four days within which to answer the petition for declaratory judgment, rather than the ten days required by statute. The Court also held that the trial judge had acted improperly and irregularly in granting the preliminary injunction when in fact the purpose of the petition for declaratory judgment was to determine the rights and status of the parties to the lease agreement.

On the issue of the denial of the motion for a jury trial, the Supreme Court opined that the request was consistent with the Civil Procedure Law for a jury to determine the factual issues rose in a case. Since in the instant case the parties had raised both legal and factual issues, the Court said, it was error for the trial judge to deny the motion for a jury trial. Equally important, the Court said, it was irregular and erroneous for the trial judge, in his ruling on the motion for a jury trial, to also grant the petition for declaratory judgment, since no notice of assignment had been served on the appellant for a hearing of the petition, no evidence had been taken in the case, and no trial had been had. The Court emphasized its long-standing view that a judgment will be reversed where no notice of assignment was served on a party to the proceedings.

The Court also held that the trial judge had erred in disposing of the main proceeding, the petition for a declaratory judgment, without first disposing of the motion to dismiss. The Court noted that a motion to dismiss is a pretrial motion and hence takes precedence over all other pleadings and matters in a case, and that it must therefore first be determined by the court before it proceeds to any other matter in the case. The Court therefore reversed the judgment of the trial court and ordered a new trial commencing with the disposition of the motion to dismiss.

Marcus R. Jones of Jones and Associates Legal Consultants appeared for the appellant. *Joseph N. Nagbe* of the White and Associates Law Firm, in association with the Freeman's Legal Consultancy, appeared for the appellees.

MR. JUSTICE SACKOR delivered the opinion of the Court.

On June 15, 1977, Appellant Robert J. Brown, attorney-in-fact for his father, Tarlo Sawee Tarlo, and his Uncle Tarlo Sewee Wreh, executed and entered into a lease agreement with General Construction Inc., through its General Manager, Siegfried A. Woefram, a German National, for a portion of **land** with the building thereon, situated on Bushrod Island, for a period of twenty (20) years certain commencing from June 15, 1977, up to and including June 15, 1997 with an optional period often (10) years. The records in the case show that Jacob D. Gbassana claiming to represent General Construct-ion, Inc. as successor-in-interest or business, entered into sublease agreements with other parties, including a sublease with Jihad Akkari on January 2, 1997, Fadi Barbar of Barbar Motors Corporation, and the United Nations through Dennis Acquiso, its Transport Officer. Similarly, Appellant Brown also entered into a lease agreement with the same Barbar Motors Corporation on January 2, 1998, for a period of ten (10) years, with an option of ten (10) additional years.

On July 31, 1998, Co-appellee Gbassana, representing General Construction, Inc., filed a petition for declaratory judgment in the Civil Law Court, during its June A. D. 1998 Term of court, presided over by His Honour Wynston O. Henries, Resident Circuit Judge. Co-appellee Gbassana requested the trial court to declare the rights and status of the parties to the lease agreement. The co-appellee also sought the aid of a preliminary injunction to restrain the appellant from receiving rentals from Jihad Akkari, Fadi Barbar, and the United Nations, through Dennis Acquiso, its transport officer. The records indicate that a writ of summons was issued, served, and returned served, commanding the appellant to file his Answer within four (4) days, instead of ten (10) days. The appellant filed his answer on August 6, 1998, and also filed an indemnity injunction bond on August 10, 1998. On August 3, 1998, appellant filed a motion to dismiss the co-appellee's petition for declaratory judgment, contending therein that the property valuation certificate attached to the co-appellee's injunction bond was defective, in that the said property had already being used in a criminal appearance bond.

The trial judge granted the motion for permanent injunction on August 21, 1998, thereby restraining the appellant from receiving rental from the tenants herein above mentioned. The

records in this case show that the appellant filed a motion for a jury trial on September 25, 1998 on the ground that the petition for declaratory judgment and the motion for preliminary injunction contained factual issues triable by a jury, and that the petition for declaratory judgment could not terminate the controversy. This motion was resisted, heard and denied. The records before us further show that the trial judge disposed of the declaratory judgment petition in his ruling on the motion for a jury trial. In the ruling the judge granted the petition, determining that the lease agreement was valid and was on the same terms and conditions as the original lease agreement. The respondent, appellant herein, being dissatisfied with ruling, excepted thereto and appealed therefrom to this Court of last resort on an eleven-count of bill of exceptions. We deem counts 2, 3, 9, and 10 of the bill of exceptions to be relevant to the determination of this case. The appellant alleged in count 2 of his bill of exceptions that the trial judge had erred when he allowed appellant only four (4) days to file his answer, contrary to the law which required ten (10) days to file an answer. He also alleged that the trial judge erred when he granted the petition for permanent injunction pending the adjudication of the case without disposing of the legal issues raised in his answer. We are in agreement with the appellant that the trial judge indeed committed a reversible error when he allowed the appellant only four (4) days to file his answer instead of the ten (10) days stipulated by law. Civil Procedure Law, Rev. Code 1: 9.4(3).

We also observe from the records in the case that both parties granted lease rights to their respective tenants, including their rights under the optional period of ten (10) years, the same as contained in the original lease agreement of June 15, 1977. We hold that it was irregular and erroneous for the trial judge to grant a preliminary injunction to restrain the appellant from collecting rental pending the determination of the declaratory judgment, purposely filed by the co-appellee to declare their rights and status to the lease. Hence, count 2 of appellant's bill of exceptions is hereby sustained.

In counts 3 and 9 of the bill of exceptions, the appellant alleged that the trial judge's denial of his motion for jury trial was erroneous and prejudicial to his interest, in that the pleadings contained triable issues to be decided by a jury. Section 45.9 of our Civil Procedure Law, Rev. Code 1, grants to party litigants the right to trial by jury for the determination of factual issues, consistent with chapter 2 of the said law. Hence, the trial judge erred in denying the appellant's motion for a jury trial. Counts 3 and 9 of the appellant's bill of exceptions are therefore hereby sustained.

The appellant alleged in count 10 of his bill of exceptions that the trial judge erred when he granted the petition for declaratory judgment without making a final settlement of the trial of the facts and circumstances in the case. We shall decide this issue later in this opinion. Further, in his brief, the appellant raised and argued seven (7) important issues, issues 5 and 7 of which we deems worthy of determination by this Court since we have already passed upon most of the other issues as contained in the bill of exceptions. During arguments before this Court, the appellant contended that the trial judge committed a reversible error when he failed to dispose of the appellant's motion to dismiss, filed on August 3, 1998. Counsel for the appellee conceded the legal correctness of the appellant's contention that a motion to dismiss takes precedence over all pleadings. A motion to dismiss is a pretrial motion which must be heard and determined by a trial judge before trial of the main action or proceeding out of which it emanates. Civil Procedure Law, Rev. Code 1:11.2(2)(3)(4). We hold that it was irregular and erroneous for the trial judge to dispose of the main action or proceeding out of which the motion to dismiss grew, without first disposing of the motion.

The appellant also argued before us that the trial judge committed a further reversible error when

he disposed of the petition for declaratory judgment while ruling on the appellant's motion for a jury trial. A recourse to the records in the case revealed that His Honour Wynston O. Henries disposed of the appellant's motion for a jury trial on Friday, October 9, 1998. We hereunder quote the relevant portion of said ruling for the benefit of this opinion:

"Wherefore and in view of the foregoing, it is the ruling of this Court that the motion by respondent/movant for trial by jury is hereby denied and that the agreement entered is valid and operative on the same term and considerations agreed upon in the original agreement. AND IT IS HEREBY SO ORDERED."

In counter arguments, the appellee contended and maintained that the appellant could not challenge Appellee Jack Gbassana's right to sue for and on behalf of General Construction Inc. since the appellant had dealt with the appellee on several occasions, and received from the appellee sundry amounts of money representing rentals under the lease. During the arguments, this Court propounded several questions to counsel of the appellee, some of which we hereunder quote for the benefit of this opinion:

Ques: After the denial of the motion for jury trial, what happened?"

Ans: It was denied; then the judge ruled on the petition for declaratory judgment."

Ques: Are you saying that the petition for declaratory judgment was never assigned for argument?"

Ans: Well, I cannot say since I did not see it on the case file."

Ques: Were the receipts submitted into evidence?"

Ans: No, Your Honour, there was no trial held in the court below."

Ques: Do you agree with your adversary that the proceeding was irregular as there was no opportunity to test the validity of the receipts?"

Ans: Yes, you are correct Your Honour."

It is clear from the records in this case that the trial judge denied the appellant's motion for a jury trial on October 9, 1998, and that he also ruled on the petition for declaratory judgment in his ruling denying appellant's motion for a jury trial, without the issuance and service of a notice of assignment for the hearing of the said petition on its merits. Counsel for the appellee conceded the legal soundness of the appellant's contention that the entire proceeding in the court below was irregular. In the case *Diallo v. La Foundiaria Insurance Company*, [1976] LRSC 8; 24 LLR 498 (1976), this Court held:

"A judgment will be reversed and the case remanded to the lower court when a notice of assignment has not been served on counsel for a hearing at which a judgment is rendered against the counsel's client."

In the *Diallo* case, the trial court had disposed of Appellant Diallo's complaint without any notice of assignment being served on his counsel, and without the disposition of law issues. This Court, upon appeal, reversed the judgment and remanded the case to the lower court for a new

trial. In the instant case, the trial judge disposed of the petition for declaratory judgment in his ruling on the motion for a jury trial without a notice of assignment being served on the appellant's counsel for the hearing of the declaratory judgment petition. The trial judge therefore committed a reversible error when he irregularly proceeded to dispose of the petition for declaratory judgment which was never assigned for hearing. The ruling of the trial judge denying appellant's motion for jury trial, as well as the ruling granting appellee's motion for preliminary injunction, is hereby reversed and set aside.

In view of the foregoing, we have no alternative but to reverse the judgment of the trial judge and remand the case for a new trial, commencing with the motion to dismiss and the disposition of law issues, and thereafter proceed with the hearing of the declaratory proceeding on its merits with the aid of a jury, under the control of the trial court, should a trial be necessary. 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 proceed with the hearing consistent with this opinion. Costs are ruled against the appellee. And it is hereby so ordered.

Judgment reversed; case remanded.

Nimley et al v Yancy et al [1982] LRSC 72; 30 LLR 403 (1982) (8 July 1982)

KMA NIMLEY, NAGBE SEKE et al, Informants, *v.* **HIS HONOUR M. FULTON W. YANCY**, Assigned Circuit Judge, presiding over the June Term, A. D. 1981, of the Sixth Judicial Circuit, Civil Law Court, Montserrado County, TOE GBARDEE et al., Respondents.

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE DENYING A BILL OF INFORMATION.

Heard: March 11, 1982. Decided: July 8, 1982.

1. In order for the Supreme Court to entertain an information the case must have either been pending before or decided by the Court and there must appear to be an usurpation of the province of the Court by the respondents, or there exist some irregularities, or obstruction in the execution of the Court's mandate, or refusal to carry out the orders of the Court.

2. Where there is no obstruction in the execution of the mandate of the Supreme Court, or refusal to carry out its orders, information cannot lie and the Supreme Court cannot exercise jurisdiction over it.

3. Where the Supreme Court lacks jurisdiction over an information, it cannot pass on issues that go into its merits and demerits.

On August 4, A. D. 1981, during the June Term of the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, a final judgment was rendered against informants in an action of ejectment instituted against them by the administrators of the intestate estate of the late Toby Anderson. Exceptions were not noted to the final judgment, nor was an appeal announced. During the execution of the writ of possession, informants fled to the Chambers Justice and filed a bill of information, alleging errors in the trial of the case and the execution of the writ of possession.

In respondents' returns to the information, they contested the jurisdiction of the Supreme Court, asserting that no such jurisdiction was conferred by statute, precedent or rule of the Court to entertain and review any case heard in the trial court except by a remedial process or regular appeal. They argued that there being no case pending before the Supreme Court, the purported information was baseless, unmeritorious and unprofessional and should therefore be denied. The Chambers Justice denied the information, to which informants noted exceptions and appealed to the Full Bench.

The Supreme Court *en banc,* holding that it lacks jurisdiction over the case, affirmed the ruling of the Justice in Chambers and dismissed the information.

J. Henrique Smith appeared for informants, while *S. Edward Carlor* appeared for respondents

MR. JUSTICE MORRIS delivered the Opinion of the Court

This information stemmed from an action of ejectment filed by the respondents, Toe Gbardee and Francis Kieh as administratrix and administrator of the intestate estate of the late Toby Anderson of the Settlement of New Georgia, Montserrado County, against Messrs. Kma Nimley and Nagbe Seke, specifically named in the writ, with others referred to as et. al., as defendants. The sheriff's returns indicate that only Kma Nimley was served with the summons and copy of the complaint on December 26, 1980, but that he never filed any answer.

The complaint alleged in substance that the defendants had wrongfully and willfully entered upon the ten acres of **land** situated and lying in the settlement of New Georgia which the late Toby Anderson purchased from one Amanda T. Yates of the same Settlement, and that they were withholding said property from the lawful possession of the plaintiffs. The plaintiffs further maintained in their complaint that despite repeated demands made of the defendants to surrender the premises to the plaintiffs, they had unjustifiably refused, neglected and failed to do so and were still wrongfully and willfully withholding the possession thereof from plaintiffs, to the great injury, inconvenience and damage of the plaintiffs.

The records in this case reveal that there were three notices of assignment issued, two were received by Co-defendant Kma Nimley and he refused to accept the third notice of assignment. When the case was called for trial on July 18, 1981, neither defendants nor their counsel appeared. Attorney George Tulay, counsel for plaintiffs, then moved the court for default judgment since the defendants had failed to appear, having received the summons and the complaint. The court denied the application of plaintiffs' counsel and ordered the case re-assigned for July 23, 1981 at 9:00 o'clock a.m. in order for the defendants to be pre-sent and to put an end to the litigation. This last notice of assignment was served on co-defendant Kma Nimley but he refused to receive his copy on the ground that he had his legal counsel.

The case was again called for trial on the 23rd day of July 1981 as per assignment but defendants were not in court. Counsel for plaintiffs again moved the court for default judgment but before the court could rule, Counselor Lewis K. Free appeared and made the following records:

"At this stage Counselor Lewis K. Free, Sr., most respectfully begs to inform this Honourable Court that he is the legal representative and counsel for Kma Nimley, Nagbe Seke, et. al., all of the settlement of New Georgia in the intestate estate case of the late Toby Anderson of New Georgia, Monrovia, Liberia. And that this action is already pending before this Honourable Court from the probate court in which the said Toe Gbardee and Francis Kieh objected to George Kiada being the administrator and the matter is not yet disposed of and this suit of ejectment is misleading and serves as a fraud on this court. And so Counselor Lewis K. Free respectfully

submits that this court institute an action into the veracity and authenticity of this present suit. And submits."

The court then ruled thus:

"THE COURT: The request of Attorney Tulay that the defendants be called three times at the door cannot be granted in as much as the returns indicate that the defend-ants refused to sign the notice of assignment indicating that they have their lawyer, in addition to which Counselor Free has spread his representation of the said defendants on the records. The court taking judicial notice of the records in this case sees that there is no answer filed and will proceed accordingly; that is, the plaintiff may prove his case.

Counsel for the defendants being present may take whatever steps he may deem necessary in the premises. As for the matter being pending in probate, this being a court of record, no motion or petition filed in an action of ejectment is within the scope of the monthly and probate court. Therefore, this court does not feel inhibited to proceed with the case. And it is hereby so ordered."

The aforementioned ruling of the judge was an indirect invitation to counsel for defendants to pursue the necessary legal safeguard in the interest of his clients by resorting to remedial process or prosecuting the case to the end and then appealing from the final judgment. But this counsel for defendants failed to do. Subsequently, a jury was empanelled upon the request of the plaintiff's counsel. The first witness for the plaintiffs in person of Co-plaintiff Frances Kieh testified in the presence of counsel for defendants and the defendants' counsel cross-examined her on July 24, 1981, as per court's minutes. But when trial resumed on July 28, 1981, the records indicate that the counsel for defendants was not present wherein the court ruled that "both counsels being in court on the 34th day's session, Friday, July 24, 1981, when the case was postponed until an interpreter could be obtained and same was assigned for the 28th at three o'clock, the counsel for plaintiff may proceed with his case. And it is hereby so ordered." Plaintiffs having rested evidence, the case was submitted to the jury after having been duly charged by the court. The jury then retired to their room of deliberation and brought a verdict for plaintiffs, awarding the land in dispute and $19,000.00 damages for the illegal and wrongful withholding of the property. No appeal was taken from the final judgment which confirmed the verdict and there was no recourse taken by way of remedial process by the defendants' counsel. Final judgment was rendered on the 4th day of August, 1981 confirming and affirming the verdict and a writ of possession was ordered issued and served. When the writ of possession was served on the informants, defendants in the trial court, they elected to file this information in the

Chambers of our distinguished colleague, Ceapar A. Mabande, then presiding in said Chambers. We quote the three-count bill of information verbatim for the benefit of this opinion:

"1. That they are all Liberian citizens residing within the Township of New Georgia, Montserrado County, Liberia, who purchased sundry town lots at various times from one Robert Kadie of said Township upon a title deed executed to him on the 5th day of April, A. D. 1967, by one Toby Anderson, deceased of said Township. Photo copies of the original deeds as well as informants' deeds are hereto annexed, marked exhibits "A" through "C" to form a cogent part of this information.

2. That some of your informants have built substantially on their respective lots since 1976, and have been living in their homes without molestation during construction periods and since their permanent occupancy, that is to say, moving into their respective homes.

3. That your informants have never been made parties in any suit in relation to their said premises since their occupancy; consequently, they have never been summoned to appear before any court within the Republic of Liberia to answer any cause; yet a writ of possession was ordered issued and issued by the clerk of the Civil Law Court for the Sixth Judicial Circuit, Montserrado County for service, which writ was served on informants. More than that, informants were arrested and held under gun point, taken to New Georgia and their personal belongings indiscriminately taken and thrown out of their homes in the rain. In such a condition we being already at gun point as aforesaid, were compelled to sign a stipulation to meet Toe Gbardee and Frances Kieh, administrator and administratrix aforesaid, on Sunday, the 23rd of August, 1981, to arrange to remain on our premises."

In respondents' count one of the returns, they contest the jurisdiction of this Court either by statute, precedent, or rule of court, to entertain and review any case heard in the trial court except by a remedial process or regular appeal. They argued that there being no case pending before this court, the purported information was baseless, unmeritorious and unprofessional and should be denied. Justice Moses K. Yangbe, then presiding in Chambers, heard arguments *pro et con* and dismissed said information. The informants appealed from the Justice's ruling dismissing the information. Therefore, the case is before us for final determination.

At the hearing of this case during the October 1981 Term, Counselor Lewis K. Free, then representing the informants, in resisting count one of the respondents' returns strenuously argued that law is a progressive science and therefore this Court should disregard the stern rules and

procedural forms and give justice where justice belongs. Therefore, he said, information will lie to correct errors committed by the lower court. Counsel for informants strongly contended that this Court should not refuse jurisdiction because the informants did not proceed by either certiorari, mandamus, prohibition or error, for to do so, the informants would be likened to mariners dying with thirst in the midst of the sea. The informants' counsel admitted that this case was not on an appeal before this court but that it is still pending before the Probate Court. The informants' counsel cited the cases of *Schilling and Company v. Tirait and Dennis*, [1965] LRSC 3; 16 LLR 164 (1965) and *Kwrah Gbea v. Gbae Geeby* [1960] LRSC 50; 14 LLR 147 (1960) to buttress his contention.

This Court has held that "no valid judgment can be rendered against a person over whom the court has no jurisdiction." In *Gbae v. Geeby*, this Court also held that: "A judgment is not binding upon a party who has neither been duly cited to appear before the court nor afforded an opportunity to be heard." We are in perfect agreement with the syllabi just quoted, but unlike the case at bar, those two cases traveled to this Court by writ of error. This Court therefore had jurisdiction over the causes to afford the needed remedy in accordance with law because the scope of error is to review while the case before us is an information. In the instant case, our jurisdiction has been contested and in order to render a valid judgment we should first have jurisdiction over the cause.

Respondents' counsel cited the Civil Procedure Law, Rev. Code 1: 16.21(1-4), which spells out the purpose of the writs of certiorari, mandamus, prohibition and error and argued that informants could have moved this Court through the Justice in Chambers by means of any of those writs so as to confer jurisdiction of this Court over the cause. Informants failure to take recourse to any of the remedial or extraordinary writs, and there being no appeal taken from the final judgment of the court below, this Court cannot assume jurisdiction over the cause through a bill of information, the counsel contended. He therefore prayed this Court to refuse jurisdiction and dismiss the information.

Counsel for informants contended that the time for filing a petition for error had elapsed and the judgment was satisfied by the issuance and service of the writ of possession. We disagree with informant's counsel, because the verdict was brought on July 29, 1981 and final judgment was rendered on August 4, 1981. The information was filed on August 21, 1981, seventeen (17) days after rendition of final judgment. The statute on the procedure on the application and hearing of the writ of error is quoted as follows:

"1. *Application.* A party against whom judgment has been taken, who has for good reason failed to make 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. Such an application shall contain the following:

(a) An assignment of error, similar in form and content to a bill of exceptions, which shall be verified by affidavit stating that the application has not been made for the mere purpose of harassment or delay;

(b) A statement why an appeal was not taken;

(c) An allegation that execution of the judgment has not been completed; and

(d) A certificate of a counsellor of the Supreme Court, or of any attorney of the circuit court if no counsellor resides in the jurisdiction where the trial was held, that in the opinion of such counsellor or attorney real errors are assigned." Civil Procedure Law, Rev. Code 1: 16.24.

The six months required by statute had not expired and the payment of the $19,000.00 is part of the satisfaction of the final judgment, to which there is no evidence that same has been paid. Seemingly, the judgment has not been completely satisfied. Therefore, counsel for informants still had ample chance to either petition the Justice in Chambers for a writ of error or prohibition.

However, due to the untimely death of the late Justice Roosevelt S. T. Bortue at the verge of writing our opinions, this case could not be decided because of lack of quorum during the October Term. When this case was called for hearing during this term, Counselor J. Henrique Smith appeared for the respondents. Both counsels submitted the case without argument. We shall now consider the legal issues raised in both the information and the returns. We recite the relevant statutes which confer jurisdiction on this Court:

"Original Jurisdiction.

The Supreme Court shall have original jurisdiction in all cases affecting ambassadors, or other public ministers and consuls, and those in which a county is a party.

"Appellate Jurisdiction.

The Supreme Court shall have jurisdiction of all appeals from courts of record and from rulings of Justices of the Supreme Court presiding in Chambers on application for remedial and extraordinary writs including refusal to issue such writs and shall be the Court of final resort in all such cases.

"Remedial and Extraordinary Writs.

Power to Issue Limited to Justice Presiding in Chambers

Except as provided in paragraph 2 and as may be otherwise provided by statute, the power to issue remedial or extraordinary writs in exercise or aid of the appellate jurisdiction of the Supreme Court and to otherwise issue writs of mandamus, prohibition, quo warranto and other remedial or extraordinary writs and processes, shall reside exclusively in the Justice presiding in Chambers." Judiciary Law, Rev. Code 17: 2.1, 2.2. and 2.9.

From the laws cited above and since jurisdiction is conferred upon a court by law, we disagree with the contention of counsel for informants that we should disregard the provisions of the statutes and assume jurisdiction over this case and correct the alleged errors. In the absence of the above, we find ourselves paralyzed to entertain an information, especially in a case still pending before the lower court, or already decided by the court below without any appeal being taken from said final judgment and/or application for a remedial or extraordinary writ was prayed for and issued.

To pass upon the other issues raised in the returns would be tantamount to going into the merits and demerits of the information which we are precluded from doing because we have no jurisdiction over the cause.

In view of the facts mentioned *supra* 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 affirmed and that the information being baseless and unmeritorious is hereby dismissed. Costs are ruled against the informants. And it is hereby so ordered.

Information dismissed.

Ajami et al v Koroma et al [1983] LRSC 31; 30 LLR 742 (1983) (4 February 1983)

KAMIL AJAMI and **HUSSIEN AJAMI,** Plaintiffs-In-Error, v. **E. S. KOROMA**, Assigned Circuit Judge, Sixth Judicial Circuit, Montserrado County, and **E. G. SALEEBY**, Defendants-In-Error.

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE DENYING THE ISSUANCE OF A WRIT OF ERROR.

Heard: December 16 & 21, 1982. Decided: February 4, 1983.

1. A judgment in a jury case shall not be announced until four (4) days after the verdict.

2. The proper procedure upon the failure of appellant to file its bill of exceptions within the period provided by statute, is for the appellee or prevailing party to file a motion to dismiss the appeal and enforce the judgment.

3. 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 for the hearing of the appeal, to file an

approved appeal bond, or to serve the notice of the completion of the appeal as required by statute.

4. A bill of exceptions is a specification of the exceptions made to the judgment, decision, order, ruling, or other matter excepted to during the trial and relied upon for the appeal together with a statement of the basis of the exceptions. The appellant shall present a bill of exceptions signed by him to the trial judge within ten days after rendition of the judgment. The judge shall sign the bill of exceptions, noting thereon such reservations as he may wish to make. The signed bill of exceptions shall be filed with the clerk of the trial court.

These proceedings grew out of an action of ejectment instituted by the co-defendant-in-error in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, to recover the possession of a warehouse, rent due, and general damages. The plaintiffs-in-error appeared and filed an answer, but failed to serve a copy thereof on the co-defendant-in-error. Accordingly, Co-defendant-in-error Saleeby, filed a submission to the effect that plaintiffs-in-error had failed to serve a copy his answer on co-defendant-in-error. To this submission, plaintiff-in-error failed to interpose a resistance. Subsequently, on the disposition of law issues, the answer was dismissed and plaintiffs-in-error ruled to a bare denial. After a regular trial, the jury returned a verdict in favour of co-defendant-in-error, which was affirmed by the court. Plaintiffs-in-error being absent, the court deputized an attorney to take the judgment for the plaintiffs-in-error. Exceptions were taken and an appeal announced to the Honourable the People's Supreme Tribunal.

Two days after the final judgment, the Government was overthrown in a coup d'etat, and the courts ceased to operate and did not resume operations until May 19, 1980, pursuant to PRC decree No. 3, issued April 24, 1980, and published on May 19, 1980. Two days after the opening of the Civil Law Court, co-defendant-in-error moved for execution to enforce the judgment for failure of the plaintiffs-in-error to file their bill of exceptions, which was granted. During the execution of the judgment, plaintiffs-in-error applied to the Justice in Chambers for a writ of error. From a ruling denying the petition, defendant appealed to the Full Bench.

Plaintiffs-in-error contend that due to the recent change of Government, and the promulgation of Decree No. 3 by the PRC Government, an additional period of 30 days was allowed in computing any period of time prescribed or allowed by statute, by order or Rule of Court, for act to be done, and that in matters of a judicial nature, the grace period hereinabove specified shall continue for a period not to exceed fifteen days after the Court or Tribunal was established. Plaintiffs-in-error contend that pursuant to this decree, the period for filing of their bill of exceptions had not expired when Counsellor Dunbar requested the court to resume jurisdiction and enforce its judgment.

The Supreme Court agreed with the plaintiffs-in-error, and held that PRC Decree No. 3, which re-established the courts after the military takeover, provided for a grace period for acts required to be done under the statute, and that this grace period had not expired by the time the Civil Law Court ordered the enforcement of the judgment. The Supreme Court also held that the procedure resorted to by defendants-in-error was not proper in that under the statute, upon plaintiffs-in-error failure to file his bill of exceptions, the proper procedure is to file a motion to dismiss the appeal, and not for enforcement of the judgment.

The Court also found that upon review of the records that the trial court's final judgment on the verdict was given on the third day after the jury verdict when under the law the four days allowed for rendition of a judgment in a jury case had not expired. Accordingly, the Supreme Court reversed the ruling of the Chambers Justice, granted the petition, and ordered the Civil Law Court to resume jurisdiction and allow the plaintiffs-in-error to file their bill of exceptions and to have same approved nunc pro tunc.

Joseph Dennis of the P. Amos George Law Firm appeared for plaintiffs-in-error. Stephen B. Dunbar, Sr. appeared for defendants-in-error.

AD HOC JUSTICE THORPE delivered the opinion of the Court.

This petition for a writ of error grows out of an action of ejectment instituted in the Civil Law Court, Sixth Judicial Circuit, Montserrado County, in which E.G. Saleeby, one of the defendants-in-error herein, is the plaintiff, and Kamil Ajami and Ali Hussien Ajami, plaintiffs-in-error, are the defendants.

A brief history of the case reveals that on the 17th day of November, 1978, during its December, A.D. 1978, Term, E.G. Saleeby instituted an action of ejectment against Kamil Ajami and Ali Hussien Ajami to recover a warehouse constructed on a parcel of **land** situated in the New Kru Town Area and the rent due in the amount of $2,500.00 plus damages for the unlawful occupancy and use of said warehouse and **land**.

An answer was filed by the plaintiffs-in-error, by and thru their counsel, on the 27th day of November, A. D. 1978, but regrettably a copy of the answer was not served on Co-defendant-in-error Saleeby. Consequently, on December 22, 1978, Co-defendant-in-error Saleeby filed a submission that notwithstanding there was an answer in the case file as filed by the plaintiffs-in-error, the said answer had not been served on him (co-defendant-in-error). The submission was never resisted; whereupon, on the 17th day of August, 1979, upon due notice to both parties, the court in disposing of the law issues, dismissed plaintiffs-in-error's answer, ruled the case to trial on the facts contained in the complaint, leaving plaintiffs-in-error to rest their defense on a bare denial.

On the 7th day of April, 1980, during the March Term of said court, the case having been duly assigned, trial by jury was conducted. The jury returned a verdict in favour of Co-defendant-in-error Saleeby, awarding him a total of $11,560.00 as rental due plus damages. Final judgment of the court was rendered on the 10th day of April, A. D. 1980, which final judgment confirmed and affirmed the verdict of the jury. Plaintiffs-in-error being absent, the court deputized Attorney David Ross to take the said judgment for them. Exceptions were taken and appeal announced to the Honourable the People’s Supreme Tribunal, sitting in its October Term, A. D. 1980, and granted by court.

Upon inspection of the records transmitted to us, we observed that plaintiffs-in-error did not perfect the appeal up and including the 23rd day of May, A. D. 1980. Thus, Co-defendant-in-error Saleeby moved for execution to enforce the judgment so rendered. It was at the service of the execution on plaintiffs-in-error on the 26th day of May, A.D. 1980, that they, through the P. Amos George Law Firm, filed a petition for a writ of error containing seven (7) counts, praying the Court to order the issuance of the alternative writ of error, to order their store reopened, and to permit them to file their bill of exceptions, since the time for the filing of their bill of exceptions had not expired. To this petition, the defendants-in-error filed a ten count returns.

Let us, for a brief moment, traverse the issues raised by both parties. Out of the seven-count petition, we have selected counts 1, 3 and 4 and the prayer to pass upon which read, as follows:

"1. Plaintiffs-in-error complain that during the absence of Co-plaintiff-in-error, Kamil Ajami, from the country in Lebanon where he had gone for only 14 days, co-defendant, E. G. Saleeby, instituted an action of ejectment against them to oust and evict Co-plaintiff Kamil from a certain warehouse held under rental. The writ was served on Co-defendant Ali Hussien Ajami, who was not authorized by co-defendant Kamil Ajami to receive summons on his behalf or even to sign checks in his absence; notwithstanding this illegal practice, the defendants on the 10th day of April, 1980, obtained a judgment against the plaintiff-in-error in the total amount of $11,560.00.

3. And plaintiffs-in-error further complain that on the day of rendition of the illegal judgment against plaintiffs-in-error, the court appointed Attorney David Ross to take the judgment for plaintiffs-in-.error. On the said 10th day of April, A. D. 1980, he excepted and announced an appeal to the Honourable the People's Supreme Tribunal, sitting in its October Term. The appeal was granted by the court. On the morning of the 12th of April, the then existing Government was overthrown and the courts and all other operations were immediately ceased not until May 19, A. D. 1980 when the Civil Law Court was reopened for the transaction of business, and 10 days could not have expired, computing the time from the closure of the court and the reopening and the time of the granting of the execution prayed for, as will more fully appear by copies of the final judgment and minutes of court marked Exhibits "C" and "D" to form part of this petition.

4. And also because plaintiffs-in-error further complain that notwithstanding the closure of the courts, due to the change of Government, immediately upon the reopening of Court, execution was prayed for and granted and the Co-plaintiff-in-error Kamil Ajami's business was closed by the sheriff and plaintiff-in-error arrested and Co-plaintiff-in-error, Ali Hussien Ajami, incarcerated."

And their prayer:

"WHEREFORE, and in view of the foregoing, plaintiffs-in-error bring this complaint in error praying Your Honour to order issue the interlocutory writ of error, order their store reopened, and permit them to file their bill of exceptions, since the time for the filing of the bill of exceptions had not expired; and that Your Honour will order the minutes of court brought to your Chambers and review the records upon examination of facts set forth and contained in the petition, will order the peremptory writ of error issued."

Counts 6 and 7 of the defendant-in-error's returns say thus:

6. That as to count three of plaintiff-in-error, the same is designed to mislead this Honourable Court, in that, final judgment was handed down on the 10th day of April, A. D. 1980, and up to the 21st May, A. D. 1980, although exceptions were taken and an appeal announced, not even the first step, the filing of their bill of exceptions, had been taken after one month eleven days from the judgment, as can be seen from the minutes of the 21st day's sitting of the court, herewith made and marked exhibit "F". Defendants-in-error contend that the granting of the

issuance of the bill of costs and the execution was made within the sound discretion of the trial judge and the pale of the law.

7. That as to count four of plaintiffs-in-error's petition, upon their refusal to comply with the costs and execution, they were ordered in keeping with law." As far as count 1 of the plaintiffs-in-errors' petition is concerned, the Court holds that plaintiffs-in-error were brought regularly under the jurisdiction of the court, trial was conducted, regularly, as in keeping with trial procedure under the statute. Civil Procedure Law, Rev. Code 1: 22.1-22.14. Co-defendant-in-error, His Honour E. S. Koroma, committed no error during this stage of the trial.

As to counts 3 and 4 of the petition, plaintiffs-in-error dwells on the fact that on April 10, 1980, judgment was rendered, exceptions noted and appeal granted. On April 12, 1980, the military coup took place, the Government was overthrown and the courts and all other operations ceased. The courts were re-established by the PRC Decree No. 3, issued April 24, 1980, and published May 20, 1980. According to plaintiffs-in-error, the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, was re-opened on May 19, 1980. On May 21, 1980, Counsellor Stephen B. Dunbar, Sr., was permitted to spread on the minutes of court the following:

"Counsellor Stephen B. Dunbar, Sr. brings to the attention of this Honourable Court in re the case Saleeby v. Ajami et. al, action of ejectment, that the court's final judgment was handed down on the 10th day of April, A. D. 1980, to which exceptions were noted and an appeal announced to the Honourable the Supreme Court, sitting in its October Term, A. D. 1980. It has now been one month and eleven days since said ruling was handed down and the defendants have failed and neglected to comply with the requirements by even taking the first step of filing a bill of exceptions within 10 days as required by the law from the time the final judgment was handed down.

Counsel therefore requests Your Honour to order the Clerk to prepare a bill of costs to be served on the defendants, and in the event they fail and refuse to pay, that a writ of execution be issued and placed in the hands of the Sheriff for execution. And submits."

This is where plaintiffs-in-error contend not to have had their day in court, for the fact that the time to file their bill of exceptions had not expired when they were confronted with bill of costs and execution. It is true that the military coup did occur and the courts were closed and later reopened. Let us see whether plaintiffs-in-error were deprived of their day in court. PRC Decree No. 3, Computation of Time, §1.6, reads as follows:

"GRACE PERIOD--Due to the recent change of Government, an additional period of 30 days is allowed in computing any period of time prescribed or allowed by Statute, by order or Rule of Court, by Rule or Regulation, or by other order, the day of the act, events, or default after which the designated period of time begins to run is to be included, provided, however, in matters of a judicial nature the grace period hereinabove specified shall continue for a period not to exceed fifteen days after the Court or Tribunal is established.

This Decree shall take effect immediately upon the signature of the Head of State of the Republic of Liberia."

According to this Section of Decree #3, the period for the filing of plaintiffs-in-errors' bill of exceptions had not expired when Counsellor Dunbar requested the court to resume jurisdiction and enforce its judgment on the 21st day of May, A. D. 1980.

And more than this, according to records certified to us, the verdict of the jury was given on the 7th day of April, 1980, while the court's final judgment was given on April 10, 1980, three days after the verdict of the jury, when under the law the four days allowed for rendition of judgment in a jury case had not expired. Civil Procedure Law, Rev. Code 1: 41.2.

"All judgments shall be announced in open court. The judgment in a jury case shall not be announced until four days after the verdict."

The four days did not expire before final judgment was given. And so after having lost jurisdiction by the granting of an appeal in the circuit court, in order to resume jurisdiction and enforce its judgment, the procedure set under dismissal of appeal for failure to proceed is as follows:

"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 for 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., 1: 51.16.

In accordance with this section of the law, the Court holds that in order to dismiss the appeal and enforce the judgment because of the defendants, now plaintiffs-in-errors' failure to perfect their appeal, a motion should have been filed, heard and passed upon. Thus, giving plaintiffs-in-error the opportunity to be heard. This procedure was ignored by the presiding judge, co-defendant-in-error .

The bill of exceptions, the first step toward taking an appeal. Because of its importance, we deem it expedient to quote the relevant law:

"A bill of exceptions is a specification of the exceptions made to the judgment, decision, order, ruling, or other mat-ter excepted to on the trial and relied upon for the appeal together with a statement of the basis of the exceptions. The appellant shall present a bill of exceptions signed by him to the trial judge within ten days after rendition of the judgment. The judge shall sign the bill of exceptions, noting thereon such reservations as he may wish to make. The signed bill of exceptions shall be filed with the clerk of the trial court." Ibid., 1: 51.7.

In view of the foregoing and the law cited, it is our opinion that the ruling of the Chambers Justice be, and the same is hereby reversed. The petition for a writ of error should be, and the same is hereby granted and the peremptory writ of error ordered issued, commanding the judge presiding in the Civil Law Court to resume jurisdiction over this case and allow the plaintiffs-in-error to file their bill of exceptions, and the same to be approved nunc pro tunc within 10 days from the date of the reading of the mandate. And it is hereby so ordered.

Petition granted.

Pearce v B. Flomo [1977] LRSC 51; 26 LLR 299 (1977) (25 November 1977)

MARY PEARCE, Petitioner, v. ALFRED B. FLOMO, Assigned Judge, Sixth Judicial Circuit, Montserrado County, et al., Respondents.
PETITION
FOR WRIT OF PROHIBITION TO THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY

Argued October 13, 1977. Decided November

25, 1977. 1. A magistrate has no authority to review and reverse the judgment of an associate magistrate. 2. It is irregular and improper for a Justice in chambers to issue an order without the proper application of the parties. 3. A mayor, who is a member of the Executive Department of the Government, has no authority to interfere with a matter pending before a court, since in so doing he oversteps the bounds of his authority and violates the Constitutional provision for separation of powers. 4. A court has no power to interfere with the judgment of another court of concurrent jurisdiction. 5. Res judicata is a principle of law which forbids relitigation of issues in a case involving the same parties and the same subject matter where the case has once before been judicially determined. 6. An order enforcing a void decree is void ab initio. 7. Prohibition is the proper remedy to restrain an inferior court from hearing and passing judgment in a case which has already been adjudged by a court of competent jurisdiction.

In 1971, Mary Pearce instituted an action of ejectment against Jebeh and Siafa Kiawu. Judgment was rendered in her favor by Associate Magistrate Benson. From that judgment no appeal was taken, but later in that year, a writ of possession was issued by Magistrate Jallah in favor of Jebeh Kiawu, who it appears took or remained in possession of the property in dispute. Subsequently Mary Pearce was complainant in three proceedings against the Kiawus, charging them with malicious mischief. Out of one of these charges, tried before Justice of the Peace Tuo, arose summary proceedings instituted by Jebeh and Siafa Kiawu against Tuo as co-respondent with Mary Pearce and another, in order to restrain him from further action in the case. The sum299

mary proceedings were tried before Circuit Judge Lewis, who dismissed the petition, but in the course of his opinion "held" that the ruling of Magistrate Jallah in the 1971 ejectment proceeding was illegal and void in reversing the judgment of Associate Magistrate Benson. In March 1977, Mr. Justice Azango wrote a letter to Justice of the Peace Tuo directing him to proceed with enforcement of the judgment of Magistrate Benson and place Mary Pearce in possession of the disputed property. On April 18, 1977, Circuit Judge Flomo issued an order that the ejectment case be dismissed without prejudice to the plaintiff "and that the parties be placed in status quo ante." There is no showing how the case came before Judge Flomo. The following day, Mary Pearce applied to the Justice in chambers for a writ of prohibition to restrain Judge Flomo from issuing a writ of possession against her. The case was sent forward from the Justice in chambers for decision by the Court en banc. The Supreme Court held that the judgment of Associate Magistrate Benson was still controlling; that Magistrate Jallah had no authority to reverse that decision, nor was Circuit Judge Flomo empowered to revive and enforce the void judgment of Magistrate Jallah. The Court reiterated the rule that prohibition is the proper remedy to restrain an inferior court, in this case the Circuit Court with Judge Flomo presiding, from taking action beyond its jurisdiction or from proceeding by rule different from those which ought

to be observed at all times. The writ of prohibition was granted, and the Court ordered enforcement of the judgment of Judge Lewis.

Lewis K. Free for petitioner. James D. Gordon and J. Lemuel Reeves for respondents.
MR. JUSTICE BARNES delivered the opinion of the Court.

In um, petitioner in this case filed in the Magistrate Court, Monrovia, before Associate Magistrate Benson, an action of summary ejectment to evict respondents Jebeh Kiawu and Siaf a Kiawu from a certain piece of property located at West Point behind the General Market, Old Kru Town. Associate Magistrate Benson heard the case and rendered judgment in favor of plaintiff-petitioner herein on September 9, 1971. From the record certified to this Court there is no showing that any appeal was taken from Magistrate Benson's judgment. For the benefit of this opinion we find it necessary to quote Magistrate Benson's judgment : "In keeping with the evidence adduced at the trial of this case, the court says that plaintiff is awarded judgment. Defendant having been adjudged liable, it is hereby entered that he be evicted, ousted and ejected from the possession of plaintiff's property. Costs of these proceedings against defendant. It is hereby so ordered." Notwithstanding the judgment, a writ of possession was issued on December 20, 1971, in favor of the defendant for the same property as was involved in the summary ejectment suit. It is very difficult to comprehend how this could be done ; we can only content ourselves by concluding that this is but one of the mysteries in the history of this case. Subsequently, according to the record certified to this Court, Judge John N. Lewis, during the February 1976 Term of the First Judicial Circuit Court, entered a ruling in summary proceedings, filed by Jebeh Kiawu against Justice of the Peace Alfred Tuo and others, growing out of a charge of malicious mischief made by Mary Pearce against the defendant in summary ejectment. Inasmuch as the ruling of Judge John N. Lewis in the summary proceedings gives the historical background in the case, we insert it verbatim:
"On December 18, 1975, petitioners through their counsel, Counsellor Alfred Cassell, filed a petition for

summary proceedings against the respondent Justice of the Peace and Mary Pearce and Joseph Kollie, growing out of the case of Mary Pearce and Joseph Kollie, plaintiffs against Jebeh Kiawu and Siaf a Kiawu, defendants : malicious mischief. "In the petition, petitioners allege that on February 3, 1973 [sic], petitioners were granted squatters' rights at West Point behind the General Market, Old Kru Town, to erect a dwelling house; that on October 5, 1971, respondent Mary Pearce instituted summary proceedings against the petitioners hereof in the magisterial court in Monrovia . . . and that they were placed in constructive possession of the property; that notwithstanding

that matter was sub judice, Joseph Kollie, co-respondent hereof, swore to a writ of arrest for malicious mischief, and that when the matter was preliminarily investigated by the magistrate, probable cause was found and the matter forwarded to the county attorney for prosecution; that notwithstanding the matter is still before the county attorney for prosecution, co-respondent Justice of the Peace Alfred Tuo and Mary Pearce swore to a writ of arrest for malicious mischief, naming the same parties, subject matter and property as in the writ before the magistrate, which is now before the county attorney ; that despite the writ of possession alleged to have been ordered in favor of petitioners, respondents on January 8, 1974, referred the matter to the Honorable Henry B. Fahnbulleh, the Assistant Minister for Presidential Affairs, alleging that petitioners hereof were illegally occupying the property of Mary Pearce; and after investigation of the same, Assistant Minister Fahnbulleh dismissed the complaint of co-respondent Mary Pearce, ruling that the ruling of the Magistrate Court be undisturbed; that on January 8, 1974, co-respondent Mary Pearce again appeared before Justice of the Peace Alfonso Caine, swore out a writ of arrest for

malicious mischief against Siafa Kiawu, which was subsequently dismissed by Justice of the Peace Caine. "The petition finally prays that these summary proceedings against Justice of the Peace Alfred Tuo be sustained and that he be estopped from probing any further into the case. "Two basic issues seem to be raised by petitioners' petition: ( ) that petitioners are the owners of the property, having been placed in constructive possession thereof by a decision of the magisterial court, growing out of summary ejectment which was instituted by Mary Pearce against Siafa Kiawu on October 5, 1977 [sic] ; and (2) that the petitioners were being molested before more than one justice of the peace based upon the same facts.
"With reference to the first issue, respondents in their return have made profert of a ruling of the Magistrate Court as follows:
" 'In keeping with the evidence adduced at the trial of this case, the Court says that plaintiff is awarded judgment. Defendant having been adjudged liable it is hereby entered that he be evicted, ousted and ejected from the possession of plaintiff's property. Costs of these proceedings against defendant. It is hereby so ordered. Dated this 9th day of September, 1971. [Sgd.] C. A. BENSON, ASSOCIATE MAGISTRATE.'

"So that on September 9, 1971, co-respondent Mary Pearce was put in possession of her property. There is no record to show whether or not an appeal was taken; we assume therefore that this ruling was final. "Quite peculiarly, however, petitioners' exhibit 'C' is a certificate of the then clerk of the magisterial court which reads: 'This is to certify that during the latter part of December 20, 1971, this Court issued a writ of possession in favor of Messrs. Jebeh Kiawu and Mamadee Sheriff against Madam Mary Pearce and Kollie. The writ was served on the above-named

defendants and the plaintiffs put in possession of their property and the matter closed. Given under my hand and seal of court this 23rd day of June, 1972. [Sgd.] E. WILMINGTON SMITH, Clerk of Court, Commonwealth Dist. Monrovia.' "When petitioners' counsel was questioned while arguing, how was it possible for there to have been two contradictory rulings in the same summary proceedings, he answered that the matter was subsequently, after Associate Magistrate Benson's ruling, reheard and redecided by the late Magistrate Peter Bonner Jallah who reversed the earlier ruling of Associate Magistrate Benson. "If the answer of petitioners' counsel is true, the act of the late Magistrate Peter Bonner Jallah in rehearing, redeciding and finally reversing the ruling of associate magistrate is without authority in examining the ruling of an associate magistrate. "The only remedy available to the losing party was to take appeal from the ruling of the associate magistrate, which seemingly was not taken advantage of. "We hold, therefore, with regard to the first issue, that the· ruling of Associate Magistrate Benson, dated September 9, 1971, is valid and still in force ; that the certificate of the clerk of court, apparently based on the ruling of Magistrate Peter Bonner Jallah, which sought to revive and reverse the ruling of Associate Magistrate Benson is based on an illegal and void ruling, and hence of no effect. "Coming to the second issue, we shall endeavor to examine the various writs of arrest for malicious mischief to see whether they involve the same subject matte-- . . . "Although involving the same parties and for the same crime of malicious mischief, and probably referring to the same subject matter, i.e., the premises in question, the three writs refer to separate and distinct

acts, touching separate and distinct portions of the house, with separate and distinct descriptions of what the damage was. This being the case, the doctrine of lis pendens is inapplicable, as the subject matter in each writ is separate and distinct. "In view of the foregoing, the petition for summary proceedings is dismissed and the justice of the peace ordered to proceed forthwith with the hearing of the matter before him. And it is hereby so ordered. "Given from under the hand and seal of Judge John N. Lewis, Assigned Circuit Judge." Even though there is no showing in the record certified to this Court of an appeal being taken from the ruling of John N. Lewis upholding the judgment of . Associate Magistrate Benson in the summary ejectment case, the clerk of court issued a writ of possession as mentioned above to the defendants predicated upon an alleged ruling of the late Magistrate Peter Bonner Jallah, reviewing and reversing the judgment of Associate Magistrate Benson. It is our opinion that Magistrate Peter Bonner Jallah had no authority to review and reverse the judgment of Associate Magistrate Benson. If the defendants were dissatisfied with the judgment rendered against them, the proper and legal thing to have done was to have appealed from the judgment. It is inconceivable that a magistrate of concurrent jurisdiction would undertake to review and reverse the ruling of an

associate magistrate. The records in this case further show that there were three judgments rendered in favor of plaintiff-petitioner on the same subject matter, but none of these judgments was enforced because there was a counter-remand by another Circuit Judge. This is evident by summary proceedings involving the same property, same parties and subject matter, brought before Judge Napoleon Thorpe presiding in Court Room B of the First Judicial Circuit, by Jebeh Kiawu and Siafa S. Kiawu against Alfred. Tuo,

the justice of the peace who had been ordered by Judge Lewis to hear and determine Mary Pearce's summary ejectment case. But when the case was assigned for hearing, the petitioners failed to appear, and the petition was dismissed. Since the petition had been dismissed, the justice of the peace then had the authority to enforce Judge Lewis's order of March 1976. It is strange to us that before the orders of Judge Lewis could be enforced by the justice of the peace, without any showing of a petition for a remedial writ upon which a stay order might have been legally issued, the justice of the peace received an order under seal of the Supreme Court to disobey Judge Lewis's order and allow an appeal to be taken, which appeal should have been taken almost three years before. It would appear that respondents gave the Justice in chambers an incorrect picture of the case, which led him to issue the irregular stay order allowing the appeal to be taken. It is irregular and improper for a Justice in chambers to issue an order without the proper application by the parties. The issuance of the stay order disregarded the provisions of the Civil Procedure Law relating to the procedure in special proceedings. Rev. Code I :16.1-1i. In addition to the irregular stay order by the Justice in chambers, the justice of the peace received a letter over the signature of one Joshua G. Logan, Special Assistant to the Mayor of Monrovia. The letter reads thus : "Mr. Justice of the Peace : "Mr. Saif a Sonai Kiawu has reported to the Mayor that based upon a decision of your court he has been ejected out of a house that he constructed at West Point on a piece of public land for which he has a squatter's right. "I would be pleased if you could advise us of the nature of this case. "Meanwhile, the Mayor would have me request you to suspend enforcement of your decision pending re-

ceipt of your apprising him of the nature of the case, since it is said to involve public land owned by the City Government. "Your cooperation will be highly appreciated. "Very truly yours, "[Sgd.] JOSHUA G. LOGAN, Special Assistant to the Mayor."

Here again the mayor had no authority to interfere with a judicial matter pending before a justice of the peace, or especially so with specific orders of a circuit judge, because the Constitution of Liberia

has designed the scope of proper authority to each of the three branches of government and the mayor belongs to the Executive Department of Government. The mayor's letter to the justice of the peace contravenes the provision of the Constitution with respect to the powers granted each department of government.

The records in this case show that on March 8, 1977, Justice Azango, who was then in chambers, wrote a letter to Justice of the Peace Alfred Tuo to the effect that Counsellor Lewis K. Free had brought to his attention that for more than three weeks, he, the justice of the peace, had tried a summary ejectment case involving Mrs. Mary Pearce as plaintiff and Siafa and Jebeh Kiawu as defendants, and in the process of enforcing the judgment, an order was given by Mr. Justice Horace stating that he should "reinstate the parties to their state before judgment and to permit Mr. Siafa Kiawu to complete his appeal." He further stated in his letter that his colleague had informed him that he, Mr. Justice Horace, was misled by Mr. J. K. Burphy, who intervened in the matter on behalf of defendants.

The Justice then in chambers concluded his letter by stating that since there was no application for any of the extraordinary writs known to the Supreme Court of Liberia before him or even an announcement of an appeal from the judgment to this Court, the justice of the peace was to proceed im-

mediately with the enforcement of the judgment and put Mrs. Mary Pearce in possession of the property; and that his mandate should be carried out promptly and a report made to him on or before March io, 1977, without fail. The mandate of Justice Azango contradicts the order of Associate Justice Horace on the same matter. Here again is an instance of an irregular and improper mandate emanating from the Justice in chambers. On April 19, 1977, Mary Pearce applied for prohibition in the chambers of Justice Azango. The petition joined Judge Flomo as co-respondent since he had on April 18 rendered a judgment on the self-same summary ejectment case. There is no showing on the records how the case got before Judge Flomo since his colleague, Judge Lewis, had already determined summary proceedings growing out of this case. The judgment of Judge Flomo reads as follows : "That the entire case be dismissed without prejudice to the plaintiff to file the same in a court of competent jurisdiction, and that the parties be placed in status quo ante. Costs to abide final determination of the action when filed. And it is hereby so ordered. "Given under our hand this 18th day of April 1977 in open court.

"[Sgd.] ALFRED B. FLomo, Assigned Circuit Judge."

To this judgment Mary Pearce took exceptions and announced that she would abide by the statute. She then applied for prohibition before Justice Azango who issued a stay order on April 2o, and a return was filed on April 25. In his ruling, Justice Azango stated that he had heard a certain phase of this matter while he was in chambers and had given orders to the lower court ordering the enforcement of the judgment of Judge Lewis to evict and oust respondents from the premises, that enforcement of the judgment was interrupted by other irregular proceed-

ings, and that in order to afford the parties a fair and impartial hearing before a court he was recusing himself from further hearing and determination of the case but would order the clerk to have the case redocketed for rehearing before another Justice. The matter was brought before the Chief Justice who was then presiding over chambers in place of Mr. Justice Henries, who was away from the country on official business. After carefully studying the various aspects of the matter, the Chief Justice felt that it should be returned to the Magistrate Court for the parties to defend their respective claims in that court of origin. It was his further opinion that since no appeal was taken from Associate Magistrate Benson's decision in the case, the said decision should be enforced according to the prevailing law and practice; but since Magistrate Jallah was permitted illegally and unauthorizedly to set aside the decision of a judge of concurrent jurisdiction without any move on Mary Pearce's part to stop him, her chance to correct the error at the proper time was lost. Additionally, the Chief Justice noted the patent and reversible errors apparent from the record of the case could only be fairly corrected by commencing the proceedings anew from the Magistrate Court. He felt that he did not have the competence unilaterally to make such decision in face of the positions already taken by the two Justices in chambers and therefore decided to order the case sent forward to be heard by the bench en banc at the October 1977 Term. Thus, the proceedings in prohibition have come before the Court en banc for final determination. The petition for prohibition states that co-respondent Judge Flomo was proceeding by rules different from those which ought to be observed at all times, in that, instead of hearing the matter de novo as the statute mandatorily requires upon an appeal taken by co-respondents Jebeh and Siafa Kiawu, he merely reviewed the records

of the entire case which had been adjudged by an inferior court including the acts of his colleague with whom he had concurrent jurisdiction, as well as passing upon the acts of the superior judges in a case which had been settled by them. Petitioner further raises in his petition the doctrine of res judicata to the effect that the matter had been determined by a judge with whom Judge Flomo had concurrent jurisdiction and that the judgments and mandates of superior judges had also been made in the case, yet, he, the co-respondent judge, elected to nullify, set aside, and discard all previous rulings in the case. Petitioner further contends that it was imperative that the co-respondent judge should have heard the case de novo and not to have dismissed it, and for this reason the judgment dismissing the case is unenforceable because it was obtained in contravention of the statute. Petitioner therefore prays for the granting of the writ of prohibition restraining the corespondent

judge from issuing and serving upon her the writ of possession. In their return respondents contend that petitioner is precluded from filing the petition for the reason that she withdrew the exceptions taken to the ruling of Judge Flomo. Respondents contend that prohibition will not lie where a judgment has been fully satisfied before its filing, and that the judgment of Judge Flomo had been fully satisfied. Respondents further contend that the record of these proceedings clearly indicates that the subject out of which these prohibition proceedings grew was pending before the court on appeal. Respondents finally contend that the principle of res judicata is not applicable in the instant case, for where title is involved in summary proceedings, a justice of the peace cannot exercise trial jurisdiction. Therefore the justice of the peace erred when he tried and determined the summary ejectment proceedings involving title to realty, and all acts done in the trial of the issues joined in the summary

ejectment proceedings before him were void ab initio. Respondents pray that the unmeritorious petition be denied. As has been pointed out earlier in this opinion, it is difficult to comprehend how the case came up before the co-respondent judge on appeal, for it is nowhere in the record certified to this Court that an appeal was taken from the judgment of Associate Magistrate Benson, and neither was an appeal taken from Judge Lewis' ruling upholding the decision of Associate Magistrate Benson. The co-respondent judge had no authority to render judgment dismissing the case without prejudice to plaintiff to file the same in a court of competent jurisdiction, and directing that the patties be placed in status quo ante, when Judge Lewis, with whom Judge Flomo had concurrent jurisdiction, had ruled on the same subject matter and the same parties. Further, two Justices of the Supreme Court had rendered conflicting opinions involving the same matter. This Court has held that a court has no power to interfere with a judgment of another court of concurrent jurisdiction. Republic v. Aggrey, 13 LLR 469 (796o) During the argument before this Court, the petitioner stressed the point that because of the irregular and improper manner in which the case came before corespondent Judge Flomo, his judgment is of no legal effect because the case had been previously decided by a judge of concurrent jurisdiction. In addition, the petitioner relied on the case Kiazolu-Wahab v. Sonni, [1964] LRSC 38; 16 LLR 73, 74 (1964), in which Mr. Justice Pierre, speaking for the Court, said : "Res judicata is a principle of law which forbids relitigation of issues in a case involving the same parties and the same subject matter where the said case has once before been judicially determined ; that is to say, where the merits of the issues involved have been examined and judgment rendered thereon." In the instant case, judgment had been rendered by Judge Lewis

and no appeal had been taken. This Court is of the considered

opinion that this point is well taken. This Court has held that an order enforcing a void decree is void ab initio. Handsford v. Harris, [1969] LRSC 9; 19 LLR 176 (1969). Respondents contended that the petition for prohibition should be denied because petitioner should have sought remedial relief prior to the court's, meaning the co-respondent judge's, final judgment and the issuance of the writ of possession and its enforcement in favor of the respondents. They relied on Coleman v. Cooper, [1955] LRSC 7; 12 LLR 226 (1955) , at page 229 especially. That case is not analogous because the respondents had fully and completely performed all of the acts complained of by the petitioner and therefore prohibition could not lie. In the instant case, the respondent judge had improperly and irregularly heard a case which had already been adjudged by a court of competent jurisdiction and therefore had no authority to pass upon the issues involving the same parties and the same subject matter. A writ of prohibition is the proper remedial process to restrain an inferior court from taking action in a case beyond its jurisdiction, or in a case where the court, having jurisdiction, has attempted to proceed by a rule different from those which ought to be observed at all times. Parker v. Worrell, 2 LLR 525 (1925). This Court held in the case Mensah v. Tecquah, [1954] LRSC 29; 12 LLR 147, 15o (1954) , that where a court attempts to proceed by a rule different from those which ought to be observed at all times, prohibition will lie. In such cases, the Court held, it does not only prohibit the doing of the unlawful act but goes to the extent of undoing what has already been done. 22 R.C.L., Prohibition, § 7 (1918). Respondents raised certain issues in their reply affidavit to petitioner's affidavit, but we deem it unnecessary to pass upon them because of the irregular manner in which the court acquired jurisdiction in the case. It is therefore the considered opinion of this Court that

the writ of prohibition be granted, and the Clerk is hereby ordered to send a mandate to the court below to enforce the judgment of Judge Lewis. And it is hereby so ordered. Costs against respondents.
Petition granted.

Sylla & Co. v Royal Pharmacy [2005] LRSC 1; 42 LLR 357 (2005) (28 February 2005)

SYLLA & CO. BAKERY, by & thru its Attorney-In-Fact, SHEIK KAFUMBA KONNEH, Plaintiff/ Appellant, *v.* **ROYAL PHARMACY**, by & thru JOSEPH DIXON, Defendant/Appellee.
APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: January 5, 2005. Decided: February 28, 2005.

1. Where an agreement expires by its terms and, without renewal, the parties continue to perform as before, an implication arises that they mutually assented to a new contract containing the same provision as the old, and ordinarily, the existence of such a contract is determined by the objective test, that is, whether a reasonable man would think the parties intended such a binding contract.
2. As a general rule, a tenant who remains in possession of leased premises after the expiration of the lease term does not thereby become a tenant from year to year; however, consent to remain on the premises may be actual or constructive, implied or expressed, or maybe by words or some acts recognizing or treating him as tenant, often evidenced by payment and unconditional acceptance of rent.
3. If after the expiration of a lease, the tenant pays rent and landlord accepts the payment, the lease is extended.
4. The acceptance of rent by the landlord, where the tenancy has expired, raises the presumption that the tenant has been accepted for an additional period.
5. The proof of acceptance of rent by the landlord is evidence of his consent to a renewal of an expired lease.
6. Absent evidence to show a contrary intent on the part of the landlord, a landlord who accepts rent from his hold-over tenants will be held to have consented to a renewal or extension of the lease.
7. A promissory note which makes no mention of an existing sublease agreement or the property conveyed, and which is not signed by the two parties to an existing sublease agreement, is not a renewal of the sublease agreement or an addendum thereto.
8. The renewal or addendum to an existing written contract cannot be an oral arrangement.
9. A sub-lessor alleging breach of an alleged oral sublease agreement under which part payment had allegedly been made must file an action of debt, and not action of summary proceedings to recover real property.
10. An addendum to any agreement is a contract and must meet the basic requisite of a valid contract.
11. Among the requisite to the formation of a valid contract is that there must have been the mutual consent of all parties competent to contract, founded on a sufficient consideration to perform some legal act or omit to do something, the performance of which is not enjoined by law.
12. A lease, like a contract for the conveyance of **land**, requires the participation of at least two parties, the lessor and the lessee.
13. A promissory note which contains only the signature of the sub-lessee, promising to pay rent for a certain period, but does not indicate the demised premises for which the sub-lessee is paying and does not include the signature of the sub-lessor consenting to accept the rent for the period indicated, and a covenant to convey to the sub-lessee the specifically demised premises, does not meet the requirement contemplated by Liberian statute and common law for a valid contract for the conveyance of real property.

The appellant, Sylla & Co. Bakery, sued the appellee, Royal Pharmacy, in an action of summary proceedings to recover real property. In the complaint, the plaintiff/appellant prayed the court to

have the appellee evicted from the property and to have the appellee pay the appellant an amount of US$4,250.00 which the appellant claimed was due it by the appellee based on a promissory note issued by the appellee.

The records revealed that the appellant and the appellee had entered into a sublease agreement for the lease of the appellant's premises by the appellee for a period of one year, in consideration for which the appellee was to pay an annual rental of LD4,250.00, payable in advance. The sublease agreement stipulated that at the end of the certain period, the appellee would have the option to renew the sub-lease for another two years on conditions negotiated by the parties. No such negotiations were ever held even though the appellee continued to occupy the premises and to pay annually the rental stated in the sublease agreement. This rental was accepted by he appellant.

After several years the appellant, through its attorney-in-fact, wrote to the appellee stating that the rental for the premises for the ensuing year would be US$4,250.00. The appellee thereupon executed a promissory note in favour of the appellant promising to pay US$4,250.00 as annual rental for the premises. Upon the appellee's refusal to pay the amount because no agreement had been reached for payment in United States Dollars, the appellant sued out in summary proceedings to recover possession of real property.

The trial court ruled that the continued adherence to the terms of the sub-lease agreement was tantamount to a renewal of the agreement on the same terms for additional one-year periods; that the appellee should pay the appellee the year's rental of LD4,250.00 and vacate the premises at the expiration of the current one-year period; and that there was no agreement for payment of the rental in United States Dollars. From this judgment both parties appealed to the Supreme Court. However, only the appellant perfected its appeal.

The Supreme Court affirmed the ruling of the trial judge. The Court held that the once the sublessee was allowed to remain on the premises and to tender payment for the new period, and the payment had been accepted by the sub-lessor, those acts constituted performance under the agreement. Hence, it said, the sub-lease agreement was deemed to have been renewed or extended by implication for another year under the same terms and conditions as the original sublease.

The Court held further that the promissory note which the appellant relied on as evidence of a new leasehold was not legally an addendum or a new lease or an extension of the old lease. The Court noted that the promissory note was signed only by the sub-lessee, that the promissory note did not state the property to which it referred, and that it could not there-fore be the basis upon which the written sub-lease agreement could be amended. Moreover, the Court stated, if the promissory note could be considered as a new lease, then the appellant should have sued in an action of debt for the amount due and not in an action of summary proceedings to recover real property.

Momodu T. B. Jawandoh appeared for the plaintiff/ appellant. No counsel appeared for the defendant/appellee.

MADAM JUSTICE COLEMAN delivered the opinion of the Court.

This appeal is before us from a ruling of His Honour Francis N. Topor, Assigned Circuit Judge, Sixth Judicial Circuit, Montserrado County, in a summary proceeding to recover possession of real property filed by the plaintiff, now appellant, Sylla & Co. Bakery, against the defendant/appellee, Royal Pharmacy.

The complaint, filed by Sheik Kafumba F. Konneh as attorney-in-fact for the appellant, Sylla & Co. Bakery, alleged that on July 15, 1987 Sylla and Co. Bakery, acting through its president, Mohammed Sylla, executed a sublease agreement with the appellee, Royal Pharmacy, for one year certain.

The appellant in its complaint also stated that upon the expiration of the sublease agreement, the appellant and the appellee orally agreed that the appellee would remain in possession of the premises and pay rent in United States Dollars at a rate of US$4,250.00 (Four Thousand Two Hundred Fifty United States Dollars) per annum for the period July 15, 1991 to July 14, 1992, as per a promissory note signed by the appellee's representative.

The complaint also alleged that the appellee paid US$1,000.00 (One Thousand United States Dollars) but refused to pay the balance US$3,250.00 (Three Thousand Two Hundred Fifty United States Dollars) and failed to vacate the premises. The appellant therefore prayed the trial court to oust, evict and eject the appellee from the property and to award appellant special damages of US$3,250.00 (Three Thousand Two Fifty United States Dollars) and general damages for the appellee's wrongful withholding of the premises.

A writ of summons was issued and served on the appellee. The appellee filed a seven (7) count answer, alleging that the appellant had no legal capacity to institute the action since the power of attorney was prepared in Guinea and not notarized and probated in Guinea, but bore stamps of the Republic of Liberia. The appellee also denied that it ever paid US$1,000.00 (One Thousand United States Dollars), but admitted that it paid LD$7,000.00 (Seven Thousand Liberian Dollars), which the appellant converted to US Dollars at a rate of L$7.00 to US$1.00, and issued a receipt for US$1,000.00 (One Thousand United States Dollars) without the consent and authorization of the appellee. The appellee alleged that it rejected the receipt in a letter addressed to Kafumba Konneh, attorney-in-fact for the appellant.

Finally, the appellee alleged that the promissory note referred to by the appellant was secured by fraud and deception; that the sublease agreement did not call for payment of rent in United States Dollars; and that the alleged oral agreement to pay rent in United States Dollars was not in harmony with the law which required that transactions in relation to realty be reduced to writing.

The appellant filed a ten (10) count reply denying the aver-ments of the answer, confirming the complaint, and insisting that the appellee had paid US$1,000.00 (One Thousand United States Dollars) and not LD$7,000.00 (Seven Thousand Liberian Dollars).

A motion to dismiss the complaint was filed, heard and denied. The law issues were subsequently disposed of and the case ruled to trial.

A regular trial was held, during which the appellant produced five witnesses and had admitted into evidence the following instruments: a power of attorney signed by Mohammed Sylla, President of Sylla and Co. Bakery; a sub-lease agreement entered into by plaintiff and defendant; a promissory note signed by the defendant; a letter demanding payment of US$3,250.00 (Three Thousand Two Hundred Fifty United States Dollars); and a second letter addressed to the defendant demanding payment of US$3,250.00 (Three Thousand Two Hundred Fifty United States Dollars) on or before July 8, 1992.

The defendant, for its part, produced three (3) witnesses to testify on its behalf and offered into evidence six species of documentary evidence, including: a receipt from Abraham Kamara to Mr. Joseph Dixon; a letter from the attorney-in-fact of the plaintiff, Kafumba Konneh, to Abraham Dixon; two letters to Kafumba Konneh requesting the return of the LD$7,000.00 (Seven Thousand Liberian Dollars); a sub-lease agreement between plaintiff and defendant; and a receipt from Sheik Kafumba Konneh to Joseph Dixon, for the amount of US$1,000.00 (One Thousand United States Dollars).
Final arguments were heard and His Honour Francis N. Topor, Assigned Circuit Judge for the December, A. D. 1993 Term, rendered final judgment on January 28, 1994.

The judge, in his final judgment, ruled as follows:

"Plaintiff and defendant entered into a sublease agreement on July 15, 1987, for the period of one (1) calendar year, beginning July 15, 1987 and ending the 14th day of July, A. D. 1988, at an annual rental of LD4,250.00 payable yearly in advance. Though there was no express agreement between the plaintiff and the defendant after the expiration of the sublease agreement, defendant continued to occupy the premises from July 15, 1988 up to July 14, 1992. Hence, by these conduct, the sublease agreement between plaintiff and defendant was deemed renewed.

"Plaintiff, in its complaint, referred to a promissory note allegedly issued by defendant on the 11th day of November, A. D. 1991. In the 1st paragraph of the said promissory note, defendant correctly acknowledged his indebtedness to Sylla and Co. Bakery. The second paragraph recites and states that defendant will pay or cause to be paid to Sheikh Konneh the sum of US$4,250.00 (Four Thousand Two Hundred Fifty United States Dollars). The 2nd paragraph is out of context for there is no contractual basis for the promise to pay US$4,250.00 (United States Dollars Four Thousand Two Hundred Fifty). The expired sub-lease agreement stated the currency in which rental should and must be paid. There is no agreement between Sylla and Co. Bakery and defendant for the payment in US$ currency. The power of attorney did not sufficiently confer any right to the grantee to make a novation respecting realty.

".....where an agent is authorized to make a contract for his principal in writing, it must, in general, be personally signed by him; but in the name of the principal and not merely in the attorney's name, though the latter be described as attorney in the instrument." [*Miller v. McClain*] [1954] LRSC 12; 12 LLR 3, 6 (1954); 3 BOUVIER LAW DICTIONARY 2691, (Rawle's 3d rev. 1914).

"After alleging fraud, the party alleging it must produce the evidence tending to establish the allegation at the trial. In the absence of evidence in support thereof, the allegation of fraud may not be sustained. With respect to the averments of fraud, the Civil Procedure Law, Rev. Code 1.9.5(2) requires that they be stated with particularity and not in a broad sweep as was done by the defendant in his answer. Where fraud is alleged, every species of evidence tending to establish the allegation should be adduced at the trial; otherwise the party asserting fraud will not be allowed to succeed. *Henrichsen v. Moore*, [1936] LRSC 1; 5 LLR 60 (1936). Allegations are not proof; rather they must be sustained by evidence. *Hill v. Hill*, 13 LLR 257 (1958); *Jogensen v. Knowland*, 1 LLR 266 (1895).

"In view of what has been stated hereinabove, the court is of the opinion that the attorney-in-fact, not being authorized by the power of attorney made profert of with the complaint to demand for payment in US$ currency, is hereby overruled. For power of attorney, with respect to realty, must state with particularity what the attorney is required to do. This not having been done, the attorney, Konneh, has no right to demand payment in currency not contemplated by the parties at the time of making or entering into said contract.

"Accordingly, defendant is liable to plaintiff in the amount of LD4,250.00 (Four Thousand Two Hundred Fifty Liberian Dollars), being the rent in arrears.

"Plaintiff is entitled to the possession of its premises. Defendant is to be ousted, evicted and ejected from the premises. The clerk of this court is hereby ordered to issue a writ of possession and place same in the hands of the sheriff for service on defendant. And it is hereby so ordered. Costs are ruled against defendant."

To this ruling/final judgment, the appellee excepted and announced an appeal to the Honourable Supreme Court of Liberia. The appeal was granted but the judge further ordered that the defendant be ousted since in summary proceedings to recover possession of real property an appeal does not serve as a stay. The defendant excepted to this further ruling and gave notice that it will take advantage of the statute. Similarly, the appellant also excepted to the trial judge's ruling and appealed only to that portion of the said ruling awarding plaintiff LD4,250.00 (Four Thousand Two Hundred Fifty Liberian Dollars) instead of United States Dollars.

The appellant's appeal was granted and perfected. The appellee did not perfect its appeal and is therefore not before this Court.

Even though the plaintiff excepted only to that portion of the judge's final judgment awarding LD4,250.00 (Four Thousand Two Hundred Fifty Liberian Dollars) instead of US Dollars, it filed a four (4) count bill of exceptions raising other errors allegedly committed by the judge in his final judgment.

In the appellant's bill of exceptions, it alleged that the judge erred in ruling that the sublease agreement of July 15, 1987 was still in force; that the judge erred when he ruled that Sheik Kafumba Konneh, attorney-in-fact for Sylla & Co. Bakery, did not have authority to demand payment of rent from appellee Royal Pharmacy in United States Dollars; that the judge erred when although he ruled that the appellee did not prove fraud in the execution of the promissory note, he failed, refused and neglected to award appellant the amount of US$3,250.00 (Three Thousand Two Hundred Fifty United States Dollars), same being the balance rent due under the promissory note; and that the judge erred when he revoked his order to the clerk for the issuance of the writ of possession and instead ordered that the appellee remained on the subject premisses up to and including the 15th day of February 1994.

This Court will restrict itself only to that portion of the judge's final judgment excepted to and appealed from by the appellant.

The issues to determine this matter are:

1. Whether or not the judge erred in ruling that the sub-lease agreement entered into between the appellant and the appellee was deemed renewed by their conduct and therefore the appellant was entitled to rent in Liberian Dollars as stated in the sublease agreement of 1987?

2. Whether or not the promissory note signed by the sub-lessee was an addendum, extension or renewal of the sub-lease agreement of 1987, and thus had a binding effect on the sub-lessee?

From the records before us, a sublease agreement was entered into on the 15th day of July, 1987 by and between Sylla & Co. Bakery, as sublessor, and Royal Pharmacy, as sublessee. The sublease agreement was for one year (July 15, 1987 to July 14, 1988), with an annual rental of LD4,250.00 payable yearly in advance. The sublease agreement contained a provision for an option to renew the agreement for an additional two (2) years on renegotiated terms and conditions.

The sublessee occupied the premises from 1987 up to 1991, and even though the certain period of the sublease agreement was for only one year, with an option to renew for an additional two (2) years, there is no evidence that at the end of the one year certain period the parties renegotiated the additional two (2) years optional period. However, the sub-lessee remained on the premises and paid the amount of LD4,250.00 (Four Thousand Two Hundred Fifty Liberian Dollars), the rent stated in the sublease agreement, until 1991 when Kafumba F. Konneh informed the sublessee that he had a power of attorney from the sublessor and that the rent covering the period July 15, 1991 to July 14, 1992 should be US$4,250.00. A promissory note was prepared and signed by the sublessee alone to pay the amount of US$4,250.00 as rent, covering the period July 15, 1991 to July 14, 1992. The promissory note stated that any failure to comply, the sub-lessee was to peacefully yield up the premises.

The trial judge, in his final judgment, stated that since the parties had performed under the sublease agreement when it expired in 1998, the agreement was renewed by the conduct of the parties; that is, by the sublessee remaining on the premises and paying the rent as stipulated in the sublease agreement and the sublessor accepting the rent.

The question is, did the trial judge err in ruling that by the conduct of the parties the sublease agreement of 1987 was renewed and therefore the sublessor was entitled to rent under the sublease agreement? There is no disagreement between the parties that the sublease was for only one year, with an option for an additional two (2) years on terms and conditions to be renegotiated. There is also no disagreement that when the sublease agreement expired on July 14, 1988, the parties did not renegotiate the additional two (2) years optional period, but that the sublessee remained on the premises and paid the rent as stated in the sublease agreement of 1987 up to 1991. We therefore hold that the judge was acting within the scope of the law when he ruled that based on the conduct of the parties (i.e. the sublessee remaining on the premises after the one year period and paying the rent and the sublessor accepting the rent), that the sublease agreement was renewed. The issue or question that arises is not just whether the original sublease agreement had expired in 1988, but whether at the expiration there was an extension or renewal of the sublease agreement by implication.

The sublease agreement provided that the sublease was for only one year and could be renewed for another two years on terms and condition to be negotiated. However, when the sublease expired in 1988, there was no negotiation for the additional two years optional period and there was no act by the parties to indicate that the sublease agreement expired or terminated in 1988. Instead, there are clear indications that the sublease agreement was renewed on its terms by implication. That is, the sublessee retaining the premises and paying the same rent as stated in the sublease agreement.

The Supreme Court held in the case *Francis v. Liberian French Timber Corp.*, 22 LLR 173 (1973), that “the doctrine has been advanced that where an agreement expires by its terms and

without renewal the parties continue to perform as before, an implication arises that they mutually assented to a new contract containing *the same provision as the old*, and ordinarily, the existence of such a contract is determined by the objective test, that is, whether a reasonable man would think the parties intended such a binding contract." (Emphasis provided).

In 49 AM JUR. 2d, *Landlord and Tenant*, at section 1143, it is stated that "it seems to be uniformly accepted as a rule of law that a tenant who remains in possession of a leased premises after the expiration of the lease term does not thereby become a tenant from year to year. Such consent may be actual or constructive, implied or expressed, or may be by words or some acts recognizing or treating him as tenant and is often evidenced by payment and unconditional acceptance of rent".

The cases generally hold that if after the expiration of a lease, the tenant pays rent and landlord accepts the payment, the lease is extended. So, the view has been taken that the acceptance of rent by the landlord raises the presumption that the tenant has been accepted for another year. Similarly, the proof of acceptance of rent by the landlord is evidence of his consent to a renewal. Indeed, it is the rule that absent evidence to show a contrary intent on the part of the landlord, a landlord who accepts rent from his hold-over tenants will be held to have consented to a renewal or extension of the lease. 49 AM JUR 2d, *Landlord and Tenant*, § 1144, page 1097.

The Court is therefore in agreement with the trial judge that the conduct of the parties was an implied consent between the appellant and the appellee, and that the sublease agreement was renewed on the same terms and condition as the sublease agreement of 1987.

The second issue this Court deems necessary to determine this matter is whether or not the promissory note obtained from the sublessee was an addendum, extension or renewal of the sublease agreement of 1987, and hence, has a binding effect on the parties?

The records reveal that after the sublessee had been in possession of the premises from 1987 to 1991, an attorney-in-fact was appointed by the sublessor to represent its interest. A promissory note was obtained from the sublessee promising to pay or cause to be paid the full sum of US$4,250.00 (Four Thousand, Two Hundred Fifty United States Dollars) to Sheik Kafumba Konneh on the 30th day of November 1991. This amount represented rent covering the period July 15, 1991 to July 14th, 1992.

The appellant, in its Brief and argument before this Court, contended that the sublease agreement under which the appellee claimed to have paid rent had in fact expired on July 14, A. D. 1988, and that the parties had met and agreed orally to a renewal of the tenancy of the appellee, not as a sublessee but rather as a tenant from year to year, paying its rentals in United States Dollars annually. It was under the alleged renewed arrangement that the appellee executed the promis-sory note to pay the appellant the sum of US$4,250.00 (Four Thou-sand Two Hundred Fifty United States Dollars) in advance for the period from July 15, 1991 to July 14, 1992. The appellant therefore contended that there was no justification for the appellee to pay the agreed rent in Liberian Dollars instead of United States Dollars, as undertaken in the note.

The appellant further contended that the intent of the parties being clear and not in dispute, as seen from the promissory note, there is no further reason to refuse to enforce same. Therefore, the appellee must honor its own note or be compelled to make payment as stipulated therein.

The appellee, in its Brief, contended that the alleged promissory note, which is not consistent in terms of the currency, and which made no reference to the sublease agreement between the parties, cannot be interpreted as an amendment to clause two (2) of the sublease agreement.

The defendant further contended that when an agreement expires by its terms and without a renewal and the parties continue to perform as they had, a new contract containing the same

provisions arises by implication. It relied on *Francis v. Liberian French Timber Corp*.[1973] LRSC 47; , 22 LLR 168, syl. 2, text at page. 175.
The appellee also argued that among the requisites to the formation of a valid contract is that there must have been the mutual consent of all parties competent to contract, founded on a sufficient consideration to perform some legal act or omit to do something, the performance of which is not enjoined by law. It relied on [1975] LRSC 8; 24 LLR 126 (1975), syls. 3 & 4, and text at pages 139-140.
In his ruling on this latter issue the trial judge held that since the sublease agreement between the parties was deemed renewed, there was no contractual basis for the promise to pay US$4,250.00 (Four Thousand Two Hundred Fifty United States Dollars), as the sublease agreement stated Liberian Dollars as the currency in which the rental should and must be paid. He further held that "[t]here is no agreement between Sylla & Co. Bakery and defendant for the payment in United States Dollars currency."

We concur with the trial judge.
If we accept the argument of the appellant that the promissory note was a contract; that the parties orally agreed to the renewal of the tenancy; and that it was the alleged renewed arrangement that led to the issuance of the promissory note, then the follow-up questions are: Was the alleged renewed arrangement that prompted the issuance of the promissory note a renewal of the sublease agreement? Or was it an addendum thereto? Or was it a totally new lease agreement? We think the promissory note conforms to none of the above. It is not a renewal of the sublease agreement or an addendum thereto because the promissory note made no mention of the sublease agreement or the property conveyed, and it was not signed by the two parties. Moreover, a renewal or addendum to an existing written contract cannot be an oral arrangement as the appellant in this case would have us believe.
On the other hand, were we to take it that the promissory note was issued under a new lease agreement, meaning that the parties had set aside the sublease entered into on July 15, 1987; that what now existed between them was a new oral lease agreement under which the alleged part payment in United States Dollars was made, then the appellant should have sued in an action of debt and not summary proceedings to recover possession of real property. This is because under such circumstance the alleged new oral lease agreement would be in force and effect and the only contention of the appellant would be that the appellee had not fully paid his rent. And since it would be that part payment had been made to the appellant, appellant's contention would be for payment of the remaining rent balance, which remedy would lie in an action of debt and not summary proceedings to recover possession of real property which is now before us on appeal. Given what we have said above, the only logical conclusion is that the sublease agreement was, by the actions of the parties, renewed on the same terms and conditions, including the payment of rent in Liberian Dollars.
An addendum to any agreement is a contract and must meet the basic requisite of a valid contract. The Supreme Court of Liberia held in the case *Bestman v. Acolatse*, [1975] LRSC 8; 24 LLR 126 (1975), text at 139-140, that "[a]mong the requisite to the formation of a valid contract is that there must have been the mutual consent of all parties competent to contract, founded on a sufficient consideration to perform some legal act or omit to do something, the performance of which is not enjoined by law."
A lease, like a contract for the conveyance of **land**, requires the participation of at least two parties, the lessor and the lessee. 49 AM JUR 2nd, *Landlord and Tenant*, § 60.

The promissory note which the appellant claimed was a valid contract did not met the requisite requirement contem-plated by our statute and common law for a valid contract for the conveyance of real property. The promissory note contained only the signature of the sublessee and the promise to pay rent for a certain period; it did not indicate the demised premises for which the sublessee was paying rent and it did not include the signature of the sublessor consenting to accept the rent for the period indicated and a covenant to convey to the sublessee the specifically demised premises.
We are therefore of the opinion that the promissory note did not meet the requirement of a lease agreement or an addendum to a lease agreement for the reasons stated above.
In view of the foregoing, we hold that the judgment of the lower court requiring appellee to pay to the appellant the sum of LD4, 250.00 (Four Thousand, Two Hundred Fifty Liberian Dollars), the agreed amount stated in the sublease agreement, is hereby affirmed. The Clerk of this Court is hereby ordered to send a mandate to the lower court ordering the judge presiding therein to resume jurisdiction over the case and enforce its judgment. And it is hereby so ordered.
Judgment affirmed.

Cole v Dixon et a l [1938] LRSC 16; 6 LLR 301 (1938) (16 December 1938)

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ASSIICIATatil
GEORGIA L. COLE for herself and her Grandsons, Appellant, v. ELLA M. DIXON, Widow of the late R.
EMMONS DIXON, and THOMAS C. LOMAX, Curator for Montserrado County, Appellees.
APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL
CIRCUIT, MONTSERRADO COUNTY.

Argued December 5, 6, 1938. Decided December 16, 1938. The inchoate right of dower is so vested in
the wife as against the husband immediately on the marriage that no conveyance or act of the husband can deprive her of it.

Appellant
brought a proceeding in the Probate Division of the Circuit Court of the First Judicial Circuit to have certain property struck from
the inventory of property of the estate of appellees' intestate. From judgment for appellees appellant appealed to this Court. Judgment
modified and affirmed as modified.

William B. Dennis for appellant. for appellee.
Court.

S. David Coleman

MR. JUSTICE DOSSEN delivered
the opinion of the

This cause originated in the Probate Division of the Circuit Court of the First Judicial Circuit, Montserrado County, Republic of Liberia, at its November term, 1937. As there is only one point raised in the case, and that is a point of law, we do not deem it necessary to deliver a lengthy opinion, but will confine ourselves to the issue raised by both contending parties in support of their contention. But before proceeding to consider the issue thus raised in the bill of exceptions, we desire to give a brief synopsis of the case as appears from the records filed.

The late R. Erraons Dixon, a citizen of the County and Republic aforesaid, died intestate, and according to law his estate was taken over by the Curator of this County to be administered. Thereupon an inventory was taken of the assets of the said decedent, among which was a piece of real property, lot No. 288, which petitioners claimed was their property by virtue of a deed of gift which the said decedent had executed during his lifetime, and which property they contended should not be put on the inventory of the assets of said estate ; but not being able to convince the Curator of that fact, said petitioners made and filed in the said Probate Division of the aforesaid Circuit Court, November term, 1937, a petition which reads as follows : "That by inspection of the inventory taken and filed by the Curator of Montserrado County of the estate of the late R. Emmons Dixon, of the city, county and Republic aforesaid, she has discovered that their real property, lot No. 288 in Monrovia, has been included on the list of properties of the late R. Emmons Dixon, which is not a part of the said estate of the aforesaid estate of the decedent. "2. That she and her aforesaid grandsons acquired title to the said lot No. 288, Monrovia, by a deed of gift from R. Emmons Dixon the deceased which has been duly probated and registered according to law. A copy of said deed is hereby made a part of this petition. "3. Therefore petitioner prays that Your Honour will cause the said lot No. 288, Monrovia, the property of her and her grandsons to be struck from the inventory of the late R. Emmons Dixon, and will grant unto them such further and other relief which they are legally entitled to." Respondents in answering the said petition, in counts 2 and 3. of their answer, said inter alia, to wit: "2. And also because respondents further say that

the said purported deed of gift executed by the said R. Emmons Dixon is of no legal validity in that there is no monetary consideration mentioned as set out said deed. "Wherefore respondents pray that the petition of the said Georgia L. Cole for herself and for her grandsons be denied. "3. And also because said respondents further say that said petition should be denied for the reasons that in said deed the said Mrs. Ella M. Dixon, wife, now widow of the said R. Emmons Dixon, did not relinquish her dower in the said property

as by inspection thereof it will very clearly appear. Therefore respondents pray that the said petition be denied and the property lot No. 288, Monrovia, be permitted
to remain on the inventory of the estate of the late R. Emmons Dixon, as part of his property." To which answer the said petitioners
filed the following reply inter alia, to wit: 2. And also because petitioneTs in further replying to the answer of the respondehts
say, that the recital in the deed of gift, namely: 'for filial love and affection' for the mother of the said R. Emmons Dixon, late
of Monrovia, is sufficient in law to give validity to the said deed of gift. "3. And also because petitioners, further replying to
the answer of respondents, say that petitioners denied that the contention raised in count three of said answer is tenable in law;
in that, the widow Ella M. Dixon during the natural life of her husband R. Emmons Dixon had no dower right in his property since
indeed the right of dower accrues only after death of the husband. Wherefore petitioners pray this Honourable Court to dismiss the
answer of the respondents with costs against the said respondents. And this the petitioners are ready to prove." The pleadings having
been rested, the said cause came

on for hearing at the February term of the aforesaid court 1938. And the trial judge after carefully examining the records, law and hearing
arguments pro et con, handed down the following ruling on
the law pleadings, in which he said inter alia, that: "The inchoate right of dower is so vested in the wife as against the husband
immediately on the marriage that no conveyance or act of the husband can deprive her of it. The court has already intimated that
the court, not being a court in Equity, could not cancel and declare void a deed duly probated and registered. That is the province
of the court of equity, etc. For these legal reasons set forth in this opinion, the court is of conclusion that the property in question
should not be stricken from the inventory but same is to remain in the estate and be operated upon in common with the estate of the
late R. Emmons Dixon so that the vested one third interest of the widow of said estate may remain secured. Costs against the estate;
and it is so ordered." The petitioners being dissatisfied with the said ruling of the trial judge, excepted and removed the cause
to this Judicature of last resort for review, upon a bill of exceptions which reads as follows, to wit: "Georgia L. Cole for herself
and her grandsons, petitioners in the above entitled cause, being dissatisfied with the ruling of Your Honour on their said petition
rendered on the 18th day of January 1938 inter alia:--For these legal reasons set forth in this opinion the court is of this conclusion
that the property in question should not be stricken from the inventory but same is to remain in the estate and be operated upon
in common with the rest of the estate of the late R. Emmons Dixon, so that the vested one third interest of the widow may remain
secured. . . . To which ruling petitioners excepted, and being now on

appeal to the Honourable the Supreme
Court of the Republic of Liberia, April Term 1938 for review, submits this as their bill of exceptions." We shall now examine the
law governing this cause and apply it to the case to see how far the said ruling of the trial judge is supported. Our Constitution
declares that : "In all cases in which estates are insolvent, the widow shall be entitled to one third of the real estate during
her natural life, and to one third of the personal estate, which she shall hold in her own right subject to alienation by her, by
devise or otherwise." This provision of the Constitution has to be so construed as to read: 1) subject only to alienation by herself
by devise or otherwise; and 2) even in all cases in which estates are insolvent, she shall be entitled to one-third thereof even
before the payment of any debts. Lib. Const., Art. 5, sec. Ir. Judge Bouvier in volume 3, page 3454, of his Law Dictionary defines a widow as an unmarried woman whose husband is dead.
"The very essence of the dower right [says another author] is the security which it affords to the wife against impoverishment by
the losses or acts of her husband. It may be generally stated that her dower cannot be defeated or impaired by any act of the husband,
or by any title emanating from him. Not only does the wife's right prevail over any conveyance made by the husband in the execution
of which she does not share, but her right remains unaffected by any lien or other claim based on a contract made by him, or by execution
sale on a judgment against him, or by a creditor's bill. Nor is her right affected by his bankruptcy, or, although on this point
there is some conflict, by adverse possession gained by another against the husband. . . ." 9 R.C.L.,

"Dower," 4127 citing the case Sykes v. Chadwick, [1873] USSC 166; 18 Wall. 141 (U.S.), 21 L. Ed. 824, the relevant portion of which reads : "Still her right of dower is a valuable interest, which she cannot be compelled to resign,
and which the law very carefully protects from the control of her husband. When she does part with it an officer must examine her
apart from her husband, to ascertain whether she does it freely and voluntarily. And whilst this interest is a valuable right of
the wife, it is a corresponding incumbrance upon the land to which it attaches. By the aid of modern science it is capable of a definite valuation. Hence it is easy to ascertain whether an undue valuation is placed upon it." (p. 145.) Our own Supreme Court has made
the following pronouncement in the case, Brown v. Allen, 2 L.L.R. us, 118, 2 Lib. Semi-Ann. Ser. 10 (1913), by His Honor Chief Justice
Dossen speaking for this Court: "The first exception is to the administrator and administratrix, defendants in error, disposing of
real property without first showing to the lower court that the personal assets of the estate were insufficient to liquidate the
claims against it; and also for selling lands to pay widow's dower. " . . . With respect to the admeasurement of a widow's dower,
we hold that real property cannot be lawfully sold, or converted into money, to enable her to obtain a greater amount of personal

property out of an estate. The Constitution settles upon a widow one-third of the personal estate of which her husband . is seized at the time of his death." This Court having very carefully gone through the records filed in this case, examined and applied the statute law, has no hesitancy in saying that the ruling handed down by the trial judge on the 18th day of January, 1938, is fully supported by law as cited above, and

should be affirmed with the modification which follows: That the right of grantee to enter into possession of lot No. 288, the subject of this suit, be postponed until either) the death of the widow; or 2) her dower in the estate of her late husband shall have been fully admeasured, and she shall have acknowledged the receipt of same by a deed of acquittance; in which event, after probation and registration of said deed, the court will be permitted to put grantees in possession; and that inasmuch as the Curator of intestate estates has been shown to be in possession of the assets of the estate, he shall be required to pay all costs out of the said assets without prejudice to any portion of the widow's dower; and it is so ordered. Affirmed.

Perry v Ammons [1965] LRSC 11; 16 LLR 268 (1965) (15 January 1965)

MacDONALD M. PERRY and His Honor, ROBERT AZANGO, Assigned Judge of the Circuit Court of the Sixth Judicial Circuit, Montserrado County, Appellants v. IGAL AMMONS, Appellee.
APPEAL FROM RULING IN CHAMBERS ON APPLICATION FOR WRIT OF ERROR.

Argued October 15, 1964. Decided January 15, 1965. 1. A writ of error will not lie to review a judgment in favor of the plaintiff in an ejectment action where the sheriff's return of service shows that the statutory procedure for service of process by re-summons was completed eight years prior to the jury trial of the action ; and at the time when the writ of re-summons was served the defendant was imprisoned under sentence of conviction of a crime ; and the defendant received no actual notice of the hearing. 2. The statute of limitations is not tolled by imprisonment under sentence of conviction of a crime.

On appeal, a ruling in Chambers granting a writ of error for review of a judgment on a jury verdict in an ejectment action was reversed. MacDonald M. Perry for appellants and pro se. Jacob H. Willis for appellee.

MR. CHIEF the Court.

JUSTICE WILSON

delivered the opinion of

The appellant herein, MacDonald M. Perry, who was defendant in the lower court, filed an action of ejectment venued before the Circuit Court of the Sixth Judicial Circuit, Montserrado County, sitting in its June, 1956 term. Appellee Igal Ammons, one of the defendants, was then committed to prison for the serving of a sentence after having been convicted of murder. Presumably the other codefendant, Billy Lewis, was possessed of his

civil liberties at the time of the institution of the action. Although this action was commenced in 1956, it was not until the December term, 1963, of the Circuit Court, presided over by His Honor Judge Robert Azango, by assignment, that the case was called for hearing and subsequent determination. It has been noted that in the court of original jurisdiction neither of the codefendants filed a formal or special appearance, nor was an answer filed to counter the complaint laid. Predicated upon the aforesaid complaint, the case was ruled to trial by the assigned judge. The records of the trial court also reveal that notices of assignment were served on the parties by the court prior to the trial of the case. Irrespective of the aforementioned, neither defendant was present either in person or by counsel. Predicated upon this fact, trial of cause was had and MacDonald M. Perry was granted a judgment by default. The case was submitted to a jury and a verdict was returned awarding the property in question, together with $15,000 damages, unto the plaintiff thereat. Subsequent to the occurrence of the above-recited acts and after the rendition of final judgment by the presiding judge, a writ of error issued out of the Chambers of Mr. Justice Pierre, predicated upon a petition filed by Igal Ammons alleging that errors had been committed at the trial and that the plaintiff-in-error was unable to avail himself of the right of direct appeal. The petition also recited that the writ of summons showed no returns and that subsequently a writ of re-summons was issued and was returned served in keeping with statute. The petition further contended that neither the writ of summons nor the writ of re-summons was served on plaintiff-inerror, for he was at the particular time serving a prison term after having been convicted of a crime. The following legal issues were raised in the petition: 1. Is an individual who has been incarcerated capable of being served with process in a civil cause?

2. What species of evidence adduced by a sheriff is sufficient to preclude collateral attack with respect to service of process? 3. Was there ever introduced any evidence to substantiate the allegation of

plaintiff-in-error to the effect that no service of process was ever had on his person? 4. What quality of evidence would rebut the returns of the sheriff that the particular process has been served? 5. Did there exist any legal disability to preclude the service of process upon the person of codefendant Billy Lewis? 6. Does incarceration stop the running of the statute of limitations against the person incarcerated?

Before answering these questions we should like to first draw our attention to the ruling of Mr. Justice Pierre in Chambers, stating that two things were necessary for the determination of the ejectment case. In the words of Mr. Justice Pierre: "The first thing is that as soon as possible after the service of the re-summons the plaintiff should have been called upon to establish the validity of his title at a trial before a jury. Notwithstanding it has taken eight years for the case to be heard and even though the defendant had, within these eight years, been released from prison and is residing in Monrovia, there is no showing that he was ever informed of the hearing which had been delayed for eight years." It is unfortunate that we are unable to accept the proposition of our learned former colleague because of the fact that, in our opinion, the words "as soon as possible," as used by him, have not been employed as intended in the applicable statutory provision which reads as follows: "In addition to any of the other procedures au-

thorized by statutes or under this Title, the following procedure may be used when title is in issue in action of ejectment. "If the defendant fails to appear after being summoned, the plaintiff may have a writ of re-summons. The plaintiff shall thereupon post a copy of this complaint together with a copy of the writ of re-summons upon the real property claimed by him at least ten days before the date the defendant is required to appear under the writ of re-summons. If the defendant fails to appear within ten days of the appointed date, the plaintiff may apply for entry of default and for the entry thereon of an imperfect judgment by default. As soon as possible thereafter the plaintiff shall be called upon to establish his title to the premises or land which is the subject of his claim; a jury shall be empanelled if there is any question of fact to be tried. If the plaintiff succeeds in proving his title, a perfect judgment shall be granted. The plain tiff shall then be allowed to apply for, and the court shall order the clerk of the court to issue, a writ of possession, requiring the sheriff to eject from such premises or land all persons occupying them adversely to the plaintiff and to put the plaintiff in complete possession thereof. "If the defendant appears in response to the writ of summons or re-summons, the action shall be tried as provided by law in any civil action. If the plaintiff prevails, he shall be entitled to a writ of possession upon entry of final judgment." 1956 Code, tit. 6, § 1125. It can be seen from the above-recited section that the phrase "as soon as possible thereafter" relates back to a point in time immediately following the obtaining of an imperfect judgment by default. The above-alluded-to phrase does not refer to any mandatory sequence in respect of time that bears

a direct relationship to the service

of the re-summons ; ergo, the fact that the trial of the case was not had until eight years after the service of the resummons does not constitute an error cognizable before this Court to permit of the issuance of the peremptory writ sought by the plaintiff-in-error. The second point mentioned by the learned Chambers Justice was, and we quote : "The second thing which I think should have been considered in the determination of this ejectment case was the reason why it might not have been practicable for the prisoner to have appeared, if summoned, or to have been able to see the posted writ upon the property, being confined in jail for crime." Before going into the second point mentioned by the Chambers Justice, we should like to deal, in proper sequence, with the several legal issues mentioned supra. The first question is whether an individual who has been incarcerated is capable of being served with process in a civil cause whilst imprisoned. "It is well established that the mere fact that a person is in jail or prison under a criminal charge or sentence furnishes no exemption against the service of civil process on him ; one imprisoned is subject to be proceeded against in civil actions in all modes described by law to enforce civil remedies the same as though he were at large." 42 AM. JUR. 90 Process §1o4.

Having now determined that a prisoner is ordinarily amenable to the service of civil process, we must now turn to the second issue for a determination of the species of evidence adduced by a sheriff which shall be deemed legally sufficient and conclusive with respect to service of process to the exclusion of collateral attack. To authorize a judgment against a person who has not appeared and answered or otherwise submitted himself to the jurisdiction of the court, there must be not only service on such person but also a legal return of such service.

"The return is merely evidence by which the court is informed that the defendant has been served." 4 2 AM. JUR. 104 Process § 117. "Where the judgment recites service, and there is a return, the recital is always based on the return, and the two are to be construed together." 42 AM. JUR. 105

Process § 118.

In the instant case, the record reveals that service of process was had by the sheriff and the writ of re-summons issued only for the permissive compliance with Section '125 of the Civil Procedures Law, quoted supra. "Generally, if the record

is silent as to service, or if, in the absence of a return, there is a recital of due service, then, on a collateral attack jurisdiction will be conclusively presumed." 21 R.C.L. 1316 Process § 62. In the instant case there was both service and return in accordance with the record; furthermore no evidence was ever introduced to rebut the returns with respect to regular service having been had upon the persons of both plaintiff-in-error and his codefendant in the court below. In the premises, that recital of service cannot herein be attacked. The foregoing also covers the third query which relates to the allegations that plaintiff-in-error was never served with process. The Court would now like its attention to a supposed missing link in the chain of events. associated with the present case. Much was said in both the petition and the brief of the defendant-in-error with respect to the lack of jurisdiction over his person due to improper service. Yet, strangely enough, no mention was made of codefendant Billy Lewis in either of the above-recited documents or in the ruling of the Chambers Justice. In accordance with the returns of the sheriff, the said codefendant too was served in accordance with law. Irrespective of this fact, the plaintiff-in-error has completely

ref rained
from making any mention of legal reasons why the writ requested should be ordered issued regardless of the nonappearance of his co-defendant. This is indeed strange ; but our legal conclusions here can be drawn only from the record as certified to us, the documents filed with this Court, and the arguments of counsel. Lastly, in an endeavor to explore every possibility legally cognizable before this Court, we have asked whether or not the incarceration of an individual stops the running of the statute of limitations against the person thus incarcerated. Reference to 1956 Code, tit. 6, § 51 reveals that the Legislature has prescribed certain instances when the statute of limitations does not run. The incarceration of an individual is not by law included as one of the exclusions to the running of the statute. In the premises, where a right of action has accrued to an individual and he omits to assert the accrued right predicated upon the fact that the person against whom the right exists is incarcerated, and in this case for the crime of murder, the right of action of the individual would be forever lost due to the indefinite running of the statute of limitations. Having now touched upon several issues which in the opinion of the Court were germane to a fair determination of whether or not the peremptory writ as requested should have been granted, we shall now touch briefly upon the second point dealt with by the Chambers Justice. Since we have already quoted the relevant portion of his ruling earlier in this opinion, we shall now deal with the practicability of the prisoner's appearing after having been summoned. If the defendant-prisoner is denied the right that he would ordinarily have in accordance with Section 8 of Article I of the Constitution respecting the property rights of individuals, in such event it will legally be incumbent upon the Superindent of Prisons to permit the passage of mail between the subject prisoner and his counsel for the purpose of defending a suit wherein

said prisoner is defendant; for to hold otherwise would constitute a travesty of justice in, on the one hand, making a prisoner amenable to service of process and, on the other hand, depriving him of the services of counsel to defend himself. This however should not be construed as an indirect restoration of the prisoner's civil liberties; it only affords him an opportunity to defend his suit. It should nevertheless be clearly understood that courts cannot and will not do for parties litigant that which is imposed upon them by law to do or have done for themselves. In virtue of the above-recited facts it is the opinion of this Court that the ruling of the Chambers Justice be and the same is hereby ordered reversed and that a mandate be sent to the Circuit Court of the Sixth Judicial Circuit, Montserrado County to resume jurisdiction and have its judgment enforced with costs against appellee. And it is hereby so ordered. Reversed.

Bestman v Findley [1968] LRSC 43; 19 LLR 57 (1968) (14 June 1968)

TOM N. BESTMAN, Chairman of the Board of Trustees of the BASSA BROTHERHOOD I & B SOCIETY of Monrovia, Appellant, v. HON. JOSEPH P. FINDLEY, Circuit Judge, Sixth Judicial Circuit, and LUCY GIBSON, Appellees.
APPEAL FROM RULING OF JUSTICE PRESIDING IN CHAMBERS DENYING A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued May 15, 1968. Decided June 14, 1968. 1. A petition for a writ of certiorari alleging irregularities in the conduct of a case by a judge, should be based upon a record containing the facts to substantiate the allegation, and not merely upon observations and recollection of the petitioner.
'2. Judges have discretionary power in injunction proceedings to dissolve a temporary injunction on application, or to condition such dissolution, pending a final hearing, on the posting of a bond by the applicant, indemnifying plaintiff for any damages he may sustain as a result of such dissolution.

Appellant applied for a writ of certiorari from the Justice in chambers, after alleging that in the course of an application by the defendant for a dissolution of a temporary injunction obtained by the plaintiff, the judge unreasonably and arbitrarily dissolved the injunction pending its final determination, upon an indemnification bond being given.
An appeal from the ruling of the Justice denying the writ was taken and the ruling was aliirmed. Thomas G. Collins for appellant.
for appellees.
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J. Dossen Richards

MR. JUSTICE WARDSWORTH delivered the opinion of

the court. This case emanates from the chambers
of the Justice presiding who heard and determined the matter in favor
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of appellees-respondents. The
petitioner, disputing the ruling of the Justice, noted exceptions and prayed
an appeal to the full bench for review of the said matter,
which was granted. The petition contains five counts, of which we shall set
forth two and three : "2. That pending the hearing of
said case, as aforesaid, for some reasons unknown to the petitioner, the
respondent judge, while engaged in a certain ejectment case
then on trial, and seemingly being angered by some insolent conduct of
counsel in said case, suddenly yelled out in open court :
'You, woman with the glasses on,' meaning the defendant, 'go and build your
house on the community land, your bond will be arranged
later.' "Upon this sua sponte order of the court, the said defendant
immediately resumed her building construction work on plaintiffs'
property, with defiance and challenge to them up to the filing of this
application. "3. That since the resumption of the building
construction work, petitioner's counsel has repeatedly informed the
respondent-judge of the abrupt violation of the injunction order,
but to no avail, in that, no record was made of the sua sponte order nor were
the petitioner and other parties concerned ever cited
to appear or have their day in court before making said ruling." Countering,
co-respondent filed a return, numbering nine counts,
of which we shall set forth the following four : "2. That as to count two of
the petition, same is false and deliberately calculated
to mislead this Court. In keeping with the provision of the statutes, a
regular application for the modification of injunction was
made by the co-respondent and opposed by the petitioner in these proceedings.
Although the application

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was made on the 24th day of July, 1967, the resistance thereto was not filed
until the 7th of August, 1967, and it was not until
the 8th day of August, that the judge, in the sound and judicious exercise of
his discretion, granted the application of the petitioner,
defendant in the injunction suit, and ordered her to file an indemnity bond,
which she did, and said bond was approved on the 8th
day of August, 1967, so that the allegations contained in count two of the
petition that the respondent judge gave a sua sponte order'
is a fabrication. Co-respondent respectfully requests this Court to take
judicial notice of the records certified and transmitted by the clerk of the
trial court in the injunction

suit, with special reference to the minutes of the court for the 34th day session, Tuesday, August 8, 1967. "4. And also because co-respondent says, that count three of the petition is a manifestation of petitioner's lack of the correct understanding and proper application of the law controlling suits of injunction, because the judge may, either by motion of the defendant or upon his own initiative, dissolve an injunction, more especially when he has before him the petition, a verified answer, and motion to dissolve, and the judge is not legally obliged to hear evidence when in his discretion the petition has no merits. "6. And also because co-respondent submits that certiorari does not lie to review the exercise of the discretion of a judge, especially when he has acted upon the authority of law, as the respondent judge did in this case, unless there is a clear showing in the petition of an arbitrary abuse of that discretion, which does not appear in the petition, or any suggestion thereof made therein. "7. And co-respondent further submits that certiorari cannot lie in this case because there have been

no errors committed by the respondent judge, nor has there been any allegation of any act of his which is materially prejudicial to the rights of the petitioner." It is regrettable to observe that there is no showing by petitioner that the trial judge did give the order to the defendant in the manner described in count two of the petition, as there is no record from the trial court in the form of a clerk's certificate or minutes of the court to support petitioner's allegation to the effect: "The respondent judge while engaged in a certain ejectment case then on trial, and seemingly being angered by some insolent conduct of counsel in said case, suddenly yelled out in open court : 'You, woman with the glasses on,' meaning defendant, 'go and build your house on the community land, your bond will be arranged later.' " "Certiorari is a special proceeding to review and correct the proceedings of any administrative board or agency or of any court of record other than the Supreme Court. . . ." Civil Procedure Law, 1956 Code 6:1200. It is obvious that a petition for a writ of certiorari alleging irregularities in the conduct of any case by a trial judge should be based upon a record containing the facts to substantiate the allegations of the petitioner. This does not obtain in this case; consequently, the petition in this regard is unmeritorious. Therefore, count two of the petition is hereby not sustained. With respect to count three of the petition, we gather that petitioner intends to convey that the co-respondent, Lucy Gibson, was not legally authorized to resume work on her building construction. In checking the record in this case we find a document entitled, exhibit "A," purporting to be in opposition to an application for modification of the injunction, signed by the Barclay law firm of counsel for plaintiff-appellant. We have found a certified document, signed by John B. P. Morris, clerk of the Circuit Court, Montserrado County, which reveals that

on August 8,
1967, the trial court made the following ruling : "The Court: This application has been filed since the 24th day of July, 1967, and defendant has been coming from time to time for relief, without avail. The application is granted and the resistance thereto overruled, pending final determination and upon tendering a bond." It is crystal clear that this document, emanating from the trial court, controverts the allegations in count three. In regard to the court's exercising discretion in modifying an injunction, without first taking evidence, the following is applicable : "Upon reasonable notice to the plaintiff, the defendant may file a motion to dissolve or modify the writ; and the court shall hear the motion as expeditiously as the ends of justice permit. The court may dissolve the writ outright at such hearing or may condition dissolution of the writ pending final hearing of the issues on the giving of a bond by the defendant for any damage caused the plaintiff by the defendant's actions after dissolution of the writ if on final hearing a permanent injunction is granted ; .. ." Civil Procedure Law, 1956 Code 6:1o84 (in part). We gather from the foregoing that our law makers in injunction proceedings impliedly granted judges discretionary powers to dissolve outright the writ, or condition dissolution thereof on the defendant's giving bond to indemnify the plaintiff for any damage he may sustain, pending final hearing of the issues. It would seem unreasonable to take evidence before application for modification of the injunction may be heard and disposed of, especially so in view of the statute quoted which includes the requirement of a bond to be given by the defendant. It is evident that the trial judge did not err in granting co-respondent Lucy Gibson's application for modification of the injunction.

Therefore,
in view of the foregoing, it is our considered opinion that the petition is unmeritorious, and the ruling of the Justice in these proceedings is hereby affirmed, with costs against appellant. And it is hereby so ordered.
Affirmed.

Massaquoi v Administrators [1942] LRSC 8; 7 LLR 404 (1942) (20 February 1942)

Ex parte J. J. MASSAQUOI, for his Wife, SARAH MASSAQUOI, Petitioner-Appellee, Administrators of the Estate of the Late MOMOLU MASSAQUOI, Intervenors-Appellants.
APPLICATION FOR REARGUMENT OF APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued January 6, 1942. Decided February, 1942. 1. Where there is no material variance between the opinion and the judgment a reargument will not be granted in order to correct same. 2. Where the opinion dismisses the case but the judgment remands same, there is no material variance.

Petitioner brought a suit in equity to correct a number in a mortgage deed. The court granted said petition.
On appeal to the Supreme Court, the petition was denied. Ex parte J. J. Massaquoi, [1941] LRSC 14; 7 L.L.R. 273 (1941). Application for reargument was granted by Mr. Justice Russell in chambers. Upon transferral to the Supreme Court
en banc,
application denied. H. Lafayette Harmon for petitioner. A. B. Ricks for

respondents. MR. Court.
JUSTICE

RUSSELL delivered the opinion
of the

This cause was continued on the docket after our last April term, 1941, upon an application for reargument granted by this
Justice. The principal cause for which same was granted was that contained in counts one and two of the motion for reargument, filed
by J. J. Massaquoi for Carl Lahai Massaquoi and Lulu Gbessie Massaquoi, heirs of the

late Sarah Massaquoi,
legatee of Carl Kurhmann, praying the Court to confirm the survey of one town lot of land Number 272 of the City of Monrovia, made
by B. J. K. Anderson, Public Land Surveyor, Montserrado County, and to correct the number in a mortgage deed executed on the twenty-fifth day of February, 1939. Counts one and two of the motion recited the following: Because there is a material variance between the final judgment and the opinion handed down by Mr. Justice Dossen, where they ought to agree, in that, the final judgment shows that the
said case is remanded to the court below for a re-trial in accordance with the opinion rendered, although the opinion on its face
shows that although the judgment is not reversed, yet the case is dismissed with cost against the petitioner; for said inadvertent
variance, petitioner feels that a rehearing of the case would enlighten the court's mind more clearly on the issues joined by the
parties and enable it to remedy said palpable and unintentional mistake, as the records will more fully show. "2. And further because
from the reading of the opinion handed down in said case, the court has been seriously misled and has overlooked an important point
of law and fact controlling this case, in that, the opinion entitles the party petitioner as 'J. J. Massaquoi, for his Wife, Sarah
Massaquoi, . . .' as will more fully appear by careful inspection of the pleadings in said case, and as the records will show." Upon

inspection of the said opinion and judgment Ex parte Massaquoi, [1941] LRSC 14; 7 L.L.R. 273 (1941), we find that there is a variance between certain parts of the two that should agree. It does not appear from the petition filed for a reargument that any point of law or of fact material to the decision of said question was overlooked in the opinion

handed down in this case on May 3, 194j, as aforesaid, but rather that according to the opinion the case
should be dismissed while the judgment decided that the case should be remanded. Because of the premises herein laid down, we are
of the opinion that said judgment of said court should be corrected and the case remanded in order that the petitioners may be allowed
to file a new complaint according to the indications therein given and the respondents a new answer should they desire so to do,
each party to bear his own costs, and the government tax fee and the cost of the officers of the Supreme Court to be shared equally
between the parties; and it is hereby so ordered. Application denied.

Joseph Sinoe v Nimley [1965] LRSC 2; 16 LLR 152 (1965) (15 January 1965)

JOSEPH SINOE, Appellant, v. JUAH NIMLEY, His Honor, A. LORENZO WEEKS, Circuit Judge Presiding over the Circuit Court of the Second
Judicial Circuit, Grand Bassa County, et al., Appellees.
APPEAL FROM RULING ON APPLICATION FOR WRIT OF PROHIBITION TO THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, GRAND BASSA COUNTY.

Argued October 22, 1964. Decided January 15, 1965. 1. An application for a writ of prohibition to restrain enforcement of a decree of reformation of a deed will be denied where the petitioner for prohibition
had actual notice of the suit for reformation and failed to intervene. 2. Returns of respondents to a petition for a writ of prohibition
need not be verified. 1956 Code tit. 6, § 1222. 3. Prohibition will not lie to a court in an action wherein nothing remains to be
done.

On appeal from a ruling in Chambers denying an application for a writ of prohibition by a party in an ejectment action upon
a decree in equity for reformation of a deed to real property, the ruling in Chambers was affirmed and prohibition denied.
A. Gargar
Richardson for appellant. Smith for appellees.
MR. JUSTICE WARDSWORTH

J. Henrique

delivered the opinion of

the Court. We cull
from the record certified to us in the aboveentitled cause a brief history of
the case which may be stated succinctly as follows:
On January 24, 1963, one of the respondents in the prohibition proceedings,
filed a bill in equity in the Equity Division of the
Circuit Court of the Second Judicial Circuit, Grand Bassa County for
correction of deed
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for Lot
Number 87 to Lot Number 910 during the pendency of an action of ejectment
filed by Joseph Sinoe, appellant, against Juah Nimley,
one of the appellees in these prohibition proceedings, for the recovery of
Lot Number 91o. It is alleged that Joseph Sinoe and his
counsel were in knowledge of the filing of said bill in equity. Upon
assignment of said cause for hearing, His Honor, A. Lorenzo
Weeks, presiding over the Circuit Court of the Second Judicial Circuit, Grand
Bassa County did on February 9, 1963, hear and decree
the correction of said deed from Lot Number 87 to Lot Number 91o, which
decree of the court the appellant in these proceedings was
fully in knowledge of ; but he remained silent and made no effort to prevent
said judge from entering the decree which was perfected
on February 14, 1963. On June 11, 1963, Joseph Sinoe, the appellant herein,
filed his petition in the Chambers of Mr. Justice Harris
for the issuance of a writ of prohibition. The said writ of prohibition
having been issued and served and appellees having made returns
thereto, the matter was duly assigned for hearing. The Justice, having heard
arguments pro et con on the issues raised by the parties
in the petition and returns, denied issuance of the peremptory writ of
prohibition. For the benefit of this opinion we deem it expedient
to quote the ruling of the Justice presiding in Chambers word for word, to
wit: "These prohibition proceedings have grown out of
a bill in equity filed in the Equity Division of the Circuit Court of the
Second Judicial Circuit, Grand Bassa County, by one Juah
Nimley against one Joseph Sinoe, for the correction of her deed from Number
87 to Number 91o, during the pendency of an action of
ejectment between the identical parties in the new division of the said
court. Joseph Sinoe, the plaintiff in the action of ejectment,
claimed Lot Number 91o, and Juah Nimley, the defendant in said

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action claimed Lot Number 87. During
the November term, 1962, of the court, the correction proceedings came on for
trial before His Honor, A. Lorenzo Weeks who, after
the hearing of said matter, had the deed of Juah Nimley calling for Lot
Number 87 corrected to Lot Number 910, the number for which
Joseph Sinoe's deed calls. Joseph Sinoe not being satisfied with the decree
of the said judge, fled to the Chambers of the Justice

presiding in the Chambers of this Honorable Court and petitioned for a writ of prohibition against the trial judge, Juah Nimley, the clerk of the probate division of the circuit
court, and the registrar of deeds, averring in his petition as grounds for the issuance of the writ the following: That petitioner
bought a parcel of land from John Sango, of the City of Lower Buchanan, Grand Bassa County, in 1959, same being Lot Number 910, as
will more fully appear from the original deed and the transfer deed to said parcel of land hereto attached to form part of this petition.
CI (That in 1961, respondent, Juah Nimley, com2. menced operating on said premises, and petitioner informed her that the premises
were his, but she refused to desist her operations whereupon petitioner filed an action of ejectment against respondent Juah Nimley
on March 20, 1961. " '3. That after pleadings had rested, counsel for both petitioner and respondent agreed to submit the dispute
to a board of arbitration because respondent claimed Lot Number 87 and petitioner claimed Lot Number 910. The arbitrators were appointed
by the court and, after the survey of the premises in contention, they submitted a report to the effect there was no Lot Number 87
in the area but

that Lots Number 902, 904, 906, 908 and 910, belonged to petitioner. " '4. That while
this report of the board was pending for disposition, on January 24, 1962, respondent Juah Nimley filed a bill of equity to correct
her deed from Lot Number 87 to Number 910, the subject matter of the ejectment suit pending before the identical court, without making
petitioner party to the bill; nor was copy of the bill served on petitioner and consequently the court has no jurisdiction over him.
" `s. That on the 9th and loth days of February, 1963, after the November term, 1962, of court had ended, the respondent judge continued
holding Chambers sessions, when indeed he was without any further jurisdiction to hold Chambers sessions over the February term,
1963, and without any notice to petitioner or his then counsel, called the bill in equity for the correction of deed and decreed
that respondent Juah Nimley's deed should be corrected from Lot Number 87 to Number 910 contrary to law, and thereby the respondent
judge proceeded by rule different from those which ought to be observed at all times, and therefore prohibition will lie, not only
to prevent, whatever remains to be done, but also to undo what has been illegally done. " '6. That notwithstanding the bill in equity
for the correction of deed was not filed in the equity division of the aforesaid court, yet the respondent judge, on the 9th and
loth days of February, 1963, recessed in law and opened in equity, and decreed the correction of said deed in the law division of
said court. " '7. That despite the fact that the ejectment case

between petitioner and respondent Juah

Nimley was still pending and a bill in equity for the correction of the identical deed in question was filed, yet the court did not acquire jurisdiction over the person of petitioner by means of summons, but the learned judge at the time, giving his decree in the absence of petitioner and his then counsel, attempted to and did pass upon the report of the board of arbitrators and at the same time decreed that the deed for Lot Number 87 should be corrected to Lot Number 91o. Petitioner contends that the decree which seeks to deprive the third party of his vital, legal and constitutional rights, is void and that prohibition will lie to prevent its enforcement.

" '8. That notwithstanding the fact that February 9, 1963, was Saturday, and Sunday was on the loth day of February, 1963, yet the respondent judge elected to hold court from Saturday midnight through Sunday morning, a day non diem, when he decreed the correction of the deed ; therefore said decree is void of any legal validity and prohibition will lie to bar its enforcement and to vacate the proceeding out of which said decree grew.' "Respondents, having been summoned, appeared and filed their returns containing ten counts as well as amended returns containing three counts, the pertinent portion of which we quote as follows :

" `I. That petitioner's petition should be dismissed, in that the court has jurisdiction over the subject matter of the petition for the correction of deed ; as such, prohibition will not lie where the court has jurisdiction over the subject matter of the cause and exercises the same.

"'And this respondents are ready to prove. 4 2. And also because respondents submit that

petitioner's petition should be dismissed in that, the cause having been assigned, heard, and disposed of, the clerk of the court, entered a decree on February 9, 1963, which said decree has been fully complied with, as per certificates from the probate clerk, registrar of deeds, hereto attached, marked Exhibits A and B, respectively. Respondents submit that prohibition will not lie where the court has jurisdiction over the cause, there remaining nothing more to be done at the time of the filing and service of the writ of prohibition upon the respondents.

"'And this respondents are ready to prove. " '3. And also because the respondents pray the

dismissal of petitioner's petition in that the court has not proceeded contrary to its rules to be observed at any and all times, in that the cause was duly filed, assignment made thereof and the matter heard and disposed of in keeping with the procedure of the court.

"'And this respondents are ready to prove. `5. And the said respondents further submit

that the trial judge had jurisdiction at the time of the rendition of the final

decree in this case, having been granted him by the Chief Justice of the Supreme Court of Liberia, as will be proven to the satisfaction of the court at the hearing of these proceedings. "'And this respondents are ready to prove.

" '6. And also because the respondents deny the legal sufficiency of Counts 1 2, 3 and 4 of petitioner's petition to entitle him to relief
,

in prohibition by the issuing of the alternative writ thereof, since the contents thereof do not attack the court's jurisdiction over the subject matter, nor the court proceedings, by rules which ought to be observed at any and all times, but in substance, indicate an error by the court in the hearing and disposition of the petition for the correction in an allegedly selfsame matter in which an ejectment suit was pending, thereby showing, and this respondents submit, that the petitioner has filed a wrong form of remedial process of prohibition and should have filed a writ of error. "'And this respondents are ready to prove. " '9. And also because respondents deny that the court's final decree was rendered at midnight on February 9, 1963, as per certificates already attached. "'And this respondents are ready to prove. " '1o. And also because respondents deny all and singular the allegations laid and contained in petitioner's petition not made a subject of a special traversal herein. "'And this respondents are ready to prove.' "Petitioner subsequently filed an answering affidavit in which he avers, inter alia, the following: 1. Because petitioner says the returns, as a whole, are fatally defective and therefore a fit subject of dismissal, and he so prays, in that the affidavit buttressing said returns is not taken before any justice of the peace in the County of Grand Bassa, for it is not signed by any duly qualified justice of the peace for said county aforesaid. For reliance, see records of court. And also because petitioner says that in Counts 4, 5, 6, 7 and 8 of his petition he
(2.

averred that he was never summoned and returned by the Sheriff of Grand Bassa County to appear and defend his interest as well as his property rights guaranteeed under the Constitution of Liberia, since indeed the subject matter, that is the bill in equity for correction of deed from Lot Number 87 to Lot Number 910 would have affected his interest and thus thereby deprived him of possession of said Lot Number 910 which is the subject of litigation in an ejectment suit pending before the identical court. Petitioner contends that said respondents having failed to traverse them, these points are considered admitted, and therefore prohibition

will lie where a decree or judgment is given when the court has not acquired jurisdiction over the person whose interest will be affected by such judgment or decree.' "In our opinion, the main grounds upon which petitioner in these proceedings bases his petition for the writ of prohibition are : first, that he was not made a party to the proceedings for the correction of Juah Nimley's deed from Number 87 to Number 91o; second, that the trial judge had lost jurisdiction; and third, that the decree was rendered in the matter at midnight, February 9, 1963, which was on a Sunday morning--non diem, and therefore not legal. "In connection with the judge's jurisdiction having ended over the November term, 1962, of the Circuit Court of the Second Judicial Circuit, Grand Bassa County, we find in the records of that court the following radiogram from the Chief Justice of the Supreme Court of Liberia : " 'Cape Palmas CK 25 De Elm at 1545 " 'URGENT JUDGE WEEKS BASSA " 'RADIOGRAMS RECEIVED YOU WILL CONTINUE ONLY JURY EMPANELLED

IN EJECTMENT CASE TILL ENDED STOP DISCHARGE OTHERS REGARDS [Sgd.] " 'CHIEF JUSTICE WILSON. " 'Certified true and correct:
[Sgd.] " 'JOSEPH T. KING, Clerk of Court.' "The above-quoted radiogram from the Chief Justice to Judge Weeks, who was the presiding judge at the time, proves conclusively that the jurisdiction of the judge was extended as far as the ejectment case was concerned, as well as the bill in equity which was collateral to the ejectment case. The judge was therefore not without jurisdiction when he rendered his decree, as far as term-time was concerned ; nor was he without jurisdiction as far as the subject matter was concerned.
From the records certified to this Court it is shown that after the decree was rendered in the matter of the correction of the deed, the court having recessed in probate and opened in equity, the court was ordered adjourned at midnight. That being so, the decree surely could not have been given on Sunday morning, a non dies, for Sunday morning did not begin at midnight when the court was ordered adjourned, but thereafter. "Now, when it comes to the petitioner in these proceedings not having been made a party to the proceedings for the correction of Juah Nimley's deed from Number 87 to Number 910, the records from the court below substantiate that fact, although we find in the records of the case in the lower court the following certificate over the signature of the clerk of the court: " 'Republic of Liberia " 'Office of the Clerk of Court, " 'Grand Bassa County. " 'Second Judicial Circuit, Grand Bassa County. "'Certificate.
" 'This is to certify that previous to the hearing and disposition of the bill in equity for the correction of

deed of Juah Nimley, Counsellor S. W. Payne, representing Joseph Sinoe, was notified by court of the assignment of this case.
That previous to court's rendering its final decree in this matter, the court ordered the sheriff to recess in probate and open in

equity, which was done. " 'Given under my hand and seal this 27th day of July, 1963. [Sgd.] " 'JOSEPH T. KING,
"`Clerk of Court.'

"The above certificate substantially proves that, although the petitioner in these proceedings might not have been made a party to the correction proceedings in the lower court, yet he had notice of the filing, assignment and hearing of the cause; and being 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, he had a right to intervene and defend his rights in keeping with 1956 Code, tit. 6, § 129, and not to have set dormant and not speak when his rights were being assailed and when he was under no legal disability. " 'A party who, being under no legal disability at the time, stands by and permits property which he claims to pass into the hands of another without objecting thereto at the time, is presumed to have consented to the transaction. (Savage v. Dennis, and Blunt v. Barbour, 1871 and 1872) ' McAuley v. Madison, r L.L.R. 287 (1896), Syllabus 3. "Petitioner also attacks the returns of the respondents for lack of verification and prays dismissal thereof. We are aware that the statute governing issuance of the writ of prohibition provides that: 'An application for a writ to prohibition shall be made in writing, verified by the petitioner. . . (1956 Code, tit. 6, § 122o) but another section of the same statute provides as follows: " 'When the writ has been served, it shall be the

duty of the clerk of the inferior court to which the writ is directed to transmit the entire record of the action or proceeding specified therein to the Supreme Court. The respondents shall file their returns upon a date set in the writ. " 'Upon hearing the Supreme Court shall either quash the interlocutory writ, thereby permitting continuation of the action or proceeding in the inferior court or make the writ absolute.' 1956 Code tit. 6, § 1222. "Nowhere under return is it stated that the return must be verified as in the case of the application for the writ. "The respondents strenuously contend that prohibition will not lie because the bill in quity for the correction of the deed of Lot Number 87 to Number 910 having been heard, and a decree entered and enforced before the institution of these prohibition proceedings, there remains nothing to be restrained or prohibited. "A recourse to the records certified to this Court from the court below in the proceedings to correct Deed Number 87 to Number 910 reveals that the suit was filed in the Equity Division of the Circuit Court of the Second Judicial Circuit, Grand Bassa County, on January 24, 1963; the decree was entered on February 9, 1963 ; the registrar's correction of the deed was made on February 14, 1963. The petition for the writ of prohibition was filed on June I1, 1963, or four months and two days after the rendition of the decree, and three months and 27 days after the enforcement of the decree; and hence there was nothing remaining to be restrained or prohibited. " 'It may be stated as a general rule that the only effect of a writ of prohibition is to suspend

all actions and to prevent any further proceeding in the prohibited direction. It can only operate to restrain a pending action or proceeding, and can never

be used to prevent the institution of an action. Where prohibition would be ineffectual it will usually be disallowed, as where the act sought to be prevented is already done, or where, if the act were 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 the pursuance or in completion of its order, or where it has dismissed the proceeding, prohibition is not an effectual remedy. But where anything remains to be done by the court, prohibition not only prevents what remains to be done but gives complete relief by undoing what has been done.' 22 R.C.L. 8 Prohibition § 7.
"There remaining nothing further to be done in the matter, the decree having been fully enforced, prohibition will not lie. The writ is therefore quashed and the peremptory writ denied with costs against the petitioner. The clerk of this Court is hereby ordered to send a mandate down to the court below commanding its enforcement. And it is so ordered." The ruling of the Justice presiding in Chambers as quoted supra being in strict conformity with the principles of law controlling, we have decided not to disturb said ruling. Therefore, in view of the foregoing, the ruling entered in these prohibition proceedings is hereby affirmed with costs against the petitioner. And it is hereby so ordered.
Ruling affirmed.

Kennedy et al v Pearson [1943] LRSC 5; 8 LLR 123 (1943) (19 February 1943)

JAMES M. KENNEDY, WALTER LEE, and L. A. MOORE, Appellants, v. J. G. B. PEARSON for his Wife, JULIA A. PEARSON, Appellee.
MOTION TO
DISMISS APPEAL FROM THE MONTHLY AND PROBATE COURT, MONTSERRADO COUNTY.

Argued February 11, 1943. Decided February 19, 1943. Where there is no approved bill of exceptions found in the record the appeal will be dismissed.

On motion to dismiss on the ground that there is no approved bill of exceptions, in appeal from a judgment permitting the probate of a warranty deed, motion granted.
W.
0. Davies-Bright for appellants. B. G. Freeman

for appellee. MR. Court.
JUSTICE SHANNON

delivered the opinion of the

This is an
appeal from the Monthly and Probate Court for Monterrado County and from a judgment of the Commissioner of Probate, His Honor Nugent
Gibson, judge thereof. According to the records certified to this Court it appears that on April 9, 1941 before said Monthly and
Probate Court Counsellor W. 0. Davies-Bright offered for admission to probate a warranty deed from John M. Moore and Anna Moore to
Walter A. Lee and J. H. Lee, all persons of the settlement of Johnsonville in Montserrado County, for a certain parcel and tract
of land lying, situated, and being, according to the descriptions in said deed, in the said settlement of Johnsonville; J. G. B.
Pearson for his wife, Julia Pearson, filed objections to the admission to probate of said warranty deed, which

objections, in the analysis of the case before said Monthly and Probate Court, were by the court's ruling sustained and
the admission of said warranty deed to probate denied, with costs against the respondents, now appellants. It is from this ruling
of the said Commissioner of Probate that this appeal has been taken and brought before this Court. At the call of the case here for
adjudication, appellee submitted a motion for the dismissal of said appeal and for the remand of said cause for the enforcement of
the ruling or judgment against said appellants. The said motion embodies three counts but, the first and the third counts having
been waived by counsel for appellee in his argument, the Court finds itself in the position of addressing itself to and considering
only count two thereof which reads as follows : "And also because the appellee says that the bill of exceptions in this case is further
bad and defective in that the following notation on the original as filed in the Clerk's office : `Approved this znd day of September
A. D. 194.1. N. H. Gibson Commissioner of Probate, Mo. Co., R.L.' does not carry the signature of the said Commissioner of Probate
showing that the same has been approved by him, the same being typed thereon. Appellee submits that the bill of exceptions over the
signature of the Commissioner of Probate does not indicate his approval of same in keeping with the statute. Wherefore because of
such legal and incurable blunder, appellee prays the dismissal of this appeal with costs against appellants." From an inspection
of the bill of exceptions it appears that appellants' counsel, in his preparation, made the following notation on the typewriter
: "Approved this znd day of September A.D. 1941. N. H. Gibson, Commissioner of Probate, Mo. Co., R.L.,"

obviously intending that the autograph of the Commissioner of Probate be affixed in approval. This was not done, as has been conceded

even by the counsel for appellants. But he, however, insisted in a rather plausible but unconvincing argument that under our statutes bills of exceptions are not required to be approved but merely to be signed by a trial judge from whose judgment, opinion, ruling, or decree an appeal is prayed and for the prosecution of which appeal the bill of exceptions is prepared and submitted and, consequently, that the following notation penned by the Commissioner of Probate on said bill of exceptions is to be taken for said signature as is required by law : "This case was, on agreement of the parties, submitted without argument, wherefore the Court gave its ruling and filed same in the Clerk's Office and noting exceptions.
The Court's ruling is based mainly upon that section of law found in the Revised Statutes of Liberia, relating to the probation of deeds. "[Sgd.] N. H. GIBSON,
Commissioner of Probate, Mo. Co.

"MONROVIA,
17th Sept. 1941."

It is to be markedly observed that, notwithstanding that the above notation is made on the face of the bill of exceptions in this case, there is nothing in it to show that it refers to said bill of exceptions or that it is in approval of same as to warrant an interpretation of an intention on the part of the Commissioner of Probate to approve same; and it is on this point that our colleague, His Honor Chief Justice Grimes, disagrees with us and dissents, insisting that said notation is tantamount to an approval of the bill of exceptions by the said Commissioner of Probate, even against and contrary to the argument of the appellants' counsel that an approval is not required by law, the signature of the trial judge, possibly whether of approval or disapproval, being the only legal requisite. On this point, His Honor Justice Dossen, a former

member of this Bench, in the case Melton and Banks v. Republic, [1934] LRSC 13; 4 L.L.R. 115, I New Ann. Ser. 117, decided April 20, 1934, speaking for the Court which was unanimous in its opinion, said : "Passing on to count three of appellee's said motion, by an inspection of the record filed in this case, we observe that the foundation of the appeal is seriously defective and bad in that the bill of exceptions is not approved by the trial judge, which defect is incurable and renders said appeal without legal effect. A bill of exceptions is a formal statement in writing of exceptions taken to opinions, rulings, decisions and judgments of a judge in the course of a trial and constitutes the foundation of an appeal ; hence where it does not appear in the records of the appeal duly signed by the trial judge, the omission is fatal. 'The court cannot assume responsibilities and burdens of which any party may fail to avail himself in the incipient stage of a case, much as it might be anxious to give relief. . . " Id. at 117. (Emphasis added.) It is true, as it has been striven strenuously to inject into the decision of this matter, that the recent act of the Legislature passed and approved on November 21, 1938, entitled "An Act Amendatory to the Statute Laws of Liberia

Relating to Appeals," provides : "That no act nor omission of a Judge nor any officer of Court shall affect the validity of an appeal, but such act, mistake or negligence shall be remedied by some appropriate order of the appellate court so as to promote substantial justice." L. 1938, ch. III, I

Consequently, whatever might appear to be the act, mistake, or negligence of the Commissioner of Probate in this matter should not be allowed or permitted to prejudice the appellant. Nevertheless, to file an approved bill of exceptions is not a duty to be performed by the judge or by some other officer of the court. It is ele-

mentary knowledge, at least it should be, that it is the party who appeals that files the bill of exceptions. It is necessary, therefore, that an appellant, after having duly and timely submitted his bill of exceptions to the trial judge for his approval, determine whether or not said trial judge has approved or refused to approve said bill of exceptions so that where said approval or refusal to so do does not meet the ends of justice or the equity of his case he, the appellant, can avail himself of the opportunity of having the situation corrected or righted by the appropriate course of procedure. This the appellant appears not to have done, and since indeed the doctrine has been oft and anon stressed by this Court, especially in the case Blacklidge v. Blacklidge, i L.L.R. 371 (1901), which held at page 372 that "litigants must not expect courts to do for them that which it is their duty to do for themselves," this Court does not hesitate to say that there is no approved bill of exceptions filed in the case and that the failure and negligence to do so is attributable to the appellant. Consequently, we are of the opinion that count two of the motion to dismiss should be sustained, the appeal dismissed with costs against appellant, and the trial court notified to resume jurisdiction for the enforcement of its judgment; and it is hereby so ordered.
Motion granted.

MR. CHIEF JUSTICE GRIMES, dissenting. The time has now come for me to explain why I have refused to append my signature to the judgment dismissing this appeal. I begin by conceding that the bill of exceptions in this case is not approved in a manner that has heretofore been regarded as orthodox; but, inasmuch as laws should be construed not according to the mere letter but according to the spirit and inasmuch as a maxim often repeated by

the most eminent law writers reads, qui haeret in litera hearet in cortice, i.e., he who adheres to the mere letter

is as one who sticks only to the bark of a tree, let us review the facts brought out at the counsel table during the argument on the motion at this bar and the law which, in my opinion, should be applied to those facts. To begin with, in the interval between the assigning and bulletining of this case for trial and the time when it was called at the bar, appellees offered a motion to dismiss containing three counts, viz.: i. Because there is no approved bill of exceptions filed in this case as prescribed by the statutes-- in that judgment was rendered on the loth day of August A.D. 1941, but the bill of exceptions was not approved until September 17, A.D. 1941, quite twenty-eight (28) days after final judgment as will more fully appear from the records certified to this Honourable Court, there being no legal bill which said section prescribes he shall attach in open court or in Chambers provided it was submitted to him . . . within ten days. Section on page i i of said enactment enumerates the causes upon which this Court 'shall dismiss' an appeal, and that relevant to this issue is: 'bill of exceptions not taken, or not signed * by appellant or judge.' This is substantially the same language used in our Revised Statutes Volume I, pp. 425, and 430, pp. 495 and 497, save that in the latter, the only cause for dismissal relevant to the question now under consideration is : failure . . . to file bill of exceptions." So read the law until 193 6 when the Legislature by an enactment passed, by limitation, certain amendments of the enactment found in section 430 of the Revised Statutes. Here instead of "shall . . . dismiss" as found in the enactment of 1893-94, 1I, § 2, the Legislature in 1936 substituted the words "might dismiss" an appeal, and, for
" .

the first time, this act introduced as one of the causes for dismissal, "failure to file approved Bill of Exception." L. 1935-36, ch. VII, § 1. But note further that section two of said enactment prescribed inter alia: "[T]hat no act or omission of a Judge, or any officer of Court shall effect [sic] the validity of an appeal, but such act, mistake or negligence shall be remedied by some appropriate order of the Appellate Court so as to promote justice." L. 1935-36, ch. VII, § 2. The latest enactment on the subject is that on page three of the Act of 1938, ch. III, § 1, which, after a careful comparison by me with that of 1935-36, save for the inversion of some sections differs only in prescribing the nonpayment of costs of the lower court as a ground for dismissal. Coming back now to the case at bar, judgment having been by His Honor the Commissioner of Probate rendered in open court on August 27, 1941, Counsellor Davies-Bright for appellants prepared and tendered his bill of exceptions on September z, forwarding the document in a dispatch book exhibited to the Court and to his opponent during the argument at this bar on the motion under consideration. The judge acknowledged receipt of the document by a notation in said dispatch book on the third of September. On said bill of exceptions as so submitted counsel had typewritten the judge's name a reasonable distance under the

word "approved," obviously expecting the judge to sign the space left if the complaints in said bill of exceptions were found correct.
The judge did not simply sign on the dotted line as he might have done and was expected to have done, but appended thereunder the
notation hereinbefore quoted which, even at the risk of repetition, I quote again as follows : "This case was, on agreement of the
parties, submitted without argument, wherefore the Court gave its ruling and filed same in the Clerk's Office and not-

ing exceptions. The Court's ruling is based mainly upon that section of law found in the Revised Statutes of Liberia,
relating to the probation of deeds. "[Sgd.] N. H. GIBSON, Commissioner of Probate, Mo. Co. "MONROVIA, 17th Sept. 1941." As a judge
may approve, refuse to approve, or make notations showing his disapproval in part and corresponding approval of the rest, I regard
that notation as tantamount to an approval and as a defense of the correctness of the decision he had given, viz.: "The Court's ruling is based mainly upon that section of law
found in the Revised Statutes of Liberia relating to the probation of deeds." Reverting to the opinion I expressed in the case of
Adorkor v. Adorkor, [1936] LRSC 15; 5 L.L.R. 172, 3 New Ann. Ser. 118 (1934) , a bill of exceptions is a complaint that the trial judge has committed sundry errors, and said bill
of exceptions is presented to the judge as notice of what appellant intends to argue in the appellate court as to those decisions
upon points of law or fact which appellant contends are erroneous and from which he is appealing. If, then, said judge without signing
his approval on the dotted line justifies by a notation thereon the position he took in deciding the cause, should the appeal be
dismissed for that? If so, why did the Legislature change the word "shall," found in the enactment of 1893-94, supra, to "might"
in subsequent enactments providing for the dismissal of appeals? Could counsel for appellant be correctly accused of laches in not
having moved by mandamus to have the orthodox endorsement made under such circumstances when even as recently as February 11, the
date of the filing of this motion now being decided, the appellee in the first count of said motion now drawn stated in express terms,
supra, "[Mut the bill of exceptions was not approved until September 17, A.D., 1941, quite twenty-eight days after final judgment
. . ."? If such

an endorsement by the trial judge can legally be considered wrong, why did the Legislature
prescribe the following? "[T]hat no act or omission of a Judge, or any officer of Court shall effect [sic] the validity of an appeal,
but such act, mistake or negligence shall be remedied by some appropriate order of the Appellate Court so as to promote justice."

L. 1935-36, ch. VII, § 2. Had I considered this issue from the same angle as my colleagues I should have insisted on having what
they consider an omission or an act of negligence remedied by an appropriate order issued sua sponte, but as I am in the minority
I have no power but to leave on record these my reasons for withholding my signature from the judgment dismissing this appeal.

Nyornnie & Peter v Weah [1964] LRSC 44; 16 LLR 102 (1964) (22 May 1964)

NYORNNIE and KOFA PETER, Appellants, v. J. ADO ONANUGA, EMILY WILSON and IGNATIUS N. WEAH, Justice of the Peace, Montserrado County, Appellees.
APPEAL FROM RULING IN CHAMBERS ON APPLICATION FOR WRIT OF CERTIORARI.

Argued March 19, 1964. Decided May 22, 1964. A
justice of the peace court not being a court of record, its judgments are reviewable only on appeal to the circuit court and not
by certiorari to the Supreme Court.

On appeal from a ruling in Chambers denying certiorari to a justice of the peace court in summary
ejectment proceedings, ruling affirmed.

A. Gargar Richardson, for appellants. and Michael M. Johnson for appellees.

Etta Wright

MR. JUSTICE MITCHELL delivered the opinion of the

Court. On December 5, 1962, Nyornnie and Kofa Peter, defendants below, now appellants,
were summoned on process issued out of the office of Ignatius N. Weah, Justice of the Peace for Monrovia, to appear before him at
his office on December 6, 1962, to answer the complaints of J. Ado Onanuga and Emily Wilson, respectively, plaintiffs in summary
ejectment. It is further certified by the records that, at the call of the respective cases, in the court below, the defendants were
severally represented by Counsellor A. Gargar Richardson, who tendered demurrers of the same tenor and nature on jurisdictional and
other legal grounds,
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seeking to dismiss both of the causes. His demurrers, containing six counts each, were resisted by counsel representing the plaintiffs. At this stage of the trial, the court heard arguments and dismissed the
demurrers, ordering the cases tried on their merits. Defendants took exceptions to the ruling of the justice of the peace and found

their way to the Chambers of Mr. Justice Pierre by petition for the issuance of a writ of certiorari to review the ruling of the court below. Mr. Justice Mitchell, sitting in Chambers for his colleague, heard the matter, denied the issuance of the peremptory writ, and dismissed the petition. From that ruling the petitioners, now appellants, through their said counsel, took exception and prayed for this appeal. For the expediency and for the benefit of this opinion, we are couching herein the ruling of the Chambers Justice from which this appeal has travelled, and here below it is laid word for word : "This Court has so often emphasized on the important question that practitioners before this bar should be men and women conversant with the law, so that their ability might be reflected through their practice, because that is the main human resource that must add dignity and brilliancy to our practice. But when persons honored with so high a calling, fail to demonstrate the required aptitude and ability, they thereby attempt to dwarf the practice into a fantastic drama and disrate the honor of the fraternity. To us, this evil is graduating itself into this respectable society and must be discouraged. "The remedial writ of certiorari, is statutorily defined as follows : " 'Certiorari is a special proceeding to review and correct the proceedings of any administrative board or agency or any court of record other than the Supreme Court. It shall be commenced by a writ of certiorari allowed by the Supreme Court or by a Jus-

tice thereof sitting in chambers on the application of the party adversely affected by the proceedings in the inferior court or administrative board or agency.' 1956 Code, tit. 6, § 1200. "This definition of the writ and against whom it may be sought is written out in clear and understandable words, but it would appear that the counsel applying for the issuance of the writ in this case in the interest of his clients might not have comprehended or understood its import and unambiguous meaning; hence, we have been compelled to preface this ruling in the manner in which we have done. Moreover, it is not the office of the writ of certiorari to compel a party or the parties against whom it is sought to perform some duty, but its function is to review some act of a court which the petitioner concedes to be prejudicially against his interest in a litigation pending. "In this case, according to petitioner's petition, J. Ado Onanuga and Emily Wilson sued out respectively actions of summary ejectment against Nyornnie and Kof a Peter, seeking to oust them from two parcels of land which they are supposed to occupy as tenants at will of the plaintiffs, and which parcels of land are situated in the Commonwealth District of Monrovia. These two suits were instituted before Justice of the Peace Ignatius Weah, of Monrovia, Montserrado County. Petitioner's petition further shows that, after being summoned, they appeared and moved the court by demurrers to dismiss the actions, which the court denied. "The respondents filed their returns alleging the insufficiency of the grounds of the petition to warrant the issuance of the peremptory writ, and after hearing arguments, we did not see the necessity of referring to any law citation for a solution of

the issues involved, although counsel for petitioners strenuously. argued

the point that because the
statutes provide that certiorari will lie against any administrative board or agency, he interprets a justice of the peace court
to be an agency of the circuit court, and therefore felt that his petition was in harmony with law which authorized, as he contended,
that a ruling of the justice of the peace could be reviewed by certiorari. "Respondents' counsel, countering this point of argument
advanced by petitioners' counsel, contended that, a justice of the peace court not being a court of record, a ruling or judgment
therefrom could not legally be reviewed on certiorari. "A thorough review of all of the issues raised on both sides in argument gives
us the impression that one of two evils prevailed--that either petitioners' counsel made a serious blunder in his understanding of
the law applicable, or that he was urged to burden the court with an unmeritorious matter. Certiorari does not lie to restrain some
act of a court which might be construed to be illegal; nor does certiorari lie against a justice of the peace whose court is not
a court of record according to our statutes. And, whereas it is a fact that an appeal from the ruling or judgment of a justice of
the peace court in summary ejectment is not supersedeas to the enforcement of said judgment, yet certiorari could not be invoked
as a remedy. "The justice of the peace court is a court of first instance with its jurisdiction well defined; and the statutes make
it mandatory that all rulings or judgments from a justice of the peace court must be reviewed on appeal by the circuit courts de
novo. And because that court does not carry a clerk or a seal, the reason is clear. "Therefore it is needless for us to weary our
time further on the question. It is our opinion that petitioners have failed to produce convincing proof of law that might authorize
the issuance of the writ herein

sought; hence the petition is hereby dismissed and the writ sought denied with costs against the petitioners; and the clerk of this Court is hereby ordered to send a mandate to the respondent justice of
the peace ordering him to resume jurisdiction and proceed into the trial of the two summary ejectment cases out of which these proceedings
grew. And it is hereby so ordered." Exceptions were taken to the ruling thus made and an appeal was prayed for to the full court,
which right was granted without reservations. The case therefore appeared on our docket for further hearing, or rather for a review
of the ruling quoted supra. When this case was assigned and called for hearing, both sides being represented, they argued respectively.
Appellants' counsel still argued that an appeal from the ruling of the justice of the peace was not supersedeas in the case of summary
ejectment, and that, since his clients had no alternative--a justice of the peace court being an agency of the circuit court--certiorari could issue to review the acts of the court of

first instance. He belabored the Court with absurd theories of his own, and when requested by the Court to cite some case in point, or some law to convince the Court of the ground of his argument, he could not. In fine, it was actually amazing to understand the patience exercised by the Court and time it gave to his untenable argument, and for no other reason, maybe, than to demonstrate the tolerance of the Court. Respondents' counsel directed their trend of argument to the fact that, since the appellant had the right of appeal which constituted adequate remedy, he could not benefit by certiorari, nor would the writ lie against a justice of the peace. Concluding, it is our opinion that the appellants have not made a case. The grounds of their petition, as well as their argument, are without legal merit. "Certiorari differs from appeal in that it brings up

the case on the record, while on appeal the case is brought up on the merits. It cannot be used as a substitute for an appeal or a writ of error, except in a very few jurisdictions. . . ." i i C.J. 89 Certiorari, § Our justice of the peace court is a court of first instance and its jurisdiction and procedure are clearly defined by law. It is not a court of record, nor is it an agency of a court of record, and its judgments can only be reviewed on a regular appeal before the circuit court. "The general rule is that the writ of certiorari does not lie if there is an adequate remedy, by appeal, writ of error, or exceptions." II C.J. 103 Certiorari § 29. Over the ages of time, the principles controlling the issuance of the writ of certiorari have remained the same. This case not being one in which the writ is sought to offset the enforcement of some judgment or ruling, the appellants have seriously blundered; moreover, in any case, the circuit court would be the proper legal forum. Therefore the ruling of the Chambers Justice is sound in our opinion and it is hereby affirmed with costs against the appellants. And it is hereby so ordered. Ruling affirmed.

Yangah v Melton [1954] LRSC 25; 12 LLR 128 (1954) (10 December 1954)

MULLEY YANGAH, Appellant, v. JACOB S. MELTON, Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued October 13, 1954. Decided December 10, 1954. 1. Where statutory regulations governing service of summons are not substantially complied with, the court has no jurisdiction over the person improperly served. 2. A defendant who has not been summoned at least fifteen days prior to the first day of the term of court to which the writ of summons is made returnable has not been legally summoned and is not required to answer the complaint.

Plaintiff's action of ejectment was dismissed by the court below on the ground
that timely service had not been effected upon the defendant, and that jurisdiction over the defendant was therefore lacking. On
appeal to this Court, judgment affirmed.
Nete Sie Brownell for appellant. and K. S. Tamba for appellee. Momolu S. Cooper

MR. JUSTICE
DAVIS delivered the opinion of the Court.* On February 28, 1952, the instant appellant, Mulley Yangah, instituted an action of ejectment
against the instant appellee, Jacob S. Melton, before the Circuit Court of the Sixth Judicial Circuit, Montserrado County, for the
recovery of a certain tract of land situated within the Kakata District. Process having been issued, served and returned, appellee
filed an. answer, Count "1" of which presents an issue of law as follows: CI . . . the complaint should be dismissed as materially
defective, in that upon inspection of the returns to the
Mr. Chief Justice Russell was absent because of illness, and took no part in this case.

writ of summons which purports to place the defendant under the jurisdiction of this court,
it will be seen that said defendant was not summoned until March 5, 1952, although the said case of ejectment is venued in the March,
1952 term of this court. The defendant submits that, in keeping with the practice of this jurisdiction, he should have been summoned
and returned fifteen days before the opening day of the March, 1952 term of the court at which he is required to appear and answer
the complaint of the plaintiff. March 17 being the third Monday, and hence the opening day of the March term of this court, it is
patent that plaintiff has ignored and violated this statutory provision. Because of this the defendant prays that the complaint be
dismissed." The pleadings progressed as far as the rejoinder and there rested. On May 8, 1952, Judge Richards proceeded to hear and
dispose of the issues of law, and sustained Count "t" of defendant's answer, dismissing the action with costs against plaintiff.
From this ruling the plaintiff has appealed. In support of appellee's contention that the trial court had no jurisdiction over him,
in that he had not been legally summoned because he had not been summoned fifteen days prior to the opening day of the term of court,
he relied upon Modderman v. Roberts, 1 L.L.R. 217 (1888). Appellee contended further that the statute construed by this decision is mandatory and not discretionary, and that its provisions
must be strictly followed. Appellant contended, in substance, that appellee's plea was insufficient because the statute provides
that every complaint in law shall be filed at least fifteen days before the opening of the ensuing term of court; hence, the records
having shown that the complaint was filed within fifteen days before the opening day of the term of court to which defendant was
summoned, it was immaterial

whether defendant was summoned a week or so before the opening of said term of court so long as it could be shown that the complaint had been regularly filed fifteen days before the opening day of the said term of court. Upon the surface, and at first blush, both arguments seem plausible. But let us for a moment go beneath the surface, and, by examination of the law controlling, unearth the legal soundness of one argument, and the fallacy of the other--for evidently both cannot be legally correct, since they are inconsistent with each other, that is, one insisting that it is imperative that a defendant should be summoned fifteen days before the opening day of the term of court to which he is summoned to appear, and the other contending that it is not material whether he is summoned fifteen days before the opening day or not, so long as the plaintiff's case is filed fifteen days before the opening day of court. The syllabus of the decision of this Court cited and relied upon by defendant reads in part as follows : "A defendant who has not been summoned at least fifteen days prior to the first day of the term of court to which the writ is made returnable shall not be deemed as legally sumi-noned and will not be compelled to answer the complaint." Modderman v. Roberts, supra. We shall now examine the writ of summons and sheriff's returns made thereto. The writ of summons shows on its face that it was issued on February 28, 1952, and returned on March 4, 1952. It also shows on its face that the sheriff was commanded to notify the defendant to file his formal appearance in the office of the clerk of court on March 4, 1952. Moreover the writ of summons required the defendant to appear and defend himself against plaintiff's complaint at the March term of the Circuit Court of the Sixth Judicial Circuit on the third Monday in March, 1932, that being March 17, 1932. Defendant was re-

turned summoned on March 4, 1952. The opening day of the March term of court to which he was cited to appear and defend was March 17, 1952. Consequently defendant had only thirteen days between the day on which he was summoned and the opening day of court, and not the fifteen days required by law. We are of the considered'opinion that the trial Judge committed no error in sustaining Count "1" of defendant's answer and dismissing plaintiff's case, because it is evident from the foregoing computation that the defendant was not summoned fifteen days before the opening day of the March term of court to which he was required to appear and defend. From the decison of this Court quoted above, it is imperative that a defendant, except in cases of injunction be summoned at least fifteen days prior to the opening day of the term of court to which the writ is made returnable, or in other words the term of court to which he is required to appear and answer the complaint of the plaintiff. Defendant was therefore illegally summoned. This Court in the

Modderinan case, supra, laid down the following rule at 1 L.L.R. 2 18 : "It is obvious that the court could have no jurisdiction over a person not legally summoned under the statute above quoted, consequently it could exercise no power in such a case." The reason for the foregoing rule is plain and the principle elementary. The statutes allow a defendant four days after being summoned to appear and give notice of his intention to contest the suit brought against him, and ten days within which to file an answer. Adding these together, and taking into consideration the day on which he is summoned, we have fifteen days. Therefore, if a defendant does not have fifteen days from the day he is summoned to the day of the opening of the term of court to which he has to defend himself, or answer the complaint of plaintiff, the law presumes that he has not had

sufficient time to prepare an adequate defense, and therefore disfavor his being ushered into court in such a state of unpreparedness. In the light of the foregoing, we hereby express and record our full accord with the ruling of the trial judge dismissing the case, which ruling we now affirm with costs against the appellant. And it is hereby so ordered. Affirmed.

Union Nat'l Bank v M.C.C [1973] LRSC 12; 21 LLR 487 (1973) (2 February 1973)

UNION NATIONAL BANK, Appellant, v. M.C.C. (a construction company), Appellee. MOTION TO DISMISS APPEAL FROM THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued January 11, 1973. Decided February 2, 1973. 1. The failure of a surety to append to an appeal bond his affidavit and the certificate of valuation of his real property obtained from the Bureau of Revenues, does not change the fact that he has encumbered his property to the amount pledged by him as security. 2. Hence, in the instant case, prior pledges though unsupported by necessary documents reduce the unencumbered value of the property by the total amount of the prior pledges. 3. The absence of revenue stamps required on documents, a ground for dismissal of an appeal, can only be excused when cancellation procedures employed establish their usage. 4. No party may benefit from deliberate violation of the law, especially when another is injured thereby. 5. The Supreme Court cannot concern itself with the relative amounts in litigation, but will let the law prevail.

A motion was made to dismiss an appeal from a judgment in excess of $5o,000.00, alleging failure to affix revenue stamps to the

appeal bond's supporting papers and an insufficiency of real property pledged by the sureties because of prior pledges of the same property in other cases. The motion was granted and the appeal dismissed.

Samuel E. H. Pelham and Joseph Williamson for appellant.
Dessaline T. Harris for appellee.
MR. CHIEF JUSTICE PIERRE delivered the opinion of the Court. This case was tried in the June 1972 Term of the Sixth Judicial Circuit Court, and final judgment was rendered on September 6, 1972. Appeal from this judgment was announced and completed with the filing on September 19
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of the appeal bond and the notice of completion of appeal. The case was docketed in the Supreme Court, and came on for hearing on January II, 1973. The appellee has moved to dismiss the appeal, alleging that the affidavit of sureties is unstamped and the bond is insufficient. According to the papers the amount involved in litigation is $55,439.60, and the bond accompanying the appeal was approved for $82,500.00. The appellee has contended in his motion that the revenue certificate attached to the bond shows that one of the appellant's sureties owns property recorded in the Bureau of Revenues in the amount of $100,000.00, and the other surety owns only $10,000.00 worth of real property. However, the property of the first surety as shown by the certificate of the Clerk of the Debt Court for Montserrado County is encumbered to the extent of $94,670.44, representing previous liens on his property when he stood bond in five cases now pending before the aforesaid Debt Court. Thus, of the $82,500.00 for which the bond was approved, there is now only $15,329.56 in unencumbered real property available to indemnify the appellee. Appellant has filed a fifteen-count resistance to the motion, in which he has denied that his affidavit of sureties was filed without a revenue stamp, and has also denied that the property pledged to his appeal bond is in any way encumbered. We shall review these two points in the reverse order of their presentation. In denying the insufficiency of the property pledged by one of the sureties to his appeal bond, the appellant argued that suretyship in the prior pending cases in the Debt Court constitutes no lien upon the property in the absence of documentary proof thereof in the office of the Clerk of the Debt Court as reflected by a certificate of valuation from the Bureau of Revenues to the bond in each case, which proof the Clerk of the Debt Court has certified was not furnished.

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The argument is untenable in view of the clear language contained in the statute. "Lien on real property as security. A bond upon which natural persons are sureties shall be secured by

one or more pieces of real property located in the Republic, which shall have an assessed value equal to the total amount specified in the bond, exclusive of all encumbrances. Such a bond
shall create a lien on the real property when the party in whose favor the bond is given has it recorded in the docket for surety
bond liens in the office of the clerk of the Circuit Court in the county where the property is located, or, if it is in the Hinterland,
in the office of the clerk of the Circuit Court in the nearest county" Civil Procedure Law, L. 1963-64, ch. III, § 6302 (2). We have
no docket in the circuit courts for surety bond liens in Liberia at present, instead since all real property is on record in the
Bureau of Revenues in each county, certification of property valuation for appeal bonds is made by officials of the said Bureau of
Revenues. The act of becoming a surety to a bond in itself creates an encumbrance on one's property, so long as that property has
been registered in the Bureau of Revenues. Each bond must be accompanied by an affidavit of surety, and each affidavit of surety
must contain certain information: (a) that the surety owns the property offered as security; (b) a description of the property, sufficiently identified to establish a lien; (c) a statement of the total amount of the lien, unpaid taxes, and other encumbrances; (d) a statement
of the assessed value of the property offered. Civil Procedure Law, supra, § 6302(3). In view thereof we assume that no court will
accept as valid any bond unless the requirements have been strictly observed. Since the law commands that bonds filed in courts of
the Republic should comply with these requirements, why would any party file a bond falling short of these requirements? The statute
requires that valuation

of property shall be certified by the Bureau of Revenues, and the certificate attached to each bond in order to validate it. Civil Procedure Law, supra, § 6302 (4.). The reason for such a requirement is to assure
that the surety is indeed a landowner, and that such land is registered. For only in such a case could the adverse party be indemnified
against loss or injury growing out of the case. The failure to attach the revenue certificate to the bond, however, does not remove
the encumbrance on the surety's property, if that property is on record in the Bureau of Revenues. It is, therefore, our opinion
that the surety's admission of not having attached his affidavits and certificates of the Bureau of Revenues to the bonds he was
surety to in the Debt Court, does not change the fact that he is a surety on the appeal bonds in these five pending cases and that
he encumbered his real property on record in the Bureau of Revenues to the extent of the total penalty of such several bonds. It
is interesting to note that the appellant has not denied the fact that Saju Tarawally, the surety referred to, is also surety in
the five cases pending in the Debt Court. His argument before this Court was that Tarawally did not attach Bureau of Revenues certificates
and his affidavits to the said bonds in the Debt Court and that this failure exempted his registered property from encumbrance. From
the argument made before us, we have to assume that this admitted failure was deliberate. And we cannot overlook the assumption nor

escape the conviction that this deliberate failure to comply with a statutory requirement was intended to hurt the interests of opposing parties. Any act which knowingly violates the law must be repudiated by the courts. No party can be allowed to benefit by his deliberate violation of law as admitted, especially where such violation hurts the interests of others. The Stamp Tax Act of our Revenue and Finance Law,

referred to above, not only commands that specified documents must bear revenue stamps to make them valid, but also requires that stamps placed on such documents be cancelled. It has also specified the manner of such cancellation. "571. Stamps to be cancelled. When a revenue stamp is affixed to any instrument or document listed in section 570 above, it shall be defaced and cancelled as provided in this section: "(a) If the stamp is affixed by the government official who issues or registers the document or instrument, he shall cancel the stamp by means of perforation in the presence of the person to or for whom such document or instrument is issued or registered and who is liable for the payment of the stamp tax thereon. Such perforation shall be made after the revenue stamp is attached to the document or instrument in such manner that such document or instrument shall bear the identical perforation. "(b) If the revenue stamp is purchased by a private person to be affixed to an instrument or document which requires a stamp under the provisions of section 570 above, he shall deface and cancel the stamp by means of perforation or by writing across it with permanent or indelible ink or pencil so that the stamp cannot be reused." 1956 Code 35 :571. If appellant had cancelled the stamp on his surety's affidavit in accordance with the requirement of the statute quoted above, there could have been no disputing the fact that a stamp was placed on the document. Our interpretation of this statute, in respect of private individuals stamping documents, is that the stamp should be cancelled either by perforation of the stamp after it has been placed on the document, or by writing across the stamp and the document, so that the writing appears on both sides of the attached stamp. Had either of these courses been followed, even though the stamp might have dropped off,

as the appellant has contended, the perforation or the writing would have remained on the document itself, as proof that the statute had been obeyed. In the absence of such proof, we can only uphold the position taken by the appellee in his motion. We have over and again frowned upon dismissing cases without going into their -merits, and we have only dismissed when there was legal cause, and when there was no other alternative. In this case pure negligence compels dismissal in a case involving a large sum of money. During the argument appellant's counsel stressed the point

of a case of such magnitude being dismissed for the want of a twenty-five cent stamp on the affidavit. The Court cannot concern itself with sums of money involved in litigation; the law will apply with equal force and effect in the dismissal of a case involving a large sum, as it would for a small amount, so long as in either case the ground for dismissal was dictated by the laws of the land. As much as we would have liked to go into the merits in the case we are prevented from doing so. The motion is, therefore, granted, and this case is dismissed with costs against the appellants. And it is so ordered. Motion to dismiss appeal granted.

In re Coleman and Brownell [1954] LRSC 1; 11 LLR 350 (1954) (22 January 1954)

In re S. DAVID COLEMAN and NETE SIE BROWNELL, Counsellors at Law, Respondents.
PETITION FOR REMISSION OF SUSPENSION FROM PRACTICE OF LAW.

Argued December 17, 1953. Decided January 22, 1954. Under the Constitution the Supreme Court determines whether an order suspending counsellors from practice of law should be remitted.

Petitioners were adjudged in contempt of this Court and thereupon were suspended from the practice of law for three years. In re Coleman, II L.L.R. 35o (1953) After five months petitioners, supported by the Liberian National Bar Association, petitioned this Court to remit the remainder of the period of suspension. The sentence of suspension was reduced to one year from the date of the judgment of contempt. MR. JUSTICE DAVIS delivered the opinion of the Court.
At the last March term of this Court it became our painful duty to sit in judgment upon two of the oldest and most outstanding counsellors of this bar, Nete Sie Brownell and S. David Coleman. In re Coleman, II L.L.R. 35o (1953) . And while it was a duty the performance of which afforded us no pleasure, nevertheless, in upholding the majesty of the law and vindicating the honor and dignity of this Court, we felt that we were doing nothing more than what we had been sworn to do; and this we did with malice toward none, but with firmness in the right as God gave us to see the right. In our decision we adjudged these counsellors guilty of contempt of Court, and imposed upon them a penalty of three years of suspension from the practice of law. The decision in this case called forth enormous comment; and, throughout the country, there were discussions

assail them by direction or indirection,

subject to an appeal to the court in banc upon such terms as he may fix. But a justice may waive the exercise of this right and send the matter to the court, as proceedings for contempt involve the very existence of the court. Blackstone says : 'Laws without a competent authority to secure their administration from disobedience and contempt would be in vain and nugatory.' (4 Bl. Com. 286.) It is for this reason, namely, the preservation of the integrity of the courts and the orderly administration of justice, that there have been so few attempts on the part of executives to exercise the pardoning power in cases of contempt; . . ." In the present case, Mr. Justice Barclay, presiding in chambers, was informed in a petition praying for the issuance of a writ of mandamus, that, although a mandate had been issued and sent down to the judge of the Circ.uit Court of the Sixth Judicial Circuit, Montserrado County, execution thereof had been prevented by the actions of Counsellors Nete Sie Brownell and S. David Coleman, who, on behalf of Isabella and Olivia Karnga, had filed injunction proceedings to prohibit the said execution of the said mandate. The respondents were accordingly cited to appear and show cause why the writ prayed for should not be granted. They duly appeared and filed returns, annexing thereto a copy of a petition for rehearing and reargument of their ejectment action, Karnga v. Williams, II L.L.R. 000 (1952), for the obvious purpose of arguing the said petition before this Court and of thereby circumventing our rule controlling the rehearing of such a petition. Mr. Justice Barclay, considering this an effort to hinder the administration of justice and to circumvent the rules of this Court, summoned respondent Beysolow for neglecting to enforce the said mandate. The complaint in the injunction proceeding, as well as the returns filed by Counsellors Brownell and Coleman

in the mandamus proceeding, clearly demonstrate the improper purpose with which these proceedings were instituted. The parties, Isabella and Olivia Karnga, two intelligent women, not only followed the legal advice of their counsellors, but also, in their own behalf, signed the affidavit attached to the complaint in the injunction proceedings which, in the opinion of this Court, constitutes contempt. In In re Ricks, i New Ann. Ser. 61 (1934), involving contempt, this Court declared: "Contempt of court as defined by the best authorities the world over is, inter alia, the despising of the authority, justice or dignity of the court. "He is guilty of contempt, whose conduct is such as tends to bring the authority and administration of the law into disrepute and disrespect, or whoever interferes with, or prejudices parties litigant against their counsel. "It is specifically laid down as the duty of all officers of courts to maintain the respect due to courts of justice, and any breach of this duty is a contempt for which they should be held accountable." Judge Beysolow admitted his error and prayed forgiveness, which attitude considerably mitigated his offense. Respondents Isabella Karnga and Olivia Karnga were represented in the returns of Counsellor Nete Sie Brownell and in the returns of Counsellor S. David Coleman. Each of these lawyers filed separate returns, the one vehement

and defiant, the other with a softer pedal. Since they so appeared and filed returns and briefs, they duly submitted to the jurisdiction of the Court. The imputation in the dissenting opinion of our colleague, Mr. Justice Shannon, that Counsellor Brownell did not have his day in this Court, is void of legal merit, particularly since, in Clark v. Barbour, 2 L.L.R. 15 (1909), this Court has held that we will decide only such issues as are joined between parties and set forth in pleadings. Moreover it

is well settled that this Court has the option of allowing or disallowing oral argument after the filing of the written pleadings upon which the issues are joined. Counsellor Coleman insisted that he did not intend to prevent the execution of the mandate, and that his object in instituting injunction proceedings was merely to prevent the sheriff from interfering with lands not concerned in the litigation ; and he expressed so-called regrets. He failed to show, either by general or by specific description, what lands he referred to. Considering his lengthy practice of law, it is difficult for us to believe that he did not know what would be the result when he set the circuit court in motion by injunction proceedings to prevent the execution of the mandate of this Court. Counsellor Brownell, on his part, filed voluminous returns, defiant and threatening. We shall refer him to the case of In re Ricks[1934] LRSC 7; , 4 L.L.R. 58, i New Ann. Ser. 61 (1934), where the then Mr. Justice Russell, speaking for the Court, stated (at 4 L.L.R. 64) : "This present Bench regrets exceedingly, that it should be forced by circumstances at this, its first sitting since its induction into office as the Supreme Court of the Republic of Liberia, to be called upon to discharge the painful duty of passing upon the misconduct and unprofessional actions of counsellors of this bar; but as we are sworn to protect the Constitution laws of this Republic, we can only do so with our eyes blinded to sympathy and only wide awake to justice, with a firm determination of beginning our career just as we hope to end it." Never in the history of this Supreme Court has such a baseless attack been made upon it by counsellors of its bar with the transparent object of bringing the Court into disrepute, disregard, and dishonor, hindering the administration of justice, and belittling the authority, justice and dignity of this Court. We would be recreant to our trust to tolerate this.

Since our colleague, Mr. Justice Shannon, has refused to sign the judgment of the majority in this case, and has prepared a dissenting opinion, we proceed to discuss the reasons assigned by him for withholding his signature. He states in substance, that, although he concurs with the view that all the parties charged with . contempt herein are guilty thereof, he finds himself unable to sign the judgment for the following reasons. First, he is unwilling to have the counsellors suspended, but

feels that they should be fined in the sum of two hundred dollars each. Second, he is of the opinion that Counsellor Brownell did not have a fair opportunity to be heard. Because Counsellor Brownell informed this Court that his son was ill in Europe, and asked that the case be continued, Justice Shannon feels that this Court should have waited until Counsellor Brownell's state of mind changed before proceeding to adjudicate the matter. With respect to our distinguished colleague's first objection our opinion is that the professional misconduct of Counsellors Brownell and Coleman merits no less a penalty than suspension; for they sought not only to prevent the enforcement and execution of this Court's mandate, but also to disturb, abrogate, and disrupt the very constitutional fabric of this country. With respect to our learned colleague's second objection our records show that Counsellor Brownell was afforded every opportunity to be heard, but that he, in his usual defiant attitude and manner, refused to appear, and did not even acknowledge receipt of this Court's citation. He had, however, already filed his separate brief and returns, thereby submitting to the jurisdiction of this Court. We therefore heard the case upon the brief submitted. If Counsellor Brownell had considered his son's illness, as mentioned in his letter to this Court, a ground for continuance, he should have filed a motion for such continuance. In any event he should not have first disobeyed this Court's notice commanding him to appear, and then,

after the case had been adjudicated, ask an opportunity to appear and defend. The course suggested by Mr. Justice Shannon, our colleague, would, in our opinion, condone the subversion of constituted authority. The respondents are therefore adjudged guilty of contempt of this Court. We have seen fit to impose a small fine of twenty dollars upon respondent Beysolow, to be paid within fourteen days from the date of this judgment; upon his failure to pay, the clerk of this Court is hereby ordered to issue a commitment directed to the marshal of this Court for the said respondent to be kept in custody until the said fine is paid. Isabella Karnga and Olivia Karnga are each to pay a fine of one hundred dollars within thirty days from the date of this judgment; upon their failure to pay, the clerk of this Court is hereby ordered to issue a commitment directed to the marshal of this Court for them to be kept in custody until the said fine is paid. Counsellors Nete Sie Brownell and S. David Coleman have openly violated their professional responsibilities and have acted in contempt of this Court. They are therefore suspended, for three calendar years certain, from all participation in the rights, privileges, dignities, and emoluments of members of the bar of this Court, and of all courts of this Republic, commencing May 29, 1953, and ending May 29, 1956, with costs of these proceedings against them to be paid within thirty days from today; and it is hereby so ordered.
Guilty of contempt.

MR.

JUSTICE SHANNON, dissenting: This dissent would not have been necessary had consent been given to engraft my position on the majority opinion, since I do not disagree with the conclusions of the majority as to the culpability of the parties ; my disagreement is solely as to the proper degree of punishment.

To make my position clear I shall state the facts succinctly as follows: This Court dismissed an appeal in an ejectment case between the Shavers heirs, and the late Abayomi Karnga and sundry others, and ordered that the trial court resume jurisdiction and enforce its judgment in favor of the said Shavers heirs. The lower court ordered the issuance and service of a writ of possession. To make impracticable the service of this writ of possession, Isabella Karnga and Olivia Karnga, parties substituted upon the death of their husband and father respectively, through counsel, Nete Sie Brownell and S. David Coleman, instituted injunction proceedings in the said lower court before respondent Beysolow, presiding by assignment. When the complaint with the application for the granting of the writ was submitted to respondent Beysolow he pointedly told the parties, through their counsel, that he did not see any grounds on which he could properly issue a writ aimed to frustrate enforcement of a judgment of the Supreme Court. Nevertheless he subsequently allowed himself to be inveigled into allowing argument of a motion for an order to show cause why the said writ should be issued. At this stage the opposite side moved in this Court before Mr. Justice Barclay, presiding in chambers, and prayed mandamus to compel the judge of the trial court to proceed to the enforcement of the judgment in ejectment. In consequence of the unfair and unprofessional imputations made by counsel, respondents in these proceedings, it became necessary to cite them to appear and show cause why they should not be held in contempt of Court. This order ran against respondents Beysolow, Isabella Karnga, Olivia Karnga and counsel, Nete Sie Brownell and S. David Coleman. The returns of respondent Beysolow, after giving the facts in the case, particularly as affecting him, made an

unreserved concession of his wrong; and hence the degree of the fine was limited. For reasons not shown in the record but presented orally in Court, counsel elected to file separate returns pro se, and at the same time represent Isabella Karnga and Olivia Karnga. This complicated the situation for these two respondents, since the said returns of counsel were divergent in points of defense. Needless to say, these returns were not considered sufficient to purge the said respondents of 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 embarass or prevent the due administration of justice." 6 R.C.L. 488, Contempt, § i. Having set forth the grounds of my agreement with my colleagues in adjudging the respondents guilty of contempt, I shall endeavor now to explain why I disagree with them as to the measure of punishment to be inflicted upon the two counsellors.

Whilst it is undeniable that courts should always be zealous and alert in the preservation of their dignity, nevertheless, in the meting out of punishment for infringements upon such dignity, there should be no room for any speculation to the effect that such punishment arises from wrong done to individual members of the Court. I am of the opinion that the proper punishment for

these two lawyers is not suspension, but rather fines in amounts much larger than imposed upon the lay respondents herein.

I also deem it necessary to mention that I opposed deciding the matter of Counsellor Nete Sie Brownell without an opportunity on his part to appear and defend in person. Counsellor Brownell received distressing and disturbing news of the serious illness of his son in London, and, because of this, asked for a continuance of the hearing of the matter against him. I do not know if there is any record of a denial of this application. So far as I know Counsellor Brownell expected an opportunity to be called to appear and defend his conduct in person. I gather this from a letter which he addressed to the Chief Justice. This opportunity was never afforded.

An attorney charged with contempt of court should be afforded an opportunity to appear in person to disprove the charge or show mitigating circumstances. In the absence of Counsellor Brownell we were, perforce, compelled to decide the case against him upon the record only; and this constitutes an additional reason why his punishment should not be suspension. I thus concur with the judgment herein in every respect except for suspension of the two counsellors.

Richards v Parker et al [1954] LRSC 6; 11 LLR 396 (1954) (22 January 1954)

SAMUEL T. A. RICHARDS, Petitioner, v. PHILIP C. PARKER, Sr., Commissioner of the Commonwealth District of Monrovia, by C. ABAYOMI CASSELL, Attorney General, and S. RAYMOND HORACE, Solicitor General, HENRY B. DUNCAN, Secretary of Public Works and Utilities, and His Honor J. DOS SEN RICHARDS, Resident Judge of the Sixth Judicial Circuit, Montserrado County, Respondents.

APPEAL FROM THE CHAMBERS

OF MR. JUSTICE SHANNON.

Argued November 30, 1953. Decided January 22, 1954. Prohibition will not lie where it is not shown that the lower court is exceeding its jurisdiction.

A bill in equity for cancellation of a lease agreement was filed by the Republic of Liberia. Petitioner herein unsuccessfully petitioned Mr. Justice Shannon in Chambers for a writ of prohibition. On application to this Court en banc, petition denied.
Samuel T. A. Richards, petitioner, pro se. The Solicitor General for respondents.

MR. Court.

JUSTICE

BARCLAY delivered the opinion of the

S. T. A. Richards, petitioner herein, entered into a lease agreement with the Commissioner of the Commonwealth District of Monrovia for a small isolated tract of land, or rather little shop, located at the corner of Water and Randall Streets in the Commonwealth District of Monrovia, for a period of thirty years certain, commencing July 1, I951. The agreement was probated and registered. He occupied and erected a small concrete store thereupon, but,

on May 26, 1952, he received a letter from the Secretary of Public Works and Utilities requesting him to vacate the premises since the building would have to be demolished for widening of the street because of increased traffic. Petitioner replied, pointing out the inconsistency and impracticability of conforming with such a sudden and surprising demand. Thereafter the Solicitor General of the Republic filed a bill in equity for the cancellation of petitioner's lease agreement in the Circuit Court of the Sixth Judicial Circuit, Montserrado County at its September, 1952, term. Petitioner, then respondent, was required to file his formal appearance on July 14, 1952; but before the time allowed for the filing of the aforesaid appearance had expired, petitioner, respondent below, learned that a further action of injunction was being instituted against him in order to restrain and prevent his entering in and upon his store premises, and that other suits were being planned. Petitioner then applied to Mr. Justice Shannon in chambers for a writ of prohibition. So far as we know, and we have not been contradicted by petitioner, the only action filed in the court below is the bill in equity for cancellation which has not been adjudicated, since the merits thereof are not before us and are not embraced in this opinion. Mr. Justice Shannon denied the petition on the ground that prohibition cannot lie to restrain a lower court from hearing and deciding a matter unless it is shown that said court either is without jurisdiction or is acting in excess and abuse

of its jurisdiction. He declared : "In this case, want of jurisdiction, or its excess or abuse, has not been made an issue and consequently it must be assumed and that correctly, that said court has jurisdiction and therefore should not be disturbed. 2 B.L.D. "Prohibition" ; so C.J. 663-67, Prohibition, § 20; 32 Cyc. 604, Prohibition, § c; 22 R.C.L. 19-22, Prohibition, §§ 18-20; 42 Am. Jur. 156, Prohibition, §§ 18-2o."

In their second count respondents contend that, under the circumstances, and in law, petitioner is without right to institute these proceedings until and unless he can show that he has applied, without avail, to the lower court for relief from the grievances complained of in his petition, and that, since this was not done, as the petition and other records will show, the petition has no merit. 42 Am. Jur. 172, Prohibition, § 38; 22 R.C.L. 27, Prohibition, § 27. On perusal of the petition we find that, in Count "3" thereof, petitioner states the grievance upon which he applies for the issuance of a writ of prohibition. It reads as follows : "That despite the instruction contained in the President's letter (Exhibit `A-2') , granting sixty days, as communicated by the Secretary of Public Works and Utilities ; and notwithstanding that S. Raymond Horace Solicitor General of Liberia knew the facts of these communications, the Secretary of Public Works and Utilities ignored same, and, apparently with a view to harassing, embarrassing, distressing, inconveniencing, impeding and defeating petitioner's chances of making a fair and honest living, and thus subjecting him to serious damage and loss, contrary to the sound principles of law and equity, has maliciously planned a mutiplicity of suits against your humble petitioner, and, in the furtherance of said mischievous plan, has already instituted the first of said actions, namely a bill in equity for cancellation of agreement; and your humble petitioner further understands that said respondents intend and are about to institute injunction proceedings and thereto a case of ejectment against petitioner. And all of which actions are designed ostensibly for the purpose of distressing, hampering, impeding, defeating and ultimately destroying petitioner's commercial activities, thereby rendering it impracticable for him to carry on fair trade and thus make an honest livelihood as a citizen of this Republic in corn,

mon with other citizens and in the free exercise of his organic rights." Respondents denied that they were planning to harass, embarrass or distress petitioner with the suit and action complained of, and also denied that the petition alleged facts sufficient to warrant granting the writ. There is no attack herein upon the jurisdiction of the court in any way, manner or form; nor does the petition charge that the court was proceeding, or had attempted to proceed irregularly. Parker v. Worrell, 2 L.L.R. 525, 526 (1925) ; Gittens v. Yanfor, io L.L.R. 176 (1949). We may add, in agreement with what has been expressed by Mr. Justice Shannon

in his opinion, that all the issues submitted by the petitioner are such as could be considered in connection with the issue of the cancellation of lease agreement or in injunction proceedings, if properly raised. With reference to the question of a multiplicity of suits, as raised by petitioner, we are of the opinion that, where the court has jurisdiction of the subject matter, the fact that the relator may be subject to a multitude of prosecutions is not a ground for a writ of prohibition. 22 R.C.L. 24, 25, Prohibition, § 23 ; Annot., "Prohibition to prevent numerous unfounded prosecutions for alleged violation of statute or ordinance." 37 L.R.A. (N.S.) 448 (1912) . We are therefore in full accord with the opinion of Mr. Justice Shannon, and see no reason why same should be in any way disturbed. The petition is denied with costs against petitioner; and it is so ordered.
Petition denied.

Richards v Barclay et al [2001] LRSC 30; 40 LLR 708 (2001) (21 December 2001)

A. W. MORGAN, represented by his Agent, MASSA MORGAN-RICHARDS, Appellant, v. ISAAC BARCLAY, Executor of the Estate of the Late AUGUSTA BARCLAY, and PRINCE BARCLAY, Appellees.

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

Heard: October 17, 2001. Decided: December 21, 2001.

1. No postponement of a trial shall be allowed to obtain witnesses unless it is shown to the satisfaction of the court that (a) the proper due diligence has been employed to secure their attendance, and (b) their testimony will be material, relevant and competent.

2. A motion for continuance based upon the absence of a material witness should, if supported by an affidavit of the moving party, he granted for at least one term unless the court reaches the conclusion that said motion is made only to baffle the suit or defeat justice, or the party in opposition thereto will admit the facts that the absent witness is expected to prove.

3. A request for the attendance of a material witness cannot be said to be intended to either defeat justice or baffle a case where title to the property in litigation is in dispute and is claimed by both parties.

4. A motion for continuance should be granted upon a showing that a party who is a material witness would be physically unable to attend the proceedings in question.

5. A motion to continue a case based on the absence of a material witness or other cause is addressed to the discretion of the court, but an improper or unjust abuse of such discretion may be remedied by the superior court.

The appellees, executor of and beneficiary under the Last Will and Testament of the late Augusta Barclay, instituted an action of ejectment against the appellant, alleging that he was wrongfully withholding the property of the estate and depriving them of the use thereof. The appellee, in response to the complaint, claimed that he had purchased the said property from the beneficiary of the estate whom he alleged had come into ownership of the property by virtue of an executor's deed issued to him by the executors of the estate.

Prior to the called of the case for trial, the appellant filed a motion for continuance, contending that he was his own material witness, that his presence was required to defend against the suit, that he was ill and could not attend the trial in the term in which the case had been assigned, and that he therefore required the continuance of the case to another term of the court. The trial court denied the motion, stating that the appellant had appointed his daughter as his attorney-in-fact and that she was therefore capable of defending him. A trial was had, a verdict returned against the appellant, and judg-ment rendered thereon.

On appeal to the Supreme Court, the Court ruled that the trial judge had erred in denying the appellant's motion for continuance. The Court noted that while the granting or denial of a motion for continuance is within the discretion of the trial court and should be denied where the court concludes that the purpose for the request is to baffle the suit or defeat justice or the opposing party admits of the facts sough to be proved by the absent witness, the motion should be granted where the testimony of the witness is material, relevant and competent, especially where the case involves a dispute as to title to property and evidence is presented regarding the illness of the witness which renders him physically unable to attend the trial at the time. The Court observed that in the Liberian jurisdict-ion it has been the practice to grant at least one continuance, and that a trial court had abused its discretion when it denied the appellant's request for continuance under the circumstan-ces presented in the instant case where the appellees had denied the facts which were to be proved by the witness. The Court therefore reversed the judgment of the trial court and ordered a new trial.

B. Anthony Morgan of the Morgan Grimes and Harmon Law Firm appeared for the appellant. Francis Y. S. Garlawolo and F. Musah Dean, Jr. appeared for the appellees.

MR. JUSTICE JANGABA delivered the opinion of the Court.

The brief history of this case is, as follows:

The appellees herein, Isaac Barclay, the executor designated in the Last Will and Testament of the late Augusta Barclay, and Prince A. Barclay, sole beneficiary under the said Will, instituted an action of ejectment against the appellant, A. W. Morgan, on the 4th day of February, A. D. 1998, in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County. The certified records in the case showed that the premises, subject of the litigation, were purchased by Augusta Barclay from her sister, Elizabeth Barclay Cooper, who had executed a warranty deed in favour of Augusta Barclay. On the 1st day of July, A. D. 1959, Augusta Barclay made and entered into a lease agreement with Salami Brothers for the lease to the latter of the property which comprised two vacant lots. The lease agreement provided for a certain lease period of twenty (20) years, with an optional period of another twenty (20) years. The lessee, Salami Brothers, subsequently constructed a building on the subject property. However, prior to the death of Augusta Barclay on July 10, 1967, she executed a Last Will and Testament in which she named Isaac Barclay as executor and her minor grandson, Prince Barclay, as the sole beneficiary of her estate.

In the complaint, the appellees claimed ownership to the subject premises by virtue of the Last Will and Testament of the late Augusta Barclay. The appellees also alleged that they were out of the bailiwick of this Republic during the period between the 1980's and 1990's due to the political upheaval in Liberia. They further alleged that Appellant A. W. Morgan, had illegally, unauthorizedly and unwarrantedly entered upon and took possession of the said premises, and had refused to surrender the same to them despite several demands made to him in 1996, 1997 and 1998 to vacate the said premises.

On the 16th day of February, A. D. 1998, Appellant Morgan filed an eight-count answer, along with a one-count motion to dismiss the appellees' complaint, asserting that the appellees lacked the capacity to sue because of the lack of any title or right of possession to the said property being vested in the appellees. The appellant conceded the fact that Isaac Barclay was designated and qualified as executor of the Augusta Barclay Estate and that Prince Barclay was named sole beneficiary in the Last Will and Testament of the late Augusta Barclay. The appellant contended, however, that Isaac Barclay, the named executor in the aforesaid Will, had executed a warranty deed to Prince A. Barclay in 1976, thereby transferring the 16th Street, Sinkor, property to the beneficiary in fee simple. The appellant also alleged that Prince A. Barclay, the beneficiary, had sold the subject property to the Sinkor Lease Hold Company whose shareholders are appellant and his brother, Lafayette K. Morgan. In addition, the appellant alleged that the latter sale was done with the full knowledge of Isaac Barclay who had witnessed the deed conveying the subject property to the Sinkor Lease Hold Company. The appellant alleged moreover that the company

had subsequently purchased the leasehold rights to the property and paid off the balance loan when Salami Brothers defaulted on the loan. The appellant claimed that it was the proceeds from this transaction that were used to build the first building on the **land**, and that by virtue of the foregoing the Sinkor Lease Hold Company possessed owner-ship to the disputed property.

The appellees filed a twelve-count reply on the 27th day of February, A. D. 1998 denying that Co-appellee Isaac Barclay, the executor named in the Last Will and Testament of Augusta Barclay, ever executed a deed to Co-appellee Prince A. Barclay, beneficiary of the property, giving him fee simple ownership thereto. Co-appellee Prince A. Barclay also denied ever conveying the property to Sinkor Lease Hold Company, whose shareholders were Alford W. Morgan and Lafayette K. Morgan. Additionally, in their resistance to the motion to dismiss, the appellees contended that they had the capacity to sue by virtue of the Last Will and Testament of the late Augusta Barclay. Pleadings in the case rested with the filing of the reply and the resistance.

During the September Term, A. D. 1998 of the trial court, the assigned circuit judge, His Honour Wynston O. Henries, heard and denied the motion to dismiss on September 24, 1998. The appellant noted exceptions to the ruling and thereafter filed a motion for the sequestration of rent. The motion was resisted but was granted by the trial court. The law issues were thereafter disposed of and the case was ruled to trial on mixed issues of law and facts.

On the 13th day of December, A. D. 2000, counsel for the appellant filed a motion for continuance, praying the trial court to continue the matter to the next term of court due to the absence of his material witness, Alford W. Morgan, the principal defendant in the case in the trial court. In their resistance to the motion, the appellees contended that the appellant was represented by his attorney-in-fact, Massa Morgan-Richards, daughter of the appellant. The trial judge denied the appellant's motion for continuance on the ground that Appellant Alford W. Morgan had appointed his daughter, Massa Morgan-Richards, as his attorney-in-fact to transact all matters concerning the property.

The jury trial in the case was subsequently commenced with the production of evidence by the appellees. At the conclusion of the appellees' evidence in toto, the appellant filed a motion for judgment during trial. The motion having been resisted and denied, the agent of Appellant Morgan then took the stand, testified, and was cross-examined. However, while the trial was proceeding, counsel for appellant filed in the office of the Clerk of this Court a petition for a writ of certiorari to review and correct the ruling of the trial judge denying the motion for continuance. Mr. Justice Morris, then presiding in the Chambers of this Court, denied the petition on ground that it was belatedly filed. He nevertheless ordered the lower court to permit counsel for the appellant to subpoena his material witness, in the person of Alford W. Morgan, and to subsequently proceed with the trial of the case in keeping with law. In obedience to the directive of the Chambers Justice, the trial court subpoenaed the appellant, requesting him to appear before the court on January 27, 2001. Alford W. Morgan, the appellant, could not appear, and

therefore sent a fax message to the court requesting it to postpone the trial of the case to the next term of court due to his illness in the United States of America. The trial judge ignored the request and proceeded with the trial. At the conclusion of the evidence, the trial jury brought a verdict in favor of the appellees. The appellant thereafter filed a motion for a new trial, which was resisted by the appellees and denied by the court, which then confirmed the verdict and rendered judgment thereon. The appellant excepted to the judgment and appealed therefrom to this Honourable Court upon a sixteen-count bill of exceptions.

This Court deems count 7 of the bill of exceptions to be the only count worthy of its attention and therefore hereunder quotes the same verbatim for the benefit of this opinion. The count states:

"Because within the eight days allowed, supra, counsel for defendant endeavored to have the material witness come to Liberia, but defendant, finding that he could not come, sent a fax message to Your Honour giving reasons why he could not come to Liberia before March 2001, and praying for postponement until the March Term of court, but Your Honour, having received the said fax message from defendant's material witness, denied the request, thereby strangulating defendant from testifying in his own behalf; to which defendant there and then excepted."

Two (2) issues were raised by the appellant in his brief and argued before this Court. We deem only the first issue to be determinative of this case. In regard to the said issues, the appellant's counsel contended that the defendant in the trial court, Alford W. Morgan, was his own material witness in the case and that no other person could fully and satisfactorily present the proof that he wanted or desired to establish in his own behalf. The appellant's counsel also argued that an agent of a party to a case is not necessarily a material witness for the principal, and that having an agent is not a legal ground upon which a motion for continuance should be denied.

The appellees, for their part, raised and argued three (3) issues before this Court. However, we consider only the third issue to be relevant to the determination of the case. With regard to the said issue, the appellees contended that a matter involving real property cannot indefinitely be postponed due to the absence of the appellant after he had issued a power of attorney to another person to act in his behalf. They maintained that counsel for the appellant had failed to prove the materiality, relevance, and competence of the subpoenaed witness.

The facts and circumstances enumerated above present only one salient issue for determination. That issue is whether or not the trial judge committed a reversible error when he denied the appellant's motion for continuance.

We begin our determination with an examination of the appellant's motion for continuance, filed on the 14th day of December, A. D. 2000 and denied by the trial judge on the 27th day of December A. D. 2000. We note that the denial of the motion was prior to Appellant Morgan's message of January 23, 2001. Counts 1 and 2 of the said motion, quoted verbatim hereunder, state:

"1. That Alford W. Morgan, who is the defendant and also a material witness in his own behalf in this case, was without the Republic of Liberia at the time this case was instituted and is still out of the Republic and in the United States of America, and in the circumstances will be unable to attend the trial and to testify in his own behalf if the trial was to proceed on the date assigned, and therefore defendant hereby prays for a continuance of this cause to the ensuing term of court to enable the defendant/material witness to return to Liberia and to testify in his own behalf. See writ of subpoena testificandum returned by the sheriff, which is part of the records of this case.

2. That defendant's intent is to prove by the testimony of defendant, Alford W. Morgan, that he (Alford W. Morgan) is the owner of the property, subject of these proceedings, which he acquired by bona fide purchase from the self-same Prince Barclay, one of plaintiffs in this case; and that plaintiffs, by this action, are attempting to fraudulently deprive defendant of the said real property."

In count 1 of the motion for continuance, the appellant requested the trial court to postpone the hearing of the case to the ensuing term of court due to the inability of his material witness to attend the trial and to testify on his own behalf, his absence being evidenced by the writ of subpoena testifican-dum returned by the sheriff. Count 2 of the motion stated that the defendant intended to prove by the presence of the material witness that he was the bona fide owner of the subject property which was acquired by purchase from Co-appellee Prince Barclay.

In the ruling on the motion for continuance, His Honour Varnie Cooper denied the same, stating as the grounds there-for that said motion was addressed to his sound discretion, that the then defendant, Alford W. Morgan, was represented by his daughter as his attorney-in-fact, and that the motion was filed purposely to delay the hearing of the case.

In paragraph 1 of the fax message addressed to the trial judge, the appellant informed the trial judge that his physical presence was necessary. He also informed the judge that the case was "high profile because it relates to a parcel of **land**" that he had purchased 24 years earlier, and that he could not be present at the time the case was scheduled for hearing on January 26, 2001 due to his illness. Hence, he requested the trial judge to defer hearing of the case to the next term of court, at which time he would be present. The judge also ignored the request of the appellant.

Our Civil Procedure Law provides: "No postponement of a trial shall be allowed to obtain witnesses unless it is shown to the satisfaction of the court that: (a) proper and due diligence has been employed to secure their attendance, and (b) their testimony will be material, relevant, and competent." Civil Procedure Law, Rev. Code 1:21.5., Adjournment of Trial to Obtain Witness.

The language of the above quoted statutory provision clearly shows that a trial court shall allow the postponement of a trial purposely to obtain a witness subsequent to a proper and diligence effort to secure the attendance of such witness, and that the testimony of the said witness should

be material, relevant and competent. In the case Snetter v. Snetter this Court held that "a motion for continuance based upon the absence of a material witness should, if supported by an affidavit of the moving party, be granted for at least one term unless the court reaches conclusion that said motion is made only to baffle the suit or defeat justice or the party in opposition thereto will admit the facts the absent witness is expected to prove." 2 LLR 372 (1920), Syl. 2, text at 373-374.

In the case at bar, the motion for continuance requested the trial court to defer hearing of the case to the next term of court so as to enable the appellant, who was the material witness, to appear and testify on his own behalf in establishing his owner-ship to the disputed subject property. This Court holds that the request of the material witness could not in any way have been intended to defeat justice or to baffle the case since title to the property in litigation was claimed by both parties and therefore in dispute. It is our opinion that the testimony of the material witness was material, relevant and competent in establishing his ownership to the disputed property, and that his request for continuance was to enhance the ends of justice. The appellant's fax message to the trial judge also indicated his inability to return to Liberia for the trial of the case on the scheduled date due to illness. This Court has held that "the motion for continuance should be granted upon a showing that a party who is a material witness would be physically unable to attend the proceedings in question. Samuel v. Samuel, 13 LLR 27 (1937), text at page 29. We therefore disagree with the ruling of the trial judge denying appellant's request, contained in his fax message to the trial judge, indicating his physical inability to return to Liberia and to proceed to trial. In the case Wright v. Tay, [1952] LRSC 10; 11 LLR 164 (1952), Syl. 1 & 2, citing Appleby v. Freeman, reported in 2 LLR 272 (1916), text at 274, this Court held: "A motion to continue a case based upon the absence of a material witness or other cause is addressed to the discretion of the court, but an improper and unjust abuse of such discretion may be remedied by the superior court. The practice in Liberia is to grant the continuance for one term at least, unless the opposite party will admit the facts to be proved by the witness."

We uphold our decision in those cases, and reaffirm that a motion for continuance is addressed to the sound discretion of the trial judge. This Court will, however, remedy an improper and unjust abuse of a discretion in denying the motion where the material witness has shown to the court a physical incapacity that prevents him attending and proceeding to trial, as in the instant case.

Wherefore, and in view of the foregoing, the ruling of the trial judge denying the motion for continuance is hereby reversed and the case remanded for a new trial during the March, A. D. 2002 Term of Court. The Clerk of this Court is hereby ordered to send a mandate to the lower court ordering the trial judge presiding therein to resume jurisdiction over this cause and proceed with the trial thereof de novo. Costs are to abide the final determination of the case. And it is hereby so ordered.

Judgment reversed.

Dunbar v Farhart [1975] LRSC 53; 24 LLR 427 (1975) (31 December 1975)

TILMAN DUNBAR, Appellant, v. DAVID FARHART, Appellee
APPEAL FROM THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued November 5, 1975. Decided December 31, 1975. 1. The function of a writ of injunction is to afford preventive relief and not redress for a wrong already committed. 2. Courts cannot grant injunctive relief to merely allay fears. Persons seeking relief must first establish that the threatened acts will in all probability be committed. 3. A person who has fully warranted title to realty to a purchaser and his successors, cannot thereafter obtain injunctive relief against one of such successors, for he who seeks equity must do so with clean hands.

Appellee was the purchaser of realty which he acquired from one of the appellant's successor grantees.
In the sale to the grantee purchasing the property from him, appellant had fully warranted the undisturbed ownership of the property, warranting to defend the purchaser, his heirs, successors and assigns against the claim of any person asserting a right to the property.
After the purchase of the property, appellee began the construction of a building across a public access road, which would greatly inconvenience other property owners in the area. An injunction was sought by appellant, to restrain appellee from continuing further work. The lower court denied the injunction and an appeal was taken therefrom. The position of the Supreme Court essentially, was that the appellant could not now seek equity when he had warranted title to the property and the undisturbed enjoyment thereof in all its aspects to successors of his grantee, of whom the appellee was one.
The judgment was affirmed. Appellant, pro se.M.Fahnbulleh Jones for appellee.
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MR. JUSTICE AZANGO

delivered the opinion of the

Court. The record certified to us discloses that during the year 1970, appellee commenced the construction of a building on property he had purchased from Lafayette Morgan, which was formally a part of appellant's plot of land purchased from the Republic of Liberia in 1948, and sold to Gray Johnson, who subsequently sold the same property to Miss Adelaide Morrie. Appellee commenced the digging of his foundation across the road which had been used in the area by appellant and the public for a period of more than zo years, without making available to the public another road. The road also served as an access road leading to the main highway going to Elwa village and Roberts International

Airfield. Appellant sought unsuccessfully by peaceful means to persuade appellee to relocate his foundation on his plot of land so as not to interfere with the road's use. Under the circumstances, appellant instituted injunction proceedings in order to enjoin appellee from closing the road. Pleadings progressed to an amended reply, which was followed by appellee's motion to dissolve the injunction suit and a resistance thereto. Pending the disposition of the motion, appellant filed an information before the trial court, informing the court that appellee had disobeyed the writ of injunction and should be held in contempt. The case came up for trial before Judge Roderick Lewis, who was assigned to preside over the December 1970 Term of the Civil Law Court. The judge elected not to entertain the information but to pass on the motion to dissolve the injunction and the resistance thereto. The injunction was dissolved, to which exceptions were noted and an appeal announced. Repeatedly, this Court has held that the function generally of a writ of injunction is to afford preventive re-

lief and not redress for wrong already committed. Its power is exercised not for the purpose of punishing a person for some wrongful act which he has committed but rather to prevent the doing of such an act to the injury of another. Johnson v. Russell, [1934] LRSC 32; 4 LLR 221 (1 934) ·

Its object and purpose is to preserve and keep things in the same state or condition and to restrain an act, which if done would be contrary to equity and good conscience ; and it is the appropriate relief when the remedy at law is subsequent to the injury and the effects cannot be adequately compensated. It is also settled that 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.

And under the well-known equitable maxim that "he who comes to equity must come with clean hands," and "he who seeks equity must do equity," of which we shall speak later, 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 already been characterized as the "strong arm of equity." It is settled that courts cannot grant injunctions 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. Authority supports the position taken. "If irreparable injury is threatened and impending to rights of a complainant, an injunction usually will be granted, as it is not necessary to wait for the actual occurrence of an injury which it is shown may be reasonably expected. "However, an injunction will not lie to restrain one

from doing what he is not attempting and does not intend to do, and, a fortiori, an injunction will not issue where it is shown that defendants are without power to accomplish that which it is alleged they are attempting to do. "Injunction will not issue in the absence of an actual or presently threatened interference ; it is not sufficient ground for an injunction that the injurious act may possibly be committed or that injury may possibly result from the acts sought to be prevented ; but there must be at least a reasonable probability that the injury will be done if no injunction is granted ; and not a mere fear or apprehension, since injunctions will not be granted merely to allay the fears and apprehensions of individuals which, it has been said, may exist without substantial reasons and be absolutely groundless. In these circumstances the mere fact that an injunction would not injure defendant will not authorize its issuance, and especially is the principle applicable where the injury is not certain to occur if defendant is not enjoined, and, on the other hand, an injury would certainly occur if the injunction were granted. Also a defendant will not be enjoined from doing an act merely because others are likely to follow his example and thereby cause injury." 43 C. J.S.,Injunctions,§ 21 (1945). Earlier in this opinion we alluded to the principle which states that "he who comes into equity, must come with clean hands"; and "he who seeks equity must do equity." In the instant case before us, the appellant declared in the deed for the property he had sold that for and in consideration of a sum of money paid to him by his grantee, the receipt whereof he acknowledged, he did give, bargain, grant, sell and confirm unto his grantees the property described and that he would forever warrant and defend them, their heirs, executors, adminis-

trators and assigns, against any person or persons claiming any part of the granted premises. Appellant now seeks to restrain appellee from improving the property which was acquired by him through lawful purchase. Under what principle of equity this can be done we fail to see. The warranty referred to the right of the grantee and his successsors who include the appellee, to acquire and possess the absolute and unqualified title to the property described with all the rights incidental thereto. That it related not only to those tangible things of which one may be the owner ; it included the right to acquire, possess and enjoy all aspects of the property consistent with the equal rights of others and the just exactions and demands of the State. The right to undisturbed ownership of property legally acquired is of great importance, for the theory upon which the institution and social structures of the Republic of Liberia rests is the enjoyment of life, liberty, and property. One of the greatest contributions to civilization has been the protection by law of private individuals in the enjoyment

of his property against demands and aggressions of the public. It was because of this right that appellee sought to close down a road that was running through his property. In view of the foregoing, we are of the opinion that the injunction sought by appellant was properly denied by the lower court. The decree of the lower court is hereby affirmed, with costs against appellant. It is so ordered.
zlffirmed.

Center for Law & Human Rights Education et al v MCC et al [1998] LRSC 20; 39 LLR 32 (1998) (5 August 1998)

THE CENTER FOR LAW AND HUMAN RIGHTS EDUCATION, represented by and through its Executive Director, COUNSELLOR BENEDICT F. SANNOH, **THE ORGANIZATION OF LIBERIAN MUSLIM YOUTH**, represented by and through its President, ABDUL WAHAB, et al., Petitioners, v. **THE MONROVIA CITY CORPORATION**, represented by and through its Mayor, HONOURABLE MAXWELL CARTER, Respondent.

DECLARATORY JUDGMENT PROCEEDINGS.
Heard: May 21, 1998. Decided: August 5, 1998.

1. City market is defined as a place open to the general public as purchasers and available to all who wish to offer their wares for sale, including their manufactured goods and agricultural products, making use of stalls, stands or places allotted on payment of fixed rents or fees.

2. Selling of a very limited amount of wares in diverse places, usually adjacent to one's residence, if permissible by the city zoning regulations is not selling in the city market.

3. The petty trading in the neighborhood adjacent to one's residence, where possible, is not the same as selling in city markets, as contemplated by city ordinance no. I, section 11.

4. One who may be prejudiced or threatened by the enforcement of an act of the Legislature may question its constitutionality.

5. A group or organization can also have standing as the representative of its members, provided that it has alleged facts sufficient to make out a case or controversy as if the members themselves had instituted the suit.

6. A mere interest in a problem, no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to render an organization adversely affected or aggrieved for the purpose of giving it standing to obtain judicial review. The group seeking review must have suffered an injury.

7. Before the law can be assailed by a person on the ground that it is unconstitutional, he must show that he has an interest in the question, in that the enforcement of the law would be an infringement on his rights. Assailants must therefore show the applicability of the statute to them and that they are thereby injuriously affected.

8. A statute or ordinance will not be struck down unless plaintiffs are actually aggrieved and prejudiced by its enforcement.

9. Only a real party in interest has the right to question the constitutionality of a statute or ordinance before the court.

10. One who is not prejudiced by the enforcement of an act of the Legislature or ordinance of a City Council cannot question its constitutionality. Absent a showing of injury, actual or threatened, there can be no constitutional argument.

11. The Supreme Court will not strictly adhere to the technical rules of representation, but the nature of the controversy involved and its impact on the citizens, may warrant the Court ruling that people should always assert the constitutional and fundamental rights of freedom, religion and the maintenance of a secular state on behalf of those who are of other religions who are organized on the basis of those religions.
12. The Court, in unique situations, will disregard its usual rule denying standing to raise other rights.

Petitioners herein filed a petition for a declaratory judgment in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, presided over by His Honour Judge Timothy Z. Swope. In the petition, the petitioners sought a declaration from the court that City Ordinance No. 1, which prohibited marketing and trading on Sundays, was unconstitutional since it tended to give preference to the Christian religion over other religious sects, in that it banned marketing on the Christian day of worship. The petitioners substantially averred that the Monrovia City Corporation was motivated by calls from religious leaders of the Christian faith who believed that Sunday is a holy day.

The petitioners comprised three separate groups of persons and institutions: (1) petty marketers who asserted that they did only neighborhood petty trading for a livelihood and for the upkeep and schooling of their children, and that the ban would adversely affect their ability to meet those needs and obligations; (2) the Center for Law and Human Rights Education which asserted that it and its members had interest in the protection of the Liberian people and that any enforcement of the ban would adversely affect its protection of its members and the Liberian people, especially as regard equality in the society; and (3) several Muslim organizations which contended that the ban tended to give preference to Christianity over Islam, that the ban affected its membership, many of who were marketers, that it violated the constitutional provision on the separation of state and religion, and that it violated the provision prohibiting the government from creating or promoting any state religion.

Subsequently, the petitioners filed a motion for preliminary injunction and a temporary restraining order, which was granted. In its returns, filed simultaneously with a motion to vacate the temporary restraining order, the respondent (a) challenged the right of the Center for Law and Human Rights Education to bring the suit, asserting that the organization was without standing; and (b) denied that the ordinance violated the provisions of the Constitution, noting that the ordinance was designed purely as a means of keeping the City clean by allocating days for cleaning up the City, as well as to protect the health of the residents.

The Civil Law Court, after hearing arguments on the motion to vacate, set aside the notice of injunction and temporary restraining order. As to the petition for declaratory judgment, the court ordered the clerk of court to forward the said petition to the Supreme Court because it contained constitutional issues cognizable only before the Supreme Court.

In its judgment, the Supreme Court held that the co-petitioners petty marketers had standing to challenge the City Ordinance since they had a legal basis to conclude that enforcement of the Ordinance would affect them. The Court opined, however, that its interpretation of the Ordinance was that the ban applied only to general marketers and not to petty neighborhood traders, and

that the selling of a limited amount of wares, usually adjacent to one's residence, if permissible by the city zoning regulations, did not constitute selling in the city market. Therefore, it said, those petitioners were not prohibited by the ordinance from selling in their neighborhoods on Sundays.

Regarding the challenge by the Center for Law and Human Rights Education, the Court held that the organization was without standing as it had failed to show how it or its members were adversely affected by the Ordinance. The Court noted that in order for a party to challenge the constitutionality of a statute or ordinance, the party must show that it is affected by or will be affected by the enforcement of the law. This co-petitioner organization or its unnamed members had failed to do. Hence, as to this co-petitioner, the petition was denied.

With regards to the Muslim organizations, the Court opined that while they had no standing to challenge the constitutionality of the ordinance, the intent and spirit clearly evidenced that the ordinance was designed to promote the health of the residents of the City of Monrovia and to keep the City clean. It noted that while remarks made by the Acting Mayor of the City tended to give the impression that the ordinance was designed to give preference to Christianity over other religions, and was therefore irresponsible, the true intent of the ordinance, promulgated by the City Council many years before the Mayor took office, indicated that such was not the basis for the ordinance. It noted that the ordinance showed that the day was set aside to enable the sanitary workers to clean up the City and that it had no particular reference to keeping Sunday as a Sabbath day for Christians. Accordingly, the Court denied the petition.

Benedict F. Sannoh appeared for petitioners. Charles W. Brumskine appeared for respondents.

MADAM CHIEF JUSTICE SCOTT delivered the opinion of the Court.

Petitioners filed a petition for declamatory judgment on the 17th day of September, A. D. 1997, in the Sixth Judicial Circuit Court, Montserrado County, Republic of Liberia. On September 19, 1997, petitioners also filed a motion for preliminary injunction in the said court. The assigned Circuit Judge, His Honour Timothy Z. Swope, ordered the clerk of court, Irene Ross Railey, to issue the notice of injunction and temporary restraining order. The orders of the judge were carried out and the notice of injunction and temporary restraining order were issued and served on September 19, 1997.

The respondents, on September 27, 1997, filed returns to the petition for declaratory judgment and preliminary injunction, and simultaneously filed a motion to vacate the temporary restraining order. The court heard respondents' motion to vacate and set aside the notice of injunction and temporary restraining order. Subsequently, on October 1, 1997, heard the petition for declaratory judgment. On October 3, 1997, the court ruled ordering the clerk of court to forward the petition to the Honourable Supreme Court on the ground that the petition con-tained constitutional issues cognizable before the Supreme Court.

The petition for declaratory judgment forwarded to this Court substantially averred that the respondent, Monrovia City Corporation, motivated by calls from religions leaders of the Christian faith who believe that Sunday was holy, on Wednesday, September 10, 1997, began to make public pronouncements both in the print and electronic media that effective as of Sunday, September 14, 1997, all selling on Sundays would be banned and prohibited in the City of Monrovia and its environs, pursuant to City Ordinance # 1.

Further, petitioners averred that Section 11 of City Ordinance #1 was unconstitutional in that its true motive and intent was to preserve the holiness and sanctity of Sunday, the Sabbath of the Christian faith, which was completely repugnant to the Constitution which prohibits the supremacy of one faith over another or the establishment of a state religion. In addition, Copetitioners J. Bioma Johnson, Mrs. Jacob Smith, and Mrs. Jayah Gray, who are neighborhood petty traders, asserted that they would be prevented from earning a livelihood, also as a result of the ban on selling on Sunday imposed by the respondent.

In its returns, the respondent prayed the denial and dismissal of petitioners' petition, substantially on the following grounds:

1. That as to Co-petitioner the Center For Law and Human Rights Education, said petitioner has no standing to sue in that it has alleged no personal injury traceable to the alleged unlawful act of the respondent.

2. Respondent denied that Section 11 of City Ordinance #1 , which banned and prohibited Sunday selling, was without a compelling city interest or did not concern public health of the community which was to further enhance the cleanliness of the city market.

That as to whether or not petitioners have standing to sue, this Court says yes, with reference to Co-petitioners J. Bioma Johnson, Mrs. Jayah Gray, and Mrs. Jacob Smith. The aforementioned co-petitioners, in count 3 of the petition, complained that they are "engaged in petty trade in and around their neighborhoods, and not in the general markets, and that their livelihood and means to pay their and children school fees depended on selling everyday including Sundays. Hence, they were directly effected by City Ordinance #1".

The Court examined section 11 of City Ordinance #1 to determine whether the aforementioned co-petitioners, neighborhood petty traders, are within the contemplation of the said City Ordinance. We quote section 11 of City Ordinance #1:

'"To further enhance the cleanness of the city markets, marketeers shall be allowed to operate from 6 a.m.-6 p.m., Mondays through Saturdays. Selling on Sundays in various markets in the City is strictly prohibited. Violators of this provision shall be subject to a fine of not less than US$10.00 and not more than US$20.00 for each offence."

To determine this issue, the Court must determine whether selling in and around one's neighborhood is synonymous with selling in the various markets in the city. This Court determines that within the context of City Ordnance # 1, section 11, city market is defined as a place opened to the general public as purchasers and available to all who wish to offer their wares, including manufactured goods and agricultural products for sale, making use of stalls, stands or places allotted on payment of fixed rents or fees.

Clearly, from the foregoing definition, selling of very limited amount of wares in diverse places, if permissible by the city zoning regulations, usually adjacent to one's residence, is not selling in the city markets. The topic of City Ordinance #1 is city market and not petty neighborhood selling. Hence, this city ordinance does not apply to co-petitioners J. Boima Johnson, Mrs. Jayah Gray and Mrs. Jacob Smith. A review of their petition reveal that the said co-petitioners do not sell in the city markets. This Court finds the petty trading in the neighborhood adjacent to one's residence, where permissible, is not the same as selling in city markets as contemplated by City Ordinance #1, Section

One may wonder why the co-petitioners mentioned supra filed this petition? Was the ban enforced against the said copetitioners and did they suffer any personal injury? This Court believes that the said co-petitioners are similarly situated and have good reasons to feel that their rights are threatened and, hence, are seeking pre-emptive redress. We find this permissible and

the said co-petitioners therefore have standing to sue. One who is prejudiced or threatened by the enforcement of an act of the Legislature ordinance of the city council may question its constitutionality.

The petitioners complained that the respondent is proceeding beyond the scope of section 11 of City Ordinance #1 by a blanket ban on Sunday selling, whether or not such selling is carried on from markets, in neighborhood stores, tailor shops, petty traders, waiter market, cook shops, photo studios, garages, etc. This contention of petitioners was not specifically addressed by respondents. We conclude that this is an admission by respondent, and therefore the said co-petitioners have standing to feel threatened and that their interest will be prejudiced.

This Court shall now determine whether or not co-petitioner Center for Law and Human Rights Education has a standing to assail the constitutionality of City Ordinance #1, Section 11. We shall quote count one (1) of the petition hereunder:

"That petitioner is a non-profit, non-governmental and nonpolitical human rights organization created and existing pursuant to the Not-For-Profit Corporation Act of the Republic of Liberia. The Center has an interest in ensuring that the rights and fundamental liberties of all Liberians are respected, and in this regard, it engages in and implements programs geared towards conscientizing and creating an awareness of the rights and fundamental liberties of the people of Liberia, and the means to identify, assert and demand the protection of these rights. Some of the avenues used by the Center include public interest litigation, not only as an instrument for social change, but also to ensure compliance with the constitution and laws of Liberia for its interest and that of the general public. City Ordinance #1 is in contravention of the interests of the Center, its members and the general public.

A thorough review of the entire petition has failed to reveal the interests of the "Center and its members" injured by City Ordinance #1, section 11. This failure to state the facts of the personal injury suffered by the said co-petitioner and its mem-bers deprives the said co-petitioner and its members of standing to seek judicial review of City Ordinance # 1, section 11. Legal authorities, speaking on the issue, have said the following:

"A group or organization can also have standing as the representative of its members, provided that it has alleged facts sufficient to make out a case for controversy had the members themselves brought suit... A mere 'interest' in a problem, no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to render an organization adversely affected or

aggrieved for the purpose of giving it standing to obtain judicial review. The group seeking review must have suffered an injury..." 16 AM. JUR. 2d., Constitutional Law, § 192.

Before a law can be assailed by person on the grounds that it is unconstitutional, he mush show that he has an interest in the question, in that the enforcement of the law would be an infringement on his rights. Assailants must therefore show the applicability of the statute to them and that they are thereby injuriously affected, and that a statute or ordinance will not be struck down unless plaintiffs are actually aggrieved and prejudiced by its enforcement. Thus it is said only a real party in interest has the right to question the constitutionality of a statute or ordinance before the court. These rules are applicable to all cases, both at law and in equity, to attacks on ordinances and to criminal proceedings. 16 AM. JUR. 2d., Constitutional Law, § 188. Further, "...one who is not prejudiced by the enforcement of an act of the legislature (city council) cannot question its constitutionality. Absent a showing of injury, actual or threatened, there can be no constitutional argument..." 16 AM. JUR. 2d., Constitutional Law, § 189.

Co-petitioners, Organization of Liberian Muslim Youth, National Reformation Council, and the National Muslim Council have stated to this Court that they are grass root Muslim organizations whose members are marketeers and are directly affected by Section 11 of City Ordinance #1, which prohibits Sunday selling. Further, that by this ban on Sunday selling, membership of co-petitioners say that this is an effective domination or preference for Christianity over Islam in violation of the Constitution, which prohibits the state religion or the domination of one religion over the other.

This Court has determined not to strictly adhere to the technical rules of representation. The nature of this controversy and its impact on the citizens has prompted this Court to allow the aforementioned co-petitioners to assert the constitutional and fundamental rights of freedom of religion and the maintenance of a secular state or Republic on behalf of its membership who are of another religion (Islam) and have organized on the basis of that religion. It has been said that "...the court in 'unique situations' will disregard its usual rule denying standing to rise another's rights. Unique circumstances will most readily be found where fundamental rights would otherwise be denied."

This Court believes that Co-petitioners Organization of Muslim Youths, National Reformation Council, and National Muslim Council have standing in this controversy to ensure religious freedom.

The Court shall now determine the crux of this matter, i.e., whether or not section 11 of City Ordinance #1 is constitutional? For the purpose of this determination, we shall quote counts seven (7), eight (8) and nine (9) of petitioners' petition:

(7) "Petitioners say that section 11 of City Ordinance # 1 and the public announcements emanating therefrom banning Sunday selling is motivated neither by a compelling city interest nor by any concerns for public safety, order, health, morals or the fundamental rights and freedom of others. Petitioners say that the ban is motivated solely by pressure from the Christian community who believes that Sundays are traditionally set aside for Christians to go to their respective churches for worship and hence there should be no selling on Sundays. This is supported by remarks made by the Acting Mayor of the City of Monrovia, Honorable Maxwell D. Carter...

(8) Petitioners say that even though these aforementioned motives and intent, as stated in count seven (7) above, are not expressly stated on the face of the ordinance, the natural and inevitable effect of the ordinance and its scope and operations, when put into effect, abridges constitutional guarantees of petitioners herein. Petitioners say it is not the form of the ordinance that should control the determination of the constitutionality, but rather its substance, and what is done under the provisions. The substance of this ordinance is to ensure that Sunday remains a day set aside for Christians to go to their respective churches for worship and hence there should be no selling on Sundays; which is unconstitutional.

(9) That section 11 of the ordinance offends constitutional guarantees of a larger sector of the Liberian population of which petitioners are a part and is not reasonably designed to carry out any proper legislative purpose. Petitioners say that while it is believed that Liberia was founded on Christian principles, Liberia is not a Christian state. Under the constitution and laws of Liberia, there shall be a separation between religion and state, and that the Republic shall establish no state religion. The constitution further provides that no religious denomination or sect shall have any exclusive privilege or preference over any other, but shall be treated alike. Hence, the ban on Sunday selling simply because it is a day reserved for Christians to go church constitutes a violation of the constitutional rights of the Christians who may want to sell on Sundays to make a living for themselves and their families. Whereas the City Corporation to insist on enforcing City Ordinance # 1, it might give effect to the constitutional provision for equal treatment of all religions, by prohibiting selling on Fridays, the day reserved for Muslims to go to their places of worship, and on Saturdays, the day reserved for SDA's to go to their places of worship."

To determine this issue, we examined City Ordinance #1 in its entirety, and for better understanding, we quote same as follow:

Monrovia City Corporation
City Hall, Tubman Boulevard
Monrovia, Liberia
262281/261022

ORDINANCE NO. 1
Whereas, the sanitary condition and appearance of Monrovia, the nation's Capital, have deteriorated; and

Whereas, residents of Monrovia have called from time to time for improvement in the collection of garbage and the general appearance of the City;

NOW THEREFORE, it is ordained that effective November 15, 1997

1. Garbage shall be disposed of ONLY at sites designated by the Monrovia City Corporation. The Public shall be permitted to dispose of garbage at the said designated sites between the hours of 5p.m. and 8a.m. Anyone who violates this provision shall be subject to a fine of US$10.00 for each offence.

2. No selling of foodstuff on the street, sidewalk or through Government offices within the City shall be permitted. Items affected by this Ordinance include such edibles as oranges, bananas, corn cassava, peanuts, sugarcane, avocados (butter pear), coconuts, candy, cigarettes, chicklet, fish, and other sea food, etc, Anyone found guilty of violating this provision shall be subject to a fine of not less than US$5.00 for each offence.

3. Littering (the dropping of trash) by pedestrians or motorists within the City limits is strictly prohibited. Anyone found guilty of littering shall pay a fine of not less than US$10.00 and not more than US$25.00.

4. Occupants (whether owners or lessee) or residence, commercial houses and factories of all types, religious and all civic buildings are required to clean around and in front of their premises up to the sidewalk and to keep them clean at all times. Cleaning shall include the trimming of all hedges and trees and outing of grass on their property. No dump sites on these properties shall be permitted.

5. The City Government shall bear the responsibility of cleaning sidewalks and streets ONLY. Any owner, lessee, or occupants found violating this provision shall be subject to a fine of not less than US$10.00 and not more than US$50.00.

6. The owner of a vacant lot or other undeveloped parcel of **land** within the city limits is required to keep the property clean at all times. Grass on vacant lots must be kept at lawn level, and no dumping of refuse on undeveloped property shall be permitted except where it is authorized by the City Government. Where an owner of undeveloped real estate fails to keep his or her property clean the City Government shall perform the task and a bill or a receipt will be issued of the delinquent owner. Legal proceedings shall be taken against the owner who fails to pay after thirty (30) days.

7. Owners or lessees or residences, commercial houses and factories of all types and description are required to paint the exterior of their property by December 15, 1975 and ever twelve months thereafter.

8. The use of dump sites and undeveloped property as toilets is strictly prohibited. Anyone found violating this Ordinance shall be subject to a fine of not less than US$5.00 and not more than US$10.00.

9. The City Government shall give notice to owners of old dilapidated and abandoned vehicles to have them removed from the streets of the city by marking the windshields. Owners of such vehicles shall be required to move them within thirty (30) days of the notice.

10. Upon failure of the owner to comply, the City Government shall remove said vehicles and dispose of them without any responsibility to the City Government.

11. Owners of dogs shall retain them within the confines of their property. Any dog found at large on the streets and sidewalks of the City shall be impounded or disused of if possessed with a contagious disease. Dogs impounded shall be released upon payment of a find of $5.00.

12. Auto repair on sidewalks and in the streets of the City is, strictly prohibited. Anyone found using streets, sidewalks, vacant lots, and other public places within the City as a makeshift garage shall be subject to a fine of not less than US$25.00 and not more than US$50.00 and ordered to vacate such premises at once.

13. To further enhance the cleanliness of the City markets, marketeers shall be allowed to operate from 6: a.m. - 6 p.m. Mondays through Saturdays. Selling on Sundays in various markets in the city is strictly prohibited. A fine of not less than US$10.00 and not more than US$20.00 shall be imposed for each offence. Done at the Monrovia City Hall this 27th day of October, A. D. 1975.

Sgd. Edward A. David
MAYOR, MONROVIA CITY CORPORATION
Attested: Sgd. E. Jonathan Goodrich
MINISTER OF LOCAL GOVERNMENT & RURAL
DEVELOPMENT & URBAN RECONSTRUCTION

APPROVED: Sgd. William R. Tolbert, Jr.
PRESIDENT OF LIBERIA
TRUE COPY OF THE ORIGINAL"

We note that there are two (2) sections 9 and two sections 6. We consider them typographical errors and shall deal with the sections chronologically.

To determine the intent and motive of section 11 or 13 of City Ordinance #1 violate the we must examine the four corners of the said document to determine the intent of the City Council and the evil sought to be remedied.

A careful scrutiny of the Ordinance reveal that the objective of the preambular clauses of City Ordinance # 1 is improvement in the sanitary conditions and the general appearance of the City of Monrovia.

Section one (1) of the ordinance informs the public of designated dump sites and the hours during which garbage may be collected and the fines that may be levied against violators.

Section two (2) prohibits selling of food stuffs, cigarettes and candy and sea food stuffs in Government offices, the streets, and on sidewalks and sets a fine for violators.

Section three (3) prohibits littering and sets a fine for violators.

Section four (4) requires occupants of all buildings to maintain the cleanliness and attractiveness of their building and premises.

Section five (5) reaffirms the responsibility of government for the cleanliness of sidewalks and streets.

Sections six (6) and eight (8) require owners of vacant parcels of **land** to keep their property clean.

Sections nine (9) and eleven (11) mandate the removal of old and abandoned vehicles and prohibit auto-repair on the streets, sidewalks and vacant lots.

Section eleven (11) or correct numbering is thirteen (13) states that to further enhance cleanliness, selling on Sunday shall be prohibited in the various markets in the City of Monrovia.

Clearly the intent of the promulgators or the City Council was to enhance the cleanliness and promote the attractiveness of the City of Monrovia. The intent and objectives of cleanliness and attractiveness are clear and unambiguous and flow from the preambular clauses and permeate each and every section of City Ordinance #1.

The purpose of construction of an ordinance is to discover the intention and meaning of the ordinance and the same rules that must be observed in construing statutes apply in construing ordinances. Where the language is clear and explicit and free from ambiguity, there is no room for construction and the rules of construction are inapplicable. In such a case, the ordnance must be interpreted according to its terms without resort to other means of interpretation. The intention of the municipal legislative body is ascertained primarily from the language used in the ordinance. The courts will not impute to the legislators an intention inconsistent with the language used in an ordinance which is clear and concise and which is of only one interpretation. If such intention may be determined from the ordinance itself no other construction is necessary, and the court is not permitted to add to, or subtract from, the words used in the ordinance. 62 C. J. S, Municipal Corporations, § 442.

We shall now proceed to determine whether section 11 or 13 of the said ordinance is constitutional.

We shall quote the relevant portion of the Constitution relied upon by co-petitioners. Chapter III, Article 14 provides:

"...no religious denomination or sect shall have any exclusive privilege or preference over any other, but all shall be treated alike.... Consistent with the principle of separation of religion and state, the Republic shall establish no state religion."

Co-petitioners complain that the ban on selling on Sundays is truly intended to keep holy the Sabbath of the Christian and that this is manifested by the blanket enforcement of Ordinance #1, and statements made by the Mayor of the City of Monrovia. All of this, they said, was motivated by calls made by Christian leaders for a ban on Sunday selling.

To understand statements made by the respondent, by its Acting Mayor of he City of Monrovia, Maxwell D. Carter, we examined petitioners exhibit "P/2", same being the September 13, 1997 issue of the "National" newspaper, which quoted the said statement:

"Acting City Mayor Maxwell Carter said customarily Sundays are set aside for Christians to go to their respective churches to worship."

To this allegation respondent contended that no amount of utterance(s) allegedly made by the Mayor of the City can affect the constitutionality of the City Ordinance. Respondents did not deny the statement in their returns, hence this Court deems the failure to deny as an admission that the statement was indeed made by the said co-respondent.

The question this Court must answer, however, is whether illegal statements made by one with authority to implement and enforce a law, and which statements are contrary to the intent and spirit of the law, is sufficient to render the law unconstitutional?

It is unfortunate that the highest authority of the Monrovia City Corporation, who is under a legal duty to serve diverse groups of people who have the constitutional guarantee to fundamental freedoms, including freedom of worship, and the constitutional protection that the Republic of Liberia is a secular state, chose to make such statements.

The said utterances and almost simultaneous issuance of the release placing a ban on Sunday selling does indeed give the impression that the motivation of the respondent is a religious preference for Christianity in violation of the constitution, thereby offending citizens of other faith.

The utterances of Mr. Maxwell Carter in 1997 is reprehensible, irresponsible, illegal, and unconstitutional; notwithstanding, we find that the sprit and intent of the City Council who promulgated City Ordinance #1 in 1975 was the protection of the public interest - public health and sanitation. Mr. Maxwell Carter has violated the duties and responsibilities of the office of Mayor of the City of Monrovia, but his acts are not sufficient to subvert the spirit and intent of

the framers of the City Ordinance in 1975 or to render City Ordnance #1 unconstitutional. Hence, this Court is unable to find that the utterances by Corespondent Maxwell Carter in 1997 renders City Ordinance # 1 enacted in 1975 unconstitutional. For this Court to declare the said ordinance unconstitutional, the utterances and acts of Mr. Carter, complained of herein, must have been constant and sustained by succeeding mayors since 1975, the date of enactment of the said City Ordinance #1 .

Petitioners contend that the true intent of the framers of City Ordinance #1 was to keep the Christian Sabbath, Sunday, holy. We looked to the Christian faith to determine what is considered a holy Sabbath. The Christian Bible requires that on the Sabbath no activity or work shall be done.

Petitioners' contention that Respondent Monrovia City Corporation's action is discriminatory in the enforcement of the ban in that certain businesses are allowed to open while the various markets are closed is inconsistent with the contention of the interest and effect of section 11 of City Ordinance # 1, which they said was to keep Sunday holy. Indeed, this contention supports the respondent's argument that the objective of placing a ban on selling in the various markets on Sunday is public health and sanitation, for, even though it is Sunday, other business activities continue except that the various markets are closed to allow respondents to carry out cleaning and sanitation. Properly functioning, respondent is at work on Sunday, contrary to the Christian principles of keeping the Sabbath holy.

We find that the exercise of municipal powers to promulgate regulations and/or exercise police power to regulate a class is not a violation of the equal protection clause of the Constitution. The test here is that the regulation must be operated with fairness, equality and amity on all persons and classes similarly situated.

We uphold the argument of the respondent that the Constitution does not ban city regulations of conduct whose reason or effect coincide with or harmonize with the tenets of various religions. The prohibition on commercial and other activities originally had the intent of upholding the Judea-Christian principle of keeping the Sabbath, but the Court sees that this has been secularized and the current interpretation is that the day is observed as recreational respite from a week of hard work.

Petitioners have remedies under the law for their contention that respondent is discriminatory and at the same time heavy handed and oppressive and ultra vires in the enforcement and

implementation of the City Ordinance # 1 and they can avail themselves of any improper and illegal enforcement of a statute or ordinance at a point in time, which is contrary to the spirit and intent of the statute or ordinance and of the framers thereof. This contention is not, however, sufficient for this Court to declare the statute/ordinance unconstitutional.

In petitioners' written argument or amended brief, petitioners brought to the attention of this Court that City Ordinance #1 was promulgated contrary to the Charter of the City of Monrovia, Revised Statutes of Liberia, Vol. 11 and that the then Mayor of the City of Monrovia who signed the said City Ordinance on October 27, 1975 was appointed by the President of Liberia, Dr. William R. Tolbert, instead of being elected to office as required by the said Charter.

This issue was raised for the first time before the Supreme Court in the amended brief filed on the same day arguments were heard by this Court. It is the considered opinion of this Court that this issue is one of law and fact not cognizable before the Supreme Court, and hence we are unable to pass on this issue at this time.

Wherefore and in view of this foregoing it is the opinion of this Court that City Ordinance #1 is constitutional, and the intent of the City Council in section 11 of the said City Ordinance #1 is the cleanliness and attractiveness of the city of Monrovia, i.e., the public health interest of the City and its residents. The ban or prohibition on Sunday selling in the various markets in Monrovia, while permitting other commercial activities, does not promote the holiness of Sunday or create a state religion, and neither is it violative of the equal protection clause of the Constitution. Therefore, the petition for declaratory judgment to declare City Ordinance #1 unconstitutional is denied. Costs are disallowed. And it is hereby so ordered.

Petition denied.

Kesselly v Folomah et al [1969] LRSC 10; 19 LLR 181 (1969) (6 February 1969)

THOMAS M. KESSELLY, and his wife, GERTRUDE T. HIGGINS-KESSELLY, Appellants, v. MULBAH SUMO FOLOMAH, alias JOHN F. HARRIS, and his wife, JASSAH, Appellees.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued October 16, 1968.
Decided February 6, 1969. 1. Courts will only decide those issues raised by the parties in their pleadings. 2. When the pleadings of the parties raise issues of law as well as issues of fact, the court must dispose of the issues of law before it proceeds to the disposition of the issues of fact.

An agreement was entered into by the parties which, among other things, provided for cancellation of a lease upon nonpayment by the lessees. When such breach of contract occurred, the appellants sued for cancellation, to which procedure no objection was raised by the appellees, but to which the trial court objected, ruling sua sponte that the petitioners had elected an improper course of action, and dismissing the case, from which judgment the petitioners appealed. Judgment reversed, case remanded. The Henries law firm for appellants. No appearance for appellees. MR. JUSTICE court.
ROBERTS

delivered the opinion
of the

According to the record certified to us, appellants and appellees concluded an agreement whereby appellees were granted the use of a parcel of land for the purpose of constructing a house. In this agreement appellees were to make rental payment to appellants in regular installments and their failure so to do would subject the
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agreement to cancellation.
As agreed upon, appellees erected a house but afterwards began defaulting in payment despite having their attention called to this omission and to the relevant clause of the agreement. Their continued failure to conform to the agreement urged appellants to file cancellation proceedings. At the call of the case the Henries' law firm appeared for appellants, no one appeared for appellees, neither did they file any brief, though represented by counsellor Matthew D. Wolo in the court below. Although there are other interesting points embodied in the bill of exceptions, counts one and three are of such basic principles that their determination claims our attention most. The cogent portions read : "r. The petitioners, exercising their rights in keeping with the terms and conditions of said contract, instituted these cancellation proceedings, and respondents, realizing the binding effect of the nonpayment of the rent on their part, neglected to raise the issue of wrong form of action; nevertheless, the court, sua sponte, on the loth day of July, 1967, dismissed the action on the ground that petitioners filed the wrong form of action and asserted that petitioners should have filed an action of debt and not cancellation proceedings, which ruling is quoted hereunder : . . . "3. That the court failed to pass upon issues of law raised in the pleadings by the parties, having undertaken to raise and pass on an issue of wrong form

of action, not included in the written pleadings. This was not only irregular, but materially prejudicial to the interests of petitioners. To which petitioners then and there duly excepted." Considering the above, we find it essential to quote the decree of Judge Findley:
"In this case the parties entered into agreement and made a relief clause, in case of default by lessee, to meet the failure of consideration by cancellation; it is

clear and obvious that the sequence to nonpayment is not cancellation ; upon failure to pay, you are forced and called upon to pay by an action of debt, and even specific performance would do little better.
The petition is, therefore, dismissed, without costs and the petitioners have the right to come in any manner for the enforcement of their rights as the law directs. And it is so ordered." The pleadings in this case progressed as far as the reply, and contained issues of law and fact which the trial judge failed to pass upon. Instead, he dismissed the petition on the ground that appellants had filed the wrong form of action. This is an issue gratuitously raised by the judge and is not contained in the answer. Appellees in their answer have not denied the existence of the agreement nor the default in payment complained of in the petition, but contend that the property they occupy is not owned by appellants. This contention they in no way tried to prove, nor did they seek to raise this issue during several months of occupancy of the property, until the cancellation proceedings. Referring to count one, Clark v. Barbour, 2 L.L.R. 15 (1909) is applicable, where the Court held that courts will only decide upon issues joined between the parties specially set forth in their pleadings. It was ruled further that a matter of defense not set up in defendant's plea shall not be allowed. Count three is governed by our Civil Procedure Law, 1956 Code 6:313. "When the pleadings raise questions both of law and of fact, the court shall determine all issues of law before it tries the questions of fact." Also see Johns v. Witherspoon, [1944] LRSC 32; 8 L.L.R. 462 (1944), where it was the judgment of the Court that 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. This Court has no alternative but to reverse the judgment of the court below and remand the case. The costs of the appeal shall be paid by the appellee and all other costs shall abide final determination of the case; and it is hereby so ordered. Reversed and remanded.

Saba Bros. v Fredericks [1962] LRSC 4; 15 LLR 18 (1962) (1 June 1962)

SABA BROTHERS, Lebanese Merchants Transacting Business in Liberia, by TANIOS H. SABA, Appellants, v. J. WALTER FREDERICKS, Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT, MARYLAND COUNTY.

Argued April 5, 1962. Decided June 1, 1962. 1. Special damages must be pleaded with particularity. 2. Where special damages are based on depreciation, pleading and proof of such damages is inadequate without itemization of original cost and market value after depreciation.

On appeal from a judgment upon an award by a jury in an action for damages to personal property, judgment reversed. Richard Diggs for appellants. and R. Doe Gibson for appellee. P. Conger Thompson

MR. CHIEF the Court.

JUSTICE WILSON

delivered the opinion of

J. Walter Fredericks of the City of Harper, the appellee in this case, in the exercise of his right of fee title ownership to a parcel of land situated in the township of Pleebo in Maryland County, contracted an agreement of lease for said property. on January I, 1955, with Saba Brothers, Lebanese merchants doing business in Maryland County. At the time of said lease there had been erected on the said premises a building constructed of mud, plastered with cement and zinc-roofed. Said lease obligated Saba Brothers to demolish said building and to erect a suitable building or buildings on said premises within six years, with concrete blocks and zinc roof, and apartment, to be composed of store and dwelling quarters, at their own cost and expense, and not otherwise.

According to the record certified to us, demolition took place and the construction of the new building was completed. Subsequently, in correspondence, between the parties, the appellee charged the appellant with having used some of the materials taken from the demolished building to construct the new one in violation of the terms of the contract, and demanded surrender of said used materials, which the appellant refused to do. This resulted in the filing of an action of replevin to recover said materials, which the appellant failed to produce. The

appellee then resorted to an action of damages for injuries to personal property. Pleadings having rested, and the prayer of defendant, now appellant, for dismissal of the action not having been sustained by the court, the case was ruled for trial on the facts involved.
According to the bill of exceptions, ruling on the law issues made on the pleadings was waived, and hence is not before us for review.
Exceptions to the verdict, the ruling on motion for new trial, and the final judgment, which are alleged not to be in harmony with the facts testified to at the trial, are contained in the bill of exceptions.
We first address ourselves to the lease which provides as follows : "That the lessee shall have the right to erect suitable building or buildings on said leased or rented premises within six years from the date of signing of this agreement, to consist of cement block and zinc roof, apartment to be composed of store and dwelling quarters, at their own cost and expense and not otherwise."
Appellee claimed that a violation of the contract occurred when appellant used a portion of the materials from the old building to construct the new one, and refused to turn same or any portion of it over to the appellee. Appellee, in his testimony, specifically stated that the

agreement provided that, in addition to erecting the new building at the appellant's own expense, he was also required "to hand over to me my materials."
This additional provision quoted by appellee in his testimony, not being specifically laid in the contract, must be considered as an interpretation placed on the above-quoted clause of the contract by the appellee, leaving this Court to say whether or not this interpretation is reasonably fair and just. It does not seem necessary, however, to stress the point of interpretation of this clause of the contract, in view of appellants' denial of having used any of said materials on the building, and testimony that the materials of the demolished building had been personally conveyed by appellee to his farm in his own vehicle. The weight of evidence, as produced by both sides on this score, being somewhat equal, we remain in doubt as to which of the two sides has really told the truth. We will therefore leave this point and pass on to the salient issue, which is that of the injuries done to the personal property of appellee, alleged to have been salvaged from this old building and not surrendered to him. This claim falls under the head of special damages which must be pleaded and proven at the trial. "Special damages are any losses or inconveniences accruing to the plaintiff which can be specially traced to the conduct of the defendant. When special damages are relied on, they must be stated in the complaint and proven." 1956 Code, tit. 6, § I r. Accord : Lackman v. Johns, i L.L.R. 455, 457 (19o5).
Supporting the complaint of appellee, as recited in Counts r and 2 of plaintiff's amended complaint, is the following list of items including materials claimed to have been withheld by appellants in addition to legal fees, and two years' rent claimed on the detained property, making an aggregate total of $2,000, itemized as follows :

` , 155 sheets of zinc 3o whismore planks 3o poplar planks 51 poplar planks
22 whismore planks
12 sheets hard board 12 tower bolts 12 sheets counter glasses cc 16 pcs.
timber .`, io poplar planks 16 prs. hinges 8 tower bolts
Li
" "

@$2.5o ea. @ 1.40 " @ 1.10 " @ 'Jo " @ 1.50 " @ 4.50 " @ Loo " @12.00 @ 1.5o
" @ 1.10 " @ .30 " @ .45 "
"

$387.50 45.00
33.00 56.10 33.00 54.00
12.00 144.00

24.00 II.00 4.80 3.60 $808.00

$500.00 692.00 $2,000.00" Notwithstanding these specific amounts, itemized and listed, and appellee's effort to prove the injuries sustained, the empanelled jury, after deliberation, returned the following verdict in favor of appellee: "We, the empanelled jury in the case, Fredericks v. Saba Brothers, having listened to the evidence adduced, do hereby agree that the defendant is to pay the amount of $800 to the plaintiff." This verdict was confirmed by final judgment of court which awarded damages to the extent of the jury's verdict, and thereby rejected the difference between the $2,000 claimed in appellee's complaint and the $800 awarded. Appellee did not appeal the disallowance by the jury and court of $5oo for legal services and $692 for two years' rent on property claimed to have been retained by appellants. Let us see whether the articles listed by appellee as having been unlawfully withheld from him by appellants have been proved as having been withheld, and the value
"Lawyers' fees "Two years' rent on materials

listed in the sum of $800 as the actual cost thereof proved. But before doing so, let us see what has been complained of by appellants in the bill of exceptions as error committed by the court below from which appellant has appealed to us. Count i characterizes the verdict of the empanelled jury as not in harmony with the law and facts adduced at the trial, and in support of this allegation, besides denying that appellants used any of the materials from the demolished building in the construction of the new one, appellant contends that there has not been satisfactory proof of the value of the articles claimed to have been used, to the aggregate sum of $8o8, for the reason that these articles are those which were retrieved from the old building, constructed with mud, sticks, planks and zinc ten years prior to demolition ; so that, if these materials, or any portion of them, could have been retrieved, their market value at the time of purchase and installation in said

mud building could never be the same after having remained in said building for ten years, exposed to termites and other deterioration.
This point was pressed for clarification from this bench during argument. It is our considered opinion that, to determine the market value of the materials listed
by appellee in his complaint as having been retrieved by appellant from the demolished building ten years after its construction,
and used in the new building, with the value of each item, it was imperative that a comparative statement showing the value of each
of these articles at the time of purchase, and the value at the time of demolition, allowing for ten years of deterioration, ought
to have been annexed to the complaint and proved at the trial. The testimony of appellee, and that of James W. Davies, the builder
of the old building, discloses that both of them testified to certain material and salient points on this issue, relevant portions
of which testimony we quote. Witness Fredericks testified as follows :

"Q. Please explain to this court
and jury the type of building which, according to you, was demolished. I suggest it was a block house and zinc roof, or mud plastered
with cement and zinc roof. "A. It was a mud building, plastered with cement and zinc roof." The kind of building that was demolished
ten years after construction was established by this answer of the appellee. His testimony on the quantity of materials that were
used in this building is found in his answer to the following question on cross-examination : "Q. Since, in deed and in truth, you
have placed on record that the building was built out of sticks and mud and other cheap materials, do you give the court and jury
to understand that, for seven or eight years, these materials are still serviceable, none of them being decayed? "A. The pieces bought
and turned over to Mr. Davies were new ones and not second-hand ; and being under shelter, I do not think they were spoiled. Regards
to the materials, Mr. Davies can come on the stand and testify that I bought all of these materials new. No, they were not cheap
materials." Nowhere in the testimony of appellee as witness in his own behalf is it shown that he made any effort to show at what
prices he bought the materials with which this demolished mud and cement plastered building was constructed eight to ten years prior
to its demolition. Let us, therefore, turn to the following testimony of James W. Davies, who constructed this building and who,
it is alleged, received all the materials that were placed in it, to see if he made clarification in his testimony of the market
value of those materials when turned over to him, and what they cost at the prices prevailing at the time of demolition when retrieved,
so that if there is

proof of same having been used by appellant in the construction of the new building,

what could be the loss to appellee : "Q. You in your statement in chief, said that the materials were brought to you by several persons, and their prices were not known to you. How, now, you come to know as listed here the prices of said materials under your own handwriting and signature? "A. It is like this. Plaintiff came to me and asked for this certificate. As a carpenter, I am acquainted with some of the prices of these things ; and he gave me the prices of some of these things ; and I scrutinized some of them and said : `We do not buy some of these things like this.' Thereby he became normal in giving the prices, and these are the prices noted on the list. "Q. So then, according to your last answer, you are not certain of the prices as listed on this list marked by the court Exhibit CP-4, but yet you had them done and turned over to plaintiff to be the correct prices for these materials. Am I correct? "A. As I said before, plaintiff came and asked me for the certificate, the price of the materials. I was not present when he bought them; but from mechanical experience I felt that, if I had bought them at the rate he told me, I might have been cheated. Therefore, the prices listed are prices that we generally buy these things in Pleebo ; those for which I had no particular knowledge, he himself priced them, even though I signed the certificate."

Even if the above-quoted testimony is accepted as true in all respects, there is no showing that the least effort was made to prove any part of the damages alleged to have been sustained by reason of loss of materials from the old

building, much less to establish the market value of items retrieved from that building when demolished after having been exposed to deterioration for eight to ten years. Further, there is patent uncertainty as to which of the materials listed were priced by plaintiff, and which by the carpenter, James W. Davies, who testified, that if he had priced some of the articles at the prices given to him by plaintiff, he "might have been cheated," without naming either the articles or the prices thereof. On this quality of evidence, it is difficult to understand how the jury could have arrived at a verdict awarding plaintiff the sum of $800, or how the trial court could have ignored the absence of proof of value of the articles alleged to have been withheld from plaintiff by defendant, in direct violation of the statute which mandatorily provides that special damages must be pleaded and proven. Appellee's claim of $692 as two years' rent on said withheld materials is not before us for review, the verdict of the jury having excluded it, and its exclusion not having been made a subject of appeal. The correctness of the jury's exclusion is indicated by the absence of any evidence to show the manner and circumstances by which this rental payment became due. Plaintiff failed to prove the existence of the articles claimed to have been withheld, as also the value thereof, so as to entitle plaintiff to two years rental on them. Nor is it shown by the contract of the lease agreement between plaintiff and defendant that, after demolition of the old building, and until the new one was erected, a rental was due to be paid for the interim period. The verdict gave no consideration to the alleged payment of &coo for legal services

of plaintiff's counsel ; nor was this reserved by plaintiff for review by this Court. The verdict of the jury, and the final judgment confirming it, are therefore reversed with costs against the appellee. And it is so ordered.
Reversed.

Farhat v Thomas [1976] LRSC 3; 24 LLR 453 (1976) (2 January 1976)

KHALIL FARHAT, Appellant, v. H. CAREY THOMAS, Appellee.
APPEAL FROM THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued November 13, 1975. Decided January 2, 1976. 1. It is reversible error for a trial judge not to pass upon the issues of law prior to ruling on the issues of fact in a proceeding.

The parties herein entered into a leasing agreement whereby if the conditions therein were met by the appellant, the property owned by appellee would be permanently leased to appellant. The appellee was of the opinion that the terms had not been met and refused to enter into the final lease agreement, whereupon appellant sought an injunction to enjoin appellee from exercising any proprietary rights over the property involved. Appellee brought on a motion to dissolve the preliminary injunction and deny the final injunction. The motion was granted and the decree refusing the injunction was appealed.
The Supreme Court was of the opinion that the trial court had committed reversible error in not passing upon the issues of law prior to ruling on the facts and consequently reversed the judgment and remanded the case to the lower court to dispose of it in accordance with the instructions of the Court.
J. Dossen Richards for appellant. ham for appellee. Samuel E. H. Pel-

MR. Court.

JUSTICE AZANGO

delivered the opinion of the

On October 1, 1966, appellee entered into a lease agreement with Naftali Furman, an Israeli national,
for a
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parcel of land situated on Camp Johnson Road, in the City of Monrovia, for fifteen years,
whereon a multipurpose building was erected by Naftali Furman. Lessee left the Republic of Liberia, and appellee sought concellation

proceedings in the Circuit Court for the Sixth Judicial Circuit, Montserrado County, to recover his property, and a decree was given canceling the aforesaid lease agreement. Later, appellant negotiated with appellee to lease and maintain the building. This was agreed upon preliminarily by lessor. However, appellant apparently failed to meet the terms of the precondition agreement, and appellee refused to formally enter into a regular lease agreement with appellant. Consequently, appellant applied to the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, for an injunction against appellee, enjoining him, or his agents, from asserting any proprietary rights over the property until a suit of damages had been finally determined. To this application, a nine-count answer wes filed, followed by a motion to dissolve the injunction and a resistance thereto, in which several legal issues were raised. Judge Frederick K. Tulay granted the motion to dissolve the preliminary injunction and petitioner appealed to this Court. When the case was called for argument before this Court, appellant's counsel contended that (a) the trial judge failed to pass upon issues of law raised in the pleadings; (b) the lower court judge arbitrarily ignored evidence presented to him and denied the application; (c) above all the judge's failure to pass upon the issues of law before disposing of the issues of fact in the case, was reversible error.
In perusing the record, it discloses that in counts i to 9 of appellant's application for a preliminary injunction he raised several factual issues which he felt were sufficient to grant the application, especially the agreement to lease entered into by Naftali Furman and appellee.

In appellee's answer, he raised factual issues and questioned appellant's right to institute the injunction proceedings. He denied that there was an agreement duly entered into by and between the parties concerned, therefore, the injunction should be denied, because the agreement proferted by plaintiff clearly states that defendant was willing to lease to the plaintiff if and when a decree cancelling the agreement which existed between defendant and Naftali Furman was obtained ; he said that immediately after such cancellation of the agreement a lease agreement incorporating the terms in the conditional lease would be drawn up and signed.
He denied the allegations of fact as set forth in appellant's application. Also in the answer, appellee raised issues of law that included: ( ) that where an adequate remedy exists at law, injunction should not be granted ; (a) injunction should be granted only in cases where irreparable injury will result; (3) injunction should not and ought not be granted to impair a contractual obligation, which under the Constitution of the Republic of Liberia is to remain inviolate. And in appellee's motion to dissolve the injunction, he cited his legal argument raised in his answer and prayed that the injunction be denied. In plaintiff's resistance to defendant's motion to dissolve the injunction, the issue of fraud was raised, citing as evidence thereof that the defendant elected to have plaintiff institute the injunction suit against him, indicating that defendant had his mind on artifice. Appellant cited reasons why the injunction

should be granted: (r) no action at law would prohibit defendant from practicing fraud by receiving the rents and not giving appellee his share in keeping with their agreement; (a) that a preliminary injunction will be granted where defendant is about to do or is doing, as in the instant case, an act in violation of plaintiff's right respecting the subject of the action; (3) that the injunction is

prayed for to prohibit and enjoin defendant from again perpetrating fraud by receiving the rentals from 1975 onward and converting all to his own use and benefit, whereas he is only entitled to 25% thereof; (4) that the entire motion was evasive. Disposition of issues of law before the trial of the facts has constantly and insistently been emphasized by this Court. Where there are mixed questions of law and fact, the issues of law must first be disposed of. Moreover, recently, this Court speaking through our distinguished colleagues, Mr. Justice Henries in King v. International Trust Company of Liberia, zo LLR 438, 440-44 1 (1971), an action of injunction, dealt with the point. "In the case at bar, the judge did decide the issues of law first, and, therefore, did not err. "It is also settled that 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 the jury. Roberts v. Howard, 2 LLR 226 (1916). However, a careful review of the records certified to this Court revealed that mixed issues of law and fact were presented, and that the parties were not in agreement on all of the facts. Under the circumstances, the lower court should have heard evidence on the factual issues, for it is a fundamental rule of law that evidence must support the allegations or averment in both law and equity proceedings. Evidence alone enables a court to decide with certainty the matter in dispute. Pelham v. Pelham, 4 LLR 56 (1934). It has been stated as the best judicial policy for a court not to pass on a motion to dismiss a bill for an injunction until the parties have brought in all the facts on final hearing and all the proofs are before the court. So if under the allegations of the bill it can reasonably be conceived that the complaint in the trial court could

establish a case entitling him to the injunction, a motion to dismiss should not be granted. An issue of fact cannot be adjudicated on a motion to dismiss a bill before trial." It is true that a defendant enjoined by a preliminary injunction may move, as was done herein, at any time on notice to the plaintiff, to vacate or modify it. But when proceedings have not been conducted properly in the court below, the ends of justice demand that the case be remanded. A court of equity ought to do justice completely and not by halves. Hence,

we are in the opinion that the trial judge erred when he dismissed the preliminary injunction without passing upon the issues of law before proceeding to dispose of the issues of fact. In view of the foregoing, we have no alternative but to order a reversal of the trial judge's ruling, with instructions to the court below that it resume jurisdiction over the case and proceed to pass upon the issues of law raised herein and thereafter grant a trial upon the factual merits in the case. Costs shall abide pending final determination of the

case. And it is hereby so ordered. Reversed and remanded.

Caranda v Richards [1961] LRSC 4; 14 LLR 294 (1961) (18 May 1961)

D. C. CARANDA, Appellant, v. W. D. RICHARDS and his Wife, D. W. RICHARDS, GABRIEL TAPLA JUWDA, RACHEL RICHARDS-BANKS and PRESLEY DUNBAR, Appellees.
MOTION FOR REARGUMENT OF APPEAL FROM THE MONTHLY AND PROBATE COURT OF MONTSERRADO COUNTY.

Argued March 14, 1961.
Decided May 18, 1961. A motion for reargument will be denied where the movant has failed to establish that the adjudication in question was grounded upon an oversight with respect to a material issue of fact or law.

On motion for reargument of a judgment dismissing an appeal from an order denying objections to the probate of a deed, reargument denied.

D. C. Caranda, appellant, pro se. J. Dossen Richards for appellees. MR. JUSTICE HARRIS delivered the opinion of the Court.* Objections to the probation of a warranty deed of a plot of land situated in Monrovia were filed by D. C. Caranda against W. D. Richards and his wife, D. W. Richards, Gabriel Tapia Juwda, Rachel Richards-Banks and Presley Dunbar, the instant appellees, in the Monthly and Probate Court of Montserrado County, which said objections were denied in an order from which the said objectant took an appeal to this Court. The appeal was dismissed by this Court upon the ground that the last jurisdictional step to have been taken by the appellant, which is the service and return of the notice of the completion of the appeal, so as to bring the appellees under the jurisdiction of the court was not completed within statutory time. The appellant not being satisfied with

· Mr. Chief Justice Wilson was absent because of illness, and took no part in this case.

the ruling dismissing his appeal, and believing that palpable mistake had been made by inadvertently overlooking some fact or point of law, moved for reargument. Let us now turn to the appellant's motion for reargument and ascertain what is the alleged palpable mistake made by this Court in inadvertently overlooking some fact or point of law. Turning to the submission of the appellant, we find that he claims that the notice of appeal was issued within statutory time, in that the final ruling in the court below was delivered on April 3, 1956, and the bill of exceptions tendered and approved April 3, 1956, within ten days of said ruling. The appeal bond was filed on May 3o, 1956, and approved on that date, 57 days after the ruling--in other words, within 6o days thereof. The notice of appeal was duly issued in triplicate by the clerk of court on May 3o, 1956, or 57 days after the ruling, or within 6o days thereof, commanding the sheriff in obedience to the writ or notice, and returned on October 3o, 1956, nunc pro tunc, that is to say, as of May 3o, 1956; yet his appeal was dismissed. Let us now turn to the ruling handed down in the case, dismissing the appeal on December 3o, 1957, so as to ascertain whether the above-mentioned fact was inadvertently overlooked by the Court; and for that purpose, and the benefit of this opinion, we quote hereunder the rele vant portion of the Court's ruling in said case, as follows : "The records show a situation which, although it cannot excuse the appellant from responsibility for superintending and perfecting his appeal within time, yet the very nature of the recorded circumstances would seem to require that this court should sound a warning against a repetition of such a practice on the part of the probate commissioner." The records reveal that exceptions were taken to, and appeal announced from a ruling entered against the appellant on April 3, 1956. The appeal was granted, bill of exceptions and appeal bond approved within proper

time; but the notice of appeal which should have given this Court the proper legal jurisdiction over the appealed cause was, according to the appellant's argument before this bar, ordered not to be issued and served. As late as September 26, 1956, more than five months after the appeal had been granted, appellant addressed a letter which appears in the records, to the commissioner, reminding him that his notice of appeal had still not been issued, and urging him to order its issuance in these words : "Please kindly, Your Honor, facilitate the needful and have me relieved once and for all from this great anxiety, or let me know if you will not allow the granted appeal, so that I may be forced to take recourse otherwise, which I repeatedly tell you I am loathed to do. Too much is involved as you are aware, causing me to continually rely upon your faithful guarantees through the past months." It is peculiar that, even though the appellant realized his right to other recourse in view of the commissioner's attitude, he did not take advantage of that right to safeguard his interest on appeal. As wrong as the act

of the probate commissioner is, there can be no excuse for the appellant's failure to have taken the proper legal steps to compel the commissioner to allow his notice of appeal to be issued and served within the proper time. And as strongly as we feel over this situation, we have to be reminded that courts will not do for litigants what they are expected to do for themselves. It was upon the ground that the notice of appeal had been issued and served outside the time required that the appellees prayed the dismissal of the appellant's appeal. It is, therefore, crystal clear that the fact which the appellant claims was overlooked, was not overlooked but exhaustively treated, and was the cause of the dismissal of his appeal. In the circumstances, the Court denies the motion for reargument with costs against the appellant. And it is so ordered. Reargument denied.

Jawhary v Hassan [2001] LRSC 8; 40 LLR 418 (2001) (5 July 2001)

HAFEZ M. JAWHARY, Appellant, v. GHASSAN HASSOUN, Appellee.

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

Heard: March 22, 2001. Decided: July 5, 2001.

1. In the disposition of a motion to dismiss a cause of action a trial judge is limited to disposing only of the law issues which relate to the statutory grounds for dismissal of the action, and not to pass on all of the issues raised in the pleadings which are not statutory grounds for the dismissal of the action.

2. In a motion to dismiss, a judge is limited to the motion and is required to search only for the existence of the statutory grounds for dismissal. He is under no obligation to pass upon issues raised in the pleadings which are repeated in the motion and which are not among the statutory grounds for the dismissal of an action.

3. Under the Decedents Estates Law an administrator or administratrix may be authorized by the court to dispose of the estate of the decedent. However, the administrator/administratrix cannot dispose of property of the estate without first obtaining the court’s permission.

4. A person who is not a fiduciary of a decedent’s estate duly appointed by the court has no power or authority to dispose of the decedent’s estate, whether such person be an heir of the decedent or not.

5. Where a lease agreement is signed by persons who are administrators/ administratrixes of a decedent estate, but not in their capacity as such, the signatures of such persons do not bind the estate.

6. A lease agreement which is signed by administrators/administratrixes of a decedent estate but which fails to state that they signed in that capacity does not vest in the lessee the power, authority, or capacity to sue for any portion of the estate.

7. It has always been the practice of the Supreme Court to pass only upon those issues it deems to be meritorious, worthy of notice, and germane to the legal determination of the case; the Court does not have to pass on every issue raised in the bill of exceptions or in the briefs filed.

The appellant, Hafez M. Jawhary, sued out an action of ejectment against the appellee, Ghassan Hassoun, to oust, evict and eject the appellee from a parcel of **land** which the appellant claimed he was legally entitled to by virtue of a lease agreement entered into with the heirs of the late Sensee Carew. The trial court judge sustained the contention of the appellee, contained in a motion to dismiss, that the appellant lacked the capacity to sue out the action of ejectment since the persons who signed the lease under which the appellant claimed the right of possession to the premises did not do so in their capacity as administrator and administratrix of the Intestate Estate of the late Sensee Carew, and accordingly dismissed the action. From this ruling, the appellant appealed to the Supreme Court for review.

On appeal, the appellant contended that the trial judge had erred when in ruling on the motion to dismiss, he passed upon factual issues which should have been submitted to the jury for trial; and that the judge had further erred in ruling that the appellant lacked the capacity to sue.

The Supreme Court rejected the appellant's contentions, holding, firstly that the trial judge had correctly and adequately passed upon the legal issues raised in the motion, and that he was limited by statute to pass only upon those issues which related to the dismissal of the case. The Court observed that once those issues had been determined by the court and found to be sufficient to dismiss the case, the judge was under no obligation to pass upon the other issues raised but which did not relate to the dismissal of the case. The Court opined that the lack of capacity to sue was a statutory ground upon which a case could be dismissed. It noted that in the instant case, the trial court judge had found that the persons who signed the lease agreement relied upon by the appellant to claim the right of possession to the premises, although being administrators of the Intestate Estate in question, did not sign in the capacity as administrators of the estate. The Court pointed out that because the persons who signed the lease agreement exhibited by the appellant, even if they were heirs of the late Sensee Carew, did not have the authority to commit the estate, which could only be done in their capacity as administrators of the said estate, the lease conveyed no power, right, authority, or capacity to the appellant to sue for any portion of the estate. Accordingly, the Court said, the appellant lacked the capacity to sue and, hence, the trial judge was correct in dismissing the action. The Court therefore affirmed the ruling of the trial court.

Pei Edwin Gausi of the Law Chambers of Gausi and Partners, Inc. appeared for the appellant. Roger K. Martin, Sr. of the Martin Law Offices appeared for the appellee.

MR. JUSTICE MORRIS delivered the opinion of the Court.

During his lifetime, the late Oldman A. Sensee Carew was possessed of several parcels of **land** around the City of Monrovia, among which was the portion situated on Randall Street, adjacent to Marconi Business House, opposite DITCO Store. Following the death of Oldman A. Sensee Carew, one Boima Gray, without any letters of administration from the Monthly and Probate Court for Montserrado County, situated at the Temple of Justice in Monrovia, on May 1, A. D. 1995, leased the above described premises to Mr. and Mrs. Archie F. Bernard for a period of twenty (20) years. The children and cousins of the deceased, in persons of Randolph A. Carew, Rashied P. Carew, Lansana Golafale, and Clement V. Kimber, respectively, not being satisfied with what Boima Gray had done regarding the transaction with Mr. & Mrs. Archie F. Bernard, petitioned the Monthly and Probate Court for Montserrado County for letters of administration to administer the Intestate Estate of the late A. Sensee Carew, named supra. On the 8th day of August, A. D. 1997, the within named persons, including the said Boima Gray, were appointed by the Monthly and Probate Court for Montserrado County as administrators of the Intestate Estate of the late A. Sensee Carew.

Subsequently, the administrators of the said Intestate Estate of the late Sensee Carew instituted cancellation proceedings in the Civil Law Court, Sixth Judicial Circuit, Montserrado County, to cancel the lease agreement executed between Boima Gray and Mr. & Mrs. Archie F. Bernard on the ground that the agreement was illegal. Mr. and Mrs. Archie F. Bernard conceded and instructed their counsel, Counsellor Pei Edwin Gausi, of the Gausi & Partners Law Chambers, to voluntarily discontinue the cancellation proceedings, after having effected a mutual cancellation of said lease agreement with Boima Gray. Counsellor Roger K. Martin, Sr., for the Intestate Estate of the late Sensee Carew, prepared a notice of voluntary discontinuance as prescribed under chapter 11, section 11.6 (1)(b) of the Civil Procedure Law, 1 LCLR 117 and 121. The notice was duly signed by both counsels of records and approved by the presiding judge, His Honour J. Boima Kontoe, on February 18, A. D. 2000. The notice of voluntary discontinuance, as well as the mutual cancellation agreement entered into between Mr. Boima Gray and Mr. & Mrs. Archie F. Bernard, formed part of the certified records before this Honourable Court. Also, the notice of voluntary discontinuance and the instrument of mutual cancellation of the lease agreement between the Bernards and Boima Gray were filed and concluded before His Honour J. Boima Kontoe on February 18, A. D. 2000.

On the 19th day of February, A. D. 2000, the administrators of the Intestate Estate of the late Sensee Carew, acting in that capacity, and as lessors, then entered into and executed an agreement of lease with the appellee herein, Ghassan Hassoun, as lessee. The said lease

agreement was probated and registered according to law, without any objection. Thereafter, Counsellor P. Edwin Gausi began communicating with the appellee on behalf of the appellant, alleging that the appellee was illegally occupying the property in question, and claiming that the said premises belonged to his client, Hafez M. Jawhary, the appellant herein. The appellee, being lessee of the within named Intestate Estate, brought said matter to the attention of the administrators and the Martin Law Offices. Whereupon, the administrators requested the authority or document under which the appellant was claiming the premises against the appellee. Counsellor P. Edwin Gausi, now counsel for the appellant, refused to furnish the document, but instead proceeded to court in an action of ejectment to eject and evict the appellee from the premises the appellee had leased from the administrators of the aforesaid Intestate. The action of ejectment was commenced on the 24th day of June, A. D. 2000, in the Civil Law Court, Sixth Judicial Circuit, Montserrado County, during its September Term, A. D. 2000, with the appellant, Mr. Hafez M. Jawhary, named as plaintiff, and Mr. Ghassan Hassoun, the appellee, named as defendant. The appellee was brought under the jurisdiction of the court after being duly served with a writ of summons. However, before an answer could be filed by the appellee, the appellant sua sponte withdrew his complaint. Thereafter, on June 30, 2000, the appellant filed an amended complaint, consisting of six (6) counts. The appellant averred in his amended complaint that he had the right to institute the action of ejectment under or in reliance upon chapter 62, section 62.1 of the Civil Procedure Law, as contained in volume 1 of the Liberian Code of Laws Revised, and by virtue of the lease agreement which he had executed on April 8, 1998 with the Carews, for the period commencing from July 1, 1998 and ending on June 30, 2018, for a one storey building situated and located on Randall Street. The lease agreement was pleaded as Exhibit "PLA", and carried the signatures of Messrs. Randolph A. Carew, Gabriel B. Carew, and Rashied P. Carew, as lessors, and Mr. Hafez M. Jahwary, as lessee.

On July 4, 2000, having been summoned, the appellee filed an amended answer simultaneous with a motion to dismiss the action of ejectment, stating several grounds, principal among which were the following: (a) that the document relied upon by the appellant to claim the said premises did not relate to the Intestate Estate of the Late Sensee Carew, in that the said document was not signed by the administrators of said Estate, and that as such, the appellant lacked the capacity to sue for any portion of the said Intestate Estate; (b) that the appellant's document, marked "PLA", and annexed to the amended complaint, was further void and illegal because it was probated on the same day it was issued, same being April 8, A. D. 1998; (c) that the said document was made for the same period originally granted to Mr. & Mrs. Archie F. Bernard for the identical premises, when legally the premises could not be covered by two (2) lease agreements involving separate lessees for the same period; and (d) that the appellant had failed and neglected to pay all accrued costs prior to and during the filing of the appellant's amended complaint. The motion was resisted and pleadings rested with the reply.

His Honour, Judge Varney D. Cooper Sr., presiding over the September Term, A. D. 2000 of the Civil Law Court, Sixth Judicial Circuit, Montserrado County, heard the motion to dismiss and the resistance. He sustained the contentions advanced in the motion, granted the motion, and dismissed the appellant's action of ejectment on September 20, 2000. The appellant excepted to the ruling and announced an appeal therefrom to this Honourable Court for review.

Reviewing thoroughly the briefs filed, and after listening to the legal arguments made by counsels for both parties before this Honourable Court, we gathered the appellant's contention and consistent argument to be as follows, to wit:

1. That the trial judge committed a reversible error when he passed on factual issues during the hearing of the motion to dismiss without taking any evidence, thereby concluding that the appellant had no capacity to sue;

2. That the appellant had the capacity to sue for said premises because he had a lease agreement covering the said premises; and

3. That the appellant was under no legal obligation to pay accrued costs because at the time of filing of the amended complaint the appellee had not filed any papers in court.

The appellee, on the other hand, strenuously contended in his brief and arguments before this Honourable Court as follows, to wit:

(a) That the document relied upon by the appellant to claim the premises did not relate to the Intestate Estate of the late A. Sensee Carew, in that the said document was not signed by the lessors in their capacities as administrators of the said Estate, and that as such the appellant lacked the capacity to sue for any portion of the said Intestate Estate;

(b) That the appellant's document, marked "PLA" and annexed to the amended complaint, was further void and illegal because it was probated on the same day it was issued, same being April 8, A. D. 1998;

(c) That the document referred to, supra, marked "PLA", was made and executed for a period identical to that originally granted to Mr. and Mrs. Archie F. Bernard in the lease agreement with them when legally the said premises could not be covered by two (2) lease agreements, involving separate and distinct lessees, for the same period which had been cancelled by the notice of voluntary discontinuance executed pursuant to chapter 11, sections 11 .6 (1) (b), duly signed by Counsellor Pei Edwin Gausi of the Gausi and Partners Law Chambers and Counsellor Roger K. Martin, Sr., and approved by His Honour Judge J. Boima Kontoe on February 18, 2000, as well as the mutual cancellation of the lease agreement entered into between Boimah Gray and Mr. & Mrs. Archie F. Bernard; and,

(d) That the appellant had failed and neglected to pay all accrued costs prior to and during the filing of the appellant's amended complaint.

After a careful perusal of the certified records forwarded to this Honourable Court, we view the below listed points as the germane issues for the determination of this matter:

(1) Whether or not the trial judge committed a reversible error when he granted the appellee's motion to dismiss, and dismissed, the appellant's amended complaint on the ground that the appellant lacked the capacity to sue, without submitting the case to a jury trial?

(2) Whether or not an individual or person other than the administrators or administratrixes can dispose of any portion of an intestate estate?

Traversing issue one, which is whether or not the trial judge committed a reversible error when he granted the appellee's motion to dismiss and dismissed the appellant's amended complaint on the ground that the appellant lacked the capacity to sue, without submitting the case to a jury trial, the answer is no. From the certified records in this case, we observed that the trial judge, in his ruling on the motion to dismiss, adequately passed upon the issue of privity of contract or capacity to sue, contrary to the allegation of the appellant that the judge committed a reversible error. We are also in agreement with the contention of the appellee that the trial judge was limited to passing on only the law issues relative to the statutory grounds for dismissal of the action, and not to pass on all of the issues raised in the pleadings which are not statutory grounds for dismissal of an action, especially the factual issues which require the aid of a jury. In a motion to dismiss, the judge is limited to the motion and is required to search only for the existence of the statutory grounds for dismissal. He is under no obligation to pass upon issues raised in the pleadings which are repeated in the motion and which are not among the statutory grounds for dismissal of an action. We therefore hold that the trial judge committed no reversible error when he dismissed the action of ejectment on the statutory ground of the capacity to sue. For reliance, see Civil Procedure Law, Rev. Code 1:11.2(1), chapter 12, Pretrial Motions, 1 LCLR 117, 118; J. J. Roberts Foundation v. Kaba and Meridien Properties Incorporated, Inc. (MPI), [2000] LRSC 32; 40 LLR 309 (2000).

With respect to the second issue, which is whether or not individuals or persons other than the administrators or administratrixes can dispose of any portion of an intestate estate, a thorough perusal of the certified records transmitted to this Honourable Court revealed that both the appellee and the appellant agreed that the lease premises situated on Randall Street, opposite DITCO, Monrovia, was owned by Decedent A. Sensee Carew. This being so, the only question that exists is: Who is authorized under the law to dispose of any portion of a decedent's estate?

During the arguments in the lower court and before this Honourable Court, the appellant repeatedly contended that the lease agreement marked as exhibit "PLA", attached to the amended complaint, and which the appellant relied upon to institute the ejectment against the appellee, having been signed by the heirs of the decedent, is sufficient and binding. On the other hand, the appellee contended and held the view that the contention of the appellant could not be sustained by the Decedents Estates Law of the Republic of Liberia with respect to who is legally authorized to dispose of any portion of the Intestate Estate, i.e. the heirs, or the administrators or administratrixes.

To effectively and legally dispose of the contentions of the parties with respect to who is authorized to dispose of the property of the estate of an intestate estate, we quote section 117.1 of chapter 117 of the Decedents Estates Law, which provides as follows, to wit:

"Section 117.1. Disposition of Real Property for Particular Purposes Authorized; Disposition and Fiduciary as Defined in this chapter.

(F) Purposes for which real property is subject to disposition. The court may authorize or direct the disposition of a decedent's real property or any interest therein for any of the following purposes, subject to the limitations set forth in section 117.2.

For the payment of funeral expenses;

(b) For the payment of expenses of administration;

(c) For the payment of any taxes;

(d) For the payment of the debts of the decedent, including judgments or other liens, excepting mortgage liens existing thereon at the time of his death;

(e) For the payment of any debt or legacy charged thereupon;

(f) For the payment and distribution of their respective shares to the persons entitled thereto; and,

(g) For any other purpose the court deems necessary for the best interests of the estate.

(2) "Disposition" defined. Disposition of the real property of a decedent within the meaning of this chapter includes:

(a) Sale;

(b) Mortgage;

(c) Exchange;

(d) Lease;

(e) Confirmation of a prior lease made without court's approval;

(f) Release of the right to an award for the taking of real property by eminent domain; and,

(g) Transfer to a spouse or other beneficiary in full or partial satisfaction of the interest or share of such person in the decedent's estate." Decedents Estates Law, Rev. Code 8:117.1(1), (2).

It is our interpretation and construction of the foregoing quoted provisions of the Decedents Estates Law of Liberia that an administrator or administratrix of a decedent's estate may be authorized by court to dispose of the estate of a decedent. Moreover, that even an administrator/administratrix cannot dispose of any property of a decedent's estate without first obtaining the court's permission/order to do so. On the strength of the above quoted provisions, it is the holding of this Honourable Court and in keeping with the legislative intent that a person who is not a fiduciary of a decedent's estate duly appointed by court, has no power or authority to dispose of a decedent's estate, whether such person is an heir of a decedent or not, as contended by the appellant in this case under review.

Further to the above, we observed that on page two (2) of his bill of exceptions, the appellant quoted a significant aspect of the ruling of the lower court dismissing appellant's amended complaint, but conveniently left out of quote the controlling portion of the judge's findings leading to the dismissal of said amended complaint. We therefore hereby quote below the complete statement made by the judge so as to include the portion left out of quote by the appellant on page 2 of his bill of exceptions:

Page 3 of the ruling of the trial judge. "Plaintiff/ respondent's exhibit 'PLA", which is the lease agreement, is signed by the following persons: (1) Randolph A. Carew, co-lessor; (2) Gabriel D. Carew, co-lessor; and (3) Rashied P. Carew, co-lessor. From a careful perusal of the aforesaid document, the names of the following administrators were not listed on plaintiff/respondent's exhibit "PLA", which is the lease agreement filed with the complaint (amended complaint). They are: Boima Gray, Clement V. Kimber, and Lansanah Golafale. The court observes that one Gabriel D. Carew's name appeared on exhibit "PLA". The court does not know how his name appeared on the said document since he was not listed on the letters of administration issued from the Monthly and Probate Court of Montserrado County, Republic of Liberia. Furthermore, those who signed PLA" did not indicate that they signed in their capacities as administrators."

The underlined portion of the above quoted excerpts of the judge's findings was the portion that was left out by the appellant on page 2 of his bill of exceptions. This underlined portion of the judge's observations is crucial because it reveals that whoever signed appellant's exhibit "PLA" did not sign in the capacity of administrators of the Intestate Estate of the late

A. Sensee Carew. It legally follows, therefore, that such unauthorized signatories cannot bind the said Intestate Estate, according to the provisions of the Decedents' Estates Law of Liberia, quoted supra. As such, the said lease agreement, exhibit "PLA", could not have conferred any power, right, authority, or capacity on the appellant to sue for any portion of the said Intestate Estate of the late A. Sensee Carew. Hence, rendering appellant's amended complaint was rendered dismissible and was therefore dismissed according to law. The appeal will not therefore lie, and the same is hereby denied.

As to the contention that several issues were raised in the case but may not have been passed upon, it has always been the practice of this Court to pass only upon those issues it deems meritorious, worthy of notice and germane to the legal determination of the case; the Court need

not pass on every issue raised in the bill of exceptions or in the briefs filed. In the instant case, the court acted in keeping with practice and precedence by only addressing itself to the germane issues and/or questions. For reliance, 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 Honourable Court that the appeal should be and same is hereby denied and the ruling of the trial judge is ordered confirmed. 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 to give effect to this judgment. Costs are ruled against the appellant. And it is hereby so ordered.

Judgment affirmed.

Pratt v Philip et al [1949] LRSC 13; 10 LLR 147 (1949) (22 April 1949)

JACOB 0. PRATT, Plaintiff-in-Error, v. JAMES T. PHILLIPS and EDWARD J. SUMMERVILLE, Assigned Judge Presiding at the Circuit Court for the Sixth Judicial Circuit, Montserrado County, Defendants-in-Error. WRIT OF ERROR TO THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued April 5, 1949. Decided April 22, 1949. 1. Rules of court are for the purpose of aiding the speedy determination of causes while the courts are established for the higher purpose of the administration of justice, and where the strict enforcement of the rule would tend to prevent or jeopardize the administration of justice the rule must yield to the higher purpose. 2. Neither justice nor equity would support striking from the docket this case of ejectment, the records of which have been transmitted to this Court after granting the writ of error, merely because plaintiff-in-error died in the interim and no motion for substitution had been filed in keeping with Supreme Court rule of court until the March term of the Court, thereby depriving his representatives of the right granted by the Constitution to defend property. 3. Ejectment, being a mixed question of law and fact, shall be tried by a jury.

James T. Phillips, defendant-in-error herein, successfully sues Jacob 0. Pratt, plaintiff-in-error herein, in ejectment in the circuit court. On appeal to this Court, the case was remanded for repleading and, if an issue of fact regarding encroachment arose, the trial court was instructed to order a survey of the disputed property. Pratt v. Phillips, [1941] LRSC 15; 7 L.L.R. 276 (1941). After repleading the case was ordered to trial on the date submitted after said survey. The trial judge did not allow the then defendant his day in court and without a jury decided in favor of the then plaintiff. The plaintiff-in-error unsuccessfully

applied in Chambers for a writ of error. On appeal to this Court, en banc, the application was granted. Upon assignment of this case for hearing wherein defendant-in-error moved to strike the case from the

docket on the ground that plaintiff-in-error was dead, motion denied.
R. A. Henries for plaintiff in error. R. F. D. Smallwood for H. Lafayette Harmon of counsel for James T. Phillips.
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MR. JUSTICE REEVES delivered the opinion of the

Court. From the records in the above case, the following facts have been culled: In the month of April, 1939 James T. Phillips, plaintiff, now defendant-in-error, instituted an action of ejectment in the Circuit Court for the First Judicial Circuit, Montserrado County, against Jacob 0. Pratt, defendant, now plaintiff-in-error, for ten acres of land situated in the District of Careysburg, being a part of one hundred acres to which he held bona fide title.
To this complaint Jacob 0. Pratt, defendant, now plaintiff-in-error, filed an answer in denial, and then ensued a legal contest of pleadings. At the November term, 1939 of said court the case was duly tried and judgment rendered in favor of James T. Phillips, plaintiff, now defendant-in-error, from which judgment plaintiff-in-error appealed to this Court. Said appeal case after due deliberation thereon by the Supreme Court after trial during the April term, 1941 was remanded with the following 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." Id.[1941] LRSC 15; , 7 L.L.R. 276. In keeping with said decision of the Supreme Court the parties repleaded in the court below, and after they had rested, the legal issues were duly disposed of by His Honor R. F. D. Smallwood, then Judge of the First Judicial Circuit, who ruled said case to trial upon the data that would be submitted after the survey of the land in dispute by a surveyor. Subsequently, on October 24, 1944 the case was called up by His Honor Edward J. Summerville, Judge presiding over the Civil Law Court of the Sixth Judicial Circuit, Montserrado County, which court had been empowered with such jurisdiction, and, without allowing defendant Pratt, now plaintiff-in-error, his

day in court, rendered final judgment against him on October 25, 1944, without the assistance of a jury, in violation of the statute requiring questions of fact arising in ejectment cases to be tried by a jury and in violation of the order of the Supreme Court in its judgment remanding said case for repleading and trial under special instructions. Judge Summerville also ordered a notice to be issued and served on the defendant commanding him to vacate his said premises within ten days from the date of its issuance on October 25, 1944. Jacob 0. Pratt, plaintiff-in-error, then defendant, being dissatisfied with the final judgment rendered by the judge below and the order issued to vacate said premises, filed an application for a writ of error in the Chamber Session of this Supreme Court in the October term, 1944. Said application was heard and on September 19, 1947 the writ prayed for was denied by the Associate Justice then presiding in Chambers, from which decision the plaintiffin-error appealed to the Bench en banc. Said appeal was heard during the October term of said year by the Bench en banc, and the application for the issuance of a writ of error was granted by the- majority of the Justices, one

Justice dissenting. Upon the granting of said writ a mandate was sent to the lower court, and the records of the court below were transmitted to this Court. Upon the assignment of the case for hearing by the Court at this term Counsellor Smallwood for H. Lafayette Harmon, of Counsel for James T. Phillips, defendant-inerror, filed a motion to strike the case from the docket because the plaintiff-in-error had died since October, 194.7 and there had been no motion filed for substitution of party since under the rule of court more than two terms of court had since elapsed. This motion was resisted by Counsellor Richard Henries, of counsel for plaintiff-in-error, who simultaneously filed a motion for substitution of party which was also resisted by counsel for defendant-in-error. The Court per subsequent assignment patiently heard the arguments of counsel on said motion filed and its resistance, permitting said counsel considerable latitude. Defendant-in-error's counsellor at law, R. F. D. Smallwood, referred to and read Rule VI of the Revised Rules of the Supreme Court of Liberia [2 L.L.R. 661, 665] and elaborately argued thereon; but when his attention was called to the last clause of section one of said rule he frankly admitted that said clause made the rule discretionary and not mandatory. "In the case of the death of either party, the name of the executor, or administrator may be substituted and the cause pending be proceeded with. Either party may submit a motion for such substitution and the same shall be disposed of as justice and equity may require. "If no representative of a deceased party shall appear with a motion for substitution for two terms after the death of the party, the cause may be stricken from the calendar upon the motion of the opposite party." Rules of Sup. Ct., VI, 2 L.R.R. 665.

That rules of courts are under the control of the courts is accepted universally. "Rules of Practice are for purpose of aiding in speedy determination of causes, while the courts are established for the higher purpose of the administration of practice [sic], and, where the strict enforcement of the letter of a rule would tend to prevent or jeopardize the administration of justice, the rule must yield to the higher purpose, and be relaxed by the court." 21 C.J.S. Courts § I78a., n. I I (1940). In further support of said principle, see 7 R.C.L. 1027 (1 9 1 5). Such a principle was universally accepted ostensibly to prevent the jeopardization of the administration of justice. This is vividly borne out in the issue now before this Court, for without such a universally accepted principle which finds support in the last clause of section one of Rule VI of this Court, "either party may submit a motion for such substitution and the same shall be disposed of as justice and equity may require," the Court would have no alternative but to grant defendant-inerror's motion to strike the case from the docket. However, under the accepted universal principle that rules of courts are but the means to accomplish the ends of justice and that it is always in the power of the court to suspend its own rules and except a particular case from its operation, whenever the purposes of justice require, the Court is of the opinion that this case falls within this category. Neither justice nor equity would support striking from the docket this case of ejectment, the records of which have been transmitted to this Court upon a mandate issued to the lower court after granting the writ of error, merely because plaintiff-in-error died in the interim and no motion for substitution had been filed in keeping with Rule VI, supra, until the March term of the Court, thereby depriving his representatives of the

right granted by the Constitution to defend property. This principle is even more particularly appropriate in this case where plaintiff-in-error was the defendant in the ejectment action. "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. In the case Reeves v. Hyder, 1 L.L.R. 271 (1895) this Court held: "ejectment . . . supports the idea of adverse possession. . . . It being a mixed question of both law and fact, the statute provides that such trial is to be by a jury . . . under the direction of the court. . . ." Id. at 272; Harris v. Locket, i L.L.R. 79 (1875). This Court is of the opinion as stated supra that this case falls within the category of cases in which a court is justified in excluding the operation of any of its rules whenever the purposes of justice require, since rules of courts are but the means to accomplish the ends of justice, and it therefore denies said motion and refuses to strike said case from its docket. In the opinion of the Court a legal trial of said case should be had in conformity with the Constitution so that equity and justice may be meted out in the premises to all parties concerned ; and it is hereby so ordered. Motion denied.

Carew v Jessenah [1958] LRSC 5; 13 LRSC 168 (1958) (25 April 1958)

MARIMA CAREW, Appellant, v. ABDUL JESSENAH and SALLY SELLAH, by and through her Husband, SAKU SELLAH, Appellees.
APPEAL FROM THE
CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued March 26, April 14, 1958. Decided April 25, 1958. 1. A mere deposit of a deed as security for a debt is insufficient to create a mortgage without a written instrument. 2. A deed which has been duly proved and registered will be presumed valid in subsequent proceedings for a cancellation of such a deed by reason of alleged fraud ; and plaintiffs in such proceedings must sustain the burden of proof of facts constituting such fraud. 3. Insanity cannot be established by testimony of non-expert witnesses alone. ' 4. In the absence of sufficient evidence, allegations of fact cannot be considered as proved.

On appeal from a judgment of the equity division of the court below cancelling an administrator's deed for fraud, judgment reversed.
R. F. D. Smallwood for appellant. for appellees.
MR. CHIEF JUSTICE WILSON

Joseph F. Dennis

delivered
the opinion of

the Court. This case took its birth in the filing of a bill in equity for cancellation of an administrator's deed for Lot Number 36, Monrovia, and for relief against fraud, by Abdul Jessenah and Sally Sellah, by and through her husband Saku Sellah against Marima Carew, in the Equity Division of the Circuit Court of the Sixth Judicial Circuit, · Montserrado County. According to the records certified to us from the court below, the pleadings progressed up to and including the surrejoinder. There were many law issues raised by both sides and

controverted in the court below, upon which the presiding Judge made ruling, refusing a dismissal of the action as filed by plaintiffs, appellees before this Court; and the case was ruled to trial on the merits of the facts involved. For reasons not made known to this Court, defend antappellant did not except to the ruling of the trial Judge on the law issues; hence said ruling cannot be made a subject of review by this Court. The record certified to us

from the court below reveals the following history of the case and the circumstances therein involved. In the year 1937, one Sally Jessenah, now deceased, mortgaged the property in question to one George Tarpeh against a loan of $124 to be redeemed within a specified time. Mortgagor having defaulted in the payment of the loan, the mortgagee foreclosed said mortgage and took possession of the property. The said Sally Jessenah, in an effort to redeem the property, appealed to one A. S. Carew, late husband of appellant, for a loan of the amount due plus interest. The said A. S. Carew, not having the amount required, applied to his wife, appellant in this case, for the amount, which she advanced him in the sum of L4o, with interest at the rate of one shilling to the pound per month for a period of one calendar year. Upon receiving this amount, the said A. S. Carew appealed, on behalf of Sally Jessenah, to George G. Tarpeh, to give the said Sally Jessenah an opportunity to redeem the property. Through the intervention of the late counsellor P. G. Wolo, Mr. George G. Tarpeh consented and accepted the redemption money tendered, and retransferred said property to the said Sally Jessenah. The deeds and other documents for said property were deposited with the said A. S. Carew for safekeeping, but the property was never transfered to A. S. Carew by Sally Jessenah, nor was any instrument in writing given at the time of the depositing of said deeds. Unfortunately it was not possible for Sally Jessenah to

refund the loan from A. S. Carew to redeem the property from George G. Tarpeh prior to his death. From the records in the case, an effort was made by appellees to establish that a portion of this loan was tendered to appellant, which portion she refused to accept. This part of the testimony in the case will be treated later in this opinion. Sally Jessenah died without making full payment of the loan received from A. S. Carew--an amount borrowed from his wife, the appellant. A. S. Carew, husband of the appellant, also died before the loan in question was refunded, leaving the transaction still open. Appellant appealed to the Monthly and Probate Court, Montserrado County for some action to facilitate the recovery of her money. This recourse to the Monthly and Probate Court was on the advice of the late Judge Edward J. Summerville, the said Sally Jessenah having died intestate. Appellees' counsel, in his argument before this Court, insisted and contended that the transaction between Mr. A. S. Carew and Sally Jessenah constituted a second mortgage of said property--this time to the Carews. This point will also be treated upon later in this opinion. The record further reveals, as claimed by appellant, that an auction sale was had of the property, since, as she alleged, the said Sally Jessenah was owing other persons besides the debt he was owing her. The claim of auction sale was contested by appellees. Growing out of this alleged auction sale, consequent upon the appointment of one Churchill Thomas and Laminah Jessenah, brother of the late Sally Jessenah, as administrators of the intestate estate of Sally Jessenah, an administrator's deed was executed by the said administrators, probated and registered, vesting fee title in Marima Carew, appellant, the highest bidder at the auction. Appellees,

plaintiffs in the court below, considering the transaction disposing of the property in question as tainted with fraud, filed a bill in equity for cancellation of said administrator's deed for Lot Number 36, Monrovia set-

ting out in their complaint, among other things, that after the death of A. S. Carew, husband of appellant, repeated tender of the amount of ct4o was made; but that appellant refused to accept same, because of her design to deprive them of their property which had descended to them as heirs of their father--the late Sally Jessenah. They further complain that, in furtherance of this fraudulent intent, appellant secured a false and fraudulent deed for said property, claiming same to be an administrator's deed, when in truth and in fact, said intestate estate was never put in court nor the property ever sold, said Sally Jessenah not having left any debts to have made it necessary to sell said property out of which an administrator's deed could have originated. They further complained that the name of Laminah Jessenah, brother of the late Sally Jessenah, appearing on said administrator's deed, was forged, because at the time he is alleged to have signed said deed, and at the time also he is alleged to have been appointed an adminstrator of said intestate estate, he was very sick, and therefore did not affix his cross to the deed, nor knew anything of the fraudulent transaction.

These allegations, as made and complained of by plaintiffs-appellees, were countered by appellant in her answer by insisting and contending (apart from the points of law raised and controverted, but not a subject of consideration in this opinion) that the transaction of probation and registration of said deed, as also the appointment of administrators named in and affixed to said deed, were genuine and legal acts of court, as could be seen from the deed made profert and admitted in evidence at the trial without objections from appellees. She also contended in her answer that there was no mortgage transaction between her and the said late Sally Jessenah, but that the loan which her said late husband, A. S. Carew, gave to Sally Jessenah to redeem his property from George G. Tarpeh was a transaction exclusively between her late husband and the said Sally Jessenah in

which she was no party.

On the contrary, she contended that she merely accommodated her late husband by a loan of this amount to him to relieve Sally Jessenah from his embarrassment, they being brethren of the Muslim faith.

Notwithstanding the facts and circumstances brought out by the witnesses on both sides during the trial of this case in the court below, His Honor, Judge D. W. B. Morris, presiding, made final ruling cancelling and making null and void, to all intents and purposes, the administrator's deed that was admitted in evidence at the trial, and ruling that

said property revert to plaintiffs-appellees with cost against defendant - appellant. From this final ruling of court, defendant-appellant has appealed to this Court for review. Reading through the bill of exceptions, and summarizing the many points therein raised and contained, as also the briefs filed by both sides and argued before this Court, we have decided upon a resolution of this matter in manner following, to wit: The bill of exceptions, consisting of twelve counts, recounts sundry rulings of the trial Judge on questions propounded on both sides, to which exceptions were noted. We find ourselves in agreement in not laboring too much time on these rulings and exceptions, since they do not seem to be very important in influencing an equitable disposition on the main issues involved in the case. We will therefore make a brief survey of the evidence tending to prove or disprove the following salient points in the case, namely: i. Whether the transaction of loan from A. S. Carew to Sally Jessenah, on his request to redeem the property mortgaged by him to George G. Tarpeh (an amount which he, Carew, borrowed from his wife, the appellant in this case) constituted a mortgage transaction between the late Sally Jessenah and Marima Carew, the appellant, that would preclude her from benefiting at an auction sale of the property in question.

2. Whether tender of the amount of debt so contracted by Sally Jessenah from A. S. Carew was actually wholly made by the heirs of Sally Jessenah, or Sally Jessenah himself, prior to his death, which left him not owing any debt to have necessitated the disposition of his property by public auction. 3. Whether there was an auction sale of said property. 4. Whether there was an appointment by court of administrators of the intestate estate of the late Sally Jessenah, and who these administrators were. 5. Whether an administrator's deed was actually executed, probated and registered as the law requires, and whether the signatures appearing thereon as administrators are genuine. The foregoing questions, upon investigation, by considering the evidence produced at the trial on both sides, would seem to resolve the claim of fraud in the transaction, about which plaintiffs-appellees complained in their bill of equity for cancellation of said administrator's deed. We will now address ourselves to the questions, succinctly recited above, by recourse to the testimony of the witnesses recorded at the trial in the court below. Commenting on the first question mentioned above, we are convinced that the loan made by the late husband of appellant to the late Sally Jessenah to redeem his property mortgaged to George G. Tarpeh, was a transaction in which appellant was not a party, and even so as it relates to her late husband, A. S. Carew himself, the mere depositing of the deeds for the property for safekeeping by the said Sally Jessenah after receiving the loan from him, without transferring the property to the said A. S. Carew, without an accompanying written instrument, did not constitute a mortgage transaction. "It is a rule of long standing in England, that an equitable mortgage on land is created by the mere depositing of the title deeds as security for a debt. This rule grew out of the fact that there was no general system of registration in that Country and the system

of conveyance rendered it necessary to have possession of the muniments of title. In the United States a few courts seem to have accepted the English doctrine, but it is rejected in most jurisdictions as having been superseded by the system of registration of **land** titles which prevails in this country. . . . "Title deeds need not be deposited with the creditor personally in order to create a mortgage. It is sufficient if they are delivered to a third person over whom the debtor has no control. And it has been held that a mortgage is created by a written acknowledgment of a debt with an understanding to hold the title deeds of a house as a security for the same." 19 R.C.L. 277-78 Mortgages §§ 48, 49. Based on our conclusion that the transaction of debt between Sally Jessenah and A. S. Carew for the amount by which the property in question was redeemed from George G. Tarpeh was one exclusively between the said Sally

Jessenah and A. S. Carew, depositing the deed for said property, without a written instrument, even though the amount was loaned to Sally Jessenah by her husband A. S. Carew, yet, under the law just quoted, these facts would not make this transaction a mortgage of said property so as to preclude appellant from participating in an auction sale of said property for settlement of debts due by said intestate estate, she being one of the creditors of the said Sally Jessenah. As to the second question, we observe from the record, as is recited in the ruling of the trial Judge, that the sum of £25 was the only amount alleged to have been tendered by the relatives of the late Sally Jessenah in an effort to liquidate the debt of £40, plus interest. This statement, when compared with plaintiffs-appellees' complaint, which alleges that the full amount of the debt was tendered and refused (hence their claim of the said Sally Jessenah not owing any debt at the time of his death) goes to disprove the claim of nil debet, since, even if a

portion of the amount was tendered (and this was contested by defendant-appellant as untrue and without corroboration) such a partial payment, if tendered, could not fully relieve the said plaintiffs-appellees or the late Sally Jessenah, from liability for debt in this transaction. Therefore the plea of nil debet, as alleged by plaintiffsappellees in their complaint, is without proof in point of fact, and cannot prevail against the right of recovery by defendant-appellant. Regarding the truthfulness or falsity of allegations that an auction sale of the property in question had been held whilst admitting the insufficiency of evidence adduced at the trial to positively establish that said auction transpired, we are obliged to consider circumstantial evidence as controlling our decision on this point. The circumstance to which we refer is the act, if any, of probation and registration of the deed in question by the Monthly and Probate Court, Montserrado

County, as evidenced by the original deed, which was made profert and admitted into evidence on the trial without objections from appellees. If the probation and registration by the court is accepted as an accomplished fact, as we will later observe in this ruling, it follows as a natural sequence that there could not have been a probation and registration of a deed growing out of an auction sale. An auction was had ; and the only facts and circumstances that could nullify this transaction of probation and registration, in the absence of the original deed, would be the record of court, which unfortunately could not be obtained at the trial of the case. What is interesting to us is the contention made by appellees' counsel, when arguing before this Court, that it was the responsibility of the defendant-appellant to have procured the record of the Monthly and Probate Court to disprove the transaction of auction sale and subsequent probation and registration of the administrator's deed resulting therefrom. We could not understand, nor do we yet understand, how a plaintiff in cancellation proceedings

of a deed duly and regularly probated and registered, but claiming same to be tainted with fraud--a fraud more capable of being established by the record of the Monthly and Probate Court--could consider himself not responsible to produce said record of court as the surest means of establishing the claim of fraud as complained of ; especially so when the defendant-appellant introduced into evidence, without objections, the original administrator's deed, disposing of the property in question and vesting in defendant-appellant fee title to said property; yet claiming that it was the duty of the defendant-appellant to have produced this record of court. It is our considered opinion that the responsibility for production of this record of Court weighed more heavily on the plaintiffs-appellees, than on the defendant-appellant. Moreover, the record discloses that, apart from producing the original deed in court, defendant-appellant made an effort, as evidence of good faith, to have the records of the Monthly and Probate Court in this transaction produced at the trial of the case,

which records unfortunately could not be found, by reason of the neglect of the plaintiffs-appellees. In the absence of such record, this Court cannot but accept as genuine the administrator's deed that was admitted in evidence at the trial, since probation and registration thereof has been established on record by witness Bull, then clerk of the Monthly and Probate Court at the time of said probation and registration. Further, the testimony of surviving witnesses to the signatures, and of witnesses to the signatures of the administrators whose names appear on said administrator's deed, would seem to disprove the allegation of forgery of the signatures appearing thereon. Added to the testimony of witness Bull as to his personal knowledge of the probation and registration of the deed in question, is the testimony of appellant, Marima Carew, corroborated by witness Alhaji Darro as to the sale of said property by the Government, meaning an auction sale thereof.

We revert to the question of whether there was a valid appointment of administrators of the intestate estate of the late Sally Jessenah, and who these administrators were. Unless evidence is adduced as to the incapacity of the named administrators, the evidence of witness Bull, then clerk of the Monthly and Probate Court, when said administrators were appointed, would seem to establish the. fact that there was an appointment by court of the two persons named on the administrator's deed as administrators. The probation and registration of said deed would seem to be fully established in the absence of proof to the contrary. In addition to, and further commenting on the questions above recited, we must address ourselves to a very salient and important issue raised and hotly contested in the court below and in arguments on both sides before this Court. We refer to the alleged incapacity of Marimah Jessenah, one of the persons named as administrators, and who claimed, as is alleged in appellees' complaint, that he was very sick, and later in the trial stated that the sickness complained of was insanity. On this point we are reluctant to accept as legally sufficient a mere allegation or verbal statement of witnesses of a person being insane, because of his abnormal behavior, unless corroborated by expert testimony. The more so must the sufficiency of such an allegation be questioned when the condition of claimed insanity is contested at the trial by witnesses who, according to the record before us, stated that at the time and within the period the said Marimah Jessenah is alleged to have been insane, he was apparently in a normal state of mind; and that he was present at court and was actually commissioned as one of the administrators, and had knowledge of and did affix his cross to the administrator's deed, which cross was witnessed by the late Robert It Dennis. It is incongruous and inconsistent for a person alleged to be insane, to state with certainty, and expect same to be accepted by a court

of justice as sufficient, that he knew the time he went out of his mind and when he regained normalcy. Buttressing this position, we quote from the Syllabus of Scott v. Republic, 1 L.L.R. 430 (1904) : "The testimony of ordinary witnesses that a defendant had shown signs of insanity is not sufficient to prove insanity, but must be corroborated by the evidence of a medical expert." In the body of the same opinion we find the following at 1 L.L.R. 432: "Now it is the opinion of this Court that while it does not discredit the evidence of the witnesses named, on the temporary insanity of appellant, yet, according to the statute laws of Liberia, it is not the best evidence that the nature of the case admits of ; and uncorroborated by the evidence of a medical expert, it fails to establish the fact of insanity." Apart from this well established principle of law, the record of the trial below reveals the following testimony of witnesses who testified on behalf of the appellant

at the trial and countered the claim of insanity of Laminah Jessenah, one of the named administrators at the time of the execution of the deed in question : "Q. I also suggest that you are not in position to state the condition of his mind, meaning Laminah Jessenah, during the period which it is alleged that he was appointed as one of the administrators ; am I correct? "A. Apparently when the oath of office of administrator was administered by me, both he and Churchill Thomas were of sound mind." We have testimony of other witnesses on record, which it does not seem necessary to recite in this opinion, some asserting that he was of a normal condition at this time and others that he was crazy for a time and then gained normalcy; yet none of these witnesses have been established on record as expert witnesses to sustain a conclusion that the

said Laminah Jessenah was insane and therefore could not properly have been appointed an adminstrator, or have served in this capacity so as to be able to execute and affix his signature or cross to the deed in question. Considering all of the evidence in the case on both sides, and to support a fair and impartial decision on the issues involved, we are obliged to quote, for the record, from a decision of this Court, handed down in Houston v. Fischer and Lemcke, i L.L.R. 434, 436 (19o4) "But although equity courts are clothed with extensive powers, yet they are bound by rules and practice, etc., in the exercise of their authority. A fundamental rule of pleadings and practice is that evidence must support the allegations or averments in both law and equity proceedings. This court says that in pleadings, allegations are intended only to set forth in a clear and logical manner the points constituting the offence complained of, and if not supported by evidence can in no case amount to proof. Evidence alone enables the court to pronounce with certainty concerning the matter in dispute." To have entitled appellees, plaintiffs in the court below, to the cancellation of administrator's deed for Lot Number 36, Monrovia, it was their duty to have established by preponderating testimony the fraud complained of in their complaint. Finalizing our conclusion, therefore, and taking into consideration all of the facts and circumstances involved, we are at a loss to know how the trial Judge could have arrived at the decree handed down by him in favor of the cancellation of the administrator's deed. Said decree is reversed with costs against appellees. And it is hereby so ordered. Reversed.

Kiazolu et al v Ash-Thompson et al [1986] LRSC 12; 34 LLR 94 (1986) (31 July 1986)

MESSRS MUSA KIAZOLU and **EDWIN KIADII**, Petitioners, v. **HER HONOUR LUVENIA ASH-THOMPSON**, Judge, People's Monthly and Probate Court, Montserrado

County, the Clerk of the aforesaid Court, **MARY HOWE**, The Sheriff, Deputized Officers of Court and **A. B. CLARKE et. al.**, purported Heirs of the late Chief Bai's Intestate Estate, Respondents.

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE DENYING ISSUANCE OF THE WRIT OF PROHIBITION.
Heard: June 16, 1986. Decided: July 31, 1986.

1. The unreserved withdrawal of the defendant's answer/objection or returns is an admission of the truthfulness of all averments laid in the plaintiff's complaint and that the defendant no longer contests the case.
2. Where the defendant has unreservedly withdrawn his response, the court can safely, without the defendant, proceed as in the case of a default, to hear and determine the cause based on evidence adduced by the plaintiff. Such action will not constitute an abuse of discretion on the part of the trial judge.
3. There is no point in having a defendant present in court to announce an appeal to the ruling on a matter in which the defendant has withdrawn without reservation.
4. Prohibition does not obtain, and is rendered impotent, when the act a party seeks to prevent or undo has been settled before the petition for the writ is filed.
5. Prohibition obtains to restrain an inferior court from acting in a case which falls outside its jurisdiction or, having jurisdiction, attempting to proceed by rules other than those which ought to be observed at all times.
6. A writ of prohibition not only halts whatever remains to be done by the court against which it is issued, but also gives further relief by undoing what has been done.
7. The probate court has exclusive jurisdiction over all matters relating to property (personal and real) of a deceased person, and proceeding without a party who has unreservedly withdrawn his response is within the norm of the rules governing our circuit and probate courts.

Respondents herein, A. B**.** Clarke and others, filed a petition with the Monthly and Probate Court requesting that the letters of administration granted petitioners herein, Musa Kiazolu and others, to administer the intestate estate of the late Chief Bai Bai be revoked for failure to properly manage the estate between 1982 - 1985. Kiazolu and others objected to the petition for revocation, but they all being members of the same clan convened a family meeting to resolve the matter amicably, whereupon the objections were withdrawn. The Probate Court then appointed petitioners (respondents herein) as administrators of the said estate in the absence of the objectors.

The objectors/respondents, Kiazolu and others, then petitioned the Chambers Justice for a writ of prohibition to prevent the new administrators and the Probate Judge from administering the estate, accusing the said judge of abuse of discretion. The Justice denied the writ on the grounds

that objectors/petitioners had withdrawn their objection without reservation, therefore rendering prohibition on inappropriate remedy. The full bench of the Court affirmed.

Edwin Kiadii appeared for the petitioners. *M Fahnbulleh Jones* appeared for the respondents.

MR. JUSTICE TULAY delivered the opinion of the Court.

The parties to this petition are but a few of the descendants of Chief Bai Bai and his people to whom the Republic of Liberia executed an Aborigines Grant Deed for certain acres of **land** lying and listed in Matadi Gbove Town, Oldest Congo Montserrado County. The original grantees lived on and enjoyed the **land** until they all departed this life.

Petitioners herein then petitioned the Monthly & Probate Court, Montserrado County on the 22n" of April A. D. 1982 for letters of administration to enable them to administer and save from waste the intestate estate of their forebears. The petition was heard and granted and they were placed under oath. The records do not show what developed further. It is, however, noteworthy that for the years 1982-1985, during which petitioners had the estate in their charge, it was not brought to a close.

On the 15th of July, A. D. 1985, respondents petitioned the same Probate Court for revocation of petitioners letter of administration for the self same estate, have them removed and replaced by respondents on the strength of their own petition, then before court for letters of administration.

When petitioners were duly summoned, they appeared and filed their objections to the petition for revocation filed by respondents. The objection contain the following:

"MUSA KAIZOLU, EDWIN KIADII and ISAAC KARN-LEY, Objectors to the above entitled petition, pray for denial of said petition for reasons showeth the following, to wit:

"1. Because objectors say they have no knowledge of the statement made about them in count two (2) of said petition but rather took them by surprise, that in to say, "that because of the advance age of Mr. Musa Kaizolu" one of the administrators and the fact that Messrs Edwin Kiadii and Isaac Karnley, the other two (2) administrators, have been too occupied with more pressing activities, the within estate has not been given the attention and devotion it really deserved;" they being the administrators.

2. And also because the objectors say that the appointment or substitution of administrators to administer said estate does not necessarily require legitimate heirs of the late Chief Bai Bai but also person or persons with degree of consanguinity descending out of (30) members of the family along with Bai Bai in whose name the entire property is vested may also be appointed or substituted if need be.

3. And also because the objectors say that with the pendency of final decision of this Honourable Court in re: Momo Sonii, grandson of the late chief Bai Bai, informant versus Musa Kiazolu and EdWin Kiadii, respondents, BILL OF INFORMATION, in which this Court has just passed upon law issues, ruling said case to factual trial, appointment or substitution at this time will be inconsistent to the law controlling and guiding the administrators especially so when there is no probable cause for such. Hence requesting Your Honour to take judicial notice of the record.

WHEREFORE, in view of the foregoing legal and factual reason, the objectors pray for the denial of the said petition in its entirety."

Before the court could call up the case for trial, the parties to this suit, we repeat, being members of one and same large family of.

Chief Bai Bai and his peoples, the original grantees, convened a family meeting. After the meeting petitioners withdrew their objections filed against respondents' petition for revocation of petitioners' letters of administration. On July 30, 1985, counsel for objectors made the following record in open court with objectors present:

"Counsel for respondents/objectors say that he withdrew the response to the information filed into this court on the 10th day of August A. D. 1984 when with the objection, filed in favor of the objectors on the 22nd day of July, A. D. 1985 in favor of the respondents/objectors Messrs

Musa Kaizolu, Isaac A. Karnley and Edwin Kiadii, for reason that it has been unanimously agreed by the Bai Bai family for the sake of unity that it should not be any matter against the family in question before this Honourable Court so as not to interrupt such a smooth understanding among the family and hence the withdrawal of the petition and the information previously filed before this Honourable Court by Counsellor James D. Gordon. To which Counsellor M. Agbaje concedes and also withdrew the respondent's returns as well as the objectors' objection: And since it is a unanimous agreement of the Bai Bai family to substitute the previous administrators, legally appointed by this Court, in persons of Messrs Musa Kaizolu, Isaac K. Karnley and Edwin Kiadii to that of A. B. Clarke, Sr., Sekou Fahnbulleh and Alfred B. Roberts as the new administrators, counsel for the respondents/objectors interposes no objection, provided however the new administrators will abide by the statement made by the petitioners' counsel as statute course of this Honorable Court. And respectfully submit." The court then heard the petition, ruled on it, and after revoking petitioners' letters of administration, granted respondents their letters of administration.

Petitioners herein then filed this writ of prohibition before the Justice in Chambers praying that this Court restrains the respondents (and the court below) from administering the subject estate and order the revocation of respondents' letters of administration with further orders that they, the petitioners, be reinstated to resume the administration of the estate. The Chambers Justice refused to grant the petition and petitioners have brought the case before the full bench on appeal from the ruling of the Chambers Justice.

In listening to the arguments before us the following questions need to be determined:

a. Was the position taken by the lower court correct when it heard respondents' petition and granted it, revoked petitioners' letters of administration and replaced them in their absence?

b. May the ruling of the chambers Justice appealed from be affirmed or reversed?

In the arguments before us it was brought out that petitioners withdrew the objections to respondents' petition for the revocation of their letters of administration, wherein the court below proceeded, without them, to hear and determine respondents' petition. The net effect of withdrawal of the plaintiffs' complaint, without refiling, is that the matter is no longer before the court. The unreserved withdrawal of the defendant's answer/ objection or returns is an admission of the truthfulness of all the averments laid in the plaintiff's complaint, and the defendant no longer contests the case. As in the case of default trials, the court can safely proceed without the

defendant to bear and determine the cause on the evidence adduced by the plaintiff. *Cole v. Industrial Building Contractors*, [1966] LRSC 56; 17 LLR 476 (1966). It was, therefore, no abuse of discretion on the part of the trial judge to have proceeded in the manner she did.

On the issue advanced by petitioners, that they did not announce an appeal from the decree entered against them because they were absent from the court, what would have been the purpose of announcing an appeal considering they had withdrawn their objection without reservation?

Petitioners also told the court that the writ of prohibition is the appropriate writ that obtains in this case. They, however, knew that the act they had asked this Court to prevent or undo, that is, the revocation of respondents' letters of administration and petitioners' reinstatement as administrators of the estate in point, had been done and the matter closed before the petition was filed, a fact that always renders a writ of prohibition impotent. *Fazzah v. National Economy Committee et. al.[1943] LRSC 2;* , 8 LLR 85 (1943). Prohibition obtains to restrain an inferior court from acting in a case which falls outside its jurisdiction or, having jurisdiction, it attempts to proceed by rules other than those which ought to be observed at all times. In this case the court below has exclusive jurisdiction over all matters relating to property (personal and real) of a deceased person and proceeding without petitioners here, objectors below, after they had formally withdrawn their objection, is within the norm of the rules governing our circuit and probate courts.

A writ of prohibition not only halts whatever remains to be done by the court against which it is issued, but also gives further relief by undoing what has been done. It, however, does not obtain where the act complained of has been completed. *Coleman et. al. v. Cooper et al.[1955] LRSC 7;* , 12 LLR 226 (1955).

It having been shown that the trial judge acted within the pale of the law when she proceeded to grant respondents' petition for letters of administration, in the absence of petitioners herein, who had formally withdrawn their objections interposed to respondents' petition, and it having been proved that revocation of petitioners' letters of administration had been decreed and that the respondents had been substituted for them before this petition was filed, this Court hereby affirms and confirms the ruling of the Chambers Justice quashing the peremptory writ of prohibition and rules costs against petitioners. The Clerk of this Court is hereby ordered to send a mandate to the court below to this effect. And we so hold.

Petition for prohibition denied.

Watson Bros v Ware [1949] LRSC 14; 10 LLR 158 (1949) (22 April 1949)

J. A. WATSON, Brother of the Late HANNAH A. WARE, Appellant, v. A. DONDO WARE, Attorneyat-Law, for the Estate of his Wife, HANNAH W. WARE, Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT, GRAND CAPE MOUNT COUNTY.
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Argued March 28-31, 1949.
Decided April 22, 1949. 1. It has always been the policy of the Government that insofar as native customary law and customs are not violative of the Constitution or of express provisions of the statutory law, they will be applied and upheld by the courts here.
2. Any form of expression in a devise which shows an intention to give the whole title will be held sufficient for that purpose and a devise in fee simple. 3. To establish fraud it is not necessary to prove it by direct and positive evidence. 4. Circumstances altogether inconclusive, if separately considered, may by their number and joint operation be sufficient to constitute conclusive proof. 5.
In order to introduce secondary evidence of an instrument which is claimed to have been lost or destroyed, the proponent must show that he has in good faith exhausted, to a reasonable degree, all sources of information and means of discovery accessible to him.

Nete Sie Brownell for appellant. by A. Dondo Ware, for appellee.

A. B. Ricks,

assisted

MR. Court.

JUSTICE

BARCLAY delivered
the opinion of the

The principal questions in this case to be settled are : I. Whether appellant J. A. Watson is to be considered a legitimate son of Thomas J. Watson, or whether because of the peculiar circumstances of his birth, he is to be considered a bastard.
2. Whether or not Hannah A. Ware could devise and bequeath to her husband, A. Dondo Ware, the real property of which she was sole or part owner under the will of R. J. B. Watson, her grand-

father, dated January 3o, 1906, and the

codicil to said will dated July 3o, 1907? 3. Whether or not Hannah Ware could devise and bequeath to her husband, A. Dondo Ware,
the real property of which she was sole or part owner under the Will, of her father Thomas J. Watson. 4. Whether the purported last
will and testament of Hannah A. Ware is genuine and was executed by her, and therefore should be allowed to go to probate, or whether
said document is fraudulent and a forgery. In order to obtain and present a clear picture it is necessary to relate succinctly the
case from its genesis until its present position. Hannah A. Ware whose purported will is questioned as to its genuineness, died July
19, 1936 at Robertsport, Grand Cape Mount. The will in question was offered for probate with three other documents on October 6,
1936. The other three documents are: ( ) the transfer of the right and title of one Catherine Hoff's property to him, A. D. Ware;
(2) the adoption of Clarise Ware, on behalf of his deceased wife and himself;
(3) the mortgage deed from A. Dondo Ware and wife to
one Momolu A. Tamba of Grand Cape Mount County for lots Number one, two, six, and seven jointly owned by objector and his sister
Hannah A. Ware. Said mortgage was assigned to the said A. Dondo Ware.
Appellant being in Court because of a peculiarly worded note
from A. Dondo Ware, which we shall quote hereafter, promptly objected to all of the documents offered because they affected his sister's
estate and his own interests. Some time after objections were filed charging proponent with fraud and forgery, the original will,
said to have been deposited with the clerk of court, one Mr. P. J. Lewis, mysteriously disappeared from the clerk's office, according
to a statement of Mr. Lewis; the clerk stated that prior to the misplacement or disappearance of the

will he had issued a certified copy to each of the parties. Strangely enough, according to the records before us, he did not apply
to proponent for a copy, but he is said to have written to Counsellor Ricks at Monrovia, the understood lawyer of A. Dondo Ware,
and to the late Counsellor L. Garwo Freeman, offering to pay for a copy. But any connection Counsellor Freeman had with the case or the reason for Mr. Lewis' application to him for a certified
copy has not been shown anywhere in the records. Mr. Lewis also applied to Attorney Caine, attorney for objector, for a copy, but
Attorney Caine vociferously denied ever having a copy. Despite all these applications Mr. Lewis seemed to have been unsuccessful
in obtaining a copy, certified or otherwise. Consequently, when the case was assigned for the first time in 1943, His Honor T. Gyibli
Collins presiding, since there was no will or certified copy thereof upon which to proceed, Judge Collins dismissed the proceedings
after a reading of the then records. From this ruling proponent appealed to this Court and, based on his information and his assurance
that each side had been furnished a certified copy by the clerk of the Probate Court, which assertion has not then controverted by
the counsel for the opposite side, we remanded the case, reversing the ruling of Judge Collins, and ordered the case to be heard
upon the said certified copies. Ware v. Watson, [1944] LRSC 17; 8 L.L.R. 335 (1 944). In 1945 the case was again called in consonance with the instructions of the Supreme Court, but again no original or certified

copy was produced in Court, notwithstanding the assurance to this Court of proponent that he had a certified copy of said will. This resulted in a verdict in favor of objector, but the trial judge was compelled to disband the jury and award a new trial because one of the jurymen, on being polled at the request of proponent, denied the verdict as being his, giving a frivolous reason therefor. He was consequently imprisoned.

The case was then again in 1946 assigned for hearing, His Honor W. 0. Davies-Bright presiding. It is from this trial that appellant, being dissatisfied, has appealed to this Court for a review of his case. Dealing with the first question, whether objector is the legitimate son of Thomas J. Watson or a bastard, since no exception was taken by the proponent to the verdict of the jury declaring objector legitimate, and since there was no cross appeal by appellee, there is no need for us to comment elaborately thereon, that question having in our opinion been settled in objector's favor. We would like to point out, however, that along with the statutory and common law governing this country, there is a vast body of native law and custom applicable to the natives in their relations with each other, which body of law and custom in some cases is controlling, and regulates the legal relations of the natives with those who are not natives. This is administered by native courts as well as by the courts of the Republic. It has always been the policy of the government that insofar as native customary law and customs are not violative of the Constitution or of express provisions of statutory law, they will be applied by the courts here. In the case Manney v. Money, 2 L.L.R. 618 (1927), Mr. Chief Justice Johnson in delivering the opinion of the Court, said inter alia: "It is to be observed that unless contrary to plain rules of equity and justice, the native customs will be supported in our courts when the proper proceedings are instituted. . . ." Id. at 619. Our statutes provide that "the legitimacy of every person is presumed," and that "marriage is presumed, whenever the parties have lived together as husband and wife." Stat. of Liberia (Old Blue Book) ch. X, §§ 5, 6; 2 Hub. 1 548 . In the case at bar it has been shown that at the time of the union between Thomas J. Watson and the mother

of objector he had no civilized wife ; that he paid the dowry; that the woman lived with him at Wattsville as his wife in accordance with native customary law; that he acknowledged and recognized said child (objector) as his son ; and that that fact was generally known throughout the county, then Territory of Grand Cape Mount. In Prout v. Cooper, [1937] LRSC 11; 5 L.L.R. 412 (1937), cited by appellee, the facts were quite different. The child in question was the daughter of two civilized persons, and native

customary law was not applicable. We come now to the second and third questions, which we shall consider jointly: the power of Hannah A. Ware to dispose of property willed to her and her heirs and assigns forever. We reiterate a portion of our opinion in the case Dossen V. Republic, 2 L.L.R. 467 (1924) : "It has been settled by numerous decisions of the

English and American Courts, that any form of expression in a devise which shows an intention to give the whole title will be held sufficient for that purpose; as a devise in fee-simple ; or to one forever; or to one and his heirs and all similar expressions, showing an intention to have the devisee enjoy the property in feesimple, will have the effect to so convey it. (2 Jarman on Wills, 253, 254. · · ·) The usual form is to give the property to the devisee, his heirs and assigns forever; this is all that is technically necessary." Id. at 468. Ruling Case Law states the following:

"A tenant in fee simple is one who has lands or tenements to hold to him and his heirs forever. A fee, in general, signifies an estate of inheritance, and a fee simple is an absolute inheritance, clear of any condition, limitation, or restriction to particular heirs. It is the highest estate known to the law, and necessarily implies absolute dominion over the land. . . ." Do Id. 649 (1915) It is evident, therefore, that Hannah A. Ware did

have the right to dispose of property willed to her, her heirs, and her assigns. For the purpose of this case there is no need to go further. As to the fourth question of the genuineness of the will and the charge by objector of fraud and forgery in connection with the execution thereof, it is very seldom that such charges can be proved by direct evidence. In most instances circumstantial evidence will and must be the controlling factor in determining the genuineness or lack of genuineness of such documents. "To establish fraud, it is not necessary to prove it by direct and positive evidence. Circumstantial evidence is not only sufficient, but in most cases it is the only proof that can be adduced. . . ." Rea v. Missouri, 84 U.S. [1873] USSC 139; (17 Wall.) 532, 543[1873] USSC 139; , 21 L. Ed. 707 (1873). The circumstances surrounding the advent of the purported will and subsequent developments and undisputed facts in connection therewith will now be carefully considered so as to enable us to come to a definite conclusion about whether said circumstances and factual developments will prove or disprove the allegations of fraud and forgery charged by objector. On July 19, 1936 in the city of Robertsport, Grand Cape Mount, Hannah A. Ware died unexpectedly at the hospital as a result of an operation. On July 31, 1936 proponent alleges that he was surprised to discover a will executed by his deceased wife when he was looking up her effects preparatory to his leaving for Monrovia for rest and abatement of his poignant grief over the loss of his dear wife, and concealed said discovery from the family and public until his return to Robertsport two and a half months later when on October 6th he wrote a note to appellant

worded in such a peculiar and unprecedented manner as to arouse his suspicion and curiosity and cause him to attend the court to hear and see what he was about. The note read, "Dear brother An-

thony, I have some documents to probate, so this for your information." To the surprise of objector he heard him offer four documents for probate already set out above, all of them in some way touching the estate of his late sister and his interests. He immediately therefore gave notice of his objections to each of them, and consequently filed strongly worded objections thereto, charging among other things fraud and forgery of his sister's signature. Some time thereafter the clerk of court, Mr. Lewis, suddenly surprised the community by announcing that the original will left in his office in accordance with practice had disappeared and could not be located. He, it is said, wrote to a friend to approach the late Counsellor L. Garwo Freeman for a copy if he had one. And application was also made to Counsellor A. B. Ricks, in Monrovia, for a copy as Dondo Ware's lawyer. Lewis also approached Attorney Caine, the lawyer for objector, in these words : "I come to you and Attorney Caine, if he has a copy of the Will of Mrs. Hannah A. Ware to hand me so I can get a copy from it." Attorney Caine became a bit irritated over the question; then he said to him, "P. J., I told you I have no copy and you seem not to believe me. Why will I keep the copy from you ?" (See testimony of witness Foley Sherman.) Strangely enough, nowhere in the record does it appear that he approached proponent personally for a copy. It is to be noted in connection with this mysterious disappearance of the original will, that although proponent had already in his possession two certified copies, according to his admission during his argument before us, nevertheless when he arrived in Robertsport from Monrovia in 1938 and heard the rumor that the will he had propounded was missing from the clerk's office, he wrote the clerk for a certified copy. This he did, he said, to make sure that the said original will had actually disappeared. But although the clerk was unable to furnish

the desired copy, yet proponent, being thereby assured that the original had been abstracted, did not voluntarily offer to hand the clerk one of his two certified copies for his files. It appears to us that as he was proponent of the will in question it was his duty to do so. Hence it is that in 1943 there was no will at the first trial, nor was there any at the trial in 1945 although in 1944 proponent before this Court had assured us that a, certified copy had been furnished by clerk Lewis to both parties prior to the loss of the will. At the 1946 trial a purported certified copy of the will mysteriously appeared when it was offered to a witness to identify P. J. Lewis' signature, the said P. J. Lewis having died in the year 1942. The following will now be considered : r. The alleged

unexpected discovery of the will by proponent among his wife's effects. There is nothing in this to raise any doubts in the mind as to the possibility or probability of such a
happening. 2. The unnatural concealment of the unexpected discovery of the will by proponent from all the relatives and friends of
the deceased. This fact, not denied by him, opened up a vista of suspicion, for under the circumstances there has been put forward
no reason, justifiable or otherwise, why he concealed his discovery of such an important document for two and one-half months, at
which time, without definite information at least to his brother-in-law whom he knew to be equally grieved over the death of his
only sister, he submitted the will . for probate. 3. The silence of the two attesting witnesses, Sando Karndakai and C. M. Freeman,
both allied with proponent. 4. The strongly worded objections filed by objector, charging fraud and forgery. This may be regarded
as disclosing to proponent that all would

not be plain sailing and that he should expect a heavy fight
and probable exposure of the fraud and forgery were the original will to remain in existence for close scrutiny, study, and comparison.
"Not infrequently the attempt is made to hide the evidence of forgery in a fraudulent document by some alleged accident or condition
by which the paper is partially defaced or torn, or it may be badly soiled or discolored so as to make it more difficult to show
its real character. . . ." Osborne, Questioned Documents 8 (1st ed. 191o). In this case the document was perhaps either totally
abstracted or destroyed, thus rendering it impossible to be produced for a rigid test, by comparison and otherwise. How could this
have happened? No one has been found or has come forward who typed the copies from the original, not even Sando Karndakai, one of
the attesting witnesses who acknowledged that he typed the will for Mrs. Ware. He disclaims typing the certified copy of the will,
although the record and his evidence show that he had been Mr. Ware's trusted and confidential clerk, that he could type, and that
he was at the time of the offering of the will connected with Mr. Lewis' office and had access thereto as recorder. The purported
will was drawn up in legal form. Mrs. Ware was not a lawyer and it has not been shown that she had any legal training. No lawyer
in Liberia has come forward to acknowledge having drawn up the will. The deceased's husband, proponent, disclaims any knowledge of
it. Attesting witness Karndakai stated that he typed the will from a rough draft written with lead pencil, and the draft was in Mrs.
Ware's handwriting and was her diction. In corroboration of the lead pencil story we have the evidence of Boimah Kenyeh who testified
that about one month after the death of Mrs. Ware, he went to Tosor to visit his brother, the Chief.

He asked the news, as Africans usually do. His testimony continues : "[My brother replied,] 'There is nothing else, except this

morning I saw Mr. A. D. Ware, C. M. Freeman and G. B. Ware, your relatives, who came and asked me for quarters, saying that they were going to do some writing.' I further asked the Chief where they were. He said they were in his round house. I got up to go through the door, but the Chief told me the big door was closed. I saw the window open in the house in which they were, and I passed around and entered by the back door. I complimented them, and they answered. I asked C. M. Freeman, who was the youngest relative there, the news. He said there was nothing else, except that A. D. Ware invited them to come and be witnesses to a certain document. I further asked, 'what sort of document?' He said, `The will of his late wife.' I asked Mr. Ware himself and he confirmed it. I said, 'What sort of a document?' Mr. Ware replied, 'The will of my late wife.' Then I said to Mr. Ware, 'Your wife has just died about a month ago and you have now come so early to write such a document.' Mr. Ware asked me as to my reason for replying or querying him. I said, 'Well, I felt that on the civilized side that it was just the second month since your wife died and that it was too early. This being your civilized palaver I got nothing to do with it.' When I got in the house I met Mr. Ware with a lead pencil and he was doing the writing." It must be kept in mind that they were all relatives, even the witness himself. "Circumstances altogether inconclusive, if separately considered, may, by their number and joint operation, . . . be sufficient to constitute conclusive proof. . . ." Castle v. Bullard, 64 U.S. (23 How.) 172, 187[1859] USSC 25; , 16 L. Ed. 424 (1859).

"Documents are attacked on many grounds and for various reasons, but the great majority of questioned papers are included in the following classes: (1) Documents with questioned signatures. (2) Documents containing alleged fraudulent alterations. (3) Holograph documents questioned or disputed. (4) Documents attacked on the question of their age or date. (5) Documents attacked on the question of materials used in their production. (6) Documents investigated on the question of typewriting. . . .

"The most common disputed document is that of the first class and may be any one of the ordinary commercial or legal papers such as a check, note, receipt, draft, order, contract, assignment, will, deed, or similar paper the signature of which is under suspicion. . . . In such a document the signature only may at first be attacked, but many different things may show the fraudulent character of the instrument, and everything about it that in any way may throw light on the subject should as early as possible be carefully investigated." Osborne, Questioned Documents 6 (1st ed. 191o). In addition to what has been expressed above, it is apparent to us on perusal and study of the records certified to this Court, that the original will was never clearly proved to have been lost and incapable of production, for although a subpoena duces tecum was issued and served on the clerk of the Probate Court to appear and bring with him the record book and the original will, yet on the witness stand he was never asked if he had brought said original will and, if so, to produce it. The propounding of such a question would have elicited the an-

swer
that it was lost or that upon diligent search it could not be found. That being so, the way would have legally been opened to introduce
a certified copy. "A copy is not evidence, unless the original is proved to be lost, or to be in the possession of the opposite party,
who has received notice to produce it, or unless it be a copy of some record or other public document." Stat. of Liberia (Old Blue
Book) ch. X, § 9, at 52, 2 Hub. 1548. "In order to introduce secondary evidence of an instrument which is claimed to have been lost
or destroyed, the proponent of such secondary evidence must show that he has in good faith exhausted, in a reasonable degree, all
sources of information and means of discovery which the nature of the case would naturally suggest and which were accessible to him.
The court should be fully informed of the facts showing the diligence used in making the search. In many instances secondary evidence
has been excluded because the details were not sufficiently proved. A general statement that diligence has been used or a mere perfunctory
showing of some diligence will not suffice.
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"If it is shown to have been in a particular place or in the custody of a particular
person, that place should be searched or the person in whose custody it is shown to have been should be produced, or, if he is dead,
his successor should be called." zo Am. Jur. Evidence

§ 44 1 (1 939) · Where no inquiry has been made in the place in which the drafts in question would most likely to be found, the proof as to their loss utterly fails. Rogers v. Durant, [1883] USSC 41; 106 U.S. 644, 27 L. Ed. 303 (1883). In Minor v. Tillotson, 324 U.S. [1833] USSC 17; (7 Peters) 99, tot[1833] USSC 17; , 8 L. Ed. 621 (1833) the Supreme Court of the United States stated that "if any suspicion hangs over the instrument, or that it is designedly withheld,
a more rigid in-

quiry should be made into the reasons for its nonproduction." Accord, io R.C.L. 917
(1915). On the contrary, the record shows that the clerk was only asked to give a history of the will : "Q. Mr. Witness, can you
give a brief history of the will of the late Hannah A. Ware, that is, the original of said will that on the 6th day of October 1936
was offered to your court for probation as appears on the 363rd page of the probate record book just offered and ordered by Court
marked Exhibit 'A'? "A. I have never seen the original will with my eyes. All that I know about is what I see in the records, that
on the 6th day of October 1936 a will and other papers were offered by one A. Dondo Ware for probation. Further when I was in Monrovia

in 1938 Mr. P. J. Lewis, the late clerk of the Probate Court of this county wrote me informing me of the loss of this will in question and that I should try to get in touch with the late Garwo Freeman to obtain a copy from him for him, the clerk. I did not get the copy. That is what I know." In our opinion that answer was not a positive and definite showing that the will was lost and hence could not be produced in accordance with the subpoena. For although he might have in 1938 received such a letter from the late clerk, P. J. Lewis, yet between that time and the year 1946 there is a probability that it might have been found. It was error, therefore, for the judge to have admitted said copy marked "B" over the objections to its admission, among which is (5), which reads : "And further, it has not been proven by substantial witnesses by Respondent-Proponent that the purported original Will was ever filed in the Office of the late Probate Clerk, P. J. Lewis by any witness nor was it

proven by any witness for the Respondent-Proponent that the purported original Will was ever lost from the Office of the said P. J. Lewis, then Probate Clerk, neither does it appear in the record book of the Probate Division of this Court that said Will in question was recorded to have been deposited with the late Probate Clerk, P. J. Lewis, but it was only offered for probation as appears on the face of the Probate records Exhibit marked 'A'. As to whether said purported Will remained in the Office of the late Probate Clerk, or whether it was taken away by Respondent who offered said Will for probation, that fact as far as the records are concerned in this case has not yet been established, nor can a copy from an invalid original Will be admitted in evidence, when said original has not been legally probated and registered." Objections so legally sound, pointed, and cogent should have been sustained and the purported certified copy rejected and not admitted in evidence. And last but not least, where the signature to a document is in question, the case must fall within the exceptions mentioned by this Court in the case Thomas v. Republic, 2 L.L.R. p. 562 (1926) . Mr. Chief Justice Johnson speaking for the court : "Ordinarily, copies of documents that have been deposited in a public office are admitted in evidence, and the production of the original is dispensed with on account of the . . . [injury] which would result from the frequent removal of such documents. It has been held, however, that if a paper be on file in a public office and the paper is one that might be withdrawn from the files on application for that purpose such application should appear to have been made now [since] to strictly observe the rule laid down by counsel for appellant would work quite [an] injustice to suitors, as for instance if a merchant were to bring his books into court, to be used as evidence or where orig-

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inal wills or deeds are produced in court,
the party forwarding them to the court [might] never regain possession of them, because such documents had become public property. "It follows then that the contents of such documents
may be proved by the production of the originals, or by certified copies. It seems that in some cases the original must be procured."
Id. at 564. (Emphasis added.) In the case at bar, the signature of testatrix to the purported will being challenged as to its genuineness,
it was absolutely necessary that the original be produced. A certified copy not having the actual signature in handwriting would
be ineffective and improper if admitted, since to do so would be thwarting and making abortive the proof of the forgery, if it existed,
which is the very essence of the objections and the case. Although in our opinion of 1944. we remanded the case to be tried on the
alleged certified copies, yet it was to be understood that such a procedure should be in accordance with the law regarding proof
of lost or destroyed wills, that it is to say, the establishment of the said lost will must be only upon competent and sufflcient
proof of its execution unattended by any circumstances of a questionable or suspicious character indicating or suggestive of fraud
or forgery. "Generally, in the absence of statutory regulations, official or certified copies of deeds or other instruments required
by law to be recorded, are, when admissible, prima facie evidence of everything necessary to the validity of the instruments. In
some courts, however, such a copy is not admissible to prove the existence of the deed in behalf of the grantee claiming thereunder,
although it may be read in evidence without proof of the execution, where the party offering the copy was not a party to the deed
or did not claim thereunder as heir. In many jurisdictions the statutes by their ex-

press terms or
by necessary implication make properly authenticated copies and transcripts of records of private instruments sufficient proof of
their execution and delivery. In any case, the effect of such copy as evidence is destroyed when the opposite party files an affidavit
alleging that the original deed under which the person producing the copy claims was a forgery." 20 Am. Jur. Evidence § 1041 (1939).
"Forgeries vary in perfection all the way from the clumsy effort which any one can see is spurious, up to the finished work of the
adept which no one can detect. The perfect forgery would naturally be successful, and might not even be suspected, but experience
shows that the work of the forger is not usually well done and in many cases is very clumsy indeed. "A number of causes lead to this
result, the chief of which is that fortunately the one who produces a criminal forgery is rarely the skillful one qualified to do
it well, and also because a crime of any kind is an unnatural and unusual act. Forgers frequently do not exercise what would seem
to be ordinary precaution, but no doubt overlook one part of the process because such intense attention is given to other parts,
and it is probably true that they are sometimes more bold because in so many cases ineffective procedure and inadequate means have

been provided for the detection and proof of forgery. . . ." Osborne, Questioned Documents XXI (1st ed. Isacl). On the other hand, it would seem that as Liberia becomes more opened up and known to the civilized world we must naturally expect modern scientific and more intricate and deceptive methods of committing crime and other unlawful acts, and it is necessary to counterbalance this by instituting and legalizing corresponding protective measures. For example, in the notable British trial of Dr. H. H. Crippen for the secretive murder of his wife, it was only through the modern invention and use

of wireless telegraphy that he was apprehended disguised on a ship bound for Canada, and through modern medical science and aid that the crime was finally brought home to him, resulting in his conviction and execution. In cases of the kind before us where the signature of a document is questioned as to its genuineness, photography could be used with great effect in obviating the hazard of loss or damage to the original. "In the first place every questioned document should be promptly photographed in order that a correct and permanent record may be of it and its condition. The photographic record may be of great value in case of loss or mutilation of the original document or in the event of any fraudulent or accidental changes being made in it or of any changes due to natural causes. "Photographs should also be made of disputed documents for the more important reason that they may be of great assistance in showing the fraudulent character of the papers, or on the contrary may be of distinct value in establishing the genuineness of documents wrongfully attacked." Osborne, op. cit. supra, 36. Mr. Osborne goes on to show other reasons of benefit to both parties of photographic copies, such as enlargement of the writing in question so that every characteristic can be clearly and properly interpreted whether the facts so shown point to genuineness or to fraud. By it, also, any number of accurate reproductions can be made, affording unlimited opportunity for study, comparison, and investigation by any number of examiners, thus enabling court and jury to see, understand, and weigh testimony regarding a document as it is given. Were every document, as soon as a question arose as to its genuineness, promptly and immediately photographed and the original safely secured the unfortunate occurrence in this case unique in its nature with Mr. Lewis as clerk would not have happened.

Viewing the circumstances, act, evidence, and law and the apparent discomfiture of appellee before this Court in replying to questions propounded from the Bench whilst arguing his case, we are of opinion that the judgment of the court below should be reversed, the purported will declared invalid, void, and of no effect, and in every other respect to be in accordance with this opinion; costs against appellee.

And it is hereby so ordered. Reversed.

Emerson v Bro-Krah [1966] LRSC 73; 17 LLR 598 (1966) (16 December 1966)

TEHFLEH KOWREE EMERSON, by and through her Husband, S. W. EMERSON, Appellant, v. SAYON BRO-KRAH, Appellee.
APPEAL FROM THE CIRCUIT
COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued November 22, 1966. Decided December 16, 1966. When an appellant has failed to serve notice of appeal on the appellee within the statutorily prescribed period of time, the appeal will be dismissed for lack of jurisdiction.

On appeal from a ruling dismissing an injunction, appellee's motion to dismiss was granted and the appeal dismissed. No appearance for appellant. appellee. James Doe Gibson for

MR. JUSTICE SIMPSON delivered the opinion of the Court. During the December 1965 term of the Circuit Court of the Sixth Judicial Circuit, Montserrado County, sitting in its equity division, an action of injunction was filed by the appellant against the appellee for the purpose of enjoining him from trespassing upon and erecting a building on land allegedly owned by appellant. After pleadings had rested in the lower court, His Honor S. B. Dunbar, Sr., circuit judge presiding by assignment, heard and determined the issues of law as raised in the several pleadings and thereafter ordered the injunction dissolved on the 22nd day of June, 1966. Exceptions were taken to the ruling of the trial judge and an appeal was announced to this Court during the present term. When this cause was called for hearing, it was observed that appellee had filed a two-count motion to dismiss.
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Count r of said motion alleged that notwithstanding the court below had ruled on the law issues on the 22nd day of June, 1966, the purported notice of completion of appeal did not issue until the 6th day of December, 1966, quite 16 days in excess of the time allowed by statute for completion of an appeal. Count 2 of the motion to dismiss further averred that no returns had been made to the tardy notice of completion of appeal so as to give evidence that the same had been properly served and to confer jurisdiction upon this Court to review the records of the court below. Appellee strenuously contended that the service and returns made thereto constitute a sine qua non to the conferral of jurisdiction to this Court of dernier resort.
At the time for the review of this case, the Court noticed that the appellant had not filed any resistance to the motion to dismiss.

Furthermore, neither counsel for appellant nor the appellant herself appeared to offer any resistance or explanation for the nonoffer ; therefore the Court proceeded to singly hear the motion and rule thereon. We must here again voice our strong disapproval of actions repeatedly taken by lawyers in the careless handling of the affairs of their clients. In the present case, a certificate of the clerk of the court below shows that the notice had been issued 16 days after the time allowed by statute. Furthermore, the same certificate mentioned that from an inspection of the notice of completion of appeal as filed on September 6, 1966, there was no indication thereon to the effect the the same had never been served on the appellee and returned to the clerk's office by the ministerial officer of court as provided for by statute. Dealing first with Count 1 of the motion, it is observed that the notice of completion of appeal was not completed in accordance with the provision of Section Tow of our Civil Procedure Law. And this Court has held that : "Service of notice of appeal upon the appellee by the ministerial officer of the trial court completes the

appeal and places appellee under the jurisdiction of the appellate court. When not completed within the statutory time, this Court will dismiss said appeal for want of jurisdiction." Morris v. Republic, [1934] LRSC 16; 4 L.L.R. 125 (1934) Syllabus 2. Speaking for this Court in another case, Mr. Justice Dossen said : "It is also admitted that the [lower] court correctly ruled in accordance with statutory law that it is the service of notice of appeal which gives the Court jurisdiction." Brownell v. Brownell, [1936] LRSC 3; 5 L.L.R. 76, 79 (1936). These holdings were followed by this Court in Jones v. Republic, [1956] LRSC 11; 12 L.L.R. 297, 298 (1956). In view of the above it is the opinion of this Court that Count 1 of the motion is well taken and the same is therefore sustained and the appeal dismissed for lack of jurisdiction of this Court in virtue of the tardy issuance of notice of completion of appeal contrary to statute. The appeal is therefore ordered dismissed and the judgment of the lower court affirmed with costs against appellant. And it is hereby so ordered. Judgment affirmed.

Peres v City Corp. of Monrovia [1921] LRSC 2; 2 LLR 393 (1921) (5 January 1921)

It was also error in the court below to refuse to charge the jury, at the request of plaintiff's attorney, that as no attack had been made upon plaintiff's deed in the pleadings, the question of fraud could not be argued to the

jury. (See Attia v. Payne, I Lib. L. R. 205; also Williams v. M. J. John and L. Allen, Id., p. 259.) Appellant's exceptions to the verdict were therefore well taken. The weight of evidence was manifestly in favor of plaintiff, his deed was the oldest and was duly signed by the President and was probated and registered according to law. The evidence too clearly shows that appellee had encroached upon the lot in question which is appellant's land; the verdict should therefore have been given in favor of appellant. The judgment of the court below should therefore be reversed, with costs against appellee. The appellant is hereby authorized to have the said lots surveyed and the boundaries determined, at the expense of both parties, and it is so ordered. L. A. Grimes, for appellant. Arthur Barclay, for appellee.

H. PERES, Appellant, v. THE CITY CORPORATION OF MONROVIA, Appellee.
AB.GUED DECEMBER 8, 1920. DECIDED JANUARY 5, 1921.
Dossen, C. J., Johnson and Witherspoon, JJ.

1. The prosecution in a criminal case must establish the guilt of defendant beyond a reasonable doubt, or at least the evidence must be so strong as to exclude every hypothesis of the innocence of the accused.
2. It is error to disallow on cross-examination a question which is relevant, and which tends to remove a doubt apparent in the case.
3. A battery is an unlawful beating or wrongful physical violence or constraint inflicted on a human being. It must be either unlawfully committed or caused by want of due care.

Mr. Chief Justice Dossen delivered the opinion of the court: Assault and Battery. This case comes up before us upon an appeal from the judgment rendered in the City Court of Monrovia against appellant on the 8th day of March, A. D. 1920. The case was heard and adjudicated at the last session of this court and judgment given for appellant; but the opinion of the court was reserved until this session.

The record discloses the following facts : On the night of the 6th day of March, A. D. 1920, H. Peres was entertaining visitors at his private apartment at the French wireless station in Monrovia. when one Jonathan Clarke, a Liberian employee there and the private prosecutor in this suit, became involved in a fight about the loss of a mosquito net with Messrs. Martin and Jimmerlle, Europeans employed at the said wireless station, heretofore co-defendants with appellant when this suit was before the court below. The said Jonathan Clarke approached appellant and complained that he had been beaten by said Martin and Jimmerlle, whereupon appellant descended the stairs and went to the scene of the disturbance. The evidence offered to connect appellant with the affray is conflicting and does not produce in the mind of the court an abiding conviction with respect to the guilt of appellant. It is a well settled principle of law that in criminal prosecutions,

as is the one at bar, the prosecution in order to convict, must establish the guilt of the defendant beyond a reasonable and rational doubt; that is to say, the evidence must exclude every hypothesis as to his innocence by a preponderance of proof against the defendant and in favor of the prosecution; (1 Archbold Criminal Practice and Pleading, p. 350, note; Samuel Ledlow v. Republic of Liberia, I Lib. L. R. 376). Summing up the evidence adduced at the trial in behalf of the prosecution and against the defendant, we do not find such preponderating proof of the commission of the offense charged. On the contrary, the evidence that was offered in support of the offense is rebutted by clear and positive testimony in favor of defendant. Johnny Clarke, the private prosecutor in the case, was the first witness upon the stand in favor of the prosecution. He testified substantially as follows : That after extricating himself from Martin and Jimmerlle, heretofore co-defendants in this case, he, Clarke, ran upstairs and complained to the defendant of the wrongful assault and battery which the said Martin and Jimmerlle had committed upon his body; that on returning downstairs he was again set upon by the said parties and that at this juncture the defendant came upon the scene and joined in the affray pushing him against the wall and butted him three times. Jacob, a Bassa boy, who stated substantially that on the night of the alleged commission of the offense, he, in company with one Johnny was passing the said wireless station and was attracted by

the holloing of some one in the station; that on approaching the scene they found that it was Clarke who was holloing and that he saw two of the defendants beating Clarke. On cross-examination he was asked, how many of the defendants did he see actually beating the private prosecutor, but that question was objected to and the objection sustained. We hold that it was error to have disallowed this question, inasmuch as it was relevant and the answer might have tended to remove the doubt as to the connection of defendant with the affray. This is substantially the evidence of the prosecution. The defendant was on the stand on his own behalf ; his evidence categorically denied the allegations. He admitted having gently pat Clarke upon the shoulders while investigating his complaint, but this was not done in anger nor with intent to do him any bodily hurt or harm, and therefore did not amount to battery within the legal meaning of the term. Judge Bouvier defines a battery to be : "Any unlawful beating or other wrongful physical violence or constraint, inflicted on a human being without his consent." It must be either wilfully committed or proceed from want of due care. (Bouv. L. D., vol. 1, Battery.) The evidence of defendant was corroborated by Martin one of the codefendants in the court below who testified substantially that defendant did not strike Clarke and that he was in no wise connected with the affray. This evidence when taken together with the evidence of defendant raised a cogent doubt as to his guilt which should have operated in his favor.

As we have already observed, in criminal prosecutions the evidence for the prosecution must preponderate and must exclude every hypothesis

of the defendant's innocence. The evidence for the prosecution in the case at bar, falls short of this requirement and leaves the
court in doubt as to the guilt of the defendant. Under such circumstances, there can be no conviction for want of legal certainty
which must be imparted by the clear, distinct, unequivocal and preponderating proof of the accusation. The conviction in the court
below was erroneous and should be reversed, and it is so ordered. L. A. Grimes, for appellant. Attorney General, for appellee.

Monrovia Properties v Kontoe et al. [2004] LRSC 2; 42 LLR 12 (2004) (13 August 2004)

MONROVIA PROPERTIES, INC., by and thru its Authorized Officer, Petitioner, *v.* **HIS HONOUR J. BOIMA KONTOE,** Assigned Circuit Judge, Sixth Judicial Circuit Court, Montserrado County, and **MARTHA COOPER SHERMAN**, by and thru her Attorney-In-Fact, ARTHUR SHERMAN, Respondents.

PETITION FOR A WRIT OF CERTIORARI AGAINST THE CIVIL LAW COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: March 24, 2004. Decided: August 13, 2004.

1. The Supreme Court will not pass upon a constitutional question although properly presented by the records, if there is also present some other ground upon which the case may be disposed of.
2. Certiorari is a special proceeding to review and correct decisions of officials, boards, or agencies acting in a judicial capacity, or to review and intermediate order or interlocutory judgment of a court.
3. The power to grant default judgment is not based upon one notice of assignment but lies within the sound discretion of the trial judge.
4. In real property cases a default judgment should not be granted upon only one assignment issued for the hearing; if upon an assignment neither the defendant nor his counsel appears, the court should at least make another assignment.
5. While the Civil Procedure Law provides that if a defendant has failed to appear, plead or proceed to trial, or if the court orders a default for any other failure to proceed, plaintiff may seek a default judgment against him, the court in granting a default judgment should not rely on only one notice of assignment, especially in cases involving real property.

6. There must be at least two notices of assignment issued, served and returned served, and if the defendant fails to appear, then the granting of a default judgment can be considered proper or justified.
7. In the dispensation of justice, the judge who hears the case must be the one to decide it, not another judge.

Co-respondent Martha Cooper Sherman, by and thru her attorney-in-fact, Arthur Sherman, filed a petition in the Circuit Court for the Sixth Judicial Circuit, Montserrado County, praying the court to cancel the lease agreement concluded and executed between her and the petitioner, Monrovia Properties Inc. The co-respondent asserted as the basis for the petition for cancellation that the petitioner had violated the lease agreement by sub-letting the demised property without the consent or approval of the co-respondent, as required by the agreement. Notice of assignment having been duly issued and served for hearing of the case, and the defendant and its counsel having failed to appear for the hearing, counsel for co-respondent prayed for the entry of a default judgment. The default judgment was granted and the co-respondent allowed to commence the production of evidence to make the imperfect judgment perfect.
However, as co-respondent/plaintiff first witness was concluding his testimony, counsel for the petitioner appeared in court and made representation and informed the court that he was not served with an assignment and prayed for an investigation by the court. The request was granted by the court but with the proviso that if the office of counsel for the petitioner did receive the notice of assignment, the case would be proceeded with without the participation of the petitioner or its counsel. When, on the following day counsel for the petitioner conceded that someone in his office had received the assignment, the court proceeded, as per its ruling, with the case, barring counsel for the petitioner from participating in the same.
It was from this action of the trial court that the petitioner filed a petition with the Chambers Justice of the Supreme Court for the issuance of a writ of certiorari. Given that constitutional issues were raised, the case was ordered forwarded to the Full Bench for disposition.
The Supreme Court, determining not to deal with the constitutional issues presented since there were other issues upon which the matter could be decided, granted the petition. The Court held that although the Civil Procedure Law provided for the granting of default judgment where there was a failure of a defendant to appear following the issuance and service of a notice of assignment, such default judgment should not be granted upon the failure of the defendant to appear on the first assignment of the case, especially, as in the instant case, where the case involved real property. The Court opined that for the trial court to enter a default judgment that could be considered proper and justified, it must have issued not less than two notices of assignment which had been served and returned served on the defendant, and the defendant must have failed to appear on each of such assignments. The Court therefore *granted* the petition, reversed the ruling of the trial judge, and ordered a new trial.

Snonsio E. Nigba of Legal Services, Inc. appeared for the petitioner. *Richard McFarland* of The Flaawgaa R. McFarland Legal Services appeared for the respondent.

MR. JUSTICE CAMPBELL delivered the opinion of the Court.

The records in this case reveal that co-respondent Martha Cooper Sherman, by and thru her attorney-in-fact, Arthur Sherman, Jr. of the City of Monrovia, Liberia, entered into a lease agreement with Monrovia Properties, Inc., a corporation organized and existing under the laws of Liberia, represented by its President, Stephen B. Dunbar, Jr., as lessee. The lease agreement was for a parcel of **land** situated on Bushrod Island around the Free Port of Monrovia, known as CFAO (Liberia) Ltd. Garage, containing two and one-half (2.5) acres of **land**, and was for a term of seventeen (17) calendar years, commencing from the 6th day of March, A. D. 1992 up to and including the 5th day of March, A. D. 2009.

The lease agreement required petitioner, Monrovia Properties, Inc., to pay Thirty Four Thousand Liberian Dollars (LD$34,000.00) annually in advance for the period covering March 6, 1992 to March 5, 1999, and Sixty Thousand Liberian Dollars (LD$60,000.00) annually in advance for March 6, 1999 to March 5, 2009 respectively.

Clause five (5) of said agreement provides, among other things, that the lessee has the right to sub-let or to assign a portion or the whole of the demised premises, or to assign the lease, in whole or in part during the period or life of the agreement, subject to the prior consent of the lessor, now respondent.

As a result of the Liberian civil conflict, the premises were partly damaged and at some point in time occupied by ECOMOG, as a result of which the respondent/petitioner could not continue with business on said premises. However, due to financial problems, petitioner, Monrovia Properties, Inc., leased a portion of the demised premises to Phoenix International, Inc., a corporation organized and existing under the laws of Liberia, represented by its President, Dr. Nathaniel Richardson, on July 9, 1999, for a period of one (1) year, commencing from the 1st day of July, A. D. 2000, for rental of Ten Thousand United States Dollars (US$10,000.00).

At the expiration of this lease agreement, petitioner again entered into a new lease agreement with Phoenix Inter-national, Inc. on February 9, 2001 for the same premises previously leased, for a period of five (5) years, commencing on the 1st day of August, A. D. 2000, up to and including the 31st day of July, A. D. 2005. Under the new lease agreement, Phoenix International, Inc. was required to pay Ten Thousand United States Dollars (US $10,000.00) at the signing of the lease agreement, Twelve Thousand Five Hundred United States Dollars (US$12,500.00) per annum from August 1, 2001 to July 31, 2003, and Fifteen Thousand United States Dollars (US$15,000.00) per annum from August 1, 2003, to July 31, 2005, as rental fees.

Having learned about these lease agreements, co-respondent Martha Cooper Sherman, by and thru her attorney-in-fact, filed a petition for the cancellation of the lease agreement of March 6, 1992 with the Sixth Judicial Circuit Court for Montserrado County, sitting in its June, A. D. 2001 term. The co-respondent alleged that the petitioner had violated clause five (5) of the lease agreement by leasing the subject premises to Phoenix International, Inc., without the prior consent of the co-respondent, and that petitioner had also accumulated rental arrears in the sum total of Thirty-Four Thousand Seven Hundred Thirty-Three United States Dollars and Thirty-Three Cents (US$34,733.33).

The petition for the cancellation of lease agreement also alleged that respondent/petitioner fraudulently pretended to be the true owner of the property when she executed the said lease agreement as lessor instead of serving as sub-lessor. It further titled the agreement “Lease

Agreement", instead of the appropriate caption "Sub-Lease Agreement" as is legally done. Co-respondent therefore prayed the court to cancel the lease agreement of March 6, 1992 between petitioner/co-respondent, as lessor, and respondent/petitioner, as lessee, for breach of contract and fraud.

To the petition for cancellation, petitioner, Monrovia Properties, Inc., filed a seven-count returns, wherein it denied the allegations contained in the petition.

The records also show that several motions, such as motion to enjoin payment of rent by Phoenix Inter-national, Inc. to Monrovia Properties, Inc., motion to vacate temporary restraining order, motion for sequestration of rent, and motion to introduce newly discovered evidence were filed, to which returns thereto were also filed.

In the motion to vacate the temporary restraining order, along with an indemnity bond, petitioner alleged that the temporary restraining order was not accompanied by an indemnity bond to indemnify the petitioner, contrary to law. It therefore prayed that the temporary restraining order be vacated.

The court below, allegedly without notice to the petitioner/ co-respondent, vacated the temporary restraining order. The petitioner/co-respondent therefore filed a petition for a writ of prohibition before the Justice in Chambers. The alternative writ was ordered issued, thereby staying all proceedings in the court below. The petition for a writ of prohibition was assigned, heard, and denied, and a mandate sent down to the court below to resume jurisdiction.

The trial court, having resumed jurisdiction, assigned, heard and denied the motion to vacate the temporary restraining order, as well as the motion for sequestration of rent and the motion to introduce newly discovered evidence. Thereafter, an assignment was issued, served on both parties and returned served for the hearing of the cancellation proceedings on November 18, 2003, at 11:00 a.m.

When the case was called for hearing on the said 18th day of November, A. D. 2003, petitioner Monrovia Properties, Inc. and counsel were absent without an excuse. Petitioner/co-respondent's counsel therefore prayed for default judgment. Said application was granted by the court which ordered the petitioner/co-respondent to make the imperfect judgment perfect. While co-respondent's first witness was on the witness stand on direct examination, respondent/petitioner's counsel appeared in court and was allowed to make representation. While making his representation, Counsellor Snonsio Nigba informed the court that he was not aware of the assignment of November 18, 2003, at 11 a.m. as shown on the court's file, and as per the sheriff's returns which alleged that said assignment was received and signed for on behalf of Legal Services, Inc. by one of its secretaries. He therefore prayed the court that some investigation be conducted as to the genuineness of the signature on said notice of assignment. The court, in this regard, noted the representation of Counsellor Nigba and announced that the investigation would proceed on condition that if it were established that the notice of assignment was served on Legal Services, Inc. then the respondent/petitioner's counsel will not be allowed to participate in the proceedings. The court then granted the submission and adjourned the hearing of the case to resume on November 19, 2003 at 10 a.m. so as to conduct an investigation. At the resumption of the trial on November 19, 2003, counsel for petitioner informed the court that upon investigation conducted at his office, none of the secretaries signed for the notice of assignment, but that he had discovered that the said notice of assignment was signed for by another staff in the office. He therefore withdrew the application for an investigation and prayed that the case be proceeded with in keeping with practice in this jurisdiction. To this submission, the trial judge ordered the trial proceeded with, but without the participation of the petitioner's

counsel, in affirmation of the court's ruling of November 18, 2003. Petitioner's counsel excepted to this ruling and filed a seven count petition for a writ of certiorari before the Chambers Justice. In its petition for the issuance of the writ of certiorari, petitioner contended that the refusal of the co-respondent judge to allow its counsel to cross examine co-respondent's first witness after the notation of petitioner's counsel representation was a total violation of respondent/petitioner's constitutional right and the right to the due process of law. It was also claimed that under the law and in keeping with the practice in this jurisdiction, the granting of a default judgment is an imperfect judgment to be made perfect upon the presentation of all the evidence by the moving party, and that said imperfect judgment does not exclude the defendant from cross examining a witness or to be heard upon his appearance, for to do so would be in violation of the "due process" clause that is guaranteed under the Constitution of the Republic of Liberia.

The petitioner further contended that its counsel, having appeared in court, and made representation and same having been noted by the court, he could not thereafter be excluded from the trial proceedings simply because the court was conducting a default judgment proceeding.

The petitioner also alleged that co-respondent Judge J. Boima Kontoe committed a reversible error in his ruling by barring petitioner's counsel from participating in the trial, that is, to cross examine co-respondent's witnesses and to present evidence after petitioner had appeared thru its counsel and his representation noted by the court. The petitioner prayed that an alternative writ be issued and the co-respondent judge be ordered to appear to show cause why the petition for certiorari should not be granted.

The alternative writ was ordered issued, served and returned served. The co-respondent, Martha Sherman, filed a five-count returns contending, among other things, "that Volume I of the Civil Procedure Laws Revised, section 42.1 up to and including section 42.9 were not legally engineered for entry in section 42.2 and section 42.7 and that said section 42.2 only deals with the occasion after a default trial where the judge thinks fit to want to examine the evidence presented, thru a jury, and only where damages are involved and this is not an action of damages that requires the help of juries". It was argued "that volume one of the Civil Procedure Law Revised, section 42.7(2), deals with a situation where the instrument sought to be cancelled contains or calls for an arbitration clause, but this is not the case as it is a lease agreement and does not contain such arbitration clause."

The co-respondent further alleged "that petitioner's count two of the petition constitutes an admission that petitioner's counsel was not present when the default trial commenced and that co-respondent's first witness had rested on direct examination."

The returns also alleged that petitioner was never denied any constitutional right; instead petitioner waived its right when the notice of assignment to appear on November 18, 2003 was signed for, but it failed to appear. Furthermore, the petitioner waived its right when it failed to object to the trial court's position of November 18, 2003, wherein the judge ruled that petitioner's counsel would not participate in the proceedings if it were established that the notice of assignment was properly signed for. Because constitutional issues were raised in the petition and returns, the Ad-Hoc Chief Justice forwarded the case to the Full Bench for determination; hence, this matter is before us.

Based on the facts and circumstances as stated above, there is only one cardinal issue to be determined by this Court, which is: Whether or not a default judgment should be granted upon the issuance of one notice of assignment in the trial of a case involving real property?

Before we address the issue stated above, this Court says in passing that the petition for certiorari

and the returns thereto raised constitutional issues. The Court has decided not to pass on said constitutional issue because it is "the view that Supreme Court will not pass upon a constitutional question although properly presented by the records, if there is also present some other ground upon which the case may be disposed of, is not strictly adhered to in our jurisdiction. It is of supreme necessity that recourse be had to constitutional provisions without which the controversy may not be finally determined". See *The Liberian Bank for Development And Investment (LBDI) v. Holder*, [1981] LRSC 30; 29 LLR 310, Syl. 1(1981).

Firstly "Certiorari is a special proceeding to review and correct decisions of officials, boards, or agencies acting in a judicial capacity, or to review an intermediate order or interlocutory judgment of a court". See Civil Procedure Law, Rev. Code 1:16.21 (1), I LCLR 228.

A recourse to the facts in this case tells us that at the call of the case on November 18, 2003 at 11 a.m., petitioner's counsel appeared late in court when the trial of the case was in progress, after the granting of a motion for default judgment and while respondent's first witness was at the close of direct examination. Petitioner's counsel was allowed to make representation and he informed the court that he had no knowledge of the hearing of the case being scheduled for November 18, 2003, at 11 a.m. He therefore prayed the court to conduct an investigation as to the sheriff's returns that the notice of assignment was received and signed for by a secretary in the office of Legal Services, Inc.

As a result of this submission, the trial was suspended to resume on November 19, 2003 at 10 a.m. On November 19, 2003, as per the schedule for the resumption of the trial, petitioner's counsel admitted that the said notice of assignment was received and signed for by a staff of his law firm and therefore requested the court to proceed with the trial in keeping with law.

Co-respondent Judge, J. Boima Kontoe, owing to the submission of Counsellor Snonsio E. Naigba, counsel for petitioner, ordered the case proceeded with without his participation on grounds that where a personnel of a law office represented to the ministerial officer that he or she is a secretary in said office and based on the representation returns are made to the effect that service was made on the personnel, it does not invalidate in any manner or form the returns of the sheriff The sheriff is not in the business of investigating the official job descriptions of staff members that are working in the various law offices.

A careful review of the records certified to this Court reveals that only one notice of assignment was issued out for the hearing of the cancellation proceedings on November 18, 2003, at the hour of 11 a.m., after the disposition of the several motions that grew out of the cancellation proceedings. This Court says the power to grant default judgment or not based upon one notice of assignment lie within the sound discretion of the trial judge.

This matter involves petition for the cancellation of a lease agreement and the lease sought to be cancelled involves real properly. The trial judge should have refused to grant the default judgment prayed for by counsel for co-respondent since this was the first assignment for the hearing of the cancellation proceedings. The judge should have ordered issuance of another assignment for the hearing of the proceeding for another day and time. See the case *Mensah et al. v. Wilson[1994] LRSC 38;* , 37 LLR 656, Syl. 2 (1994), where it is expressly provided that "in real property cases a default judgment should not be granted upon only one assignment issued for the hearing. If on the assignment neither the defendant nor his counsel appears, the court should at least make another assignment."

While it is true that Section 42.1 of the Civil Procedure Law, 1 LCLR, page 214, provides that "if a defendant has failed to appear, plead, or proceed to trial, or if the court orders a default for any other failure to proceed, plaintiff may seek a default judgment against him", we believe,

however, that the courts, in granting default judgment should not rely on only one notice of assignment, especially in cases involving real property. There must be at least two notices of assignment issued, served and returned served and if the defendant fails to appear, then the granting of default judgment shall be proper or justified.
Moreover, the records show that the case was not concluded. In other words, the co-respondent had not rested with the production of evidence required by law. In the face of this act, counsel for the co-respondent requested this Honourable Court to mandate the trial judge in the court below to enter judgment in accordance with law. The question now is what judgment should the court below render?
It is indeed a legal maxim in the dispensation of justice that the judge that hears a case must decide. The co-respondent has not rested evidence and Judge Kontoe who presided over the case is not presiding over the Sixth Judicial Circuit, and even if he was currently presiding, it should be noted here that the term of court is over. How can we mandate the trial judge to resume jurisdiction and enter judgment? The co-respondent having prayed for default judgment, which was granted by the court below, was ordered to make the imperfect judgment perfect by presenting all of the evidence as required by law. The fact that the co-respondent did not present the required evidence and no ruling/judgment was made by the trial court, this Honourable Court is at a loss as to how it can mandate the trial judge to resume jurisdiction and enter judgment. In the supreme interest of justice we cannot do so. We think it would be proper and legal that a new trial be held.
In view of the above circumstances and the law citations, Judge Kontoe's ruling is hereby reversed, and the peremptory writ of certiorari is granted. The Clerk of this Court is ordered to send a mandate to the judge presiding over the Sixth Judicial Circuit Court, commanding him to resume jurisdiction over this case and to proceed with the trial *de novo*. Costs are disallowed until the final determination of this matter. And it is hereby so ordered.

Petition granted; ruling reversed.

Fazzah Bros v Collins [1950] LRSC 1; 10 LLR 261 (1950) (31 March 1950)

CASES ADJUDGED
IN THE

SUPREME COURT OF THE REPUBLIC OF LIBERIA
AT

MARCH TERM, 1950. FAZZAH BROS. by JOSEPH and RICHARD FAZZAH, Petitioners, v. HIS HONOR BENJAMIN T. COLLINS, Justice of the Peace for Montserrado County, and CENTRAL INDUSTRIES, Ltd., Respondents.
APPEAL FROM THE CHAMBERS OF MR. JUSTICE SHANNON.

Argued March 27, 28, 1950. Decided March 31, 1950. 1. 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. 2. A writ of prohibition is a proper remedy against a court before which foreclosure proceedings are commenced in disregard of a pending suit to enjoin such proceedings, since no other procedure can afford adequate relief. 3. The Chattel Mortgage Act of 1936 is unconstitutional because it does not provide the mortgagor an opportunity to be heard and defend in a foreclosure proceeding. 4. Provisions in the Bill of Rights primarily for the protection of citizens inure also to the benefit of aliens here by permission of the government.

Petitioners filed an action for injunction in the Equity division of the Civil Law Court for the Sixth Judicial Circuit to enjoin respondent corporation from commencing proceedings against petitioner to foreclose a chattel mortgage. Respondent nevertheless applied for foreclosure to respondent Smallwood, justice of the peace. Petitioner then instituted a prohibition proceeding before Mr. Justice Shannon who granted the writ. On appeal

to this Court en banc, issuance of writ sustained and ruling affirmed. D. B. Cooper and Edwin i4. Morgan R. F. D. Smallwood for respondents.

for petitioner.

MR. Court.

JUSTICE BARCLAY

delivered the opinion of the

In the interest of both contending parties this advance opinion is written and handed down. This is a proceeding which grew out of a series of cases and has come before us on appeal from the chambers of Mr. Justice Shannon by the counsel for Central Industries, Ltd., respondents herein. To fully understand and comprehend this case it is necessary to state the background. It appears that in the year 1948 one of the Fazzah brothers went to New York in the United States of America, and whilst there came in contact with the respondent corporation and effected an arrangement for the supply of goods to Fazzah Brothers at Monrovia, a Syrian firm doing business in Liberia, upon certain understandings or agreements. Fazzah Brothers after some time, for reasons not disclosed in the records, defaulted in the arrangement, and it was necessary for one Leo Laskeff to be sent out to Monrovia by Central Industries, Ltd., the respondent corporation, as attorney-in-fact with authority to collect the outstanding debt. Upon his arrival in Monrovia he decided to enter suit against Fazzah Brothers for the recovery of the debt in the Civil Law Court of the Sixth Judicial Circuit, Montserrado County, by summary proceedings, which resulted in a judgment

in favor of respondent. The Fazzahs, being dissatisfied with the judgment, took exceptions and prayed an appeal to this Court for a review. For some unexplained reason the appeal was not prosecuted, and respondent, although it had obtained judgment

in its favor, did not pray for an execution for enforcement of the judgment. Instead, a compromise was suggested by one of the parties and accepted by the other and was entered into under an agreement executed on May i I, 1 949. Among the clauses in the agreement was one wherein petitioner herein, Fazzah Brothers, agreed to execute a chattel mortgage on all of its property in Liberia, including, but not limited to, Fazzah's accounts receivable, merchandise, and leasehold, as security for the payment of the instalments which we shall mention hereafter. (See paragraph 3 of the agreement.) But actually, as appears on inspection of the chattel mortgage executed, there is a difference between the agreement and the chattel mortgage as to what was actually mortgaged. In the chattel mortgage, Fazzah Brothers sold and assigned to the mortgagee all its property in Liberia including, but not limited to, Fazzah's accounts receivable which are in excess of $5o,000.00; merchandise and goods in the store and warehouse of Fazzah Brothers which are in excess of $4o,000.00 etc. (We shall quote the relevant paragraph of the chattel mortgage later in this opinion.) This mortgage was executed as security for the payment of certain promissory notes simultaneously issued in the sums of $7,500 to be paid on September 11, 1949, together with interest thereon, and $7,5oo per month thereafter to be paid on the eleventh day of each succeeding month until the entire principal and interest should be paid. The Fazzahs further obligated themselves to pay on the signing of the agreement the sum of $ro,000 in Monrovia, and £i,000 sterling by draft drawn on Barclay's Bank at Freetown, Sierra Leone. Subsequently, as disclosed by certain exhibits marked "A," "B," "C," "D," and "E," filed by respondent with its returns in these proceedings, it appears that petitioners filed an action for injunction in the Equity Division of the Civil Law Court for the Sixth Judicial Circuit, to en-

join respondent corporation from entering foreclosure proceedings, basing same primarily upon the assertion that due to a rush in the negotiations and preparation of the papers effecting the compromise, a mistake of several thousand dollars had been made in the computation of interest against them, or, to quote from the complaint : "[B]ut that due to a rush in the negotiations, defendants mistakenly charged plaintiffs with interest on the said $58,000.00 from the iith day of November, A.D. 1948 up to and including the 11th day of May, A.D. 1949, in the sum of $4,230.00, when as a matter of fact interest on said sum had been paid up to April 1, A.D. 1949, yielding

and accruing therefor in the sum of $290.00." Respondent answered by setting up that H. Lafayette Harmon, counsel for Central Industries, Ltd., is not the attorney-in-fact, and does not hold any authority or power to represent said corporation, except in the capacity of an attorney-at-law. Hence he was not the proper person upon whom the writ of injunction should have been served. Therefore, for want of the necessary legal party defendant, the issuance of the writ should be denied. Respondent also contended that a mistake made in the overcharge of interest on the principal sum is not ground for the issuance of an injunction. Before the injunction case could be heard and the injunction dissolved, and notwithstanding the allegation that there was no attorney-in-fact set out in count 1 of its "Returns to Notice" to show cause why the injunction should not be granted, and in utter disregard of the injunction filed, of which it had notice, counsel for respondent prepared and filed an application before Benjamin T. Collins, a justice of the peace, for foreclosure of the chattel mortgage, the subject-matter of these proceedings, under the Chattel Mortgage Act of 1936. Respondent was unmindful of and ignored the several opinions rendered by this Court from time to time to the effect that

to render a person amenable to an injunction, it is neither necessary that he be a party to the suit in which the injunction was issued, nor be actually served with a copy of it, as long as he appears to have had actual notice. In re Moore, 2 L.L.R. 97 (1913) ; In re Cassell, io L.L.R. 17 (1948). This act on the part of respondent's counsel has brought about, and is responsible for, these proceedings in prohibition filed in the chambers of Mr. Justice Shannon, who on January 3, 195o, after hearing arguments, handed down a comprehensive opinion granting the writ. To this opinion respondent took exceptions and prayed an appeal to this Court en banc. The opinion of our distinguished colleague reads as follows : "The Central Industries Limited commenced proceedings against Fazzah Brothers in a foreclosure of a Chattel Mortgage under the provisions of the Chattel Mortgage Act of 1936 and before His Honour, Benjamin T. Collins, a Justice of the Peace for Montserrado County. Based upon a statement of fact submitted, supported by an affidavit by R. F. D. Smallwood of Counsel to the said Central Industries Limited, the said B. T. Collins, Justice of the Peace, issued an order dated on the 17th day of December, A.D. 1949, directed to Joe Gio, a Constable for said Montserrado County, commanding him to attach sundry personal properties enumerated in said order and to make his Returns as to the manner of the service of said order.

"It is in contest of the legality and propriety of the application for, and issuance of, the ORDER as also its service that this Petition for a Writ of Prohibition has been made. The Petition after a recital of sundry acts of the said Central Industries Limited, the Justice of the Peace, B. T. Collins, and the ministerial officer in the service of the Order which Petitioners considered illegal and prejudicial to their rights and

interest, also submitted that the Chattel Mortgage Act of 1936, upon which the said Central Industries Limited based the prosecution of their claim against Petitioners is, in some of its parts, unconstitutional, in that it makes no provision for, nor did the said Justice of the Peace allow said Petitioners, their day in court.
"Upon issuance of an order to the said Justice of the Peace, B. T. Collins and Central Industries Limited, as Respondents, to appear on the 29th day of December A.D. 1949 before this Court to show cause why the Writ of Prohibition as applied for should not be granted and ordered issued, said Respondents appeared on said day and filed their Returns embodying fourteen counts succinctly showing: a) that a Writ of Prohibition would not lie in this case because what was sought to be prevented or prohibited had already been done;
b) that the said Justice of the Peace has special jurisdiction to handle such matters as arise out of Chattel Mortgages and hence prohibition would not lie against a Court in the exercise of functions properly within its jurisdiction; c) that Petitioners having, prior to the commencement of the proceedings of Prohibitio instituted an action of Injunction embracing the sa e parties and the identical subjectmatter, ought no under the law, to be permitted to resort to other C · urts or source of litigation; d) that under the circu stance stated in 'c,' supra, there is evidence that the Petitioner has another suitable and adequate remedy and hence a Writ of Prohibition would not lie; e that under the provisions of the Chattel Mortgag Act of 1936, Respondents had done all that was req ired of them without transcending the directions co tained in said Act, and hence prohibition would not lie ; the only thing left to be done being the taking of the inventory of personal properties attached, which failure is attributable to the acts

of the Petitioners in commencing these prohibition proceedings; f) that the Act (Chattel Mortgage) is not an infringement of the personal liberties of the Petitioners nor have they been unduly prejudiced ; and g) that Petitioners, having enjoyed benefits from and under this Chattel Mortgage, should not be permitted to attack or to raise any issue against same, having benefited thereby.
"In the disposition of the case it appears to us necessary only to pass upon the salient points involved in `a,"c,"d,"f,' and `g.' No special comment will be made on 'b' and `e' because the facts submitted therein are apparent on record . . . , the legal points therein involved being left for decision collaterally with the law issues raised. "As to the point that a Writ of Prohibition would not lie because what was sought to be prevented or prohibited had already been done and that in such cases Prohibition would not lie, we do not hesitate to say that this would have strong support in law if other attending circumstances did not loom up, and this from the Respondents' own Returns wherein it submits in count 8 thereof that the taking of the inventory as required by law and the giving of receipt had not

been done. There is a provision of law in Prohibition that : " 'Where prohibition would be ineffectual it will usually be disallowed, as where the act sought to be prevented is already done, or where, if the act were 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 not an effectual remedy. But, where anything remains to be done by the court, prohibition not

only prevents what remains to be done, but gives complete relief by undoing what has been done. 22 R.C.L. page 8, paragraph 7. [(1918) ..

(Emphasis added.)] So that where it is apparent, as has been admitted by the respondents, that the taking of inventory and the issuing of receipt still remained to be done, prohibition would lie to prevent the doing of these, also to undo what has been done if the procedure and the method adopted is declared illegal and unwarranted. "An interesting issue is raised in count three of the respondents' Returns in submitting that because of the pendency of an action of Injunction before the Civil Law Court of the Sixth Judicial Circuit, Montserrado County, involving the same subject-matter of Chattel Mortgage and carrying the same parties, and in which the Petitioners in these proceedings seek to enjoin the Central Industries Limited, one of the respondents, from the foreclosure of the said Chattel Mortgage, Prohibition would not lie and therefore the petition should be dismissed. This issue as raised is interesting because even though the petitioners did not bring it up, the respondents saw fit to do so and the purpose for it seems vague; for if it is true, as it appears, that there is such an injunction pending covering the same subject-matter and involving the same parties, said respondents have disregarded and discountenanced same by commencing during its pendency, foreclosure proceedings of the relevant Chattel Mortgage and then it is the said respondents who have thrown themselves against the majesty of the law and should not be encouraged to do so. In our opinion, whilst it is true, as the said respondents' counsel argued before us, that in such a case, reference of the alleged disobedience or disregard of the pending injunction proceedings should be made to the court before which the said proceedings are had for such actions as the said court

might decide if, upon investigation, the facts submitted are proven ; yet this would not afford an adequate and complete relief and remedy. " 'Prohibition has been likened to the equitable remedy by injunction against proceedings at law. The object in each case is the restraining of legal proceedings; and as the right to the

remedy by injunction implies a wrong threatened by the parties litigant against whom the relief is sought, so the right to the writ of prohibition implies that a wrong is about to be committed, not by the parties litigant, but by the person or court assuming the exercise of judicial power and against whom the writ is asked. There is this vital difference, however, between them: An injunction against proceedings at law is direted only to the parties litigant, without in any manner interfering with the court, while prohibition is directed to the court itself, commanding it to cease from the exercise of a jurisdiction to which 22 R.C.L. page 3, it has no legal claim. . . para. 2. "It is our considered opinion that, since the submission of the matter of an alleged disregard of a pending injunction would not afford petitioners the adequate and complete relief and remedy to which they felt themselves entitled, they were left no alternative but to apply for a Writ of Prohibition. "Coming on to the issue that there is evidence of the existence of other adequate and complete remedy or relief, we have been left at sea as to what this other adequate and complete remedy is, since it has not been suggested by the respondents in their returns and does not suggest itself to us; for injunction proceedings, as has already been remarked, will not afford it; neither would a remedy by appeal do so, since there is no provision in the Chattel Mortgage Act under which the proceedings in foreclosure were commenced en-

titling the petitioners, Mortgagors, to a right to defend or to appeal from any act or judgment of the Justice of the Peace before whom the proceedings are had. (See Chattel Mortgage Act of 1936.) "This brings us to the submission that the Chattel Mortgage Act of 1936 is an infringement, if executed in foreclosure proceedings in manner set out in said Act, of the personal liberties and legal rights of the petitioners. Whilst it is true that courts do not usually pass upon the wisdom of legislation, yet, in our opinion it would not be doing this when it seeks to pass upon the question whether the enforcement of a law as enacted would not have a tendency to affect the legal rights of a party. Perhaps with a view of securing capital outlaid in our country, the Legislators thought fit to enact this law, and to say that it has afforded some benefits would not be doing too much, but let us see whether the provisions in said Act for the foreclosure of a Chattel Mortgage are in harmony with the provisions of our organic law, the Constitution. "In the opinion of this court in the celebrated case of Juah Weeks-Wolo vs. P. G. Wolo Es L.L.R. 423 (1937)] the doctrine of one's day in court was largely expounded, and this court declared that a denial of same is an infringement of the Constitution of this country and a denial of a legal right. "Despite the fact that the said Chattel Mortgage Act makes provisions whereby said Mortgages are to be foreclosed, yet there is no provision therein whereby the mortgagor can be given his day in court. According to this Act, " 'If the principal amount secured by the mortgage and the interest thereon or any part of such principal and interest be not paid at the original date of maturity, as therein stated, or any extension of such maturity granted by the mortgagee and noted in

writing by him upon the mortgagor's duplicate
of the instrument, the mortgage may be foreclosed in the following manner. . . .' (See Acts, Legislature 1936, page 6, section 17.)
"In the sub-sections to the principal section are mentioned the following as stages to be followed : " 'The mortgagee shall present
his duplicate of the mortgage to the Justice of the Peace in whose judicial district the property is situated . . . , with a statement
in writing as to the amount then due and owing thereon, that no extension . . . has been granted . . . , and demand that the mortgage
be foreclosed. " `If the amount due, as shown by the mortgage and endorsements thereon, be not less than that so stated by the mortgagee,
the Justice of the Peace shall make an order in writing in which after a brief recital of the facts he shall direct the officer of
his court to take possession forthwith of the mortgaged property, or such part thereof as he can find, bring it to the Court House for safekeeping, and make
return of his proceedings. " 'The officer . . . shall give the person . . . in whose possession it is found a receipt for the same,
a copy of the mortgage and of the order of the Justice of the Peace and a written notice that unless previously redeemed, the property
will be sold by order of the court pursuant to the provisions of The Chattel Mortgage Act. " 'Upon receipt of the return of the officer
the Justice of the Peace, if it appears . . . that the mortgaged property or any part thereof has been brought into the custody of
the court, shall forthwith, by order in writing, direct that the same be sold at auction at a time not earlier than five days from
the date of the seizure thereof and not later than twenty days thereafter.'

"From this it is apparent
that there is no opportunity offered or afforded the mortgagor for his day in court to defend himself against any undue imposition
or illegal practices against him. It simply leaves room for any unscrupulous or unfair mortgagee to take advantage of a mortgagor
with no privilege reserved to the mortgagor to appear and defend. The only opportunity reserved to him is the redemption of the mortgaged
property within five days after seizure. "This is nothing short of a highhanded deprivation of one's constitutional right and privilege
of representation in court either in person, by counsel or both, and its practice is also a denial to one of his day in court, so
that the portion of the Act in this respect is unconstitutional. "The fact that the petitioners have enjoyed benefits from the Chattel
Mortgage, in our opinion, does not deprive them of taking advantage of any act against them which they consider prejudicial to their
interest and right, despite the fact that they are also parties to the Chattel Mortgage. . . . "In view of the premises above, we
have no hesitancy in granting the Writ of Prohibition prayed for and it is hereby ordered issued, with costs against respondents.

And it is hereby so ordered." In addition to what has been so well and ably expressed by our distinguished colleague, we feel it our duty to express our surprise at and abhorrence of the acts of counsellors of this Court in deliberately ignoring and disregarding an injunction pending before the circuit court, of which they had notice, and in which they were interested as counsel for Central Industries, Limited. Said counsellors were oblivious of their oath as counsellors. We were loath to believe that any of our leading counsellors would allow themselves to be so intent on pleasing their clients that they would commit such an act, but as they themselves furnished the evidence by filing copies of

the complaint and their "Return to Notice" marked exhibits "A" and "D" respectively, the truth was forced upon and driven into our unwilling minds as a nail driven into hardwood with a hammer wielded by brawny arms. Now in examining the Chattel Mortgage Act upon which this foreclosure proceeding is supposed to have been based, we find it is in a material part in direct opposition to the organic law of this country in that there is no appearance in Court required by the mortgagor to afford him an opportunity to be heard and to show cause, if he can, why the mortgage should not be foreclosed. Such a provision would give him his day in court. The justice of the peace is authorized upon the filing of a statement of fact by the mortgagee to issue an order to any constable to proceed and seize all of the personal property, etc., make a list thereof and give a receipt therefor, and bring same to the courthouse, and to give notice to the mortgagor that unless the property was previously redeemed within a certain time as prescribed by law, same would be sold by order of court. L. 1936, ch. II, § 17.
In the case at bar, the order upon which the constable acted reads as follows: "REPUBLIC OF LIBERIA, OFFICE OF THE MONTSERRADO COUNTY. JUSTICE OF THE PEACE, MONTSERRADO COUNTY AT MONROVIA. "Before His Honour, B. T. Collins, Justice of the Peace. "Central Industries, Limited, Mortgagee FORECLOSURE OF versus Joseph and Richard Fazzah of MORTGAGE. Fazzah Brothers, Mortgagors "To Joe Gio, constable, or to any other constable for MONTSERRADO COUNTY. "Know ye, that Central Industries, Limited of 3o Church Street, New York, Mortgagee entered into a

Chattel Mortgage with Joseph and Richard Fazzah of Fazzah Brothers on the i,th day of May, A.D. 1949, mortgaging all their personal property household lease in Liberia, for the amount of fifty-two thousand, two hundred and thirty dollars ($52,23o.00) to be paid in monthly instalments of seven thousand, five hundred dollars ($7,500.00) with ten per centum (10%) interest, beginning on the 11th day of September, A.D. 1949, and that the said Central Industries, Limited, Mortgagee, by and through their Counsel,

R. F. D. Smallwood, Counsellor-at-law, has appeared before me and filed a Statement of fact in writing and presented their duplicate of the Mortgage showing that the said Fazzah Brothers have defaulted in discharging their obligation on the terms of the said mortgage, and that they have not granted the said Fazzah Brothers, Mortgagors, further extension of time, and that the amount due is forty-seven thousand, two hundred and twelve dollars (47,212.00) including interest and demand the foreclosure of said mortgage. "You are therefore commanded to proceed forthwith to the business places of Joseph and Richard Fazzah of Fazzah Brothers, and seize all of their personal property, merchandise, and all property of a personal nature belonging to the said Fazzah Brothers, making a list of same, and giving receipt therefor to them. "You are also further requested to proceed to the Free Port of Monrovia and ascertain whether any property lying in the warehouse of the said Free Port belonging to Joseph and Richard Fazzah of Fazzah Brothers; and if any found, you are to attach said property, informing the Manager of said Free Port as to your service on said property, warning him not to permit said property to be removed except by authority of this Court.

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"You are further requested to proceed to the Bank of Monrovia, Incorporated, and in like manner ascertain from the Manager of the Bank whether Joseph and Richard Fazzah of Fazzah Brothers, have any credit in said Bank, and if found, to attach said credit, informing the Manager not to permit any withdrawal therefrom without authority from this court. "You are further requested that the property so attached, except those found in the Bank of Monrovia and Free Port of Monrovia you are to bring to my office, or any place that may be designated by me, for safe keeping and make your returns as to the manner of service of this Order, giving them Notice in writing, that unless the property is previously redeemed within the time prescribed by law, said shall be sold by order of court. "And for so doing this shall be your authority. "Issued this 17th day of December, A.D. 1949. "[Sgd.] B. T. COLLINS, Justice of the Peace, Montserrado County."

The notice in writing purported to be given was not signed by anybody. No inventory was taken and no receipt given as directed by the Chattel Mortgage Act, supra, and by the order of the justice of the peace. Although respondents have set up that the application for the writ of prohibition caused the failure to take the inventory, yet as far as we have observed no effort was ever made, nor was it intended, to take any inventory, for it was three days after the attachment of the goods before the application for a writ of prohibition was filed, i.e., December 20, 1949. (See notice of His Honor B. T. Collins from the clerk of this Court.) Further, upon an inspection of the chattel mortgage executed by Joseph and Richard Fazzah of Fazzah Brothers, it appears to us that they mortgaged to Central Industries, Ltd., all personal property in excess of $5o,000,

all merchandise and goods in the store and warehouse of Fazzah Brothers which are in excess of $4o,000, goods presently in the Free Port of Monrovia which are worth at least $4.6,000, and the leasehold of Fazzah Brothers on their store and warehouse. Nothing is said about credits at the Bank of Monrovia, Inc. We do not think it out of place to quote word for word the relevant clause of the Chattel Mortgage: "We the said party of the first part, do hereby sell and assign to the party of the second part all and singular our personal property now owned by Fazzah Brothers, including, but not limited to, Fazzah Brothers accounts receivable, which are in excess of fifty thousand dollars ($5o,000.00) merchandise and goods in the store and warehouse of Fazzah Brothers, which are in excess of forty thousand ($4o,000.00) dollars, goods presently in the Free Port of Monrovia, which are worth at least forty-six thousand ($46,000.00) dollars, and the leasehold of Fazzah Brothers on their store and warehouse." Hence it is obvious that freezing the credits of Joseph and Richard Fazzah of Fazzah Brothers at the Bank of Monrovia, Inc., was not contemplated by the chattel mortgage and was illegal. The other acts of seizure and attachment as carried out by the constable were also illegal, since he should have seized only personal property in excess of fifty thousand dollars, and goods and merchandise in excess of forty thousand dollars. Since no opportunity was given for petitioners to be heard, the only remedy open to them under the circumstances for the protection and securing of their property and rights was prohibition. Such highhanded practices with the rights, properties, and privileges of persons, be they citizens or aliens, is inconceivable and shocking to the conscience of men and of good citizens. In Harmon v. Republic, 2 L.L.R. 480 (1924) the case

was heard in the circuit court at Grand Bassa. After evidence had been concluded by the State, defendants filed a motion to dismiss based on a jurisdictional issue. The motion was denied, and judgment was rendered fining each defendant $1,000. Dissatisfied with the judgment, defendants prayed an appeal and the jurisdictional question came up before this Court under the following exception : "And also because the court dismissed the motion offered by defendants to the jurisdiction of said court sitting in chambers, over said cause in summary proceedings. The jurisdictional question raised was that under the Constitution, " 'in all cases, not arising under martial law or upon impeachment, the parties shall have a right to a trial by jury,' and [this action] .. . not being . . . tried by a jury . . . is not in keeping with said Constitution. (I . . . And also because the statute law providing for summary hearing of the above offense is in conflict with said section of the Constitution." Id. at 481. It is well to be reminded that the questions settled were: "[T]he Legislature can enact no law which is in direct conflict with

the organic law of the state . . . (2) "[W]hen a case arises for judicial determination and the decision depends on the alleged inconsistency of a legislative - provision with the fundamental law, it is the plain duty of the court to compare the Act with the Constitution and if . . . [they are irreconcilable] to give effect to the Constitution rather than the statute .. . (3) [N]o person shall be deprived of life, liberty, property or privilege, but by judgment of his peers or the law of the land.' " Id. at 482, 483, 484.

In a later case, Wolo v. Wolo, [1937] LRSC 12; 5 L.L.R. 423 (1937) Chief Justice Grimes of this Court took pains to elucidate the term due process of law. Said he : "American law writers commenting on the constitutional provisions which, in ours, would seem to be stronger, because, as aforesaid, of the inclusion of the word, 'privilege,' have agreed on the following as far as our examination of sundry authors goes : " 'The term "due process of law" is synonymous with "law of the land." The constitution contains no description of those processes which it was intended to allow or forbid, and it does not even declare what principles are to be applied to ascertain whether it be due process. But clearly it was not left to the legislative power to enact any process which might be devised. "Due process of law" does not mean the general body of the law, common and statute, as it was at the time the constitution took effect. It means certain fundamental rights, which our system of jurisprudence has always recognized. The constitutional provisions that no person shall be deprived of life, liberty, or property without due process of law extend to every governmental proceeding which may interfere with personal or property rights, whether the proceeding be legislative, judicial, administrative, or executive, and relate to that class of rights the protection of which is peculiarly within the province of the judicial branch of the government. The term "due process of law," when applied to judicial proceedings, means that there must be a competent tribunal to pass on the subject-matter; notice actual or constructive, an opportunity to appear and produce evidence, to be heard in person or by counsel; and if the subject-matter involves the determination of the personal liability of defendant he must be brought within the jurisdiction by service of process

within the state, or by his voluntary appearance. And there must be a course of legal proceedings according to those rules and principles which have been established by our jurisprudence for the protection and enforcement of private rights. But the forms of procedure and practice may be changed ; and the constitution is satisfied if the substance of the right is not affected and if an opportunity is afforded to invoke the equal protection of the law by judicial proceedings appropriate and adequate. . . .' 8 Cyc. 1083 and cases

cited. " 'The essential elements of due process of law are notice, and an opportunity to be heard and to defend in an orderly proceeding adapted to the nature of the case. . . .' 6 R.C.L. Constitutional Law § 442." Id. at 427, 428. These provisions, and others, incorporated in the Bill of Rights primarily for the protection of citizens would seem to inure also to the benefit of aliens who are here by permission of the government, and especially those by virtue of treaty stipulations. In the case before us it is clear to us that the determination of the case necessitates our passing upon the constitutionality of the Chattel Mortgage Act, and hence we cannot legally refuse to do so. "Since the constitution is intended for the observance of the judiciary as well as the other departments of the government, and the judges are sworn to support its provisions, the courts are not at liberty to overlook or disregard its commands, and therefore when it is clear that a statute transgresses the authority vested in the legislature by the constitution, it is the duty of the court to declare the act unconstitutional, and from this duty they cannot shrink without violating their oaths of office. . . ." 6 R.C.L. 72 (1915) . In view of the fact that the Chattel Mortgage Act in question makes no provision, as we have mentioned, for

a party defendant to appear and defend, which provision would conform to the provision of our Constitution which forbids the forfeiture of life, liberty, property and privilege without an opportunity to be heard, that portion of the said act, in our opinion, is in contravention of our Constitution. Therefore, in the light of what has been said, we are in full accord with the ruling delivered by our distinguished colleague in Chambers, and affirm same and hereby declare section 17 of the said Chattel Mortgage Act unconstitutional, with costs against respondents; and it is hereby so ordered. Ruling affirmed.

Draper et al v Wilson et al [1880] LRSC 1; 1 LLR 126 (1880) (1 January 1880)

JAMES W. DRAPER and **CHARLOTTE S. DRAPER**, Appellants, vs. **JAMES WILSON**, **CHARLOTTE HARRIS** and **BENJAMIN HARRIS**, Appellees.

[January Term, A. D. 1880.]

Appeal from the Court of Quarter Sessions and Common Pleas, Since County.

Ejectment.

Reply—Complaint—Mixed questions.

1. Where a reply is adjudged insufficient, judgment shall be given for the defendant; where a reply is not filed within ten days after notice of the filing of the answer the plaintiff is presumed to rest upon the denial of the truth of the answer only, but where an indistinct or insufficient reply is filed judgment shall be given for defendant.

2. A complaint which is indistinct with respect to the parties to a suit is bad.

The ejectment in this case, which comes up on appeal from the Court of Quarter Sessions, Sinoe County, was brought by the present appellants to recover possession of a certain piece of **land**, the title to which they claim has come to them as an estate of inheritance, etc.

In reviewing the proceedings of this case, as presented by the record, we must remark that very few if any cases have come before us burdened with greater complications and legal mistakes than appear in this case.

The first exception taken by the defendants is because the court below ruled "that the plaintiffs' reply be abated, and they rely upon the grounds taken in their complaint."

The Supreme Court is of the opinion that the ruling of the court below on this first point, as set out in the bill of exceptions, is erroneous, and unwarranted by the statute and common law. Because if the court upon inspection had discovered the insufficiency of the reply, its duty was to have given judgment for the defendants. And no consideration whatever ought to have induced the court to apply any other principle to an insufficient reply, but that embraced in the fifth section of the law on the 27th page of Liberia Statute, Book I.

When the plaintiff fails to reply to the defendant's answer within ten days after he has notice that it is filed, the law directs that he shall be obliged to rest his case on the denial of the truth of the answer only; but when the reply is not distinct, intelligible and sufficient, judgment shall be given for the other party.

The second exception is to the ruling of the court below, to the effect that the plaintiffs' complaint is sufficiently distinct and intelligible. On inspection of the complaint, this court finds a want of distinctness therein in respect to the names of the plaintiffs in this action. In the same complaint it is made to appear that one Charlotte Harris is the wife of Benjamin Harris, and also that one Charlotte Wilson is the wife of Benjamin Harris, and that both of these females, together with James Wilson and Benjamin Harris, are plaintiffs. Charlotte Harris is set out as one of the surviving heirs at the commencement of the complaint, but at the conclusion thereof Charlotte Wilson's name is substituted. Now the question as to whether Charlotte Harris is the same person called Charlotte Wilson, or whether they are two separate persons, ought to have been distinctly set out. The complaint must be distinct and intelligible so as to enable the court to know for or against whom it should give its decree or judgment. To guard, therefore, this principle of the law, the court says the court below erred in ruling that the complaint was sufficient.

The third exception is taken to the court proceeding to try a mixed question before the questions of law contained in defendants' answer were disposed of ; but the question referred to not being stated or laid in said exception, the court will not give any expression with regard thereto.

As to the fourth exception, to the court ruling that the third point in defendants' answer was a question of law. We are of the opinion that the said count manifestly contained a mixed question of law and facts,—the jurisdiction of the court, and the acts of the guardian. And the mixed nature of the question is also presented in the judge's ruling on said count, in which he says: "The facts appearing that Henderson Wilson acting in the capacity of guardian did make a prayer to the Probate Court of this County, and did obtain an order and did sell said property or estate in question, which is in contradiction to the power and right granted by the statutes of Liberia, and that of the common law as set forth in the commentaries on American law by Kent," etc.

Now the acts performed by the guardian were questions of fact, while the right of the court to invest him with the authority to perform the acts was a question of law. The judge therefore erred in his ruling on this point.

The fifth exception is taken by the defendants, now appellants, because they are of the opinion that the final judgment is erroneous because it finally disposes of real property and settles the title of the same without the assistance or intervention of a jury.

To this we would say that in actions of ejectment the titles of parties to real property ought to be determined by a jury under the direction of the court, unless the law otherwise directs; and the ruling of this court in the case of Harris against Locket at its January term, 1875, was that "Ejectment being an action involving a mixture of questions of law and facts, must be tried by a jury." For these errors the judgment of the court below is reversed and appellees ruled to pay costs.

Karmo et al v Morris [1919] LRSC 2; 2 LLR 317 (1919) (2 May 1919)

BALLAH KARMO and **WORHN-BEH**, Appellants, v**. JOHN L. MORRIS**, Secretary of the Interior and **Major John H. Anderson**, Officer Commanding the Liberian Frontier Force, Appellees.

ARGUED APRIL 15, 1919. DECIDED MAY 2, 1919.

Dossen, C. J., Johnson and Witherspoon, JJ.

1.Our membership in the family of nations imposes on the Government the duty of protecting the rights of citizens and aliens, and of promoting tranquility in the hinterland as much as any other part of the country whether such obligation has been formally assented to by the native tribes or not.

2. The Government of Liberia in extending its influence, and the right of sovereignty, over territories beyond the forty-mile limit as established in 1847 executed sundry conventions with the neighboring states which are regarded as evidence of the highest character of our extended jurisdiction, and impose on us the duty of extending our laws and policy over the hinterland tribes and of bringing the inhabitants under the influence of civilization.

3. Among other evidences of the extension of the sovereignty of this Republic over the hinterland are: the sending of political missions, and planting the flag in the hinterland; the taking of repressive military measures against refractory tribes; the suppression of the slave-trade and inter-tribal feuds; the appointment and commissioning of paramount, and sub-chiefs; the establishment of police authority and agencies under its patronage for the moral and educational betterment of the inhabitants.

4. Such acts as these destroy the proposition that there is a limitation put upon any of the three great departments of Government, or any of them, in exercising jurisdiction over the inhabitants of the Liberian hinterland.

5. The sovereign people of Liberia by one Act,—the Constitution, established at one and the same time the three great departments of Government which are not only co-ordinate and distinct but also as regards territorial jurisdiction, co-extensive.

6. The Legislature can only confer judicial power upon the courts, and whenever they attempt to transcend the limitations thus fixed by the Constitution such statute is not only voidable, but void ab initio.

7. According to the provisions of our Constitution the Supreme Court can have original jurisdiction in only three classes of cases, hence if the contention that the Circuit Courts hadn't original jurisdiction in crimes and misdemeanors arising within any part of our territorial domain and punishable under our laws the appellate jurisdiction of the Supreme Court could not reach those cases.

8. Even according to the wording of the Act of October 13, 1914 it is clear that it was not the intention of the Legislature to exclude from the jurisdiction of the courts those offenses occurring in the hinterland.

9. The whole of the judicial power of this Republic was vested in our courts and any attempt on the part of the Legislature to confer any of said judicial power on any other department of Government is void because of its repugnance to the Constitution.

10. To arrest, take bail, imprison and hold in contempt are all judicial functions which no official of the executive department can legally exercise because of the constitutional inhibitions: "No person belonging to one of these great departments of the Government shall exercise any of the powers belonging to either of the others."

Mr. Chief Justice Dossen delivered the opinion of the court:

Habeas corpus—Appeal from Judgment. This case is before us upon an appeal from the judgment of the Circuit Court of the first judicial circuit, upon a petition in habeas corpus, adjudicated before said court in November, A. D. 1918.

The following is a synopsis of the facts disclosed by the records as constituting the grounds of the action:

On the 26th day of November, A. D. 1918, appellants who are native chiefs of the Todee and Ding sections of the Golah country, were by verbal orders emanating from the Interior Department of the Republic of Liberia, of which department John L. Morris, one of the appellees in this case was head, taken into custody of Major John H. Anderson, Officer Commanding the Liberian Frontier Force, the other appellee in the suit and imprisoned in the guard room of the Interior Department.

The ground for this proceeding was alleged to have been founded upon a theft committed in the settlement of White Plains by tribesmen of the said appellants, and, the stolen goods carried into the country of which they are chiefs. The record discloses no facts leading up to their complicity in the theft, but by force of what was termed "a policy established by the said Interior Department," said chiefs were held responsible to hand over to the department the culprits and stolen property, or the value thereof ; it having been ascertained that the culprits were members of their tribe and that the stolen property had been carried into their country. It was alleged by appellees in their return that when the matter was first taken up before the Secretary of the Interior, appellants submitted to the rule of the department with respect to holding chiefs responsible for the acts of this character of their tribesmen, and executed a bond in favor of the department to pay the penalty for the theft charged. The said bond matured and upon appellants being required to fulfill its conditions they demurred to the legality of the procedure which had fixed the responsibility of the act charged upon their shoulders and refused to comply therewith. This information was conveyed to the Secretary of the Interior and, by force of a verbal order emanating from said official, appellants were arrested and taken into custody by the said Major John I3. Anderson, one of the appellees, and imprisoned as aforesaid. A writ of habeas corpus was sued out against appellees in behalf of the said appellants, which directed that appellees should have the persons of the appellants before the court below on the day named in the said writ. Appellees failed to produce the appellants in court, as they were commanded to do and returned as their reason for such failure, that appellants were not "in their custody or control at

the time of the service upon them of the said writ of habeas corpus, and, that they were unable to produce them in court as the writ commanded." Appellees made no denial of the fact of having actually held appellants in their custody and confinement, but sought to justify the imprisonment of one of the prisoners upon the ground that he acted contemptuously before the court "the court of the Secretary of the Interior," when called before it.

On the review of the writ of habeas corpus before the judge of the court below the constitutionality of the Act of the Legislature approved October 13th, 1914, which, it was contended, conferred judicial powers upon the Secretary of the Interior, who is a member of the executive department of Government, was questioned and the entire proceedings of that officer in the premises had under color, and by force of, said Act,—including the arrest of appellants, the taking of bail, the adjudication of the alleged contempt towards the so-called court of the Secretary of the Interior, and the punishment therefor, were attacked by the learned counsel for appellants on the ground, that these acts partook in their nature of judicial functions which the Legislature could not confer upon an official of the executive Government, because of the constitutional inhibition which separates the Government into three distinct coordinate branches, with functions separate and distinct from each other. The judge of the lower court was asked to recognize this fundamental principle in the Constitution, and, to declare the proceedings and the statute upon which they were founded, in conflict with the organic law. The judge of the court below in his decree went fully into the subject and in the first part of same appears to have had no doubt as to the correctness of the principle, as insisted upon by the counsel for the appellants with respect to the constitutional prohibition to the exercise of judicial functions by an officer of the executive Government; but in his conclusions he upheld the Act in question which conferred such powers upon the Secretary of the Interior, who is a member of the said executive department of the Government, and held the proceedings in the premises to be legal and ordered the writ abated with costs for appellee. In his argument before us counsel for appellants suggested that undue and improper pressure may have been brought to bear upon the judge of the court below by means of threats emanating from a certain source, the determination of this case, being regarded in certain quarters as of vast importance to the power and prestige of the Interior Department, which fact seems also to be borne out by the strenuousness and marked ability which characterized the contention of the Attorney General in his arguments at this bar. We hesitate, however, to give credence to the suggestion that a judge of any of the courts of Liberia, could in this enlightened and progressive age of this Republic (when it is, we hope, recognized by statesmen and politicians alike, that the security and safety in a democracy rest in an independent, fearless and competent judiciary), be so weak, so recreant to duty, as to permit himself to be deterred from the plain path of duty in the determination of matters brought within his grasp.

To the decree and opinion of the judge of the court below, appellants excepted and have brought the cause before this judicature upon appeal for review.

The bill of exceptions brought up for our consideration presents three points which are laid as follows:

"1. Because when on the 10thday of December, A. D. 1918, said case was taken up for trial, and during the pendency thereof attorney for petitioners asked defendant John L. Morris, Secretary of the Interior, upon cross-examination the following question, viz. : 'Is it not a fact that because of the service upon you of the writ of habeas corpus you have not yet proceeded further with the trial of the case for which Chief Varlie and Fahn Damini alias Blackey were held ?' counsel for defendant objected to said question upon the ground of irrelevancy and after arguments *pro et con* Your Honor sustained the objections ; to which petitioner excepted.

"2. And also because on the said 10th day of December, A.D. 1918, Your Honor after hearing evidence on both sides, ruled that it was not within the power of the Secretary of the Interior and the Officer Commanding the Liberian Frontier Force, defendants in this suit, to produce the bodies of Chief Varlie and Fahn Damini alias Blackey at the time of the service upon them of the writ of habeas corpus, and ruled that the other points in the returns be proceeded with ; to which ruling petitioners excepted.

"3. And also because when on the 13th day of December, A.D. 1918, Your Honor took up the second count in the returns, and petitioners submitted the questions, viz.: (a) 'In view of the fact that article I, section 14 of the Constitution of Liberia declares that the powers of the Government shall be divided into three distinct departments, * * and that no person belonging to one of these departments shall exercise any of the powers belonging to either of the other;' is not so much of the Act of the Legislature of Liberia approved October 13th, 1914, as purports to confer judicial power upon the Secretary of the Interior void, because in conflict with said constitutional provisions and if it is, can the Secretary of the Interior punish for contempt? (b) Can the Secretary of the Interior who is an official of the executive Government demand or enforce compliance with a bail bond, or a bond in which one is bound under penalty? Your Honor after hearing arguments *pro et con* on said propositions afterwards, to wit : on the 16th day of December 1918, overruled said question and gave final decree against said petitioners to the effect that their petition should be dismissed and they ruled to pay all costs; to which final decree petitioners excepted and have tendered this their bill of exceptions to Your Honor for your signature and pray an appeal to the Honorable the Supreme Court of Liberia at its April term, A. D. 1919."

In support of these contentions an exceedingly learned and comprehensive brief was submitted by counsel for appellants, which was combated by an equally learned and comprehensive brief filed by the Attorney General, who appeared for appellees, which have brought to our

consideration questions vital — not only to the validity of the aforesaid Act and the legal merits of the decree predicated thereupon ; but to the jurisdiction and the authority of the courts in certain parts of the Republic, and the force and effect of the Constitution which created them over those parts.

The question of efficacy and effect of the evidence adduced 'at the trial, the return, so far as it relates to the facts, having been settled by the judgment handed down by this court at its last term, we shall in this opinion notice those points in the bill of exceptions and briefs filed on both sides as affect the validity of the said Act of 1914, and the constitutionality of the powers conferred by said Act upon the Secretary of the Interior, so far as they relate to the exercise of judicial functions by that official.

Counsel for appellants in the second point of his brief submits : "That the whole matter for which the chiefs were called down to Monrovia and which subsequently led to their imprisonment was one properly cognizable only before a court of justice." "The object of the inquiry," he contended, "was to settle whether or not any responsibility could legally attach to them as rulers of their respective districts, for the discovery and delivery up of persons charged as thieves, who, as appellees alleged, had carried the fruits of the crime into the territory governed by those chiefs." Appellants submitted : "That a proceeding to arrest and punish for a contempt is the highest exercise of judicial power, and belongs to judges of courts of record or of superior courts," and cited the case *Langenberg v. Decker* (16 L. R. A. 108) in support of his contention. "It is true," the counsel submitted, "that the Act of the Legislature of Liberia, approved October 13th, 1914, attempted to confer upon the Secretary of the Interior and other officers of his department the functions of a court of justice, but inasmuch as he is an official of the executive branch of the Government," he contended that "every provision of said Act tending to confer such power, should be declared inoperative, illegal and void because of its conflict with the Constitution." In support of this contention section 14 of article I of the Constitution of Liberia was cited.

In the third point of the brief submitted on the part of appellants the distinctive and exclusive character of the judiciary as a co-ordinate branch of the Government is insisted upon, and we are asked to reaffirm the opinions handed down by this court in the cases *Blahmo v. Ware* (Lib. Ann. Series, No. 3, p. 4) *Jedah, Boyah et al. v. Jeffrey B. Horace, Traveling Commissioner, Grand Bassa County,* decided April, 1916, and the matter *In re the Constitutionality of the Act of the Legislature, providing for Uniform Rules, etc.* (Lib. Semi Ann. Series, No. 4, p. 4) in which brief it is contended that the principles laid down in said decisions support the case for the appellants.

In the fourth point of the brief the learned counsel for the appellants submitted : "That if it be true as is set up in the return of appellees, that the persons held as prisoners in this case did give bond for the payment of the value of the goods alleged to have been stolen by the persons charged, and said bond subsequently became forfeited, an enforcement of the compliance with same could only have been legally done by suit brought in a court of justice," etc.

These contentions on behalf of the appellants were resisted by the learned Attorney General for the appellees, who in the copious brief handed up, presented for our consideration, as against the contentions of the appellants, the following points :

"1. The jurisdiction conferred upon the Secretary of the Interior in relation to matters of administration and justice in causes arising in the hinterland districts is not unconstitutional.

"(a) Because the rules of the Liberian Constitution apply only to territory defined in the municipal law of the Republic of Liberia and to such other territories appurtenant to Liberia over which the laws and Constitution of Liberia have been extended.

"(b) The territories acquired by the Republic outside the forty-mile zone fixed in the statutes as the boundaries of the Republic are governed only by such regulations as the Legislature may prescribe, which regulations furnish the character of their rights and Government.

"2. That the native territories outside the forty-mile zone not belonging to constitutional Government, no action of the Secretary of the Interior in relation to matters arising in the hinterland can be tested by constitutional rules," etc.

The statutes of Liberia, the Franco-Liberian Treaties of 1892 and 1907[1] and numerous citations from Taylor's International Law are cited in support of this position.

We propose to consider, firstly, the grave, momentous questions raised by the Attorney General, which attack the sovereignty of the Republic beyond the limits of forty miles from the Liberian littoral, and the limitation of the Constitution and the judicial power created thereunder to the

territories embraced within the said zone of forty miles. It would follow by analogy that if the powers of the Republic created by the Constitution did not extend over the territories contemplated by the Act conferring judicial powers upon the Secretary of the Interior, the provisions of which Act as far as they assume to confer such powers upon said official are contested upon the ground of being void on account of their conflict with the Constitution, then the case for the appellants in this suit must break down.

We propose in this connection to discuss the method and policy pursued by the several colonizing powers of Europe in the acquisition of territory from the natives of Africa, and, the founding and establishment of sovereignty and civilized government over such native territories by the said civilizing powers of Europe.

Treating the question historically, we shall confine our research neither to the date of the founding of this Republic nor to the methods pursued in the acquisition of territory by us, for it must be recognized that with regard to the latter, namely the manner of acquiring African territory and of extending civilized government over the undeveloped tribes of this continent, we are bound as an African state to recognize as paramount, and to give adherence to, the principles laid down by International conferences and by International treaties and precedents with respect to what act or acts are essential to establish political and governmental jurisdictions over African tribes.

Originally it was the Pope who claimed the right to grant to individuals or corporations of European descent, the right to acquire, hold and govern African territories ; and this authority was exercisable independently of the assent of the natives over whom such powers were granted. (1 Westlake Int. Law, p. 92.) The Papal Bull of Nicholas V issued in 1454, granted to King Alfonso V of Portugal the discoveries made and to be made on the West Coast of Africa; and by the Papal Bull of 1493, Alexander VI granted to Ferdinand and Isabella and to their successors, Kings of Castile and Leon, all lands west of the Azores on the African Coast of which no Christian power had taken possession before Christmas Day, 1493. In 1494, Spain and Portugal by treaty divided between themselves the African Coast down to a line drawn 370 leagues off the Cape de Verde Islands. Here we have the earliest record of a foreign state acquiring and governing territory on the West African Coast, the basis of which right was founded in discovery and Papal sanction. It is superfluous to remark that as soon as Protestant states arose the right of the Pope to confer such rights was ignored ; but the right to acquire by discovery was adhered to and followed by all the powers which subsequently acquired territory in Africa and furnished the occasion for much dispute and in some instances conflict of arms between rival powers.

In support of the right to acquire territory by discovery and of extending over the tribes embraced in any such new territory civilized government, we need quote no higher authority than Chief Justice John Marshall of the United States Supreme Court, who in the celebrated case *Johnson v. McIntosh,* decided 1823, held that : "The potentates of the old world found no difficulty in convincing themselves that they made ample compensation to the inhabitants of the new, by bestowing on them civilization and Christianity in exchange for unlimited independence." * * "It was a right," he held, "which all asserted for themselves and in the assertion of which by others all assented. Those relations which were to exist between the discoverer and the natives were to be regulated by themselves. * * In the establishment of these relations the rights of the original inhabitants were in no instance entirely disregarded ; but were necessarily to a considerable extent impaired. They were admitted to be the rightful occupants of the soil, with a legal as well as just claim to retain possession of it and to use it according to their own discretion ;" but, he declared, "their rights to complete sovereignty as independent nations, were necessarily diminished." [1823] USSC 22; (8 Wheaton 543 [U. S. Sup. Ct.}, 5 L. Ed. 688.)

The theory upon which a civilized state may extend its sovereignty and laws over uncivilized tribes who may not have previously come under the political and governmental control of some other civilized country, was developed and carried further at the African Conference of Berlin. When that conference was laying down conditions for the appropriation by the signatory powers of territory on the Coast of the African Continent, the plenipotentiary of the United States declared that : "His Government would gladly adhere to a more extended rule, to be based on a principle which should aim at the *voluntary consent of* the natives whose country is taken possession of in all cases where they had not provoked the aggression." Protocol of 31 January, 1885. But the conference took no action on this invitation of the United States' plenipotentiary—it was merely recorded that in the unanimous opinion of the conference its Act did not limit the right which the powers possessed of causing the recognition of the occupations which might be notified to them to be preceded by such an examination, as they might consider necessary. It has been settled by International canons that whether the ideas of a native tribe permit soil occupied or claimed by them to be ceded or not, and by what tribal authorities the cession ought- to be made if permitted at all, are obscure and immaterial questions. So also are the questions whether a proposed cession . has been fully explained to the tribe and fair value given for it. (I Westlake Int. Law, p. 93.) The same author in his treatise on Internal Law declares that: "the rules which the African Conference of Berlin laid down in articles 34 and 35 of the General Act; though limited in their expression to the acquisition of territory on the Coast of Africa, embody the shape which the law as to the original acquisition of the title has taken under the influence of these views." Now let us inquire into the text of the Articles of the Berlin Conference referred to.

Article 34 declares that: "Any power which henceforth takes possession of a tract of **land** on the Coast of the African Continent outside of the present possessions, or which being hitherto without such possessions shall acquire them; as well as a power which assumes a protectorate there shall accompany the respective act with a notification thereof addressed to the other

signatory powers of the present act, in order to enable them if need be to make good any claims of their own."

Article 35 of the General Act states that : "The signatory powers of the present act recognize the obligation to insure the establishment of authority in the regions occupied by them on the Coast of the African Continent, sufficient to protect existing rights, and, as the case may be, freedom of trade and of transit under the conditions agreed upon."

Liberia must be presumed to give adherence to these articles, she being within their purview.

Commenting upon Article 35 above cited, Mr. Westlake in his treatise makes this observation that: "the establishment of an authority which may protect the natives with whom contact has become inevitable and under which the civil rights essential to European and American life may be enjoyed in tranquility is the objective of this Article."

Says he,—" The exercising of the rights here mentioned *cannot include less than this."*

No one will seriously contend that such a state of affairs as insures tranquility and the enjoyment of those civil rights which are guaranteed in civilized society, would be possible of attainment under the customary law and practice of the undeveloped native inhabitants of the Liberian hinterland any more than it would be possible in any other part of the hinterland of the African Continent not brought under the influence of civilization.

Our duty therefore to ensure the protection of such rights and to promote such tranquility in the hinterland, by the extension and enforcement of our laws and the polity of our Government, is an obligation which we are under as a member of the family of nations, having intercourse and relations with subjects and citizens of civilized communities, which obligation cannot be ignored by ourselves, nor destroyed by any failure of formal assent thereto by the native tribes inhabiting those interior parts.

Our citations of the modern international rules and precedents relative to the acquisition of territory in West Africa, and the rights to extend civilized government over the uncivilized native inhabitants whose countries have been taken under control, in our opinion completely dispose of the contention raised by the learned counsel for appellees to the effect that such acts are dependent upon the will and assent of the tribes over whom sovereignty is sought to be extended, which assent must be expressed in the form of written treaties and compacts between the two parties. It is true that in the original method of acquiring territory, the agents of Liberia treated the tribes whose territory was subsequently made a part of the Republic's domain as possessing sovereign rights over the territories they occupied, and, our title thereto was conveyed by deeds of cession and treaties. By this method our rights were established over a radius of about forty miles from the Atlantic littoral. This was regarded as the limit of our territory interiorward, when the Republic was erected in 1847. But subsequent to this date, we have in one or the other forms recognized by modern international practice extended political influence, and with it the right of sovereignty and of governmental supervision, over territories beyond and which have been recognized to the Republic by conventions between this state and the neighboring countries the boundary of whose territories marches with our frontiers. These conventions, we hold, are not only evidence of the highest character, as to the recognized territorial *status quo* of the Republic by the states with whom they have been made ; but they also by force of modern international rules and precedents noticed above, impose upon the inhabitants comprised within those prescribed limits the obligation of submitting to the sovereignty of the Republic of Liberia and the consequential right and duty on the part of the Government of extending its laws and polity over those parts and bringing the inhabitants under the influence of civilization. Upon the authority of these modern rules and precedents, we feel no hesitancy in declaring that our sovereignty over what is called the hinterland of Liberia, is perfect, complete and absolute and that the Constitution which created the Government and under which all political and governmental authority is derived, applies with equal force and effect over that section as it does over any part of the Liberian Republic.

If further evidence of the Republic's rights over what has been termed the hinterland is demanded, this can be supplied by the explorations made in those parts under the auspices of the Government, dating from those made by Governor Russworm in the forties (See Latrobe's Maryland in Liberia), and extending into the sixties and early seventies, where the hinterland as far back as the Mandingo plateau (now French) was scientifically explored by Anderson the Liberian explorer and cartographer, and, political and trade relations opened up between the tribes of the interior and the Government. (See Anderson's Journey to Musardu.) Although the relations established at the time did not in every case ripen into the form of written treaties, they nevertheless were sufficient for the purpose of laying the foundation of title to those districts which have since been acknowledged by the tribes themselves and confirmed by conventions between this Government and the Governments of France and Great Britain, as already mentioned.

These explorations have been followed from time to time by political missions, and the planting of the flag in the hinterland by repressive military measures against refractory tribes. By the suppression of the slave-trade and inter-tribal feuds. By the appointment and commissioning of paramount, and sub-chiefs through whom the Government has for nearly a century set some form of government in those parts, and who in a greater or less degree derived their authority from the Government of the Republic, and were amenable to it for the supervision of their respective tribes. And finally by the establishment of police authority and of agencies under its patronage and protection for the moral and educational betterment of the inhabitants. Such acts, we solemnly declare, partake of duties and responsibilities growing out of sovereignty, and, we hold, destroy every vestige of the proposition, with regard to the limitation of the Constitution, or, the jurisdiction of the three great departments of the Government or any of them, set up and ordained by that instrument over the inhabitants of the Liberian hinterland.

It was contended by the learned Attorney General in his arguments at the bar, that the natives of what is called the hinterland of Liberia which stretches from a zone forty miles from the coast to the Anglo-Liberian and Franco-Liberian boundaries, not having by formal act in the form of treaties placed their territory under the political and governmental jurisdiction of the Republic of Liberia, that, therefore, while admitting this section of the Republic to be under the legislative and executive jurisdictions, in that the Act passed by the former and attempted to be executed by the latter was regarded proper ; yet when it comes to the third great jurisdiction—namely the courts—the power of this department of Government, he insisted, is restricted to the forty-mile zone from the Atlantic littoral.

That such a contention is unsound, we feel no hesitancy in declaring. The sovereign people of Liberia in their majesty set up and established by *One Act,* which is called the Constitution— the three great departments of Government, which were called into being by the same instrument and at the same time and by the same method. Their powers therefore are not only co-ordinate, but co-extensive each with the other, so that the legislative powers do not run beyond those of the executive; nor, do the executive powers go beyond those of the judicial department, so far as relate to the territorial jurisdiction of those three separate and co-ordinate branches of the Government nor vice versa. "The powers of this Government shall be divided into three distinct departments" declares the Constitution. "And no person belonging to one of these departments shall exercise any of the powers belonging to either of the others." *(See* Const. Lib., art. I, sec. 14.)

To hold, therefore, that the executive can exercise jurisdiction in any part of Liberia in which the functions of the judiciary is prohibited, is to lay down a proposition distinctly in conflict with the letter of the Constitution and with its obvious spirit and intent. But let us *see* if this proposition is unequivocally supported by the Liberian Constitution. Article IV of this instrument declares that : "the judicial power of the Government shall be vested in *One Supreme Court* and such

subordinate courts as the Legislature shall from time to time establish." The query naturally arises— has the Legislature any discretion where to lodge this power ? If the Legislature possessed any discretionary power on this subject it is obvious that the judiciary, as a co-ordinate department of the Government, may at the will and pleasure of the Legislature be annihilated or stripped of all its important jurisdictions for if the discretion exists, no one can say in what manner, or at what time or under what circumstances, it may, or ought to be exercised. The language of the said fourth article of the Constitution is manifestly designed to be *mandatory* upon the Legislature. Its obligatory force is so imperative, that the Legislature could not, without violation of its duty, withhold any part of the judicial power from the courts, or, confer it upon any other department or official. The object of the Constitution, we hold, was to establish three great departments of Government : the legislative, executive and the judicial. The first was to pass laws, the second to approve and execute them and the third is to expound and enforce them. Without the courts it would be impossible to carry into effect some of the express provisions of the Constitution. What other provision is there in the organic law for the punishment of crimes (if we except those arising in the army and navy, and for impeachment) ? Neither of the other two departments is vested with this power. It is utterly inadmissible that the Legislature can confer judicial power upon any, but the courts; and whenever it is attempted to transcend the limitations fixed by the Constitution, as the statute under construction contemplates, such statute must be declared as being not only voidable—but, *void* ab initio—because of its conflict with the Constitution which is, and must always be held, as the highest law.

Under the provisions of the Constitution the Supreme Court can have original jurisdiction in three classes of cases only, viz.: Cases affecting Ambassadors or other public Ministers and Consuls and those to which a county shall be a party. (See Const. Lib., art. IV.) We have already remarked that the Legislature cannot vest any portion of the judicial power of the Republic of Liberia in any except the courts ordained and established. If, however, in any of the cases of crimes and misdemeanors arising within the territorial jurisdiction of the Republic and punishable under our laws, the Circuit Courts are, as was contended, without jurisdiction, the appellate jurisdiction of the Supreme Court could not reach those cases; and consequently the injunction of the Constitution that the judicial power *shall be vested* in the courts would be disobeyed.

A close and careful study of the Act of October 13, 1914, under consideration will, we think, overturn the proposition set forth in the brief for the appellees with respect to the limitation of this department to a zone forty miles from the littoral. The object of this Act is obviously to provide for the administration of affairs in what is called the hinterland by the executive department of the Government through the Secretary of the Interior and his subordinates in that department and so far as its provisions relate to matters belonging properly to the executive department they may be recognized as valid. But quite apart from the executive administrative functions set up in this Act, it will be observed from a careful study, that its provisions extend beyond those functions and expressly recognize the jurisdiction of the courts over offenses arising in the hinterland districts. The latter clause of section 21 of said Act reads : "Cases

leading to capital punishment shall be reported to the Secretary of the Interior and the Superintendent in the leeward counties and the territories, who shall transfer same to the judiciary." If the Constitution did not extend over those districts, and if the judicial power established by that instrument was intended to have no force in those parts, what then is the meaning, we ask, of the clause of the Act just cited ? It cannot be contended with any degree of logic that two of the co-ordinate departments set up by the Constitution could exercise functions to the exclusion of the third in any part of the territories of the Republic ; nor, that the courts could have jurisdiction over one class of offenses arising in the hinterland, while as to others this power could be lodged in some other department. It is the *whole* judicial power of the Republic which the legislature must, under the Constitution, vest in the courts. Its duty in this connection is mandatory and not discretionary. It has only to be ascertained whether a question or a function partakes of a judicial character to decide whether such question or function appertains solely to the jurisdiction of the courts.

Section 28 of said Act further fortifies our opinion to the effect that it was not the intention of the Legislature as expressed in the language of said Act to exclude the jurisdiction of the courts over offenses, occurring in what is called the hinterland. The language of this section is as follows : "Appeals shall be granted to litigants in each of the courts of the districts to the next higher court, and such cases shall be transferred to such courts of appeal with all costs ; but, any person or persons dissatisfied with the decision of the Commissioner, or the decision of the Council of Chiefs may appeal to the Secretary of the Interior, or to the Circuit Court, who shall hear the case upon the merits and from the decision of either the Secretary of the Interior or the judge of the Circuit Court, an appeal may be granted to the Supreme Court of the Republic of Liberia," etc. The only sensible construction which, to our minds, can be placed upon the foregoing section of the Act under construction is, that in express language the Legislature has extended the jurisdiction of the statutory courts, whose jurisdiction is derived from that source, over offenses committed in the hinterland districts of the Republic. It was superfluous for the Act to have mentioned the appellate jurisdiction of the Supreme Court, since its appellate jurdiction is inherent and cannot be abridged or annulled by any means whatsoever except by the will of the sovereign people of this Republic expressed by amendment to the organic law.

We have already remarked that under the Constitution it is the *whole* judicial power of. the Republic that is vested in our courts.

That the Constitution in this respect is *mandatory* and not merely discretionary. That the judicial power created thereunder is not only co-ordinate but co-extensive in its application with the jurisdiction of either that of the legislative or executive departments. It follows therefore that the Legislature cannot confer any part of the judicial power of the country upon any other department of the government without disobeying the injunction of the Constitution, and that

whenever that has been attempted as is the case in the Act under construction, such an attempt becomes void because of its repugnance with the organic law.

The actions of the Secretary of the Interior in *arresting, taking bail, imprisoning* and *holding in contempt* the appellants, were acts which in their character partook of judicial functions ; and, which no official of the executive department could legally exercise, because of the constitutional inhibition which declares that: "no person belonging to one of these great departments of the Government shall exercise any of the powers belonging to either of the other." (Const. Lib., art I, sec. 14.) It has been held that: "to arrest and punish for contempt is the highest exercise of judicial power and belongs to the judges of courts of record or superior courts." *(Langenberg v. Decker,* 16 L. R. A. 108.) No official belonging to the executive department of Government can legally arrest and punish any person for a contempt. The actions of the Secretary of the Interior in this regard, were a grave violation of law, in that the personal liberty of all classes of citizens and inhabitants of this Republic whether civilized or uncivilized, have been zealously protected by the Constitution.

The doctrine that none but the courts can exercise judicial functions in the Republic and that a statute is void which attempts to confer judicial power upon any but the courts and which infringes in the lowest degree the Constitution which is the highest law, was exhaustively treated in the cases *Jedah, Boyah v. Jeffrey B. Horace, Travelling Commissioner, Grand Bassa County* (Semi Ann. Series not heretofore printed) *supra.;* and *In re the Constitutionality of the Act providing for Uniform Rules of Practice* (Lib. Semi Ann. Series, No. 4, p. 4.)

These decisions were successfully cited by counsel for the appellants in this case. We reaffirm the doctrine which they enunciated and uphold the principles upon which they rest.

After a very careful investigation of the said Act of the Legislature approved October 13, 1914, we have arrived at the deliberate conclusion that the Act in certain respects is in conflict with this doctrine of the Constitution in that it attempts to confer judicial powers upon the Secretary of the Interior, who is an official belonging to the executive department of Government. So much therefore of said Act which attempts to confer such powers upon said officer is repugnant to the provisions of the Constitution and should be declared void and inoperative; and it is hereby so held.

Roberts v Enaimba Business [1979] LRSC 45; 28 LLR 272 (1979) (21 December 1979)

MAI ROBERTS, by and through her Husband, CHARLES B. ROBERTS, Appellant, *v.* **ENAIMBA BUSINESS** AND CONSULTING FIRM, represented by and through its Manager, E. MOMOLU FREEMAN, Appellee.

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

Heard: November 19, 1979 Decided: December 21, 1979.

1. In this jurisdiction an option clause providing for renewal of a lease agreement on terms and conditions to be agreed upon by the parties is unenforceable for uncertainty.
2. An important term or condition of any lease agreement is the rental and where it is not agreed, the option is not effective.
3. A lessor is rightfully entitled to possession of a leased property through ejectment and eviction of the lessee where the option is ineffective by virtue of the uncertainty of a term or condition of said option.
4. When a defendant is ruled to bare or general denial at the trial such defendant may cross examine plaintiff's witnesses and introduce evidence in support of his denial, but he may not introduce evidence in support of any affirmative matter. So a trial judge errs when he questions the plaintiff on matters which constitute affirmative defenses.

Appellant was the lessor of appellee under a five-year lease agreement, which provided for a five-year optional period, without agreement on the specific rental to be paid for the option. Prior to the expiration of the term certain, appellant requested appellee to vacate the premises, but he refused, relying on the optional clause. Appellant then instituted ejectment action and at the disposition of law issues, appellee was ruled to a bare denial after dismissal of his answer for reason that the option was uncertain and therefore unenforceable. At the trial, the judge asked questions of the appellant, which introduced affirmative defenses and eventually judgment was entered for appellee. Appellant then appealed to the Supreme Court. The Supreme Court reversed the judgment, ordered the eviction of appellee, and appellant placed in possession. The Supreme Court ruled that rental being an important term or condition of any lease, where the rental for an optional period is not agreed upon or the term is vague and uncertain, and therefore unenforceable, the lessor is entitled to repossession of the demised premises. The Supreme Court also ruled that since a defendant in bare denial may not introduce affirmative matters in his defense, the trial judge may not ask questions which tend to introduce the affirmative defenses already precluded by the bare denial. Hence, the *reversal* of the judgment.

Philip J. L. Brumskine and *Daniel S. P. Draper, Sr.*, appeared for appellant. *M. Fahnbulleh Jones* appeared for appellee.

MR. JUSTICE HENRIES delivered the opinion of the Court.

In 1962, the appellant's father, the late Anthony Barclay, gave her a parcel of **land** situated on the corner of Broad and Center Streets, in the City of Monrovia. The appellant constructed a three storey building on the **land** and leased it out separately to three individuals, including the appellee.
On February 28, 1973, a lease agreement was entered into between the appellant and the appellee for the third flat of the building, for a period of five years certain with an optional period of five years, the rental for the optional period to be agreed upon.
Prior to the expiration of the first five-year period of the lease, the appellee in a letter to appellant indicated his desire to remain on the premises for the optional period. The appellant denied the request because the appellee had allegedly shown complete disregard for the terms of the agreement, and had disrespected her. She accordingly asked him to vacate the pre-mises. He refused, contending that the lease agreement gave him a legal option, and therefore he could not be denied the right to continue occupancy for another five-year period. Consequently, he has continued to occupy the premises without paying any rental.

The appellant instituted an action of ejectment against the appellee in the Civil Law Court for the Sixth Judicial Circuit. After pleadings were rested, His Honour Frank W. Smith, assigned circuit judge, disposed of the law issues by overruling the appellee's answer and ruling the appellee to a bare denial of the complaint. Later, Judge Jesse Banks came into term and assigned the case for trial, and the jury brought in a verdict in favour of the appellee. Judgment was rendered in accordance with the verdict, and appellant announced an appeal therefrom.
The issue before us is whether a lease agreement which reserves an option for a future period, the rental being subject to negotiation, is binding on the lessor, and therefore enforceable merely because the lessee agrees to be bound thereby. We hold that such an option clause is unenforceable.
The relevant portions of the lease agreement reads thus:

"3. This lease shall be for a period of five years certain and an optional period of five years, The optional period of the lease is renewable immediately following the expiration of the certain period.

> 4. 4. The rental to be paid by lessee to lessor for the certain period of the lease is $2,500.00 payable in advance each year. The rental for the optional period shall be subject to negotiation between the lessor and lessee, but in no case shall the rental be increased by more than 25% of the rental of the certain period."

Judge Smith, in passing upon this question, held that nego-tiations not having taken place, the option clause to renew the lease remained uncertain and hence unenforceable. We are in agreement with Judge Smith on this point, for in this jurisdiction an option clause providing for renewal of a lease on terms and conditions to be agreed upon by the parties is unenforceable for uncertainty. *Mirza v. Crusoe et al.[(1960] LRSC 44; ,* 14 LLR 95 (1960); *Agbage v. Brown,* [1978] LRSC 61; 27 LLR 339 (1978). More to the point, a renewal covenant in a lease that leaves the renewal rental to be fixed by future agreement between the parties is generally unenforceable and void for uncertainty and indefiniteness. *See* 50 AM. JUR. 2d, *Landlord & Tenant,* § 1165.

Reading the two relevant paragraphs of the lease agreement together, it is clear that the optional period of the lease is renewable only if an agreement has been reached on the rental to be paid. An important term or condition in any lease agreement is the rental. This point not having been negotiated by the parties, the option does not become effective, and therefore the appellee is occupying the appellant's premises unlawfully.

As to whether ejectment will lie in such a case, the Civil Procedure Law, Rev. Code 1: 62.2 (a) provides that a person rightfully entitled to the possession of real property may bring an action of ejectment to vacate when there is unlawful dispossess-ion by an occupant without color of right or title after the expira-tion of the term of a lease of or rightful permissive possession. We cannot conclude this opinion without referring to Judge Banks' improper handling of this matter after the law issues had been passed upon. After Judge Smith, who has concurrent jurisdiction with him, had struck the answer and ruled the appellee to a bare denial, Judge Banks, in questioning the appellant, sought to introduce affirmative matters contrary to the statute and numerous holdings of this Court to the effect that when a defendant is ruled to bare or general denial, at the trial such defendant may cross examine plaintiff's witnesses and introduce evidence in support of his denial, but he may not introduce evidence in support of any affirmative matter. Civil Procedure Law, Rev. Code 1: 9.1(2).

Judge Banks not only interfered with the ruling of his col-league, Judge Smith, which was highly irregular but he seemed to have assumed the role of counsel for appellee, after appellee and his counsel had absented themselves from the trial, even though they had been served with a notice of assignment, which is also improper. It is the duty of the court to ask such questions as are suggested by the evidence given at the trial, but it has no more right than counsel has to ask an improper question.

In view of the foregoing, the judgment of the lower court is reversed with costs against the appellee, and the Clerk of this Court is ordered to send a mandate to the lower court ordering it to resume jurisdiction over this matter, evict the appellee from the premises, and put the appellant in possession of same. And it is hereby so ordered.

Judgment reversed.

Howard et al v Roberts [1916] LRSC 1; 2 LLR 217 (1916) (10 January 1916)

J. AZARIAH HOWARD and **MATILDA A. HOWARD**, his wife, Appellants, v. **WENDALL P. ROBERTS**, Appellee.

SUBMITTED DECEMBER 22, 1915. DECIDED JANUARY 10, 1916.

Dossen, C. J., Johnson and Witherspoon, JJ.

1. The probate division of the Monthly and Probate Court is the proper division in which objections to the probation of deeds should *be* addressed and not the law division.

2. The statute requiring all deeds, mortgages and other conveyances of real estate to be probated and registered is intended to give notice of the same so as to allow objections if any there are.

3. The judge of the Monthly and Probate Court has jurisdiction in matters of real title to the extent of finding whether objections raised before court to probation are legally founded or not.

4. Objections filed to the probation of a deed need not be supported by affidavit.

Mr. Justice Witherspoon delivered the opinion of the court:

Objection to Probation of a Deed—Appeal from Judgment. This is an appeal from the proceedings and judgment of the Monthly and Probate Court of Montserrado County at its November term, A. D. 1914.

We find, after a careful review of the case as set forth in the pleadings, that one Wendall P. Roberts, of Montserrado County, the respondent, conveyed to Sidney H. Arnett by a deed in fee simple five-eighth's of lot No. 96, in the City of Monrovia that the said objectors set up claim to said lot or parcel of **land**, and at the time it was offered, at the Monthly and Probate Court, objected to its probation.

We are disposed to consider such of the exceptions only as are material to the issue; and this brings us to the first objection laid in the bill of exceptions which reads as follows : "Because on the said 6th day of November, A. D. 1914, said cause being then before the Probate Court, Your Honor ruled that the written objections filed by objectors in the matter was improperly addressed to the probate division and refused on that ground to hear the objections; this ruling being contrary to express law, objectors respectfully except to same."

This exception is well taken in the opinion of this court. The ground upon which this ruling is based has no foundation. The title of the court as set forth in the objection reads as follows : "In the Monthly and Probate Court for Montserrado County in its probate division, September term, A.D. 1914."

We feel no hesitancy in saying that the objections are addressed to the proper division of the Monthly and Probate Court, and the judge below erred in ruling otherwise.

The second exception reads : "And also because on the said 6th day of November, A.D. 1914, Your Honor ruled that you could not determine a matter of title, although objectors pointed out that you could examine title so far as to determine the rightfulness or otherwise of objections before court, and refused to hear objection on that ground ; to which said ruling, said objectors respectfully excepted."

The law governing this point is fully clear and emphatic. The object of the statute requiring all deeds, mortgages, or other conveyances of real estate to be probated and registered, is intended to give notice of the fact so as to allow objections to same if any there are.

Section 2 of said Act reads : "It is further enacted that in order to make a deed, mortgage, or other conveyance of real estate valid and probatable said deed, mortgage or other conveyance shall be witnessed by at least two witnesses, and the Chairman of the Probate Court shall cause the ministerial officer of the court to give notice at the door, *viva voce*, that the court is about to probate said deed, mortgage, or other conveyance; and should any person or persons object to the probation of any deed, mortgage, or other conveyance pending before the court, it shall be the duty of the court to inquire into the objection and if said objections are well founded the court shall refuse to probate said deed, mortgage, or other conveyance until such objections are removed."

We affirm that while judges of the Monthly and Probate Court cannot try title to real estate, still it is clear from the law above stated that judges of the Monthly and Probate Courts are empowered to take jurisdiction in matters of objections to disputed titles to the extent of finding the legality or illegality of the grounds of objections to probation and if they appear to be well founded to suspend the probation until the question of title shall have been decided. (Act, 1861, p. 91; I Lib. L. R. 51; *Blunt v. Barbour, Id.* p. 58.)

The third objection raised the question of affidavit.

We do not concur in the ruling of the judge setting forth that the objection should have been supported by affidavit. We agree that the judge erred in this point.

The court is of opinion therefore that the judgment not being in keeping with the principle of law, should be reversed, and it is so ordered.

Arthur Barclay, for appellants.

A. Karnga, for appellee.

Taylor v Yarseah [1977] LRSC 9; 25 LLR 453 (1977) (18 February 1977)

BOIMAH TAYLOR, Appellant, v. PASI and WONKOR YARSEAH, Appellees.
MOTION TO DISMISS APPEAL FROM THE CIRCUIT COURT, NINTH JUDICIAL CIRCUIT, BONG COUNTY.

Argued January 31 and February 1, 1977. Decided February 18, 1977. 1. An appeal will be dismissed for failure to serve on appellee a notice of completion of appeal. 2. Lack of proper description by metes and bounds of the property offered as a lien of the appeal bond is also ground for dismissal of the appeal. 3. In representing a client, a lawyer owes a duty to observe the rules of the Code of Moral and Professional Ethics, and in particular, to avoid careless errors in handling an appeal.

Appellees
moved to dismiss the appeal, claiming that no notice of completion of the appeal had been served and that the appeal bond was defective for lack of a description of the property offered as a lien of the bond. The Court upheld both appellees' contentions, and took the opportunity to call attention to the prevalent carelessness of lawyers in handling cases before the courts to the prejudice of their clients. The Court announced that henceforth a lawyer guilty of acts of neglect or of mishandling a case would be subject to discipline by fine, suspension, or disbarment. The motion to dismiss was granted.

Eddie S. Watson for appellant. appellees.

S. Edward Carlor
for

MR. JUSTICE HORACE delivered the opinion of the Court. This is a case that emanates from the Circuit Court for the Ninth Judicial Circuit, Bong County. Appellees, plaintiffs in the court below, instituted cancellation pro453

ceedings
against appellant, defendant in the court below. Appellant having lost the case in the trial court appealed to the Supreme Court for review and final determination. Appellees have moved to dismiss the appeal on two grounds ; namely, ( ) that no notice of completion of appeal had been served on appellees. This point was confirmed by a certificate from the clerk of the trial court to the effect that no notice of completion of appeal had been served because appellant did not provide financial means to facilitate the service of same; (2) that the appeal bond was defective because there was no proper description by metes and bounds of the property offered as a lien of the bond in the affidavit of sureties. Appellant filed his return in which he contested the points in the motion to dismiss on the following grounds: (1) That he had paid the clerk of the trial court in full for the transcription of the records including payment for the issuance of the notice of completion of appeal and he therefore had no further duty to perform. The negligence of the clerk of court should not prejudice his interest. (2) That the description of the properties offered as a lien of the bond was sufficient guarantee that the sureties would indemnify the appellees. That the important thing in the description of the property in the affidavit of sureties is the statement of property valuation issued by the Ministry of Finance. That this Court has in a long line of cases warned against dismissing cases on technicalities. It should be observed that appellant has not denied that appellees were not served with notice of completion of appeal, but that its issuance was a legal duty imposed upon the clerk of court. The certification of the clerk of court made profert with the motion to dismiss states clearly that the notice of completion of appeal was not served, not that it was not issued, and gave reasons for the nonservice. There is no showing anywhere that payment was made for transcription of the record including

payment for issuance of the notice of completion of appeal except the mere allegation made in appellant's returns. With respect to the second point of appellants' returns that the requirement that the description of the property offered should be by metes and bounds in the affidavit of sureties is a mere technicality, we can only call his attention to the fact that this Court has interpreted the statute on the description of property in an affidavit of sureties. West Africa Trading Corporation v. Alraine, [1975] LRSC 16; 24 LLR 224 (1975). Ordinarily this case would have been decided by a judgment without opinion, but because of a pervailing condition that is becoming rather alarming in the practice before our courts, we decided to have an opinion written and filed in this case in order to make our position clear for the future. We have observed that about fifty percent of the cases coming before us on appeal are decided on motions to dismiss rather than on the merits of the case. What concerns us is that most times the motions to dismiss, carry one or more of the grounds laid in the statute for dismissal of an appeal, particularly nonissuance or nonservice of notice of completion of appeal and defective appeal bonds because of lack of sufficient description of the property offered to establish a lien of the bond. In spite of our many decisions on these points, counsel practicing before us continue to make the same errors. In the circumstances, it is not unreasonable to conclude that lawyers do not read the opinions of the Supreme Court, or that they are totally indifferent to the pronouncements of this Court. What is more important, however, is the fact that when these lawyers carelessly handle causes before this Court, or any other courts for that matter, the interests of their clients suffer and some person is deprived of rights which they can ill afford to lose. It is obvious from what is happening--quite too often

in the practice now--that lawyers are unmindful of their obligation to their clients and the ethics controlling the practice as laid down in the Code of Moral and Professional Ethics in the Rules for governing Procedure in the Courts. In the first place a lawyer upon oath in being admitted to the practice of law in this jurisdiction is bound, among other things, not to counsel or maintain any suit or proceeding which shall appear to him to be unjust, nor any defense such as he believes to be honestly debatable under the laws of the land ; to employ for the purpose of maintaining the causes confided to him such means only as are consistent with truth and honor and never to seek to mislead a judge or jury by any artifice or false statement of fact or law; to maintain the confidence and preserve inviolate the secrets of his clients and not to accept compensation or reward in connection with the

business of his client except from him or with his knowledge and approval; never to reject from any consideration personal to himself the cause of the defenseless or oppressed, or delay any client's cause for unjustifiable reasons, or for money. If he is obligated to all of these, how much more represensible is his wanton neglect or gross carelessness in the handling of his client's business?

The last sentence of Rule 4 under the Code of Moral and Professional Ethics reads thus : "Having undertaken such defense, the lawyer is bound by all fair and honorable means to present every defense that the laws of the land permit, to the end that no person may be deprived of life, liberty, property, or privilege but by due process of law." That rule relates particularly to criminal causes, but we feel it is applicable to all causes which a lawyer undertakes to represent either as plaintiff or defendant. Rule 8 reads: "A lawyer should endeavor to obtain full knowledge

of his client's cause before advising thereon, and he is bound to give a candid opinion of the merits and probable result of pending or contemplated litigation. Whenever the controversy will not admit of fair judgment, the client should be advised to avoid or end litigation; it is unprofessional for a lawyer to advise the institution or continuation of an unmeritorious suit." Rule i i states : "A lawyer should refrain from any act whereby for his personal benefit or gain he abuses or takes advantage of the confidence reposed in him by his client." Certainly, these obligations are unknown to some of our practicing lawyers, or they are being ignored. When so many appeals have been dismissed on jurisdictional grounds, especially for improper and insufficient description of property in affidavits of sureties, it is inexcusable for a lawyer to be guilty of such neglect or carelessness in handling his client's cause. In the instant case it came out during the argument that counsel who appeared before us did not handle the appellant's interest in the lower court, and so we sympathize with him and must say that he did his best in a difficult situation. But the lawyer who handled the case in the court below and failed to follow up his client's interest should be condemned for such gross carelessness.

Because of the alarming rate of recurrence of the same conditions which cause so many appeals to be dismissed, we have decided not to sound a further warning against such practices--that has been often done--but to take a definite position. In future where it appears to us that an appeal must be dismissed because of gross carelessness or neglect of a lawyer handling a litigant's interest, or where it appears in the appeal record that the case was carelessly and inefficiently handled in the trial court, we will severely discipline such lawyer either by fine, sus-

pension, or disbarment. No exceptions will be made to this decision. Let all lawyers practicing before the courts of Liberia take note. However much we sympathize with the appellant in the

instant case, in view of the many precedents set by us in similar circumstances, we have no alternative but to grant the motion to dismiss the appeal. The Clerk of this Court is hereby directed to send a mandate to the court below to resume jurisdiction and enforce its judgment. Costs ruled against appellant. It is so ordered. Motion to dismiss granted.

Samuels et al v Logan et al [1984] LRSC 50; 32 LLR 433 (1984) (22 November 1984)

ISAAC SAMUELS et al., Informants, *v.* **STEPHEN LOGAN** and **WILMOT LOGAN,** Heirs and Administrators of the Intestate Estate of the late JOSIAH P. LOGAN, and HER HONOUR MARTHA K. MASSOUD, Resident Circuit Judge, Grand Bassa County, and **ROBERT HODGES**, Sheriff, Grand Bassa County, Respondents.

INFORMATION PROCEEDINGS

Heard: October 24, 1984. Decided: November 22, 1984.

1. The phrase "administer according to law" means administering an estate according to the terms of the letters of administration and the decedents Estates Law. It vests in the administrators the right only to proceed to law and the appropriate forum for enforcement of the estate's rights against intruders.
2. When an administrator finds out that trespassers are encroaching upon the decedent's estate entrusted to him, his proper course is to bring an action of ejectment in law to obtain possession thereof.
3. A judge sitting in probate and dealing with the question of interference with a decedent's estate cannot issue a writ of possession to the administrator to take possession of the estate. The award of a writ of possession in such circumstances is the proper function of a court of law, in an action of ejectment.
4. A judge sitting in probate is deemed to have acted out of order where he or she orders the sheriff to place the administrator of an estate in possession of the estate.
5. Where the administrators of an estate believe that the property of the estate which they are charged to administer is in question, they should use their letters of administration to sue out in ejectment as required by law.
6. A probate judge's orders to the sheriff to put the administrators in possession of property said to belong to the estate is tantamount to eviction of the occupants without due process of law.

7. A bill of information to the Supreme Court is the proper remedy where a lower court judge or judicial officer erroneously executes or attempts to execute a mandate of the Supreme Court.
8. A bill of information is a formal written petition to a superior court for action to be taken in a cause already determined.
9. A remedial writ brought against a judgment of the Supreme Court *en banc* is contemptuous.

Informants are occupants of a parcel of **land** which the administrators of a decedent's estate claimed to be part of the estate. The administrators, having been granted letters of administration, had filed a bill of information in the Circuit Court for Grand Bassa County, sitting in probate, charging the informants herein with interference with the estate. The respondents in the court below claimed title to or interest in the property. The judge before whom the information was filed ruled that the administrators had the right, under the letters of administration, to perform their duties according to law. Respondents therein excepted to the ruling and applied to the Supreme Court for a writ of certiorari. The writ was denied and the case remanded with instructions that the trial judge enforce the ruling.

In enforcing the ruling, the respondent judge ordered the issuance of a writ of possession, to be placed in the hands of the sheriff, to put the administrators in possession of the property. The occupants, informants herein, proceeded by information to the Supreme Court, charging that the respondents had ordered their eviction when no ejectment action had been instituted against them.

The Supreme Court agreed with the informants and granted the information. The Court held that the trial judge had acted out of place in ordering the issuance of a writ of possession to put the administrators in possession of the property. This act, the Court said, was tantamount to evicting the informants from the property without according them due process of law. The issuance of letters of administration, the Court opined, only placed the administrators in the position to sue out an ejectment action against persons alleged to be occupying the property of the estate. This did not give the administrators the right to a writ of possession. And, in any event, the Court said, a court sitting in probate could not issue such a writ.

The Court also rejected the contention of the respondents as to the appropriateness of the information, stating that information will lie where a lower court erroneously executes or attempts to execute a mandate of the Supreme Court. The Court therefore *granted* the information and *ordered* that the administrators proceed to an ejectment action at law against the occupants of the property, if the administrators desired the occupants ejected from the property alleged to belong to the Estate.

Joseph P. Findley appeared for informants. *M. Fahnbulleh Jones* appeared for respondents

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

The genesis of this dispute is derived from the death of one Josiah P. Logan, intestate, of Lower Buchanan, Grand Bassa County. Upon attaining their majority, his heirs and successors applied to the Second Judicial Circuit in Bassa, sitting in probate, for letters of administration. The application was heard and granted, and the letters of administration were accordingly issued in favor of the respondents. The aforesaid administrators later brought a bill of information before His Honour J. Jeremiah Z. Reeves, Judge of the said Second Judicial Circuit, alleging interferences with the intestate estate of their late father by certain individuals. Specifically, they charged that those individuals had unlawfully occupied lot No. 40-D, situated and lying on Tubman Street, Lower Buchanan, Grand Bassa County; that the said individuals had received rental due on the property; and that the said individuals had committed various other acts adverse to the rights of the administrators and the estate. Respondents, against whom the information had been filed, claimed title or some other form of interest in the **land**, inconsistent with the ownership and possession of the estate. (*See* Opinions of the Supreme Court, March Term, 31 LLR __ (1983).

In ruling on the information, the late Judge Reeves held:

"That since all the properties involved constitute a part of the intestate estate.....the administrators have the right to perform their duties in keeping with the letters of administration and the law controlling intestate estates. And it is so ordered."

Respondents thereupon excepted to said ruling and moved by certiorari to this Court. The Justice in Chambers heard and denied the writ; and, upon appeal, the full Bench upheld the ruling on the grounds that the ruling sought to be reviewed, being final, adjudicated the ultimate rights of the parties, and could not therefore be reviewed by certiorari. *Ibid.* This Court thereafter mandated the judge below to proceed to enforce the judgment of Judge Reeves, cited *supra.*

Upon receiving our mandate, the co-respondent judge, Martha Massoud, proceeded to enforce Judge Reeves' ruling precisely as follows:

"In view thereof, the sheriff of this Honourable Court is hereby ordered to proceed on the scene of the property and place the administrators in possession of said intestate estate; that is to say, the buildings occupied by the respondents/petitioners, the properties involved and which constitute a part of the intestate estate, and the same to be administered in keeping with the Letters of administration and the law controlling intestate estate."

It is this order of Judge Massoud that is the subject of the present bill of information. Basically, informants herein contend that the co-respondent Judge, Martha Massoud, erred in executing the mandate of the Supreme Court when she ordered the sheriff to place the administrators in possession of said intestate estate. They further maintained that the co-respondent Judge, Martha Massoud, erred when she ordered the sheriff to evict respondents from their house without a writ of possession, particularly as no suit had been instituted against them by the administrators for that purpose. They asserted that the information, filed by the administrators, was not the subject of ejectment but for interference.

Contrary to the above assertions, however, the respondents argued in their returns that Judge Massoud's directive merely meant to have the sheriff introduce the administrators to the occupants of the building, and to let them know that the said administrators are empowered by the court to administer the estate. They further contended that the fact that the trial judge never issued a writ of possession shows that she never intended evicting the respondents.

Weighing said arguments *pro and con*, two issues are basic for the determination of the bill of information: Firstly, to determine the meaning of Judge Reeves' ruling, cited *supra*; and secondly, to consider whether or not Judge Massoud over-stepped the ruling of Judge Reeves, which she was required to enforce.

The focal point in Judge Reeves' judgment was that the administrators, having received letters of administration from the Court, were empowered to proceed to administer the estate according to law. That ruling is not in dispute. In our opinion, the phrase "administer according to law" means administering according to the terms of the letters of administration and the Decedents Estates Law of Liberia. The Decedents Estates Law of Liberia does provide for administrators of decedents' estates to proceed to law for enforcement of their rights against intruders, and to remove other hazards which may be in their way. Decedents Estates Law, Rev. Code 8:107.3,

109.1, and 110.5. Therefore, whenever an administrator finds out that some trespasser is encroaching upon a decedent's estate entrusted to him, his proper course in administering the estate legally is to bring an action of ejectment in law to obtain possession thereof by a writ of possession. Certainly, a judge sitting in probate and dealing with the question of interference with a decedent estate cannot issue a writ of possession to an administrator to possess said estate. The award of a writ of possession in said circum-stances is the proper function of a court of law, in a proper action of ejectment. BLACK'S LAW DICTIONARY (5th ed.), *Ejectment: writ of possession.*

Consequently, it is not difficult to see that Judge Massoud's order to the sheriff to place the administrators in possession was out of place while she was in probate. All she was mandated to do was to read to the parties the ruling of Judge Reeves to the effect that if the informants below believed the property in question to be part of the estate they were empowered to administer, then they should use the instrument or weapon at their disposal, their letters of administration, as is required by law. *Anderson v. McGill,* 1 LLR 46 (1868). This meant that they were to sue in law for the eviction of respondents from the estate. To have ordered the sheriff to proceed to the scene and to put the administrators in possession, in a word, amounted to ordering the sheriff to evict the occupants without due process of law.

Considering whether a bill of information is the proper action to be brought where a lower court judge erroneously executes a mandate of this Court, we are of the opinion that a bill of information is the right course of action in such circumstances. According to Black's Law Dictionary, a bill of information is a formal written petition to a superior court for action to be taken in a case already determined. This is especially the proper action in this jurisdiction because any remedial writ brought against a judgment of the Supreme Court *en banc* is contemptuous. *Smith v. Stubblefield,* [1964] LRSC 15; 15 LLR 582 (1964). This Court has held that a bill of information to the Supreme Court is the proper remedy when a judicial officer attempts to execute its mandate erroneously. *Raymond International (Liberia) v. Dennis,* [1976] LRSC 35; 25 LLR 131 (1976). Also see *Thomas et. al. v. Dayrell[1966] LRSC 21;* , 17 LLR 284 (1966); *Alpha v. Tucker,* [1973] LRSC 9; 21 LLR 458 (1973); *Reeves v. Webster-Ankra,* [1973] LRSC 48; 22 LLR 181 (1973); *Ballah v. Thorpe,* [1981] LRSC 27; 29 LLR 286 (1981); and *Liberian Bank for Development and Investment v. Holder.* [1981] LRSC 30; 29 LLR 310 (1981).

For these reasons, we hold that Judge Massoud erred when she ordered the sheriff to put the administrators in possession of the property on Lot No. 40-D, located on Tubman Street, in Buchanan, Grand Bassa County. The Court further holds the view that the entire judge was required to do was to direct the administrators to proceed legally in keeping with the Decedents Estates Law of Liberia in administering the estate.

Wherefore, and in view of the above, the information is hereby *granted* and the judge presiding in the court below is mandated to direct the administrators in this case to proceed to administer the estate according to law. And it is hereby so ordered.

Information granted.

Brown v Allen et al [1913] LRSC 9; 2 LLR 115 (1913) (13 June 1913)

ANNA A. BROWN, legal guardian of the heirs of the late Coy C. Brown's Estate, Petitioner in Error, v. **JOHN L. ALLEN** and **MARTHA L. DIGGS**, formerly Martha L. Brown, Administrator and Administratrix of the Estate of the late Coy C. Brown, and **N. B. WHITFIELD**, acting in his capacity as Judge of the Monthly and Probate Court, Grand Bassa County, Respondents.

ARGUED JUNE 5, 1913. DECIDED JUNE 13, 1913.

Dossen, C. J., McCants-Stewart and Johnson, JJ.

1. A sale of real property can only be legally made by an administrator by virtue of an express order of the Probate Court when it has been shown to the satisfaction of the court that the personal property of the estate is insufficient to discharge the lawful debts against the estate.

2. Real property can not be lawfully sold to satisfy the claim for dower.

3. An allegation made by heirs that administrators sold property to themselves through the medium of third parties and paid themselves out of the estate an amount in excess of their lawful commission should be heard and determined by the Probate Court before discharging the administrators and cancelling their bond.

4. An allegation made by the heirs that certain property belonging to the estate had not been included by the administrators in the inventory should be heard and determined by the Probate Court before discharging the administrators and cancelling their bond.

Mr. Chief Justice Dossen delivered the opinion of the court:

Illegal Administration of Estate—Writ of Error. This case is brought before this court upon a writ of error sued out by the petitioner in error to have the records of the case in the court below brought before this court, and the rulings and judgment of the inferior judge reviewed and errors alleged to have been committed in the premises corrected. The assignment of errors filed embraces seventeen points upon which it is contended by the plaintiff in error the court below committed manifest error.

We do not deem it necessary to the decision of the case to pass upon all points laid in the assignment of errors ; and shall, therefore, only consider those which we deem important to the decision of the cause.

Before proceeding, however, to consider the points in the assignment of errors, we deem it proper to give a brief synopsis of the case as appears from the records filed.

Coy C. Brown, a citizen and resident of the County of Grand Bassa, in this Republic, died intestate, in the year 1908, and, under the provisions of the statute relating to the management of intestate estates, the judge of the lower court commissioned the defendants in error as administrator and administratrix, to administer the estate. An inventory of property, real and personal, was duly returned by appraisers appointed, showing personal assets to the value of $2,310.13, and real property valued at $3,189.13. Upon this inventory a bond was duly filed by the administrator and administratrix, defendants in error and the estate went into their hands for administration.

Incidentally, we would observe that throughout the whole administration of the estate, there appears from the records to have arisen from time to time, and by divers persons interested in the estate, objections to the manner in which it was being administered; but the judge below seemed not to have given weight to these objections nor to have taken the proper steps to correct them and prevent a devastavit of the assets. To the contrary, the court allowed the estate to remain in the hands of the administrator and administratrix, defendants in error, and to continue open for a period of time beyond the statutory limitation for the settlement and closing of estates, without justifiable reason as far as the records show, thereby indirectly contributing to the devastavit of the assets, against which complaints were made from time to time, as aforesaid.

Several reports appear in the records which were designated by the administrator and administratrix, defendants in error, as their final report; but the report which we are to consider in relation to the case before us is that made at the August term of the court below, A. D. 1912, which was admitted and the estate ordered closed.

To this report the attorney for the plaintiff in error, at the time the report was presented, made objections, showing material grounds why the report should not be received and the estate ordered closed. Said objections were disallowed by the judge below, aid the clerk ordered not to enter same upon the records. Whereupon the plaintiff in error applied to the Chief Justice for a writ of mandamus to compel the judge below to cause the said objections to be entered upon the records of the case. The application was granted, and the writ duly issued and served.

It does not clearly appear from the records that the objections after having been entered upon the records in obedience to the mandamus, were heard and determined by the court below; but it seems that at this stage of the proceedings, the cause was trans mitted to the Supreme Court, although the mandamus issued in the premises did not contain a mandate to that effect. At the January term of this court A. D. 1913, the case came on for hearing, when, upon the consent of both parties, the proceedings then pending were dismissed, and leave was granted the petitioner (now plaintiff in error) "to apply for a writ of error, and to use the records then before this court as the records in such proceedings." The application was made and the writ duly issued out of this court on the sixth day of February, 1913, by virtue of which the case is before us for the second time for review.

We would just here remark that the imperfect manner in which the records have been prepared and transmitted by the clerk of the court below, and the unintelligible manner in which the entire proceedings are recorded have caused the court an unnecessary amount of labour to enable it to get such a grasp upon the facts as is necessary to a proper adjudication of the errors assigned. This fact suggests to the court the importance of a rule which will not only require that all records transmitted from any of the lower courts be clearly typewritten, but also that a standard of competency should be fixed for such clerks to measure up to. It is idle to insist upon reforms in the practice and procedure of our courts unless we by some rule fix proper standards for those who are the medium through which the greater part of the business of our courts is transacted.

We shall now proceed to consider, specifically, the several errors assigned, so far as we regard them important to our decision.

The first exception is to the administrator and administratrix, defendants in error, disposing of real property without first showing to the lower court that the personal assets of the estate were insufficient to liquidate the claims against it; and also for selling lands to pay widow's dower.

The statutes of Liberia, with respect to the management of intestate estates, permits the sale of perishable property by an' administrator without any special order of the Probate Court so to do, provided however such a sale be made either to prevent waste of the estate, or to provide monies for the liquidation of debts against the estate. But a sale of real property can only be legally made by an administrator by virtue of an express order of the Probate Court, empowering him to sell, when it has been shown to the satisfaction of the court that the personal chattles are insufficient to discharge the lawful debts against the estate. With respect to the admeasurement of a widow's dower, we hold that real property cannot be lawfully sold, or converted into money, to enable her to obtain a greater amount of personal property out of an estate. The Constitution settles upon a widow one-third of the personal estate of which her husband is seized at the time of his death. To her dower in the personal estate she acquires absolute title; whereas to her dower out of the real property she acquires only a life estate, and the title herein is reversionary and cannot be alienated by her either by sale or devise. (Const. Lib., p. 18, sec. 2; Rev. Stat. Lib., p. 118, sec. 2; Bouv. L. D., p. 611, Dower.) This objection of the petitioner (now plaintiff in error) to the court's order, winding up the estate under such circumstances was properly made in order to safeguard the interests of the heir, who held reversionary interest in the property in question: and said objection should have been heard and decided by the lower court before absolving the administrator and administratrix defendants in error from the responsibility incurred if the alleged acts could be established. We are of opinion that the court below erred in not hearing and determining said objections.

The third and fourth assignments are to the effect that the administrator and administratrix defendants in error sold property to themselves through the medium of third parties: and also paid unto themselves out of the estate double the amount allowed them by law as compensation. Without deciding whether such a conveyance, if actually made, would be valid in law, we can readily perceive the reason why the objection should have been heard by the lower court, involving as does also the allegation that they paid themselves out of the estate in excess of their lawful commission, facts relating to their actions, which it would be the right of any person injured thereby to bring suit upon the bond for the redress of such injury. We hold that it was manifest error in the court below to have disallowed the objections and to have ordered the estate closed and delivery of the bond to be made before the said exception or objections had been heard and determined. (Rev. Stat. Lib., p. 120, sec. 5.)

The seventh assignment of errors, which is the last which we shall specifically pass upon in this decision, is to the effect that the petitioner (now plaintiff in error) further objected to the closing of the estate and the discharge of the administrator and administratrix (defendants in error) at the

time, on the ground that there was property belonging to the estate, which had come to the knowledge, which the administrator and administratrix had not caused to be included in the inventory, and in which the petitioner now plaintiff in error, by virtue of her relation to the heirs of the estate, as their guardian, had a right and interest in.

We do not hesitate to remark that in the entire handling of this estate, the records show that the court below showed a lack of capacity and sense of duty. The court seems to have forgotten its very high responsibility in intestate estates, conferred upon it by the law of the **land**; by which law it is charged, not only with the duty of discharging the legal debts against the estate, and thereby protect creditors from unjustifiable losses, but it is also made the guardian of the interest of the widow and heirs of such estates, having under its full and absolute control the persons who, in its discretion, are suitable to administer the estate, and revoking any such appointments when it shall be made clear that the interest of the estate or the parties interested therein so demands.

So careful is the law in guarding such estates against possible devastation, that a limited time is allowed for the settlement of them, which can only be extended when it is shown to the satisfaction of the court that there exists against the estate foreign claims which would prevent the settlement of the estate within *one year* (the statutory time), without detriment to such creditors. The court may, in such cases, extend the time six months longer. The practice of Probate Courts in failing to compel administrators to legally close estates within the time prescribed by law is directly against the statute governing the administration of estates, and, we believe, has, in many cases, proved injurious to persons interested as heirs. When it is remembered that a large percentage of our citizenship die intestate, and that their property after their death, goes into the hands of administrators to the exclusion of the heirs ; and that only after the debts and dower, if any, are paid and admeasured, and the estate closed, do the heirs come into possession of the residue, the wisdom of the law in prescribing a reasonable limit for the completion of those acts is apparent. It is the unquestionable duty of Probate Courts to enforce the observance of said statute, and thereby protect heirs against such losses and abuses which invariably occur when estates are left in the hands of administrators indefinitely, as in the case before us. The failure of Judge Whitfield (one of the defendants in error) to adhere to this statute, and to have permitted the estate to remain open and in the hands of the defendants in error for more than three years, and to have no regard to complaints charging the administrators with a devastavit, is positively unjustifiable, and raises a strong presumption in support of the proposition with respect to his connivance in the premises, which proposition, if established, would make him liable to be charged for malversation.

In view of the court below refusing to hear and determine the objections filed by the plaintiff in error, which objections involve questions of fact dehors the records, this court is not in a position to finally determine the cause. This court holds that the refusal of the lower court to hear and

decide the objections filed by the plaintiff in error was manifest error, which this court, in the exercise of its power, feels bound to correct in the promotion of substantial justice. The case is therefore remanded, and the court below commanded to resume jurisdiction over the estate and the administrator and administratrix, defendants in error, as though no order closing the estate and discharging defendants in error was made; and, without unreasonable delay, to hear and decide the objections, granting such relief in the premises as shall appear proper and right so to do. Costs to abide final judgment.

J. H. Green and *T. W. Haynes,* for plaintiff in error.

P. J. L. Brumskine, for defendants in error.

Pelham et al v Pelham [1934] LRSC 6; 4 LLR 54 (1934) (26 January 1934)

T. E. CESS-PELHAM, the Father and Legal Guardian of CHARLOTTE R. PELHAM and SAMUEL E. H. PELHAM, Minors, Appellant, v. LOUISE M. PELHAM, Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT, SINOE COUNTY.

Argued January 22, 1934. Decided January 26, 1934. 1. 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. 2. A judgment by default should not be rendered against a defendant who has appeared and pled, especially in suits in equity. 3. Nor can a final judgment be, in any such case, rendered upon a judgment by default without having had proof of the allegations set out in the pleadings.

This was a bill in equity brought by the plaintiff, now appellee, in the Circuit Court of the Third Judicial Circuit, Sinoe County, for the cancellation of a deed. Judgment Was rendered against the defendant by default. On appeal to this Court, judgment reversed and case remanded with permission to the plaintiff to withdraw and amend her complaint.

Nete-Sie Brownell * for appellants. C. L. Simpson and Anthony Barclay for appellee.
MR. JUSTICE GRIGSBY delivered the opinion of the Court. This is a case commenced in the equity division of the Circuit Court, Third Judicial Circuit, Sinoe County.
The records show that Louise M. Pelham, the wife of T. E. Cess-Pelham, filed a petition in equity against T. E. Cess-Pelham, the father and legal guardian of Charlotte

*Nete-Sie Brownell for appellant, and C. L. Simpson for appellee, each appeared in this matter before the 23rd January, 1934 when the latter was elevated to the position of Secretary of State, and the former promoted to that of Solicitor General. After their respective appointments, the latter was not allowed again to appear in a court as counsel, nor the former as counsel except for the Republic of Liberia.--Howard, Clerk.

R. Pelham and Samuel E. H. Pelham, minors, defendants, asking for the cancellation of deeds calling for certain parcels of land with the numbers one and one hundred eight, respectively, situated in the City of Greenville, Sinoe County, in which petition she claims that said parcels of land had fraudulently been transferred to the said minor children of the said T. E. Cess-Pelham by the said T. E. Cess-Pelham himself, and probated and registered without her knowledge and consent. On inspection of the records sent up to this Court for review, we have not been able to discover that the copy of any evidence of title was filed with the complaint, the basis of the claim of petitioner, which, in the opinion of this Court, is absolutely requisite in the establishment of claims to real property; nor do we find contained in said bill in equity the required clause that should have been inserted in said petition giving notice to respondent to produce said deeds in the event they were in his possession. "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. 476, § 39; Shipman, Common Law Pleading 481, §§ 287-88. This principle is also in accord with our statutes which provide as follow:

"If a party desire to give in evidence any document in possession of his adversary, he shall give him reasonable notice to produce it, and the Court shall have authority to decide whether the notice is reasonable. .. . If the party to whom the notice has been given to produce a deed or other instrument neglect or refuse to do so and do not prove that it is not in his power, he shall be taken to admit its authority and its

contents may be proved by a copy, or by the testimony of witnesses." 2 Rev. Stat. 236, § 1381. The records further show that at the call of the case for trial the attorneys for defendants sent a note, informing his Honor the Judge that they were ill, and asking that the case be postponed. Although the judge received the letter and had a record made thereof, yet he rendered a judgment by default against the defendants, and thereafter he proceeded to render final judgment without even hearing any evidence in support of the allegations contained in the bill in equity of the plaintiff. With respect to this the Court fails to see how a judgment by

default could have been rendered, inasmuch as defendants had appeared and filed an answer setting up their defense, without passing upon the demurrers and pleas therein raised. Nor, in equity jurisprudence, is it usual to render judgments by default, especially where the party apparently in default has appeared and filed his pleadings. Moreover the judge further erred in proceeding to render final judgment without any evidence having been adduced on either side. This Court will further observe that allegations are intended only to set forth in a clear and logical manner the points constituting the cause of action for which relief is prayed, and if not supported by evidence can in no case amount to proof. It is a fundamental rule of law that evidence must support the allegations or averments in both law and equity proceedings. Evidence alone enables a court to pronounce with certainty concerning the matter in dispute. Cf. . Houston Bros. & Co. v. Fischer & Lemcke, r L.L.R. 434 (i9o4). There having been no evidence, oral or written, adduced in support of the claim set up in the bill in equity, this Court fails to see under what principle of law the court below was enabled to hand down a decree in this case. This Court therefore is of opinion that the case should

be remanded with instructions to permit the plaintiff to withdraw her complaint and file a new one according to law and the indications herein given; that the deeds illegally ordered by the judge taken from the plaintiff and delivered to the sheriff, should be placed in possession of the clerk of the court with instructions that either party may have copies therefrom and use the originals in evidence should the necessity arise; and that no costs be allowed either party up to this stage of the case; and it is so ordered.
Reversed.

Richards v Pupo et al [1983] LRSC 56; 31 LLR 127 (1983) (6 July 1983)

JOHN H. RICHARDS, Petitioner, v**. HIS HONOUR FRANCIS N. PUPO, SR.,** Debt Court Judge, **EDWARD SLOCUM**, Debt Court Sheriff, and **THE LIBERIAN BANK FOR DEVELOPMENT AND INVESTMENT (LBDI),** a financial institution, represented by its Loan Recovery Officer, **C. MINOR**, Respondents.

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

Heard: May 3, 1983. Decided : July 6,1983.

1. Where the statute provides a procedure for the sale of real property to satisfy a judgment of a court, the court must adhere to the statute and an aggrieved party has a remedy for any departure therefrom.

2. Where the lower court has adopted a novel procedure during the enforcement of the mandate of the Supreme Court, the two remedies available to the aggrieved party are prohibition or information; and the former should be addressed to the Chambers Justice, when the court is sitting en banc, whilst the latter should be addressed to the court en banc.

3. Any court, including the Supreme Court, which renders a decision retains jurisdiction until its judgment is fully satisfied and any aggrieved party during the enforcement of the judgment has remedy by resorting to that court for the appropriate relief.

4. The right to be heard by the court is one of the sworn duties of a tribunal and it should be enjoyed by litigants at any stage of a proceeding to mete out transpaient justice to all parties.

5. Incorrect designation of the kind of motion applied for is not a legal ground for its denial without reference to the substance thereof.

6. Where a party withdraws a pleading reserving unto himself the right to refile, the court retains jurisdiction over the petition until the accrued costs are paid and an appended petition filed as a substitute.

7. Where a court, although having jurisdiction over the subject matter and parties, proceeds by wrong rules, prohibition is the proper remedy.

8. A motion for relief from judgment may be granted for: (1) mistake, inadvertence, surprise or excusable reflect; (b) newly discovered evidence; (c) fraud; (d) voidness of the judgment or (e) satisfaction, release, or discharge of the or reversal or vacating of a prior judgment.

Petitioner, judgment debtor in the lower court, filed a petition for a writ of prohibition upon denial of a motion for relief from judgment in the lower court. The Chambers Justice ruled denying the petition on grounds that the Full Bench had previously passed on the same matter and to do otherwise would be a review. On appeal to the Full bench, the Supreme Court found that a review of the irregularities committed by the trial judge in the enforcement of the Supreme Court's mandate did not amount to a review of the Supreme Court's decision. The ruling of the Chambers Justice was therefore reversed and lower court was ordered to enforce judgment in keeping with statute.

S. Edward Carlor appeared for the petitioner. Clarence E. Harmon appeared for the respondents.

MR. JUSTICE YANGBE delivered the opinion of the Court.

The bases of the petition for prohibition in these proceedings are: (1) that a notice for the sale of realty to satisfy writ of execution must be placarded in conspicuous public places for at least a minimum of eight weeks (Civil Procedure Law, Rev. Code 1: 44.43 (1)), but that the publication

of the notice for sale of the **land** in this case is less than even a month; (2) that the judgment creditor had agreed to satisfy the debt by installments and, accordingly, petitioner had paid one-fourth of the amount; and (3) that petitioner had filed a motion to stay the auction sale which is still pending, but the respondent judge had virtually refused to pass upon the motion and he continues to finalize the auction sale of the property of petitioner.

The respondents, contesting the issuance of the peremptory writ contended thus: (a) that there are two petitions before Court filed by the petitioner and one notice of withdrawal was filed, but no amended petition has been filed, (b) that the trial judge was enforcing a mandate of the Supreme Court and no single Justice of this Court can obstruct the enforcement of its mandate, (c) that respondents denied that agreement was reached between judgment creditor and the petitioner for installment payments of the debt, and that any part payment has been made against the debt, (d) that there is no penalty for violation of the statute requiring publications of notice of sale for at least eight weeks prior to the sale of the real property nor does such violation affect the title of the highest bidder and purchaser one Jackson Moore, hence, the auction sale had been closed since March 31, 1982, and (e) that a motion seeking relief from judgment does not affect the finality of the judgment, therefore, prohibition will not lie.

The petitioner withdrew his petitions. Therefore, the respondent contended that since the petitions were withdrawn, there is nothing before court; hence, the court has no jurisdiction in the case. We note also that the petitioner gave notice to file an amended petition as a substitute for the original petition in accordance with Civil Procedure Law, Rev. Code 1:9.10.

Assuming that the two petitions were withdrawn by mere filing of the notice of withdrawal, the questions which arise are: What are the significance of the notice given to file an amended petition, and the legal effect of petitioners' failure so to do? Should we only give effect to the word "withdrawal" and disregard the words "with express reservation to amend", as stated in the notice of withdrawal

In our opinion, in construing a document, every word or phrase in the document, from the four corners thereof, should be given consideration in order to achieve its desired purpose and intent. The statute on amendment of pleadings unequivocally provides that a notice of withdrawal should be filed, accrued costs paid and another pleading filed as a substitute. Ibid. Of course, in the instant case, no complaint for nonpayment of accrued costs was made. There is, however, a notice of withdrawal, but no amended petition has been filed, consequently, the withdrawal is incomplete, thus the petition is not withdrawn under the notion that, that which is not done legally is not done at all. Therefore, this Court does have jurisdiction over this case.

Where the statute provides a procedure for a sale of real property to satisfy a judgment of a court, the court has no choice but to adhere to the statute fully and a departure therefrom, the aggrieved party has remedy therefor. The admitted violation of the statute by the trial judge is not only irregular, but prejudicial; for in our opinion, the object of requiring at least eight weeks publications of the notice for sale of real property is not a mere formality, but primarily to afford the judgment debtor ample opportunity to protect his property from such sale by complying with the judgment otherwise, and to provide for sufficient notice to the public for a highest bidder, thereby preventing the sale of the property for less price than what it is reasonably worth.

The respondents have contended that there is no penalty for violation of the statute in this respect and it does not affect the title of a purchaser who buys at the public auction.

The contention here is not the validity of the title of the purchaser at the auction sale, nor who should be penalized for flagrant disobedience of the statute, but rather whether the procedure required by the statute has been complied within reasons as stated earlier. Hence, the excuse given by the respondents for the wanton disregard of the statute is not sustained.

The records further revealed receipt for part payment, signed by W. A. Slocum, sheriff, Debt Court for Montserrado County, which amount was paid against the principal sum awarded by the trial court, but respondents have denied the payment.

The sheriff of the debt court is the collecting agent and ministerial officer of the court and may perform such other duties assigned him by the court, as in this case. Judiciary Law, Rev. Code 17: 15.2. Therefore, the sheriff having received the amount mentioned hereinabove during the process of the enforcement of the judgment under which the co-respondent bank is seeking to recover, the receipt is binding on the respondents. When the part payment was shown in the records, assuming that counsel for respondents was not aware of the payment, the normal thing to do was to ascertain from the sheriff the correctness of the payment, which for unknown reason, counsel who also represented the co-respondent bank in the trial court including the very sheriff at this bar, apparently had refused so to do. We cannot ignore the receipt proferted by the petitioner since the authenticity thereof has not been attacked.

Respondents have contended also that the auction sale has been concluded; hence, nothing remains to be done, and therefore, prohibition will not lie. However, respondents have also admitted that the judgment in this case has not been completely satisfied. Therefore, it is obvious that something still remains to be done in connection with the full enforcement of the judgment; which are the execution of the appropriate deed to the alleged highest bidder and the payment of the balance due in accordance with the receipt we have mentioned supra. Thus, prohibition will lie. Coleman et al. v. Cooper et al.[1955] LRSC 7; , 12 LLR 226, 231 (1955).

Respondents have also asserted that this petition is intended to prevent execution of the mandate of this Court en banc because the judge of the trial court was in the process of carrying out the instructions of this Court when the prohibition was filed.

Where the trial court has adopted a novel procedure during the enforcement of the mandate of this Court, there are two remedies available to the aggrieved party; namely, prohibition or information and the former should be addressed to a Justice in Chambers, when the court is sitting en banc, whilst the latter should be addressed to the Court en banc. We want to note here that both procedures have the same effect; for, the writs in both proceedings are usually ordered issued by the Court en banc, or a Justice in Chambers and the service of the writ in each case serves as a stay for further proceedings with the enforcement. In this case, the petitioner has elected prohibition when this Court was at recess at the time the petition was filed.

One of the cases cited by the respondents in support of their contention that prohibition was the wrong writ is Raymond International (Liberia) Ltd. v. Dennis et al. reported in [1976] LRSC 35;

25 LLR 131 (1976). In that case, the petitioner withdrew an appeal, whereupon the Supreme Court sent a mandate to the lower court

to execute a ruling it had made in a labour dispute. The petitioner than sought a writ of prohibition, complaining against the lower court for proceeding in a wrong manner. The Justice in Chambers at the time forwarded the petition to the Full Bench.

The Court ruled that prohibition was not the proper remedy and the complaint should have been made in a bill of information.

The statute as well as the rule of the courts which regulate the procedures before the courts in this country have no provisions known as bill of information. However, what ushered this non-statutory practice known as bill of information in our court system cannot be traced and it should not override the statute. Notwithstanding, it is obvious that a court, including the Supreme Court, which renders a decision, retains jurisdiction until its judgment is fully satisfied and any party aggrieved during the enforcement of the judgment has remedy by resorting to that court for the appropriate relief, which maybe by way of motion and/or bill of information and the latter tantamount to a motion. The irregularities committed by the respondent judge during the enforcement of the judgment in this case are patent and they are not denied by respondents. Further, the authorities agreed that where the court, although having jurisdiction over the subject matter and parties, but proceeds by wrong rules, prohibition is the proper remedy. Parker v. Worrell 2 LLR 525 (1924). In Raymond International (Liberia) Ltd. v. Dennis, et al[1976] LRSC 35; , 25 LLR 131 (1976), petition for a writ of prohibition, the Chambers Justice felt that he alone could not entertain the petition because it grew out of the mandate of this Court, therefore, he forwarded it to the Court en banc. In this case, our distinguished colleague, the Chambers Justice, did not follow the procedure in the case cited above by sending the petition to the Full Bench, but he quashed the alternative writ, solely because he was of the opinion that to grant the peremptory writ, he, as a single Justice of this Bench, would be setting aside the decision of this Court en banc.

It is about time to draw a line between overruling the judgment of the Court en banc and granting a relief incidental to the principal relief sought in the main case for admitted gross irregularities committed by the lower court while executing the judgment of the trial court, predicated upon the instructions of the Supreme Court. There are several methods provided by statute to enforce a judgment, depending upon the kind of judgment and the nature of the case, in accordance with the Civil Procedure Law, Rev. Code 1:44.1-44.73. In the instant case, only the irregularities committed in the publications of the notice of sale were attacked and not the merits of the decision of this Court. As usual, the Supreme Court en banc did not order the trial judge as to what method he should adopt in carrying out its orders and instructions, and it is a sacred duty of the respondent judge to observe the statutory procedure in implementing the orders and instructions of this Court from which rules the court below departed.

The pendency of a motion to stay the writ of execution filed in the lower court by the petitioner is another admitted issue by the respondents, but they contended that the motion was designated as "motion for relief from judgment" and, therefore, it does not suspend the enforcement of the judgment.

The right to be heard by the court is one of the sworn duties of a tribunal and it should be enjoyed by litigants at any stage of a proceeding in order to mete out transparent justice to all parties concerned. Wolo v. Wolo, [1937] LRSC 12; 5 LLR 423 (1937). In our opinion, it was most irregular and prejudicial to the petitioner when the respondent judge failed to pass upon the motion merely because it is designated as "motion for relief from judgment."

Before addressing ourselves to the contents of this motion filed in the lower court, we would like to note in passing, that a motion is an application for an order granting relief incidental to the principal relief in the action or proceeding in which the motion is filed, and an incorrect designation of the kind of motion applied for is not a legal ground for its denial or to ignore it, Civil Procedure Law, Rev. Code. 1:10.1 & 10.5 Therefore, the fact that the motion is denominated as "motion for relief from judgment", is not a valid reason for refusal of the court to grant aggrieved party a hearing without any reference to the substance thereof for the reasons stated infra.

Grounds for motion for relief from judgment as specified by the statute are thus: "mistake, advertence, surprise or excusable neglect; (b) newly discovered evidence which if introduced at the trial would probably have produced a different result and which by due diligence could not have been discovered in time to move for a new trial under the provisions of section 26.4 of this title; (c) Fraud (whether intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party (d) Voidness of the judgment or (e) Satisfaction, release, or discharge of the judgment or reversal or vacating of a prior judgment or order on which it is

based, or inequitableness in allowing prospective application to the judgment. A motion under this section shall be made within reasonable time after judgment is entered. Ibid., 1:41.7(2)(3).

The substance of the motion which the trial court refused to pass upon, are not any of the grounds enumerated herein above, but rather it solely relates to the admitted irregularities committed by the respondent judge during the auction sale and no way attacked the validity of the judgment of this Court. Therefore, the reasons assigned not to pass upon the motion to stay the sale in our opinion is not valid and is untenable, Ibid., 1:3.44.

Consequently, the ruling of the Chambers Justice denying the issuance of the peremptory writ is reversed. The Clerk of this Court is instructed to send a mandate to the court of origin to resume jurisdiction over the case and to enforce its judgment in accordance with the relevant statute. Costs are ruled against the respondents. And it is so ordered

Ruling Reversed, petition denied

Singbe v Powell [1983] LRSC 58; 31 LLR 141 (1983) (6 July 1983)

M. D. SINGBE, Appellant, v. **JOHN POWELL,** Appellee.

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

Heard: April 27, 1983. Decided: July 6, 1983.

1. There is a time limit of ten days within which a party desiring to withdraw and amend may do so after service of a responsive pleading.

2. The defaulting party cannot benefit from his failure and neglect where an amended pleading is not filed within ten days after receipt of a responsive pleading.

Appellant, plaintiff below, filed a action of ejectment against the appellee in the Sixth Judicial Circuit Court, Montserrado County, to which an answer was duly filed by appellee in keeping with the relevant statute. Two months and twelve days after the filing of appellee's answer, appellant withdrew his complaint and filed an amended complaint. Appellee, answering, prayed the court for the dismissal of the complaint since it was filed beyond the statutory time of ten days. The lower court dismissed the amended complaint because of lateness in the filing of the same. On appeal, the Supreme Court agreed with the dismissal effected by the trial court, holding that the appellant should have withdrawn his original complaint and filed an amended pleading within ten days of the receipt of the answer. The appellant, the Court said, could not be permitted to benefit from his failure and neglect. The Court therefore affirmed the lower court's judgment.

J. Dossen Richards appeared for the Appellant. John A. Dennis appeared for the Appellee.

MR. JUSTICE SMITH delivered the opinion of the Court.

There is only one legal issue in this case upon which the appeal is based, and that is in respect of the time limit within which a complaint may be withdrawn with reservation and amended, especially where an answer has been filed thereto.

The plaintiff in the court below, appellant herein, filed his complaint in an action of ejectment against the appellee on the 18th day of January, 1979. He proferted his title deed with the complaint, but did not state the quantity of his property the defendant, appellee herein, had allegedly encroached upon and was occupying; consequently, the defendant attacked plaintiff on this point in his answer that was filed with the court and served on the plaintiff on the 24t h day of January, 1979, that is to say, six days after the filing and service of the complaint. Appellant conceded the appellee's contention and filed a notice of withdrawal on the 5th day of April, 1979, that is to say, two months and twelve days after the filing and service of the appellee's answer, withdrawing the complaint and substituting it with an amended complaint.

The appellee, upon service of the amended complaint on him, filed an amended answer in which he prayed the court to dismiss the amended complaint for being filed out of the statutory time within which to amend.

His Honour Judge Johnnie N. Lewis, then presiding over the 1979 June Term of the People's Civil Law Court for the Sixth Judicial Circuit, Montserrado County, heard the law issues as raised in the pleadings which rested with the plaintiffs reply, and on the 20th day of August, 1979, ruled dismissing the complaint on the ground of late filing, holding that the amended complaint should have been filed within ten days after service of appellee's answer. It is from this ruling of the judge that the appellant appealed to this Court of last review.

When this case was called for argument, counsel for appellant contended and argued that the statute on amendment of pleadings provides that a pleading may be withdrawn and amended at any time before trial as long as doing so will not unreasonably delay the trial of the case. Counsel for appellee, on the other hand, strongly argued that the statute relied upon by counsel for appellant does set a time limit within which one may withdraw and amend his pleading. The relevant portion of our statute on which the parties relied and cited reads as follows:

"1. Amendment of 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 pleadings; and

"(c) Substituting an amended pleading.

"3. Amendment of pleading already filed in case of amendment of pleading to which it responds. If an amendment is made in a pleading after the service of a responsive pleading, an amendment may be made within ten days to the responsive pleading if such amendment is necessitated by the new matter added to the opposing pleading, and such amendment to the responsive pleading shall not affect the right of the party making it to make another amendment under paragraph 1 of this section" (emphasis ours). Civil Procedure Law, Rev. Code 1:9.10.

From the above quoted statute, it is quite clear that there is a time limit of ten days within which a party desiring to withdraw and amend may do so after service of a pleading to which it responds; there is no ambiguity in the statute on this point. It is, therefore, our holding that appellant having conceded the contention of the appellee as raised in the answer, and wishing to indicate in his complaint the quantity of his **land** he alleged the appellee was wrongfully occupying, for which he withdrew his first complaint after the filing and service of appellee's answer, the appellant should have filed and served his amended complaint within ten days after service of said answer. The right to withdraw and amend a pleading at any time, insofar as it does not unreasonably delay trial, as provided by the statute quoted supra, does not in any way extend that right of a party to withdraw and re-file two months and twelve days, or at any time he wishes.

This Court, in interpreting the statute with respect to an unreasonable delay of a trial by reason of an amended pleading, said in the case United States Trading Company v. King, [1961] LRSC 39; 14 LLR 579, 581-582 (1961), that:

"The criterion, therefore, which controls the right reserved to a pleader to amend a pleading at his option, is whether unreasonable delay to the trial is caused by an amendment. It is our considered opinion that the question of undue delay could possibly apply if, after all of the pleadings under the statutes had been exhausted, the ten days allowed for filing a responsive pleading to the one last filed had expired. The party intending to amend would be claiming an extraordinary right if the period of time allowed by him to amend had passed or lapsed, in which case the enjoyment of such a right could only be available by leave of court. Ordinarily, the right remains that of the party intending to amend; and no undue delay could be claimed where the time allowed him to amend had not expired, and his adversary had not filed a responsive pleading ...."

In the instant case, no reply had been filed when plaintiff withdrew his original complaint and filed an amended complaint.

Therefore, in doing so, plaintiff should have filed and served his amended complaint within ten days after service of the defendant's answer. Not having filed the amended complaint within ten days as required by the statute quoted supra, he cannot benefit from his said failure and neglect.

In view of the foregoing and the law cited supra, it is our holding that the ruling of the trial judge dismissing the appellant's amended complaint be, and the same is hereby, confirmed and affirmed with costs against the appellant. And it is hereby so ordered.

Judgment affirmed

Bettie v Neor [1982] LRSC 13; 29 LLR 521 (1982) (5 February 1982)

THOMAS BETTIE, Appellant/Respondent, v.**EDWARD NEOR,** Appellee/Movant

MOTION TO DISMISS APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY

Heard: December 10, 1981. Decided: February 5, 1982.

1. There is no statutory authority that the affidavit of sureties must contain the metes and bounds of the property offered as security on the bond; but in the total absence of description of the realty offered as security on the affidavit of sureties, the appeal shall be dismissed.

2. The notice of completion of appeal must be served on the appellee within sixty (60) days from the date of final judgment; otherwise the appeal must be dismissed upon motion filed by the appellee.

3. Although property valuation to the appeal bond is not a prerequisite to the approval of a bond, nonetheless, after the statutory period for filing an appeal bond has lapse and the property valuation is not annexed to the bond, the bond is materially defective and the case shall be dismissed on a motion of the appellee.

Appellee/Movant filed a motion to dismiss the appeal on the grounds that the appeal bond was defective for several reasons, as follows: absence of property valuation attached to the bond, absence of the names of the parties to the action, absence of the metes and bounds of the property offered as security for the appeal bond, and failure of the appellant to serve notice of completion of appeal within sixty (60) days after final judgment. The motion to dismiss the appeal was granted.

Francis N Torpor appeared for the Appellant/Respondent. J. Emmanuel R. Berry appeared for the Appellee/Movant.

MR. JUSTICE YANGBE delivered the opinion of the Court.

Appellee/Movant filed a motion for dismissal of the appeal and has assigned the following reasons therefor, to wit:

a) absence of property valuation annexed to the appeal bond;

b) absence of the names of the parties to the action on the appeal bond;

c) no metes and bounds of the property offered as security indicated on the affidavit of sureties;

d) nonservice of the notice of the completion of the appeal within sixty (60) days from the date of the final judgment.

Section 63.2(2) of the Civil Procedure Law, Rev. Code requires that the affidavit of sureties contain a description of the real property offered as security on the bond, sufficiently identified to establish the lien of the bond. However, there is no statute extant providing that the affidavit of sureties must contain the metes and bounds of the property offered as security on the bond. In the case, *West African Trading Corporation v. Alrine (Liberia) Ltd*, [1976] LRSC 23; 25 LLR, 3 (1976), a motion to dismiss the appeal was filed on similar grounds, and this Court, for the first time, held that:

"...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 circumstances there would be no difficulty in designating the **land** with certainty.... "

In that case there was no description of the kind of the property in the affidavit of sureties as in the instant case.

In view of the total absence of description of the realty offered as security on the affidavit of sureties in this case, we have no alternative but to re-affirm the holding of this Court in the case *West African Trading Corporation v. Alraine (Liberia) Ltd*, already cited hereinabove.

Liberian law provides that every document filed in a case must contain the caption of the case, which includes the names of the parties or the title of the case. Civil Procedure Law, Rev. Code 1:8.1(2); *Vamply of Liberia Inc. v. Kandakai et al.*[1973] LRSC 55; , 22 LLR 241 (1973). The law also requires that the notice of the completion of the appeal must be served on the appellee within sixty (60) days from the date of final judgment; otherwise, the appeal must be dismissed upon motion filed by the appellee. Civil Procedure Law, Rev. Code 1:51.9 and 1:51.16.

Appellant/respondent has filed a five-count answering affidavit, contending that pursuant to Ru1e III, Part 1 and 3 this Court should not entertain the motion. Appellant/respondent also requested the Court to deny the motion for the following reasons: first, the records in this case are not before this Court, because the counsel or parties in the case have not taxed the records; second, the statutory period for the opening of the Supreme Court is on the second Monday in October, 1981.

Appellee/movant filed for diminution of records, which was granted prior to hearing arguments on the motion to dismiss, and the records were sent to us. Therefore, the contention that the record in the case are not before us, has no merits.

After the filing of a bill of exceptions, the only court which has jurisdiction in a case is the appellate court. Hence, Rule III of the Revised Rules of the Supreme Court cited above by appellant is not applicable to this case. Count one of the bill of exceptions is accordingly overruled.

In count two of the bill of exceptions, appellant/respondent contended that the property valuation is not a pre-requisite for the approval of the bond, and that after the approval of the bond; the property valuation was obtained and made part of the records in this case.

Attached to the motion to dismiss is the certificate of the clerk of court verifying to the effect that there is no property valuation to the appeal bond. This Court holds that although property valuation to the appeal bond is not a pre-requisite to the approval of a bond, nonetheless, after the period required by statute within which a bond should be filed has lapsed and the property valuation is not annexed to the bond, it becomes fatal in the face of the statutory provisions. The second count of the bill of exceptions is also, similarly, overruled.

Counts three and four of the bill of exceptions have already been traversed in this opinion; no further comment is necessary. The same are, therefore, not well taken.

The final judgment in this case was rendered on the 12th of August, 1981, but up to the 20th of October, 1981, a period over sixty (60) days from the date of the final judgment, no notice of the completion of the appeal was served on the appellee/movant. See the clerk of court's certificate attached to the motion. Count five of the bill of exceptions is, therefore, not sustained.

Accordingly, the motion to dismiss the appeal is hereby granted, the appeal is dismissed, and the Clerk of this Court is hereby ordered to send a mandate to the trial court, ordering it to resume jurisdiction in the case and to enforce its judgment. And it is hereby so ordered.

Motion granted; appeal dismissed.

Perry v Ammons et al [1983] LRSC 115; 31 LLR 437 (1983) (10 May 1983)

MACDONALD M. PERRY, Petitioner, v. **IGAL AMNIONS, BOAKAI TAYLOR** and **HIS HONOUR**

J. GBAFLEN DAVIES, Commissioner of Probate, Montserrado County, Respondents.

PETITION FOR A WRIT OF MANDAMUS TO THE MONTHLY AND PROBATE COURT FOR MONTSERRADO COUNTY.

Decided March 10, 1983.

1. Mandamus will lie to compel a lower court judge to enforce his ruling assessing the payment of legal fees against a party who has withdrawn his objections in a case, in consequence of which a ruling was made against him.

Petitioner applied for a writ of mandamus to compel the Commissioner of the Probate Court for Montserrado County to enforce his ruling assessing the payment of legal fees against the Co-respondent Ammons, objector in the lower court. The Justice in Chambers heard the petition without the presence of the respondents who had refused to receive and sign the notice of assignment. The Justice found magnitude in the petition and hence granted the same, noting that a judge had a duty to enforce costs assessed against a party in a case determined by him.

Macdonald M Perry appeared for petitioner. Respondents pro se for respondents.

SMITH J., presiding in Chambers.

On the 10th 'day of February, 1964, these mandamus proceedings were filed before the late Mr. Justice Wardsworth, then presiding over the March Term of this Court. The Petition alleged that on May 31, 1963, the Probate Commissioner, J. Gbaflen Davies had entered a ruling awarding costs to him in a proceeding then pending before the Probate Court, and that since the aforesaid ruling, the costs had not been paid by correspondent Igal Ammons, by reason of the failure of the correspondent judge, commissioner of probate to enforce his ruling.

Recourse to the file of the mandamus proceedings reveal that although the alternative writ was served on the respondents on the 12th day of February, 1964, in keeping with the returns of the marshal, General John C. A. Gibson, no returns have been filed. From the exhibits to petitioner's petition, same being "A" and "B", it seemed that there was a dispute over the ownership to a parcel of **land** situated on Randall Street, in the City of Monrovia, in Block 60, and that one of the claimants, MacDonald M. Perry, petitioner in these proceedings, had filed a caveat in the Probate Court for Montserrado County, followed by a formal objection, against the probation of a Warranty Deed for lot No. 59 in Block 60, situated on Randall Street, Monrovia. The warranty deed against which the objection was filed was from one Boakai Taylor to Igal Ammons, co-respondent in these mandamus proceedings. When the objection was called for hearing on May 31, 1963, the court entered the following record:

"When this case was called, one of the respondents, in person of Igal Ammons, appeared in person and brought to the attention of the court that he had filed with the clerk of this court his withdrawal in the above objection, even though he is represented by counsel. The court therefore has no alternative but to accept his withdrawal and order the payment of all legal fees up to and including the date of this ruling. AND IT IS HEREBY SO ORDERED."

It is because of the non-enforcement of this ruling to pay the legal fees that petitioner has come before these Chambers of the Supreme Court to compel the co-respondent probate commissioner to enforce the ruling.

When the mandamus proceeding was called for hearing, the respondents did not appear, even though an assignment was duly issued and served. Recourse to the Marshal's returns to the notice of assignment, disclosed the following: "On the 24th day of February A. D. 1983, this notice of assignment was duly served on Counsellor M. Perry for petitioner. When Bailiff Borbor Parker approached one of the respondents Igal Ammons with the within notice of assignment, he refused to sign and accept his copy. I now make this as my official returns in the office of the Clerk of this Court. Jehu T. Stryker, Sr., Marshal, People's Supreme Court."

In view of the fact that since the giving of the ruling in the objection proceeding on may 31, 1963, the costs ordered to be paid have not been paid, the petition for mandamus is hereby granted, and the peremptory writ of mandamus is ordered issued, commanding the judge presiding in the Probate Court to resume jurisdiction over the case and enforce the ruling of the late Probate Commissioner, His Honour J. Gbaflen Davies, for the payment of the legal fees referred to in said ruling. In that connection, the Probate Court is ordered to issue a bill of costs, to be taxed and approved as the law directs, for service by the Sheriff of the Probate Court for payment. Costs against the respondents. And it is hereby so ordered.

Petition granted.

Scaf et al v Ricketts [1979] LRSC 44; 28 LLR 263 (1979) (20 December 1979)

RAOUF SCAF, Attorney-In-Fact for ANTOINE A. NASSAH, JOSEPH CHOWIRI, and his assignee and occupants, et al., Appellants, ***v.*** **ESTHER G. RICKETTS**, sole heir and legal representative of her late husband, G. H. RICKETTS ESTATE, Appellee.

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

Heard: November 11, 1979. Decided: December 20, 1979.

1. Fraud is the employment of trick, artifice or duress by one person to influence another to enter into agreement or contract in which he would not have participated in the absence of the misrepresentation, concealment of material facts, or undue influence.
2. Proof of evidence that the defendant perpetrated the fraud complained of must be established at the trial or the action fails.
3. To make a lease agreement a contract, it is necessary that the lessee shall give in return for the premises exactly the consideration which the lessor requests.
4. Parties to a contract may safely enter into a subsequent contract before the expiration day of the prior one. The new contract may merge the terms of the old contract or be separate and distinct from the old contract; and in either event, it is enforceable.
5. Courts are required, except under stringent circumstances, to enforce contracts and not to aid parties to escape the performance of their obligations.
6. In an action in a court of justice, the plaintiff must have the capacity to sue as a prerequisite for bringing the action. Hence, a widow cannot sue under a power of attorney from her deceased husband as the agency expired upon the death of the husband. She cannot also sue as his representative without letters testamentary or letters of administration, as the case may be.

Appellee brought an action in equity for the cancellation of a lease agreement entered into by her husband as lessor, with appellant, as lessee, for a period of years, which incorporated the remaining period of a previous lease, under which the appellee was sub-lessee. The basis of the cancellation proceedings was that the new lease agreement was obtained by fraud and tricks since the previous agreement still had nearly four years to expire and that the deceased husband was of feeble mind when he executed the new agreement. The trial court entered judgment for

appellee and on appeal, the Supreme Court ruled that the mere execution of a new contract, which merged the terms of the old contract and superseded it, does not necessarily constitute fraud. Such a contract, the Court said, is valid and enforceable.
The Supreme Court also ruled that fraud, which is tricks and artifice, or duress to influence another to enter into an agreement he would not have otherwise participated in, must not only be alleged, but must also be proved. The Court noted that this was not done at the trial. The Court also found that the capacity of the appellee to sue, as well as the capacity of one of the appellants to stand in the place of the original lessor, was not clearly established at the trial. The Supreme Court therefore reversed the judgment and remanded the case with instructions that the parties replead.

Moses K. Yangbe and *Toye C. Barnard* for the appellants. *Herman Hopkins* and *Roosevelt T. Bortue* for the appellee.

MR. JUSTICE TULAY delivered the opinion of the Court.

On the 5th of March, A. D. 1959, a lease agreement, which empowered the lessee to sublease the demised premises, was entered into by Henry G. Ricketts, as lessor, and the Levant Mercantile Corporation, by and through its Manager Joseph G. Fazzah, as lessee. The subject premises contains one/half town lot; the contract which expressly revoked the 1956 contract previously entered into by the same parties became effective at once and it was to remain in full force and effect up to and including March 5, 1969, for an annual rental of $900.00; the rent for the first three years to be paid in advance with an option of another nine years at the rate of $1000.00. A little over seven months thereafter, that is, on the 31st of October, A. D. 1959, the Levant Mercantile Corporation, by and through its Manager Joseph G. Fazzah, sold, assigned, conveyed and transferred all its rights and interest in said half town lot tract of **land** with all the appurtenances thereon to sub-lessee or assignee, Raouf Scaf.
The years, 1960 through 1973, passed away without any event.

On the 31st day of July, A. D. 1974, however, Mr. Henry G. Ricketts, lessor in the 1959 lease agreement, entered into a subsequent contract of lease for the same premises with Raouf Scaf, sub-lessee under the original lease agreement; three years and seven months before the expiration by evolution of time of the prior contract.
The new contract was to take effect as of the 5th day of March, A. D. 1975, and to last up to the 4th of March, A. D. 1995, for an annual rental of $1,500.00. The contract authorized the lessee to sub-lease the premises. It is worthy of note that even though the 1959 lease contract still had three and one-half years to expire, the subsequent 1974 contract never revoked it. However, on the 1st of August, 1974, this money receipt was issued:

"Received from Raouf Scaf the full sum of One Thousand Five Hundred Dollars (1,500.00) against agreement dated July 31st, 1974.

This amount represents one year rent in advance commencing March 5, 1975, ending March 4, 1976.

Monrovia Henry G. Ricketts

August 1, 1974"
Two other similar receipts for the years March 5, 1976, through March 5, 1977, and March 5, 1977, through March 4, 1978, appear on the records certified to this Court. Appellee contended that she refused to accept the last check when she discovered what she terms as fraud, but she admits receiving at least one of the checks and converting the amount into her own use.
Count three of the complaint is the crux of the case and it reads thus:

"That prior to and before the expiration of and during the period of the lease the lessee did entice and take advantage of her feeble minded late husband in the year 1974, just to be exact, into a subsequent further, terms of years being twenty (20) in number, while the second optional period only contracted for ten (10) additional years."
We gather, with some difficulty, from this count of the com-plaint three grounds, which are the bases for this cancellation:

(a) Fraud-pleaded without enthusiasm perpetrated by the defendants on the lessor; defendants had him execute the 1974 lease agreement in the absence and without the consent and knowledge of his relatives and friends.

(b) Henry G. Ricketts, the lessor was feeble minded at the time he executed the 1974 agreement;

(c) The 1974 agreement was entered into while the prior agreement had yet three and a half years to run.
We take fraud to be the employment of trick, artifice or duress by one person to influence another to enter into agree-ment or contract in which he could not have participated in the absence of the misrepresentation, concealment of material facts or the undue influence; and this includes alteration of words, clauses and phrases in a written instrument after its execution; in the case of an unlettered plaintiff, reciting different words to his hearing other than those actually written in the document; prevailing upon the plaintiff to sign a written instrument under a title when in fact it is a different instrument. *Kontar v. Mouwaffak*, [1966] LRSC 52; 17 LLR 446 (1966); putting the plaintiff under fear or alcoholic intoxication.
In law, proof of evidence that the defendant perpetrated the fraud complained of must be established at the trial or the action fails. *Henricheen v. Moore*, [1936] LRSC 1; 5 LLR 60 (1936). But the case in point is in equity and in Bouvier's Law Dictionary we read: "A court in chancery may grant relief for fraud presumed by circumstances."
Since none of the attributes of fraud enumerated above had been proved by at least presumed circumstances, we shall eliminate the question of fraud and concern ourselves with the lessor's feeble-mindedness at the time of the execution of the 1974 lease agreement and the legality or

illegality of entering into a new and subsequent contract while a prior one, between the same parties and for the same subject, exists.

To make a contract valid the parties to it must possess the capacity to contract; the life time or the duration of the contract and cause or causes for earlier termination must be given. In the absence of restraints, and except the performance exclusively lie in the dexterity or the skill possessed by one of the parties, the contract binds the parties, their heirs, executors, administrators or assigns.

The contention of the plaintiff herein is that the lessor, Mr. Henry G. Ricketts, was feebleminded and, therefore, lacked the capacity to contract at the time he executed the 1974 lease agreement now sought to be canceled.

A person is incapacitated to contract because of advanced age especially so when the age is coupled with impairment of his mental faculties so that he is unable to protect his property rights. Under normal circumstances this would place plaintiff on firm ground except that there exists a converse argument.

According to Doctor Titus's testimony, lessor's feeble mindedness began in the early part of this decade and this mala-dy went in crescendo along the years. Accordingly, his mental impairment was bad enough in 1974 when he executed the lease agreement, subject of the cancellation suit before us, but it was, of course, worse in 1976 and in 1977 when he executed a power of attorney and his last will and testament respectively, two and three years later. If the 1974 lease agreement is invalid so also must the power of attorney and the will except it be admitted unconditionally that feeblemindedness, unlike idiocy, but like insanity, is recurrent and relapsing - and this requires proof - so that the spell was on the lessor when he executed the lease agreement in 1974 but he was quite lucid in 1976 and 1977 at the times he executed the power of attorney and his last will and testament, respectively. Without this proposition to hold that the 1974 lease agreement is void because the lessor was feeble- minded, which illness advanced or worsened as the years rolled on, to accept the 1976 power of attorney and the 1977 last will and testament as valid, is as nonsense as saying "John Doe, the Professor, died an hour after he gave lecture." Without proper punctuation the sentence means one hour after Professor Doe died he gave lecture. What a fallacy.

To make a lease agreement a contract, it is necessary that the lessee shall give in return for the premises exactly the consideration which the lessor requests. The 1974 agreement of lease calls for an annual payment of $1,500.00 to be paid in advance and lessee paid the full amount in August 1974 for the year commencing August 1974 to August 1975 and the lessor received the amount in full.

The agreement then became contracts. Thereafter appellee received one more check for $1,500.00 but after she discovered that the payments were being made under the 1974 agreement she refused to accept any more payments. To properly plead equity appellee should have refunded $600.00 to appellants, this amount representing the difference between the $1,200.00 annual rental under the 1959 agreement and the $1,500.00 under the 1975 agreement and to have instituted this cancellation suit im-mediately thereafter. It is said that cancellation proceeding was instituted during the life time of the lessor but was later with-drawn. Why was this, we ask? "Equity helps the vigilant, not the slothful."

In the absence of an inhibiting statute - and ours are silent on the score - parties to a contract may safely enter into a subsequent contract before the expiration day of the prior one. Where the

parties, before the expiration of the prior agreement or contract, enter into a subsequent agreement which covers all and more of the terms laid in the original agreement, it, the original agreement, merges into the subsequent contract and its terms cannot be enforced; but where the subsequent agreement is variant in parts, the two agreements operate parallel. The terms which are not the same must be recognized and performed as in the case of two statutes on the same subject, the subsequent statute obtains only with regard to issues on which the original statute is silent.
Additionally, where the subsequent contract covers the remaining time of the prior contract, as is the case before us and more beside the consideration or performance is wider and the parties, by their overt acts, ignore the original contract, there is novation.
Moreover, when the parties to a subsequent contract on the same subject, the terms of which are inconsistent with those of the prior one so that they cannot operate parallel, and neither of the parties exerts any claim under the prior contract, the latter discharges the former.

Additionally, when the parties enter into a new and written agreement on the same subject matter and from which greater benefit accrues to both parties, as in the case before us an in-crease of $300.00 in the rental payment and an additional period of 16½ years, the prior contract is accordingly extinguished for it is merged into the subsequent contract.
The prior lease agreement of 1959 was entered into by and between Henry G. Ricketts, now deceased, as lessor and the Levant Mercantile Corporation by and through its general mana-ger, Joseph G. Fazzah. Soon after the execution of the agreement the Levant Mercantile Corporation sub-leased the entire premises to Raouf Scaf, one of the appellants herein. In 1974, three and half years before the expiration of the lease under which he become a sub-lessee, the sub-lessee entered into agreement of lease with the same lessor for a period of twenty years; a period which included the unexpired time of the 1959 agreement.
Raouf Scaf, being an assignee of the Levant Mercantile Corporation, was properly bound to perform under the 1959 agreement and as such he was qualified to contract with the lessor, Henry G. Ricketts, for the same premises when he still had three year interest remaining in it.
It was advanced, with some enthusiasm, that the contract is against public policy because it was entered into while the prior one was still extant and that because the consideration, $1,500.00, is to merge a sum for the premises; but we hold otherwise. Though the contract was executed almost four years before the original contract expired by its terms, the subsequent one, now sought to be canceled, includes the unexpired time in its twenty year term which is in conformity with our existing statute - the period must not exceed 20 years. Hear also what the common law say:

"So the mutual agreement of parties to a bilateral executory contract, before a breach therefore, to abrogate and dis-charge it and to substitute in its stead a new contract conferring new advantages or imposing new burdens (as in the case at bar) or both constitutes a sufficient considera-tion to support the substituted contract." 17 AM. JUR 2d., *Contracts*, § 461.

Much that we now look upon the consideration, $1,500.00, to be a hook too small to catch such a leviathan, yet, without proof of fraud, what can we do? For, the right of contract falls within the liberty of the citizens which cannot be infringed upon. Courts are required, except under stringent circumstances, to enforce contracts and not to aid parties to escape the performance of their obligations. It is a good doctrine, accepted by majority of writers, that the primary duty of

courts is to enforce contracts, not to abrogate them. When, therefore, contract between two parties dealing with each other at arms length, if free from taints of fraud, and a consideration is given by the promisee or lessee, comes before a court of justice, it must be given a fair presumption of justice.
Having already agreed upon the validity of a subsequent lease agreement entered into by the same parties - in this case, the lessor, Henry G. Ricketts, and lessee, Raouf Scaf - while the original or prior one was still operative under the doctrine of "inference of conduct" as against "inference of word" it is only required of co-appellant Chowiri to prove that he stands in place of lessee Raouf Scaf who hitherto stood in place of the Levant Mercantile Corporation, by and through its general manager, Joseph G. Fazzah. This proves to be nothing less than the existence of assignment of lease agreement between him and Raouf Scaf or a partnership agreement between them.

As stated hereinabove, one of the qualifications of a valid contract is that the parties to it must possess the capacity to contract. This also holds true for an action in a court of justice; the plaintiff must have the capacity to sue. Appellee herein could not have sued by virtue of the power of attorney given her by her husband because it became void at the death of its executor. She could not have sued because of her position as widow of the lessor, unless she possessed letters of administration. She sued by virtue of her position as the sole executrix of the lessor. We wonder how the lower court entertained the naked complaint without profert of the will, plaintiff's authority to sue? It was, therefore, a reversible error for the court to have denied appellants' application for a *subpoena duces tecum* to make appellee produce the will before court. Appellants also assigned as error the court's failure to pass upon some of the issues of law raised in the pleadings.
For the conclusions arrived at, we remand this case to be repleaded and have every iota of issues of law raised properly passed upon before a regular trial is conducted in conformity with this opinion. Costs to abide final determination. The Clerk of this Court is hereby instructed to send a mandate to the trial court commanding the judge therein presiding to resume jurisdiction over this case and proceed in accordance with this opinion. And it is hereby so ordered.

Judgment reversed; case remanded.

Cooper v Davies [1978] LRSC 57; 27 LLR 310 (1978) (14 December 1978)

EUGENIA SIMPSON COOPER, et al., Appellants, v. WILLIAM R. DAVIS, SR., et al., Appellees.

APPEAL FROM THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT,

MONTSERRADO COUNTY.

Argued October 31, 1978. Decided December 14, 1978.

1. Where a lawyer is a member of a law firm, he is not required to pay the license fee prescribed in the Revenue and Finance Law, Rev. Code 35 :12.31, for individual practitioners, but is in compliance with the law if the firm has paid the fee therein prescribed for partnerships and the business registration fee required of partnerships by the General Business Law, Rev. Code 14 :4.3(3).
2. The Supreme Court will not review issues where no exceptions were taken in the lower court, or consider an issue not included in the bill of exceptions.
3. All issues of law raised in the pleadings must be decided by the trial judge before trial of issues of fact, and failure to do so is, reason for the appellate court to remand the case for new trial.
4. A denial of allegations of the complaint and an allegation of new matter as a defense thereto in the nature of confession and avoidance may be pleaded together, but each defense should be asserted in a separate count.
5. A plaintiff in ejectment can recover only by proof of title which must be established by proof either of descent or purchase.
6. In an ejectment action, a duly probated and registered deed is superior, as evidence of title, to any prior instruments or indicia which have not been duly probated and registered.
7. In an action of ejectment, the plaintiff must establish his case upon the strength of his own title and not upon the weakness of the defendant's title.
8. Ordinarily a verdict will not be set aside as being excessive, but an appellate court will do so where there is no evidence to support the amount awarded.

In an action of ejectment, a verdict and judgment in the amount of $85,000 were rendered for plaintiff. On defendant's appeal to the Supreme Court, it was held that the trial judge committed error in not passing on several issues of law before the trial of the issues of fact. The Court also considered the damages awarded to be excessive. For these reasons the *judgment* was *reversed* and the *case remanded* for a new trial.

Joseph J. F. Chesson for appellants. *Peter Amos George* for appellees.

MR. JUSTICE HENRIES delivered the opinion of the Court.
According to the record certified to this Court, the appellees have claimed ownership to lot No. 261, situated on Ashmun Street, Monrovia, Liberia, on the ground that this property was owned by their grandfather and great-grandfather, William McCall Davis, as a result of a mortgage deed given to him by one Frances M. McGill. The appellees proffered with their complaint in ejectment a deed probated and registered on April 6, 1891, naming as grantors Elizabeth L. Moore for herself and as guardian for her infant sister Fenoa Grace McGill and Caroline Augusta Haylebong, heirs of the late Frances M. McGill. According to the deed the conveyance was made because of the grantors' inability to redeem the mortgage deed.
William McCall Davis, the grantee, died in 1892, allegedly leaving a will in which all his real property was bequeathed to his male heirs. This purported will was never proffered nor offered into evidence; hence it is not a part of the certified record before this Court. In any event, the estate was administered and closed, and thus far it is not known whether he died seized of the property or to whom the property descended. One of the male heirs of William McCall Davis was William Seton Davis, father and grandfather of the appellees, who died in 1905. There is no

evidence as to whether he left a will or not, or what happened to lot No. 261 prior to his death, as no will or deed was proffered or offered into evidence.
According to the testimony of William R. Davis, Jr., one of the appellees, they, the appellees, knew nothing about lot No. 261 until 1968, when William McCall Davis' deed miraculously came into their possession, 76 years after his demise. Nine years later, that is to say, in 1977, this action of ejectment was instituted, approximately
85 years altogether since the death of William McCall Davis.
The appellants claimed ownership of lot No. 261 as a result of a purchase by the late Philip F. Simpson, appellants' father and grandfather, from the late Rev. Ashford Sims; who in turn had received it as a grant from the Government of Liberia for services rendered during a military expedition. They claimed that the deed from Rev. Sims to Philip F. Simpson had been destroyed in a fire in 1927; that lot No. 261 was willed by Simpson to his late daughter, Sarah Simpson-George; that upon failure to get a copy of the original deed from the State Department's archives, the late Sarah Simpson-George petitioned the Sixth Judicial Circuit Court in 196o for issuance of a registrar's deed in her name for lot No. 261. The court heard and granted the petition, and a deed signed by President William V. S. Tubman was issued to her for the property in 1963, in pursuance of the court's decree dated 1960. She in turn willed it to her nieces Eugenia Robertha and Elenora Simpson. Also found in the records is an indenture between Philip
F. Simpson and Sarah Simpson-George for lot No. 261 probated and registered April 7, 1942, which formed part of the petition presented to the Sixth Judicial Circuit Court in 1960.
The trial in the action of ejectment resulted in a jury verdict and final judgment, awarding $85,000 in damages for the plaintiffs/appellees. The defendants appealed.
Several issues were raised and argued during the hearing of this matter. We shall take up first those issues that we consider to be peripheral. The first issue concerns the appellants' contention that under the Judiciary Law a lawyer must have an individual lawyer's license to practice law; that where the lawyer is a member of a law firm, the firm's license alone does not give the lawyer the right to practice law; and therefore Counsellor Raymond Hoggard could not legally represent the appellees.
The trial judge overruled the objection, relying on the Revenue and Finance Law, subchapter C, which requires a law firm to acquire a license.

The Judiciary Law, published June 22, 1972, provides as follows:

"

17.9. *Licenses.*

"1. Required to practice law. No person shall practice law or appear before any court as an attorney or counsellor at law without a valid license as a lawyer.

"2. Licenses: by whom issued. All licenses for attorneys or counsellors shall be issued by the Bureau of Revenues of the county or territory in which the licensee resides and be registered in the office of the Clerk of Court of the county territory."
This section is clear on its face in that all it requires is that a lawyer must have a license issued by the Bureau of Revenues before he can practice law or appear in any court. It is important to note that no fixed license fee is set here.

However, section 12.31 of the new Revenue and Finance Law, published June 20, 1977, Rev. Code, Title 36, provides a schedule of taxpayers required to obtain annual licenses and pay annual fixed license fees or professional trade levies therefor. The relevant portion reads as follows:

1. *Schedule A: Enterprises engaged in particular professions subject to fixed license fees.* Every sole proprietorship, partnership, corporation, or association engaged in a professional activity as described in schedule A subtended below shall obtain an annual professional license for which shall be paid a fixed fee of $30o in addition to the Business Registration fee payable under the Business Registration Act, originally enacted as Commerce and Industries Registration Laws."

Law is the fifth profession in schedule A. The business

"
registration fee is $ 100 for sole proprietorships and $1 so for partnerships, according to the General Business Law, Rev. Code 14:43 (3). Thus under these two statutes, a law firm must pay a total of $400 if it is a sole proprietorship, or $45o if it is a partnership.
The question now is whether each lawyer who practices law or who appears before a court must have an individual license, or whether the license fee of $450 for a law firm, as prescribed in the Revenue and Finance Law, meets the license requirement prescribed in the Judiciary Law, regardless of the number of lawyers in the firm. It is observed that neither the Judiciary Law nor the Revenue and Finance Law makes any reference to the other, and since the Judiciary Law does not fix a rate, the only amount that is required to be paid is that found in the Revenue and Finance Law and the registration fee fixed by the General Business Law. It means then that a sole proprietorship, that is to say a lawyer practicing alone, is required to pay $400; if he is in partnership with one or more lawyers, the partnership must pay $450. Under this interpretation, Counsellor Hoggard, who at the time was associated with the P. Amos George Law Firm, was properly licensed to practice law.
Another issue which is mentioned only in passing relates to the appellees' allegation that Counsellor C. Abayomi Cassell, who had been called as a witness by the appellants, had previously given a written opinion on the subject matter in the instant case to the appellees for which he had received payment. Counsellor Cassell admitted writing an opinion for the appellees some years ago but doubted that any reference was made to lot No. 261. The trial court did not pursue the matter any further, and no exception was taken to the witness's testimony on that ground. In keeping with a long line of cases, this Court cannot review issues where no exceptions were taken in the lower court, *Urey v. Republic, 5*
LLR 120 (1936), or consider an issue not included in the bill of exceptions, *Richards v. Coleman*, [1938] LRSC 15; 6 LLR 285 (1938). This applies also to the issue concerning Counsellor Joseph J. F. Chesson, counsel for appellants, who, it was alleged in plaintiffs' reply, was previously retained by the appellees to represent them in this same matter. This was denied by the counsel. Again the court did not make a ruling on it, and no exceptions were taken; hence it cannot be considered here.
Several interesting legal issues were raised, but the court did not pass upon all of them. Some of them are:
(1) That the deed executed by Elizabeth L. Moore for herself and as guardian for her infant sister Fenoa G. McGill in favor of William McCall Davis, under whom appellees are claiming title to

lot No. 261, is invalid because there is no evidence to show how the purported guardian was appointed and by what legal authority she was granted the right to sell property allegedly belonging to her infant sister;
(2) That William McCall Davis held this deed under a mortgage, and there is no evidence that the mortgage was ever foreclosed;
(3) That the description in the two deeds under which the parties are claiming ownership of the property differ considerably, and yet no effort was made to determine whether in fact the deeds related to the same property;
(4) That appellees questioned the registrar's deed which was proffered by the appellants on the ground that the deed could not convey title, that it is fraudulent and has no standing as against the deed under which the appellees are claiming title to the **land**; and
(5) That the appellants' answer was evasive and contradictory in that it both denies the truthfulness of the complaint and sets up a plea of justification.

These are all issues of law which should have been passed upon by the trial judge before trial of the issues of fact. Failure to pass upon the issues of law in a comprehensive manner has always been a reason for remanding the case for a new trial. *Claratown Engineers, Inc. v. Tucker,* [1974] LRSC 48; 23 LLR 211 (1974); *Zakaria Bros. v. Pannell,* [1969] LRSC 8; 19 LLR 170 (1969) ; *Thomas v. Dayrell,* Ts LLR 304. (1963); *Wright* V. *Richards,* 12 LLR 423 (1 957)•
Much was made of the fact that the appellants in their answer stated several defenses, in addition to denying that they are occupying premises belonging to the appelilees. Some of the defenses were estoppel, waiver, laches, and statute of limitations. The appellees contended that pleading in such a manner is inconsistent, unless the party so pleading first confesses and then avoids. Since reference has been made to this with respect to the ruling on the law issues, it seems necessary to point out that this Court in *Mourad v. Oost Afrikaansche Compagnie (0i1 C)[1974] LRSC 43;* , 23 LLR 183 (1974), held that, in keeping with section 9.3(3) of the Civil Procedure Law, Rev. Code, Title I, when a party has several claims or defenses which may appropriately be made or raised in the same action, he may state them all, but assert them in separate counts. Further in *Claratown Engineers, supra,* at 213, with respect to determining inconsistency of defenses, it was pointed out that defenses are not inconsistent where they may all be true. Under modern code practice "a denial of allegations of the complaint and an allegation of new matter as a defense thereto in the nature of confession and avoidance are not necessarily inconsistent as not to be pleadable together. The defendant may plead by way of denial and also plead the statute of limitations." 61 AM. JUR. 2d, *Pleading, §* 163, 164 (1972). The rationale for this, according to this authority, is that "if the statutory allowance of several defenses were to be limited by the strict logic of the old special pleas in bar, all special defenses would be cut off where the cause of action was denied, for such special defenses are supposed to confess

and avoid, although in fact they may not confess at all." Such an interpretation of the statute should be avoided if there is any other that will give a party his clear right to several defenses. 61 AM. JUR. 2d, *Pleading, supra, §*
163.

The most important issue, as in all cases of ejectment, is title, which must be established either by proof of descent or purchase. *Reeves v. Hyder, i* LLR 271 (1895). In the case at bar, proof of purchase is of no import, since the appellees are claiming ownership to lot No. 261 by virtue of their being the lineal descendants of William McCall Davis. However, the fact that they are his direct descendants does not *ipso facto* give them title to the property. Rather they must show that he died seized of the property, and that at the distribution of his testate estate they were given an executor's deed for the property. Being more specific, if it can be established that he died possessed of lot No. 261, it must be shown that William Seton Davis, his son, acquired it in keeping with the wishes of the testator; and that in a similar fashion, William R. Davis, Sr., one of the appellees, acquired title to the property.

As for the other appellees, William R. Davis, Jr., and
Mary Davis, since their father William R. Davis, Sr., is alive and is one of the parties, whatever claim they might have to lot No. 261 must depend on whether title can be traced directly from William McCall Davis, their great grandfather, to their father, and thereafter on what disposition he might make of it, assuming he has title to it.

In other words, they can assert ownership only by title and not by ties of blood. In ejectment the plaintiff must show in himself a legal title to the property in dispute to recover it. His title is not presumed, but must be established beyond question. Title and not ties of blood is the essential issue. *Cooper-King v. Cooper-Scott, [1963] LRSC 38; 15* LLR 390 (1963).

The appellants have proffered a duly probated and
registered deed which was issued as a result of the lower court's decree, which was also proffered. A court should take judicial notice of its own decrees. The appellees have attacked the deed, but it is settled that in an ejectment action, a duly probated and registered deed is superior as evidence of title to any prior instruments or indicia which have not been duly probated and registered. *Dundas v. Botoe,* [1966] LRSC 53; 17 LLR 457 (1966). More important is the well-established rule that a plaintiff in ejectment must recover unaided by any defects or mistakes of the defendant; he must establish his case upon the strength of his own title and not upon the weakness of the defendant's title. *Tay v. T eh[1968] LRSC 18; ,* 18 LLR 310 (1968); *Duncan v. Perry,* 13 LLR 510 (1960) ; *Williams v. Karnga, 3* LLR 234. (1931). These principles of law as a matter of public policy must be insisted upon and strictly adhered to, especially in cases of stale and belated claims where, by the passage of time, the condition of the party occupying the property in good faith has so changed that he cannot be restored to his former state.

The last issue of importance is the verdict of the jury which was in the amount of $85,000. Reviewing the record of the trial we found nothing to warrant a verdict in that amount. In fact, there was no evidence that the appellees had suffered any damage. A mere allegation is not proof; evidence must support the allegation, for it is evidence alone which enables the court to decide with certainty the matter in dispute. *Houston v. Fischer and Lemcke, 1* LLR 434, 436 (1904) ; *Jogensen v. Knowland,*
LLR 266, 267 (1895). It is true that appellees asked for only general damages which are not required to be pleaded specifically, but this does not relieve them of the responsibility of proving that such damages are traceable to, and the probable and necessary result of, the injury. According to 22 AM. JUR. 2d, *Damages, § is* (1965), "general damages are those which are the natural and necessary result of the wrongful act or omission asserted as the foundation of liability." Clearly some evidence is necessary to sustain the awarding of $85,000 as general damages.

Ordinarily a verdict will not be set aside as being excessive, but an appellate court will do so

where there is no evidence to support the amount awarded; where the verdict is so grossly disproportionate to the measure of damages; and where the testimony most favorable to the successful party will not sustain the inference of fact on which the damages were estimated. *Levin v. Juvico Supermarket*, [1975] LRSC 12; 24 LLR 187 (1975) ; 5 C.J.S., *Appeal and* Error, § 1651 (1958).
Because the trial judge erred in not ruling on all of the issues of law raised in the pleadings and because of the excessiveness of the verdict, this case is reversed and remanded for a new trial, permission being given the parties to replead if they so desire. Costs to abide final determination. And it hereby so ordered.

Judgment reversed; case remanded.

Mines Asso. v Freeman [1978] LRSC 54; 27 LLR 297 (1978) (14 December 1978)

MINES MANAGEMENT ASSOCIATES, Appellant, v. JAMES FREEMAN, Appellee.

MOTION TO DISMISS APPEAL.

Argued November 21, 1978. Decided December 14, 1978.

1. If the ground laid in a motion to dismiss an appeal is meritorious, the Supreme Court does not have jurisdiction over appellant's motion to vacate the judgment from which the appeal was taken.
2. A certificate issued by the Real Estate Division of the Ministry of Finance that a surety offering property as security on an appeal bond is the owner of such property will be accepted by the courts as correct where no evidence is offered to prove the contrary.
3. Property of a decedent offered by his administratrix as security for an appeal bond is acceptable for that purpose where, on a motion to dismiss the appeal, no evidence is offered by the appellee to show that the administratrix was without authority to use the property in that manner.
4. Where there is real property offered by the sureties on an appeal bond which sufficiently indemnifies the appellee against loss and assures the court of compliance with its judgment, and where ownership of such property has not been claimed by another, there is no defectiveness in the appeal bond which uses such property as security.

On appeal of this case to the Supreme Court, the Court was confronted with two motions, a motion to dismiss by the appellee and a motion to vacate the judgment filed subsequently by the appellant. The Court decided that as a matter of jurisdiction, it was required first to decide the motion to dismiss the appeal. That motion was based on the contention that neither of the two sureties on the appeal bond held title to the property offered as security. The Court found the

contrary to be true, and therefore upheld the validity of the appeal bond. The *motion* to dismiss was *denied.*
Moses Yangbe and *S. Edward Carlor* for, appellant.

M. M. Perry for appellee.
MR. CHIEF JUSTICE PIERRE delivered the opinion of the Court. 297
When this case was called we discovered two motions on file: one to dismiss filed by the appellee on June 2, 1978, and the other, to vacate the judgment of the trial court filed by the appellant on July 20, 1978. Both were resisted, and both were sought to be argued before us. The question as to which should take precedence over the other was argued, and we hold that the determination of the issue involves a jurisdictional question, because if the ground laid in the motion to dismiss is meritorious, we could not have jurisdiction over the motion to vacate the judgment, which is the subject of the appeal sought to be dismissed. Therefore, before addressing ourselves to the motion to vacate the judgment, let us examine the motion to dismiss to see if there is legal ground for granting it.
The appeal bond approved and filed to guarantee the appellee against loss is claimed by the motion to be misleading and unenforceable, because the two sureties whose property appears to be offered as security, to wit : Marima Curry and Zondell B. Jallah, do not hold title in themselves to the pieces of property offered. In support of this claim, the motion alleges that the certificate of the Ministry of Finance attached to the affidavit of sureties shows one of the two pieces of property to be owned by Thomas M. Curry in the case of one of the sureties; in the other case, although the Revenue certificate shows Peter B. Jallah to be the owner of the second piece of property offered in the bond, the affidavit of sureties shows the same property to be owned by Zondell B. Jallah, the second surety.
In the case of these two sureties, both are widows respectively of the men named as rightful owners of the two pieces of property; that is to say, widows of Thomas M. Curry and Peter B. Jallah, both of them now dead. In the resistance to the motion it is contended that in the case of the surety Marima Curry, as administratrix of her late husband's intestate estate, she was clothed with authority to be surety to the bond, and could in such capacity offer property of the estate as she had done; and in the case of the surety Zondell Jallah, the property qualification which she used as surety to the bond is property actually owned by her, as can be seen from the affidavit of sureties, and therefore it was a harmless clerical error for the affidavit of sureties in the description clause to have referred to the property as owned by this surety's late husband, Peter B. Jallah.
Let us examine the latter of the two sureties first. An inspection of the certificate issued out of the Real Estate Division of the Ministry of Finance, shows that the property offered by Zondell Jallah is a quarter of an acre of **land** in Bishop Brooks, Monrovia, registered in her own name and valued at $10,675. The question of whether or not this surety owned the property which she used as part guaranty to qualify her as a surety would seem to have been resolved by this document issued out of the Real Estate Division of the Ministry of Finance, and signed by the Deputy Commissioner and the Assistant Minister for Revenues. Besides the mere allegation in the motion to dismiss to the effect that the surety did not own the property she offered to support the bond, there is no showing that this document from the Ministry of Finance was not correct. Mere allegation is not proof, especially against a document executed by proper and competent authority.
In the case of the other surety, Marima Curry, as we have said previously, was administratrix of

her late husband's intestate estate, and in that capacity she had offered her late husband's property to secure the appellee against loss growing out of the appeal. The appellee has contended that without an order of the Probate Court she was without legal authority to do so; but unfortunately he offered no evidence to show that she did not have such a court order to that effect. Nor did he claim that she was legally forbidden to be a surety and offer the estate's property as security in her capacity as administratrix.

Moreover, this Court has said that "the object of an appeal bond with sureties is to secure to the appellee his costs and to assure the court of compliance with its judgment." *Dennis v. Holder*, [1950] LRSC 4; 10 LLR 301, 307 (1950). Therefore, where there is real property offered by the sureties which sufficiently indemnifies the appellee against loss and assures the court of compliance with its judgment, and where ownership of such property has not been claimed by another, we hold that there is no defectiveness in the appeal bond which uses such property as security.

It is therefore our opinion that the bond in this case is not defective, and this being the only ground laid in the motion to dismiss, the said motion must have to be denied. And it is so ordered.

Motion denied.

Morris v Johnson [1977] LRSC 23; 26 LLR 73 (1977) (29 April 1977)

MARY MORRIS, Appellant, v. REBECCA JOHNSON, Appellee.
APPEAL FROM THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued March 16, 17, 1977. Decided April 29, 1977. 1. In ruling on issues of law, a trial judge cannot limit his decision to some, but must pass on all that are raised in the pleadings. 2. The general meaning attributed to the words "without prejudice" when used in a judgment of a court of law is that such judgment does not operate as res judicata on the merits but reserves to the parties the privilege of adjudging the value of their dealings by subsequent action. 3. The principle of res judicata will apply 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 involved have previously been tried and judgment rendered thereon. 4. The rule that judgment without prejudice does not operate as a bar is uniformly applied where a former action has been dismissed for a formal or technical defect ; in this situation the clause "without prejudice" is only declaratory of the true nature of the judgment as one rendered not upon the merits.

This was a bill in equity to remove a cloud on title. The case was before the Supreme Court on appeal from a decision of the lower court to dismiss it on the principle of res judicata on the basis of a previous suit instituted some years previously

by the appellee herein against the appellant Mary Morris and two other parties to cancel a warranty deed on the property involved in the present suit. The earlier suit terminated in the granting "without prejudice to either side" of a motion to dismiss an appeal from the lower court which granted the cancellation and, on a petition for rehearing which was withdrawn, a granting of the petition with costs against the petitioner and a mandate "to execute the foregoing judgment immediately." On the appeal presently before the Court, it considered the meaning of the dismissal of the appeal in the former

suit "without prejudice" and held that as used by the Court in that case, the words did not operate as a bar to a subsequent suit. The judgment of the lower court was therefore reversed and the case remanded for a new trial. Moses K. Y angbe and S. Edward Carlor of the Henries Law Firm for appellant. Nete Sie Brownell for ap-

pellee.

MR. JUSTICE HENRIES delivered the opinion of the

Court. Sometime in 1971, appellee Rebecca Johnson instituted an action in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, against Guah Morris, Weah Morris, and Mary Morris to cancel a warranty deed which the appellee had issued in their favor for a parcel of land situated in Congotown, a suburb of Monrovia. The lower court decreed that the deed be cancelled, and the appellant Mary Morris, together with Guah and Weah Morris, excepted to the decree and appealed to this Court. When the case was called for hearing, the appellee moved for the dismissal of the appeal because only appellant Mary Morris had signed the appeal bond. The motion to dismiss the appeal was granted "without prejudice" to either side. Morris v. Johnson, [1972] LRSC 23; 21 LLR 195 (1972). The appellant filed a petition for reargument, but later withdrew the petition. In a judgment without opinion, the request to withdraw the petition was granted "with costs against the petitioner." Morris v. Johnson [1972] LRSC 57; 21 LLR 526 (1972). A mandate was accordingly sent down to the lower court "to execute the foregoing judgment immediately." The appellant, who was petitioner in the motion for reargument, paid the costs and filed a bill in equity to remove a cloud and quiet title. After pleadings had

rested, the appellee petitioned for a writ of prohibition to prevent the lower court from entertaining the action on the ground of res judicata. The writ of prohibition was denied by the full bench on the ground that the appellee's

petition had not met the statutory requirement for issuance of the writ. Johnson v. Morris, [1974] LRSC 36; 23 LLR 154 (1974). The lower court then resumed jurisdiction over the matter and dismissed it on the principle of res judicata. The appellant
excepted and again appealed to this Court for a review. Hence this matter is now before this Court for the third time. Before traversing
the main issues on appeal, it is necessary to point out that the mandate emanating from this Court, after the withdrawal of the motion
for reargument, did not order the cancellation of the deeds or affirm the decree of the trial court. In view of its decision, out
of which grew the petition for reargument, the Court could not have ordered the cancellation. However, even though there were two
deeds involved, one from Rebecca Johnson to Guah Morris, and the other from Guah Morris to appellant Mary Morris, it was alleged
that the lower court cancelled only the first deed. Since the mandate from this Court did not order the cancellation of the instrument,
it was error for the trial court to have done so. It is regrettable that the appellant did not press on with her petition for reargument,
because this would undoubtedly have settled some of the questions that have been raised in this appeal. Two main issues have been
raised : ( ) What is the effect of this Court's decision of May 18, 1972, when it granted the motion to dismiss the appeal "without
prejudice"? Morris v. Johnson [1972] LRSC 23; 21 LLR 195. Or, in other words, did the trial court err in dismissing the case on the ground of res judicata? and (2) Did the lower court err
in not passing, on all of the law issues raised in the pleadings?

Taking the last issue first, we find
that even though law issues were raised in the answer and the reply, the trial judge erred when he passed on the law issues raised
only in the answer. In Claratown Engineers, Inc. v. Tucker, [1974] LRSC 48; 23 LLR 211 (1974), it was held that in considering the issues of law, the trial judge must rule on all of them. See also Gallina Blanca v. Nestle Products, Ltd., [1976] LRSC 33; 25 LLR 116 (1976). Now with respect to the issue of the effect of the Court's decision of May 18, 1972, recourse must be had to our opinion
in order to determine what was intended when the appeal was dismissed without prejudice. Reference is made to the opinion because
"the meaning and effect of the words 'without prejudice,' as used in the judgment, may be limited by additional language of the judgment
itself or by the particular circumstances of the case. Its meaning and effect should be determined in accordance with the intention
of the court rendering the judgment, to be gathered from the court's rulings and opinions as viewed in the light of the particular
proceeding in which the judgment was rendered." 149 A.L.R. 553, 5 88 (1 944)· Here was a situation in which there were three principles named in the general bond : Guah Morris, who died during
the pendency of the appeal ; Weah Morris, a minor at the institution of the case in the lower court; and Mary Morris. Only Mary Morris
signed the appeal bond and completed the jurisdictional steps necessary for the court to hear the appeal. Because the other principles
had not signed the bond, the appellee moved for the dismissal of the appeal. In reviewing the circumstances surrounding the case,

this Court, speaking through our late distinguished colleague, Mr. Justice Wardsworth, said with regard to Guah Morris : "In view of the fact that deceased in his warranty deed guaranteed to hold Mary Morris harmless against claimants, the

failure to complete appellate proceedings stands out even more." [1972] LRSC 23; 21 LLR 195, 197. Further, in referring to Weah Morris, we said that Weah Morris should have been defended "through one of his parents, a representative, or by a next best friend or by a guardian ad litem. Hence, his failure to sign the appeal bond as the law directs, being a co-appellant, makes the bond defective." [1972] LRSC 23; 21 LLR 195, 198. In dealing with Mary Morris, we also said : "We are reluctant to have the rights of one of the appellants suffer because of the neglect of the other. It would be grossly unfair to penalize Mary Morris who has completed her appeal by filing a signed appeal bond, because of her co-appellant's failure to file one. In fact, this is a neglect of counsel, for which we do not think the parties should suffer." [1972] LRSC 23; 21 LLR 195, 197. It is clear that the whole tenor of the opinion, especially that portion which refers to Mary Morris, leads to the conclusion that the use of the words "without prejudice" was not intended as a final determination of the matter. Indeed, its sole effect was to cause judgment not to operate upon the theory of res judicata, as a bar to a subsequent suit. There is ample legal authority for this conclusion. The general meaning attributed to the words "without prejudice" when used in a judgment of a court of law is that such judgment does "not operate as res judicata on the merits . . . but reserved to the parties the privilege of adjudging the value of their dealings by subsequent action." Edwards v. James Stewart & Co., 160 F.2d 935, 936 (1947). See also Morse V. Bragg, 107 F.2d 648 (1939). As a general rule, "the phrase `without prejudice' ordinarily imports the contemplation of further proceedings, and when it appears in an order or decree it shows that the judicial act is not intended to be res judicata on the merits of the controversy." A dismissal of an action "without prejudice" "ordinarily indi-

cates that such judgment affects no right or remedy of the parties." 149 A.L.R. 553, 559 (194.4.). Thus it can be seen that by using the words "without prejudice" the Court was careful not to compromise its position into a final decision on the merits of the case. However, we would like to reiterate here that the meaning and effect of the words "without prejudice" as used in a judgment would depend upon the language of the judgment and the particular circumstances of the case. As far as the issue of res judicata is concerned, in Phelps v. Williams, [1928] LRSC 14; 3 LLR 54, 57 (1928), this Court held that a matter 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." In Liberia Trading Corporation v. Abi-Jaoudi, [1960] LRSC 38; 14 LLR 43, 51 (196o), it was stated that a judgment on the pleadings which determines the merits of the controversy is bar to another action for the same cause. In such a case, res judicata will apply. In Wahab v. Sonni, [1964] LRSC 38; 16 LLR 73 (1964), this Court again stated that the principle of res judicata will apply 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 involved have previously been tried and judgment rendered thereon. Having stated the guidelines to be followed in invoking the principle of res judicata, we will now seek to discover whether the circumstances in the case conform to the guidelines. A review of the records certified to this Court shows that the decree cancelling the deeds was made before the appellant rested evidence on the ground that her counsel had abandoned the case. It was from this decree that an appeal was made to this Court, and

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the appeal was dismissed without prejudice. A motion for rehearing was filed and withdrawn, and this Court granted the withdrawal and ordered the payment of costs by the appellant. While carrying out this mandate, the trial court cancelled the deed, even though this Court did not affirm the trial court's decree but dismissed the appeal without prejudice. Thus it is clear that even though the case involves the same parties and the subject matter, yet it was never adjudicated on the merits. Therefore the principle of res judicata is inapplicable in the case at bar. Moreover, where an action or proceeding is dismissed without prejudice, rulings preceding the final judgment or decree of dismissal are, as a general rule, not capable of becoming res judicata. See 149 A.L.R. 561. In Liberia Trading Corporation v. Abi-Jaoudi, supra, it was held that a judgment dismissing a suit on account of a technical defect or irregularity is not on the merits and is therefore no bar to a subsequent action. "The rule that a judgment without prejudice does not operate as a bar has also been uniformly applied where a former action has been dismissed for a formal or technical defect, in this situation the clause 'without prejudice' being only declaratory of the true nature of the judgment as one rendered not upon the merits." 149 A.L.R., supra, 578. It was therefore error for the lower court to dismiss the case on the ground of res judicata.

In view of the foregoing, the decree of the lower court is reversed, and the case is remanded for a new trial. And the Clerk of this Court is ordered to send a mandate down to the court below directing it to resume jurisdiction over the case and proceed to determine same on its merits. Costs against the appellee. And it is hereby so ordered. Reversed and remanded.

Gigger v Hilton et al [1984] LRSC 51; 32 LLR 439 (1984) (22 November 1984)

TOM GIGGER, Plaintiff-In-Error, *v.* **HIS HONOUR EUGENE L. HILTON,** Judge Presiding by Assignment, Civil Law Court, Sixth Judicial Circuit, September Term, A. D. 1983, and **KOFA SAYON THOMPSON**, Defendants-In-Error.

PETITION FOR A WRIT OF ERROR TO THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: October 22, 1984. Decided: November 22, 1984.

1. An appeal can only be taken from a final judgment.
2. An error proceeding is a substitute for an appeal.
3. Error will be denied where there is no rendition of an enforceable final judgment of the trial court.

Plaintiff-in-error sought a writ of error against the trial judge for his refusal to render a final judgement in the case in the trial court, in obedience to a mandate from the Supreme Court. In an ejectment suit filed by plaintiff-in-error against co-defendant-in-error, Kofa Sayon Thompson, in the Civil Law Court for the Sixth Judicial Circuit, the heirs of King Peter sought to intervene, claiming ownership to the property in dispute. The intervention was prayed for after the trial court had, on application of the plaintiff-in-error, entered a default judgment in favor of plaintiff-in-error. The trial court denied the motion and proceeded with the trial of the case. Upon denial of the motion to intervene, and refusal by the trial judge to grant an appeal and approve intervenors' appeal bond, the intervenors proceeded by prohibition and mandamus to prevent the trial judge from enforcing the judgment, to have the Supreme Court review the trial judge's ruling, and to have the Court order the judge to grant the appeal prayed for by the intervenors.

The mandamus was granted by the Justice in Chambers and the trial judge was ordered to grant the appeal and approve the appeal bond *nunc pro tunc*; and further, that the intervenors be allowed to intervene in the ejectment suit. An appeal from this ruling was subsequently withdrawn by plaintiff-in-error, who instead filed a motion to dismiss the intervenors appeal, taken earlier, on the ground that the bond was not signed by the trial judge. The Supreme Court denied the motion to dismiss, holding that as the appeal from the ruling of the Chambers Justice had been withdrawn, the ruling was binding on the parties. A man-date was therefore sent to the trial court to proceed with the case.

Subsequently, a submission was filed with the Supreme Court but was denied. Instructions were again sent to the trial court to proceed with the case. The trial court, upon receipt of the Supreme Court mandate, attempted to have co-defendant-in-error, Kofa Thompson, dispossessed of the property. Whereupon information was again filed with the Supreme Court. The information having been granted and a mandate sent to the trial court, the court then ceased enforcement of the judgment. The plaintiff-in-error, not being present for this decision of the trial court, commenced the present error proceedings.

The Supreme Court denied the petition for the writ of error, holding that as no final judgment had been rendered from which an appeal could have been taken, error would not lie. The Court referred to the previous ruling of the Chambers Justice which instructed the trial court to allow the heirs of King Peter to intervene, which meant a recommencement of the trial. The Court determined therefore that in the interest of justice, the entire proceedings in the trial court be *abated* and the parties restored to the *status quo* without prejudice to either party.

Isaac Malobe appeared for plaintiff-in-error. *Johnson, Barnes and Keonig Law Firm* appeared for defendants-in-error

MR. JUSTICE YANGBE delivered the opinion of the Court.

Tom Gigger, plaintiff-in-error, filed an action of ejectment against Kofa Sayon Thompson, one of the defendants-in-error, to recover a piece of **land** lying in New Krutown. Default judgment was rendered in favor of plaintiff.

The heirs of King Peter, who were the grantors of the defendant, Kofa Thompson, sought to intervene in the ejectment suit. Their motion to intervene was denied by the trial judge. They then announced an appeal and thereafter submitted a bill of exceptions for the judge's approval. The trial judge refused to approve the bill of exceptions and appeal bond. Whereupon intervenors then moved by two remedial writs, one to compel the trial judge to approve the appeal bond and bill of exceptions and to allow the intervenors to intervene in the ejectment action, and the other to prohibit the trial court enforcing the judgment in the ejectment action. Chief Justice James A. A. Pierre, presiding in Chambers, ruled that as mandamus could cure the problems, he would dispense with the prohibition. In his ruling, Chief Justice Pierre held that the appeal bond and the bill of exceptions should be approved *nunc pro tunc* and that the heirs of King Peter should be

allowed to intervene in the ejectment action. From this ruling plaintiff in the ejectment action announced an appeal to the full Bench. While the appeal was pending, the defendant-in-error filed information before the Supreme Court. *In re Information of Kofa Thompson*[1978] LRSC 18; , 26 LLR 494 (1978)). Plaintiff-in-error withdrew his appeal, previously taken from the Chambers Justice's ruling, and filed a motion to dismiss intervener's appeal, stating as reason that the appeal bond was unsigned. That motion was denied. (*See King Peter's Heirs v. Tom Gigger*, [1978] LRSC 52; 27 LLR 287 (1978). In a judgment without opinion, the Supreme Court ruled on February 3, 1978, that counsel for plaintiff-in-error Tom Gigger, having withdrawn the appeal taken from the Chambers Justice's ruling in the mandamus proceedings, the parties were bound by that ruling. *In re Information of Kofa Thompson*[1978] LRSC 18; , 26 LLR 494 (1978). A mandate was sent to the court below to resume jurisdiction over the cause out of which the mandamus grew and for the trial judge to approve the bill of exceptions *nunc pro tunc*. There the matter rested.

Thereafter, however, counsel for co-defendant-in-error filed a submission before the Supreme Court. The submission was denied on the ground that the matter had already been decided, as reported in [1978] LRSC 52; 27 LLR 287.

When the instructions from this Court reached the trial judge, and an attempt was made to dispossess Mr. Kofa Thompson of the property, he filed information with the Supreme Court. In the information, the informant alleged that the judge was proceeding contrary to the Supreme Court's mandate, contending that in view of the mandate of the Supreme Court, no final judgment had been rendered, and that therefore there was nothing to be enforced. As a result of the information, which was granted, the trial court ceased enforcement of the judgment. The plaintiff-in-error not being present has filed these error proceedings.

There are two main points of contention in this case that we believe should be resolved in the best interest of the parties to the suit in the court below, as well as the intervenors. They are: Whether an enforceable final judgment was ever rendered by the trial court to warrant an application for a writ of error, and, if the bill of exceptions and the appeal bond were approved, at what level could the intervenors assert their rights? Certainly not in the Supreme Court, because the Supreme Court cannot initially entertain the production of evidence or conduct a jury trial. In all cases, except for a few exceptions which do not obtain in the instant case, the Supreme Court has only appellate jurisdiction. (*See* LIB. CONST., 1847, art. 4, sec. 2.

An appeal can only be taken from a final judgment and an error proceeding is not a substitute for an appeal. However, there is no final judgment rendered by the trial court in this case from which an appeal could have been taken by either side. Therefore, error will not lie.

Granting that we can give effect to the ruling of Chambers Justice Pierre, which ruling ordered the trial court to approve *non pro tunc* the bill of exceptions and the appeal bond, because this Court lacks original jurisdiction to try the case, same must be remanded to the trial court where the case must be acted upon. It is clear that the object of granting the mandamus was to afford the intervenors an opportunity to intervene.

Thus, in order to afford the intervenors an opportunity to protect their property and in the absence of any enforceable final judgment rendered in the court below, from which an appeal could have been taken or error proceeding instituted, the petition for error is denied. The entire proceedings are abated and the parties restored to *status quo* without prejudice to either party. Costs are disallowed. And it is so ordered.

Petition denied; trial court proceedings abated.

Kerpai v Kpene [1977] LRSC 4; 25 LLR 422 (1977) (18 February 1977)

BENDU KERPAI, et al., Appellants, v. KEMA KPENE, Administratrix of Estate of KINDI WORREL, Appellee.
MOTION TO DISMISS APPEAL FROM
THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued January 25, 1977. Decided February 18, 1977. 1. The properties
offered by sureties to a bond must be described in the affidavit of sureties sufficiently well to identify the particular piece of
property intended to be encumbered by the bond. 2. Every statute should be given that construction best calculated to advance its
object, and this may be ascertained by considering the occasion and necessity for its enactment, the defects of the former law, and
the remedy provided by the new one. 3. The object of an appeal bond is to secure to the appellee his costs and to assure the court
of compliance with its judgment. 4. The intention of the Legislature in passing an act stating the grounds for dismissing an appeal
was to discourage the dismissal of appeals on technical grounds and to give to appellants an opportunity to have their cases heard
by the Supreme Court on their merits. 5. Where an appeal bond is secured by real property sufficiently identified in the affidavit
of sureties to be located and is of a value in excess of the penalty of the bond, it satisfies the statutory requirements even though

the property of one of the sureties is not described by metes and bounds. 6. Failure of appellee to except in the court below to
the financial sufficiency of the sureties to an appeal bond within three days after receipt of notice of the filing of the bond constitutes
a waiver of his objection and warrants denial of a motion to dismiss the appeal.

Appellee moved to dismiss an appeal on the ground
that the real property pledged by one of the sureties on an appeal bond was not described by metes and bounds as required by statute,
thus rendering the bond defective. The affidavit of sureties to which objection was raised located the property of one of the sureties
only by street address, whereas the property of the other surety was described by metes and bounds. Each of the properties was valued
at far in excess of the penalty of the bond. The court held that the purpose of the statute governing appeal bonds was to protect
the appellee from loss on

account of the appeal, and that this purpose was fully sa tisfied where
the property pledged could be located and was of a value in excess of the penalty of the appeal bond. Furthermore, the appellee had
waived his objection by Tailing to act in the court below to give the appellant opportunity to justify his sureties. The motion to
dismiss was accordingly denied.
Toye C. Barnard and Moses K. Yangbe for appellants. S. Benoni Dunbar and Edward Molloy for appellee.

MR. JUSTICE AZANGO delivered the opinion of the Court. When this case was called for hearing, appellee moved this Court to dismiss
the appeal on the ground that the real property pledged by one of the sureties was not described by metes and bounds. In support
of his motion, he has relied on this Court's opinion in West Africa Trading Corporation v. Alraine, [1975] LRSC 16; 24 LLR 224 (Pm), and on Zayzay v. Jallah, [1976] LRSC 6; 24 LLR 486 (1976). He also cited our Rev. Code r :51.8. Further, he argued that the law does not make any exception as to the number of sureties
whose property must be described by metes and bounds. All are required to describe their property. Arguing the points raised in his
resistance, appellant contended that (a) the property of the surety Martha Burphy-Carey is fully described and that the value of
said property is above and beyond the amount of the bond, same being only $1,000; and the bondsman's property described by metes

and bounds is valued at $ro,000; (b) the statute does not require all of the sureties to describe the property; where one does, it
is sufficient to indemnify the appellee; (c) the statute requires the property pledged by one of the sureties to be described and
that the omission of the second description does not render

the bond defective nor the appeal dismissible
; (d) that the West Africa Trading Corporation case relied upon by appellee's counsel is not analogous, the facts and circumstances
being dissimilar. In this case, the property of one of the sureties is fully described in the affidavit of sureties ; but in the
West Africa Trading Corporation case there was no description at all by metes and bounds or otherwise in the affidavit of sureties
; (e) appellee should have raised the issue of the sufficiency of the bond and sureties before the court below. Observing that both
the motion and resistance together with the argument presented have raised legal and factual issues, we have deemed it proper to
have recourse to the affidavit of the sureties. "Affidavit of Sureties. "Personally appeared before me in my office in the City of
Monrovia, duly qualified Justice of the Peace for Montserrado County, and Republic aforesaid, Josephine Badio and Martha Burphy-Carey,
sureties to the attached appeal bond, signed in the above entitled cause and made oath according to law that they are the owners
of the real properties offered as surety, said properties being houses and vacant lots described as follows: Location Valuation Acreage
Property"Lot No. owner N/N too Center St. $25,000.00 i Lot Josephine Badio "Description: Situated on too Center Street, opposite
the prison compound, South Beach Monrovia, Liberia, consisting of one-story building. "Lot No. Location Valuation Acreage Propertyowner
Bushrod $ to,000 I Lot Martha BurphyCarey Island "Description : Commencing at the Northeast Corner of the adjoining Western lot,
owned by the said Ayoka Carey, marked by a concrete monument and running

South 75 degrees East 135 feet,
thence running South is degrees West 82.5 ft. thence running North 75 degrees West 132 ft. thence North 15 degrees East 85.5 feet
to the place of beginning and contains one town lot and no more or containing 1/4 acre of **land** and no more. "With the Republic of

Liberia, and that the assessed value of the properties are over and above the value of the Bond, in the sum of Thirty-Five Thousand
Dollars and liabilities that the said properties offered are unencumbered; all this they say to be true and correct to the best of
their knowledge information and belief and as to those matters of information they verily believe them to be true and correct. "Given
under my hand, sworn and subscribed to before me in the City of Monrovia, Republic of Liberia, this Loth day of November, 1975. "(Sgd.)
Josephine Badio "(Sgd.) Martha Burphy-Carey " (Sgd.) E. WELLINGTON SMITH, Justice of the Peace, Montserrado County." It would seem
to us that the foregoing affidavit has met all of the requirements of the statutes as far as it relates to · the qualification of
Martha Burphy-Carey, whose property has fully been described. The properties offered by sureties to a bond must be described in the
affidavit of sureties sufficiently well to identify the particular piece of property intended to be encumbered by the bond. It must
be certain and definite, so that locating it would not be difficult, nor would satisfying any obligation by virtue of the security which the property offers be denied to the appellee.
The property of Josephine Badio, though not described by metes and bounds, is sufficiently described to easily permit it to be located.

The appellee has contended, however, that the appeal bond is defective because the affidavit of sureties
does not state the metes and bounds of both pieces of property offered as security. In support of that contention he cites the statutory
provision that: "Every appellant shall give an appeal bond in an amount to be fixed by the court, with two or more [emphasis supplied]
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 shall 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." Rev. Code i :51.8. We have
been unable to accept the contention of appellee in the light of the provisions of the Civil Procedure Law which states the qualifications

of sureties on a bond. It is therein required that the sureties shall be two natural persons or insurance companies authorized to
execute surety bonds within the Republic of Liberia. Rev. Code :63.2 (I) . It is further provided that : "2. Lien on real property
as security. A bond upon which natural persons are sureties shall be secured by one or more pieces of real property located in the
Republic, which shall have an assessed value equal to the total amount specified in the bond, exclusive of all encumbrances. Such
a bond shall create a lien on the real property when the party in whose favor the bond

is given has
it recorded in the docket for surety bond liens in the office of the clerk of the Circuit Court in the county where the property
is located. Each bond shall be recorded therein by an entry showing the following : "(a) The names of the sureties in alphabetical
order; "(b) The amount of the bond ; "(c) A description of the real property offered as security thereunder, sufficiently identified
to clearly establish the lien of the bond ; "(d) The date of such recording; "(e) The title of the action, proceeding, or estate.
"3. Affidavit of sureties. The bond shall be accom. . pamed 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, sufflciently 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.
.. .
"4. Certificate of Treasury Department official. The bond shall be accompanied by a certificate of a duly authorized official
of the Department of the

Treasury [now Ministry of Finance] that the property is owned by the surety or sureties claiming title
to it in the affidavit and that it is of the assessed value therein stated, but such a certificate shall not be a prerequisite to
approval by the judge." [Italics the Court's.] Rev. Code I :63.2 (2)--(4). Our statute has also provided that : "A bond shall become
effective when approved by the

court. Approval may be granted when the party furnishing the bond presents prima facie evidence to show that the sureties are qualified or that the security offered on the bond is adequate, genuine, and as represented by such party. An approved bond shall be filed with the clerk of the court in which the action is pending. A notice of the filing of the bond shall be served on the adverse party." Rev. Code i :63.3. "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. . . . "Where no exception to sureties is taken within three days or where exceptions taken are set aside, the bond is allowed." Rev. Code 63.5 ( ), (2). "Within three days after service of notice of exception, the surety excepted to or the person on whose behalf the bond was given shall move to justify, upon notice to the adverse party. The surety shall be present upon the hearing of such motion to be examined under oath.

If the court finds the surety sufficient, it shall make an appropriate endorsement on the bond. . . . "If a motion to justify is not made within three days after the notice of exception is served, or if the judge finds a surety insufficient, he shall require another surety or sureties in place of any who have not justified. Any surety who has not justified shall remain liable until another surety signs the bond and the bond is allowed." Rev. Code i :63.6 (1) , (2). With these provisions of law as background to the position we are about to take, we note that two natural persons who are freeholders or householders within the Republic of Liberia have appended their signatures to the appeal bond by which they are bound in the sum of $i,000 to be paid to the plaintiffs or their legal represen-

tatives to indemnify the plaintiffs from all costs and from all injuries arising from the appeal taken by the defendants, and to comply with the judgment of the court to which such action may be removed. The bond in question is not only well secured by Martha Burphy-Carey, one of the sureties, whose real property is fully described in the affidavit of sureties and has an assessed value of $ to,000, but the assessed value of the property is far over and above the penalty of the bond. The

property of the other surety, Josephine Badio, is sufficiently identified and clearly establishes the lien of the bond. It is covered
by a statement from the Ministry of Finance that it has an assessed value of $z5,000. The address and description of the property
as stated in the affidavit of sureties show that it is easily located and accessible. Furthermore, the record does not indicate that
within the statutory three-day period after receiving notice of the filing of the appeal bond, the appellee requested justification
of the sureties before the court below lost its jurisdiction nor that the appellee objected either prior to or after approval of
the bond that the sureties on the bond were unqualified or that the security offered thereon was inadequate and not genuine. There
is no denial that a notice of the filing of the appeal bond was served on the appellee. With reference to the contention of appellee's
counsel that both properties offered as security to the bond should be fully described in the affidavit of sureties in order for
it to be acceptable, we must reject this as a technicality which should not prevent this Court from hearing the appeal on its merits,
especially when appellant has complied with all legal requirements for perfection of the appeal bond. "Every statute must be construed
with reference to the object intended to be accomplished by it. In order to ascertain this object, it is proper to consider the occasion
and necessity of its enactment, the defects or evils

in the former law, and the remedy provided by the
new one ; and the statute should be given that construction which is best calculated to advance its object, by suppressing the mischief and securing the benefits intended."
36 CYC. I 110. We must emphasize that the object of an appeal bond is to secure to the appellee his costs and to assure the court
of compliance with its judgment. Dennis v. Holder, [1950] LRSC 4; 10 LLR 301, 307 (1950)
This court has consistently held that: "To all intents and purposes it is obvious that the intention of the Legislature
in passing that act [Grounds for Dismissal of Appeal] was to discourage the dismissal of appeals on technical legal grounds and to
give to appellants an opportunity to have their cases heard by this Court on their merits in order that substantial justice be done
to all concerned. Johns v. Pelham, [1944] LRSC 15; 8 LLR 296, 305 (1944). Accord : Dennis v. Holder, lo LLR 301, 306 (1950) ; Cole v. Williams, io LLR 191, 192 (1949); Firestone Plantations
Company v. Greaves, [1946] LRSC 2; 9 LLR 147, 151 (1946) ." There is no reason to depart from this long-established principle in this case. We interpret the provisions of sections

63.3, 63.5, and 63.6 of the Civil Procedure Law as prerequisites to be undertaken by a party to obtain a ruling on the sufficiency
of the appeal bond before the lower court loses jurisdiction over the subject matter. In other words, we feel that the law makers
intended them as a cure for the mischief or evil of denying party litigants an opportunity for a hearing on the merits by unnecessary
dismissal of cases on motions to dismiss before an appellate court. Hence a party's failure to comply with these provisions will
be considered a waiver which will prevent him from contesting the sufficiency or insufficiency of the sureties or bonds on appeal
before this Court. A significant consideration in this case is that nowhere

in the motion filed to dismiss
the appeal have appellee's counsel attacked the financial sufficiency of the sureties Martha Burphy-Carey and Josephine Badio to
meet the requirements of the bond for $1,000 in the event adverse Judgment is given against appellants and they are unable to meet
the requirements of that judgment. We must evidently assume that they are satisfied with the sufficiency of the financial status
of the sureties. Wherefore, since we have found that the property offered by Martha Burphy-Carey complemented by that of Josephine
Badio has fully met the statutory requirements with a value far over and beyond the penalty of the appeal bond thus securing the
appellees from all injuries that may arise from the appeal taken by appellants; and since an appeal bond is not fatally defective
for having one surety if the financial ability of the surety is not questioned in the court below by the appellee on the ground that
he is not satisfied with the indemnification ; and since appellee did not move the court below to have the sureties sufficiently
justify the properties offered on the bond, thus allowing the bond to stand, we hold that the motion to dismiss is not sustained
as against appellants' resistance. This Court therefore has jurisdiction over the subject matter and will proceed to hear the above
entitled cause of action on its full merits. Costs to abide pending final determination of the cause. It is hereby so ordered. Motion
to dismiss denied.

Dollar v Cole [1976] LRSC 29; 25 LLR 67 (1976) (23 April 1976)

TOM DOLLAR, et al., Appellants, v. A. B. COLE, et al., Appellees.
APPEAL FROM RULING OF JUSTICE IN CHAMBERS DENYING ISSUANCE OF A WRIT OF ERROR.

Argued March 28, 1976. Decided April 23, 1976. 1. The Court will not do for parties what they ought to do for themselves.
2. An application for a writ of error must state that the application is not for a dilatory purpose and that accrued costs have been
paid. 3. Misnomer of a party is not by itself a ground for dismissal of a claim for relief or of a defense. 4. A notice of assignment
served upon counsel is required for each appearance.

Appellants were the plaintiffs in an action of ejectment. After much delay,
the judge notified appellants by letter that counsel was to be in court on a day named to provide the long-awaited name of a surveyor.
On that day, counsel did not appear, and the judge dismissed the action, taking the position that the letter sufficed as a notice
of assignment. Plaintiffs sought a writ of error, contending they had been denied their day in court. The Justice in chambers denied
the writ, and an appeal was taken to the full Court. The Supreme Court held that the letter was insufficient to constitute a formal
notice of assignment which is always required as a basis for dismissal if no appearance is made by a party or counsel. The ruling
of the Justice in chambers was reversed, and the case was remanded to the lower court.
MacDonald C. Acolatse for appellants. Morris
for appellees.
MR. JUSTICE HORACE

D. W. B.

delivered the opinion of the
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Court.

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LIBERIAN LAW REPORTS

Plaintiffs in error,
plaintiffs in the trial court, instituted an action of ejectment in the Civil Law Court for the Sixth Judicial Circuit, Montserrado
County, on June 14, 1972, against co-defendant in error A. B. Cole, defendant in the court below. When the case was first called
to dispose of the issues of law, the parties to the ejectment suit agreed to submit the controversy as to the true owner of the **land**

in dispute to a Board of Surveyors, one surveyor to be nominated by each party and the third by the court. The Board of Surveyors,
after considerable delay, brought in a report to which plaintiffs objected; their objections were sustained. At this point it was
again agreed by the parties that another Board of Surveyors be appointed. It appears that because plaintiffs neglected to nominate
a surveyor after being required to do so several times by the trial judge, the court allegedly wrote counsel for plaintiffs on July
1, 1974, that if they had not nominated the surveyor for their side by July 5, 1974, the case would be dismissed. Counsel for plaintiffs
in error claims that he never received such a letter, although he did not attempt to explain his negligence in nominating a surveyor
for his side after repeated requests from the trial court to do so. On July 9, 1974, the trial judge, true to her word, entered a
ruling dismissing the ejectment case. Neither plaintiffs in error nor their counsel were present. On August 1, 1974, plaintiffs in
error applied to the Justice in chambers for a writ of error. They claimed that their day in court had been denied them. The defendants
in error denied this. They also contended that the name "Cole" had been used for the defendant rather than "Coleman," though their
opposition was filed three months late. The work done by counsel on both sides, incidentally, has been of very poor quality. We must
here mention that this is not an exception to the rule ; it is in fact typical of what goes on generally in practice now.

The statute governing writs of error states clearly what an application for such a writ should contain. It must
be observed that absent from the petition are the following requirements which should have been stated therein:) an averment in
the affidavit that the application has not been made for the mere purpose of harassment or delay; (2) an averment that accrued costs
in the action have been paid. Although there are numerous reported cases where application for writs of error have been denied because of the absence of these basic
requirements, since it has been held that the statutes relating to these special proceedings must be strictly complied with, counsel
for defendants in error failed to take advantage of these blatant errors in the petition. Rather he deemed it important to deal with
the point of misnomer and to make profert copies of assignments of the case in the court below, which plaintiffs in error had ignored.
We would like to pass on the patent errors in the petition, but we find ourselves unable to do so because the issues have not been

raised in the returns. Where an applicant for a writ of error has failed to aver that the application is not for a dilatory purpose
and the defendant in error has not raised the issue, the Court will not deny the writ on said grounds, for courts will not do for
litigants what they ought to do for themselves. Pratt v. Phillips, [1947] LRSC 25; 9 LLR 446 (1947). The petition for a writ of error was taken up by our distinguished colleague, Mr. Justice Wardsworth, who on September 2,
1975, ruled, quashing the alternative writ and denying issuance of the peremptory writ, with costs against plaintiffs in error. Our
colleague based his ruling on the point of misnomer, stating among other things that plaintiffs in error instituted an action of
ejectment using the name now stated in the petition in these proceedings, and withdrew the action in the court below, and refiled
using the right

name of co-defendant in error, that is, A. B. Coleman, instead of A. B. Cole. To use the same wrong name in their application for a writ of error, said error was either intentional or due to negligence. Our distinguished colleague further took the view that although it was error for the trial court to have disposed of the matter on a day when no assignment had been made, there were equal right and wrong on both sides and, therefore, the defendants in error should be preferred, in keeping with the dictum of this Court on the point in Republic v. Muller & Co., i LLR 201, 203 (i 886) . While we feel the same way as our colleague, that the misnomer was gross carelessness on the part of counsel, we cannot in the face of the plain wording of the statute on the point of misnomer agree with his conclusion. We have set forth the section in our Civil Procedure Law, which we consider pertinent to the case at bar. "I. Not ground for dismissal. Misnomer of a party shall not, unless it affects substantial rights of other parties,, constitute grounds for dismissal of a claim for relief or of a defense; but the names of the parties may be corrected at any time, before or after judgment, on motion, upon such terms and proof as the court may require. . . . "3. Misnomer of defendant. If the name or the capacity of a defendant is erroneously stated, the error shall similarly be considered one of misnomer only; provided, however, that the proper defendant, personally or by his attorney, defended in the name of the named defendant or that the proper defendant actually did learn or should have learned of the commencement of the action and, from all the facts within his knowledge, did know or reasonably should have known what claim or relief the plaintiff was suing for ; and provided further that the service of summons or other jurisdictional act relied upon would have given the court jurisdiction of the proper defendant if

he had been properly named in the complaint and summons. "4. Procedure. In the cases set forth in paragraphs 2 and 3 above the defendant or any other party may suggest the existence of the error by motion, or an interested person may intervene to make such suggestion; and the court shall order all pleadings, process, and other papers to be amended or to be deemed amended

accordingly. The court's order shall protect the defendant and any other interested persons from unfair prejudice; if the error is
timely suggested, ordinarily both the costs and the expenses necessarily resulting to the named or proper defendant or to the interested
person shall be taxed against the person who made the error as terms for permitting the amendment. "5. Applicability of section.
The provisions of this section shall apply to all civil actions and special proceedings [emphasis supplied] and to all parties to
such actions and proceedings, however denominated, including persons who seek to intervene." Rev. Code 1 :5.4. We call particular
attention to paragraph 5, which states specifically that the provisions of this section shall apply in all civil actions and special
proceedings. Error being a special proceedings under our statutes, there is no doubt that the rule applies and the question of misnomer
should have been handled and disposed of in accord with the foregoing section quoted. We now come to the point of whether or not
plaintiffs in error had their day in court. In this connection we observe that defendants in error made profert of several assignments of the ejectment case to which plaintiffs
in error never responded. · The trial judge apparently became exasperated with the dilatory tactics of counsel for plaintiffs in
error, and rightly so, and allegedly had the clerk of court write him on July 1, 1974, that if the name

of his surveyor was not submitted by the 5th of the month the case would be dismissed. Counsel for plaintiffs in error denies ever
receiving the letter, but his ignoring so many previous assignments of the case leaves us with grave doubts about his assertion in
this respect. On July 9, the trial judge entered a ruling dismissing the case. We must remark here that although counsel for defendants
in error made prof ert of many notices of assignment which had been ignored by counsel for plaintiffs in error, there is no showing
that an assignment had been issued and returned for hearing of the case on the day it was dismissed. All that the record shows is
that trial judge ruled on July 9, 1974, that because counsel for plaintiffs in error had failed to comply with her letter of July
I, 1974, the case should be and was dismissed. We find ourselves unable to agree with the position of the trial judge. In the first
place, we do not consider her letter to the party an assignment of the case. We admit that it was outright disrespect to the court
for counsel to ignore such a letter, but that, we feel, was an act of contempt toward the court and should have been handled as such.

Coming back to the case in point, there being no showing that the case was assigned for hearing on the day it was dismissed, we declare
its dismissal reversible error. We have always held that in all courts, especially courts of records, before a case is disposed of
there must be a showing that an assignment was made, notice of assignment signed by the counsel for the parties or the parties themselves,
and returns to that effect made by the ministerial officer. We adhere to this procedure. Consequently, we are compelled to reverse
the ruling of our distinguished colleague in denying the peremptory writ of error, and hereby order that the trial court resume jurisdiction
in the ejectment case out of which these proceedings grow, and dispose of it in accordance with the law. This case is to take precedence
over all cases pend-

ing in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, and
the Clerk of this Court is hereby ordered to send a mandate to the court below to the effect of this decision. Costs to abide final
determination. And it is hereby so ordered. Reversed and remanded.

Larmie v Banks et al [1985] LRSC 9; 33 LLR 3 (1985) (20 June 1985)

ALHAJI MOMO LARMIE, alias ALHAJI MOHAMMED LARMIE SHERIFF Petitioner/Appellant***, v.*** **HIS HONOUR JUDGE JESSIE BANKS**, Presiding by Assignment over the March A. D. 1980 Term of the People's Sixth Judicial Circuit Court, Montserrado County, and SENE SEE CAREW, Respondents/Appellees.

APPEAL FROM THE CHAMBERS JUSTICE DENIAL OF THE ISSUANCE OF A WRIT OF CERTIORARI

Heard: March 14, 1985. Decided: June 20, 1985.

1. Where a motion to dismiss an action is denied, the movant may note exceptions and come up on regular appeal after a determination of the main cause, instead of proceeding by certiorari which could create a multiplicity of litigations.

2. Certiorari is a special proceeding to review and correct decisions of officials, boards, or agencies acting in a judicial capacity, or to review an intermediate order or interlocutory judgment of a court. Civil Procedure Law, Rev. Code 1: 16.21.
3. The writ of certiorari determines whether the conduct of an inferior tribunal was within its jurisdiction and otherwise legal; it is designed to control the actions of an inferior tribunal and to keep it within its jurisdiction.
4. A writ of certiorari will not issue if there is another adequate remedy such as an appeal or a writ of error, an action at or in equity, or intervention with the right of appeal secured. Thus certiorari will be denied where the relator fails to show equity or an injury not remediable at law.
5. It is the inadequacy, not merely the absence of other legal remedies, and the danger of a failure of justice without the writ, that must usually determine the priority of certiorari.
6. Certiorari does not issue as of right, but must be based on the sound discretion of the court to which the application is made.

The petitioner/appellant appealed from the ruling of the Justice in Chambers denying his petition for a writ of certiorari against the ruling of the trial judge dismissing petitioner's challenge to the jurisdiction of the court. In the court below, co-respondent Sene See Carew instituted an action of ejectment against the petitioner, praying that he be ejected from a parcel of **land** claimed by the co-respondent, and asking that petitioner be made to pay damages for his unlawful occupation and withholding of the property from the co-respondent. The petitioner challenged the jurisdiction of the court, contending that he had been granted the property by the Monthly and Probate Court for Montserrado County as part of the estate of his late wife; that the Civil Law Court could not review the action of the probate judge, who had concurrent jurisdiction; and that the proper action should have been one for relief from the judgment filed with the said Monthly and Probate Court. The trial judge, in ruling on the law issues, disagreed, holding that the court had jurisdiction over the case and that the property awarded by the probate court to the petitioner did not include the property for which the ejectment suit had been instituted. It was from thus ruling that the petitioner sought certiorari.

The Justice in Chambers, agreeing with the contention of the co-respondent that certiorari would not lie to review an interlocutory ruling on the issues of law, dismissed the petition. On appeal to the Supreme Court, the Court affirmed the ruling of the Justice. The Court, after a thorough analysis of the basis for issuance of the writ of certiorari, noted that the writ would not issue where (a) there was another adequate remedy, such as an appeal or a writ of error, available to the petitioner, (b) it sought to review an interlocutory ruling at law where an appeal was an adequate remedy, or (3) where the petitioner failed to show equity or an injury not remediable at law. Certiorari, it said, was not a matter of right, but was left to the sound discretion of the court to which the application is made. The petitioner, the Court observed, should have noted exceptions to the trial judge's ruling and reserve the matter for determination on a regular appeal. The Court further held that the denial of the motion to dismiss was not such a prejudice as would have so affected the main cause of action to the detriment of the petitioner; and, it said, even if the petitioner had suffered detriment, an appeal would have cured the situation. The Court therefore deter-mined that the Chambers Justice's *denial* of the petition be *affirmed.*

H. Varney G. Sherman of Maxwell & Maxwell Law Firm appeared for appellant. *James Bull* of the Bull Law Firm appeared for the appellee.

MR. JUSTICE SMITH delivered the opinion of the Court.

In 1980, plaintiff, now appellee, Sene See Carew, sued Alhaji Momo Larmie Sheriff in an action of ejectment before the People's Sixth Judicial Circuit in its December Term, praying for judgment against defendant, now appellant, to evict and eject him from Lot No. 58, located on Randall Street, Monrovia. The appellee also prayed that appellant be made to pay general damages for the inconveniences and embarrass-ments suffered as a result of appellant's illegal occupation of his premises.

The appellant filed both an answer and a motion to dismiss, contending among other things that the court lacked juris-diction over the subject matter, in that the property in question was part of the estate of the late Madam Mariama Carew Larmie Sheriff, which was awarded her husband, the appellant, for life by the Monthly and Probate Court for Montserrado County in 1977. The appellant concluded that the Sixth Judicial Circuit, being a court of concurrent jurisdiction with the Monthly and Probate Court, could not legally review the latter's decision. Accordingly, the appellant maintained that the proper action to have been filed by the appellee should have been a petition to set aside the disposition of the intestate estate of Madam Mariama Carew Larmie Sheriff and to seek relief from in the Monthly and Probate Court.

In his resistance, the appellee countered that the matter in litigation was one properly cognizable before the circuit court, especially so since the appellee was never a party to the matter of the intestate estate of Madam Mariama Carew Larmie Sheriff which was filed in the Monthly and Probate Court. The appellee also asserted that when the Probate Court granted appellant a life estate in all property in which his deceased wife had died seized, it did not include lot. No. 58, located on Randall Street, since the deceased merely had a life estate therein. That life estate, appellee said, abated with Madam Mariama Carew Larmie Sheriff's demise, which thereby left the fee in said estate solely to appellee.

The trial judge overruled the defendant/appellant's motion to dismiss, holding that the court had jurisdiction over the matter, and that the decree of the Monthly and Probate Court awarding the property, real, personal and mixed, of Madam Mariama Carew Larmie Sheriff, to her surviving spouse, Momo Larmie Sheriff, did not apply to Lot No. 58, located on Randall Street.

From the foregoing ruling of the judge, the appellant excepted and petitioned the Chambers Justice for a writ of certiorari for a review thereof. The appellee filed resistance to the said petition, in which he prayed the Court to deny the petition, stating as reason that certiorari will not issue to review an interlocutory ruling on law issues. A regular appeal, the appellee averred, was the proper process.

The Justice in Chambers denied the petition, and held that any attempt to grant a writ of certiorari to review an interlocutory ruling on the issues of law raised in the pleadings, would amount to opening a floodgate of endless litigation in our courts. He maintained that the age old practice in this jurisdiction was that in a case where a ruling on the law issues is entered against a parity, said party may note exceptions to the ruling and save the point for appellate review, rather than seek review by piecemeal. He concluded that the extraordinary writ would not lie where the remedy of a regular appeal remained available, and where the matter in litigation had not proceeded to hearing.

It is from that ruling that appellant has come to confront the Justices of this Court of last resort for further and final review of his application for the extraordinary writ of certiorari. The appellant contends that an issue of law on a motion to dismiss for lack of jurisdiction is, by its nature, an extraordinary issue that cannot be equated to an ordinary issue of law, and that consequently, the Chambers Justice erred when he equated the ruling on a motion to dismiss to be synonymous with an interlocutory ruling on a question of law in a pleading. If the two rulings were the same, appellant maintains, our statutes would not have required that a motion to dismiss be heard and disposed of prior to the hearing and disposition of the issues of law and facts in the pleadings. The appellant further contends that a motion to dismiss for lack of jurisdiction is superior in nature and fundamental to the rights of the party litigants. Consequently, he says, any erroneous ruling by the trial court imposes a material prejudice and injury, thereby making it properly reviewable by a writ of certiorari.

The foregoing is the history of this appeal, which grows out of a denial of a motion to dismiss for lack of jurisdiction over the subject matter in an action of ejectment.

From a close scrutiny of the various legal and factual issues presented for our deliberation and determination, the most important issues demanding our attention are two:

1. Whether or not a ruling which denies a motion to dismiss a cause of action for want of jurisdiction can be properly called an interlocutory ruling;
2. What is the office of a writ of certiorari under our law.

We have been compelled to limit ourselves to these two issues because we are basically concerned here with the question of certiorari, and to determine whether it can be granted to review a decision on a motion to dismiss.

Coming to the first issue as to whether the ruling decrying the motion to dismiss was interlocutory, it is imperative that we first enquire as to the object of that motion in the first place, or rather, what did said motion seek to achieve, if granted? Appellant contends and concedes in his brief that a motion to dismiss is a special pleading different from the other pleadings in the main cause of action. In our opinion, what the motion sought to achieve, if granted, was a dismissal of the entire action before the court without further ado. That means, at that point, the only course left open to appellant was a regular appeal to a higher tribunal. By this fact, it becomes clear that the ruling on the motion to dismiss was a final ruling *per se*, and not an interlocutory ruling which can be reviewed by a remedial writ of certiorari.

On the other hand also, since the motion to dismiss was denied, the course opened to the movant/appellant was likewise an appeal. In some cases, however, the movant has a choice of either appealing from the ruling denying the motion or treating the same as an interlocutory ruling by taking exceptions thereto and saving the issue for the regular appeal.

It has therefore been the precedent in our jurisdiction that where such actions as a motion to

dismiss are denied, the movant may note exceptions and come up on regular appeal after a determination of the main cause, instead of coming up on certiorari, in order to avoid a multiply of litigations, or he may appeal therefrom. *Raymond Concrete Pile v. Perry*, 13 LLR 522 (1950). This brings us to the second issue, which is to determine what is certiorari and to show when it lies. Our Civil Procedure Law defines certiorari as a special proceeding to review and correct decisions of officials, boards, or agencies acting in a judicial capacity, or to review an intermediate order or interlo-cutory judgment of a court. Civil Procedure Law, Rev. Code 1: 16.21.

At common law, certiorari is in the nature of an appellate process used to obtain review to determine from the face of the record, whether the inferior court has exceeded its jurisdiction or has not proceeded according to the essential requirements of the law. The writ determines whether the conduct at an inferior tribunal was within its jurisdiction and otherwise legal, that is, to control the actions of the inferior tribunal and to keep it within its jurisdiction. At common law, in the absence of statutory enlargement, only the external validity of proceedings had in the lower court may be examined by the superior court under its supervisory jurisdiction; the supervisory jurisdiction of the court cannot be exercised in order to review the judgment as to its correctness, either on the law or facts of the case. 14 AM JUR 2d, *Certiorari*, § 2. The writ will be denied if the relator does not show equity and an injury not remediable at law. 14 AM JUR 2d, *Certiorari*, § 7.

Under the prevailing practice, a writ of certiorari will not issue if there is another adequate remedy, such as an appeal or writ of error, an action at or in equity, or intervention with the right of appeal secured. However, it is the inadequacy, not merely the absence of all other legal remedies, and the danger of a failure of justice without the writ, that must usually determine the propriety of certiorari. Ordinarily, at common law, the writ will not issue to review interlocutory orders at law which are reviewable on appeal. *The Bassa Brotherhood Industrial and Benefit Society and Gross v. Dennis et. al[1971] LRSC 60; ,* 20 LLR 443 (1971); *Amechi v. Smallwood,* [1974] LRSC 16; 23 LLR 3 (1974); 14 AM JUR 2d., *Certiorari,* §11.

From that analysis of the writ of certiorari, both at common law and in our statute, four points are worth noting: Firstly, certiorari cannot issue as of right but from the sound discretion of the court to which the application is made; secondly, it cannot issue in a situation where other remedies such as appeal may be available to the relator; thirdly, it cannot issue to review interlocutory rulings at law where an appeal may be an adequate remedy; and finally, it will be denied where the relator fails to show equity or an injury not remediable at law.

From what has been discussed, *supra*, we are convinced that the Chambers Justice used his sound discretion in denying the writ. The injury which appellant complained of and sought to have us review by certiorari can adequately be reviewed by the course of a regular appeal. Further, the denial of the motion to dismiss was not such a prejudice that would have affected the main cause of action, to the detriment of the appellant; and, even if it did, an appeal could have cured the situation.

Therefore, the ruling of the Chambers Justice, being sound in law, is confirmed in its entirety. The Clerk of this Court is hereby directed to send a mandate to the court below to resume jurisdiction over the original action of ejectment and dispose of it. And it is so ordered.

Petition denied

Kennedy et al v Goodridge et al [1985] LRSC 41; 33 LLR 398 (1985) (18 December 1985)

SARAH C. KENNEDY and **CATHERINE JOHNSON-WHISNANT (alias THOMAS), Contractor, J. SAINTE LUCE,** Petitioners, *v.* **ISHMAEL B. GOODRIDGE** and **HIS HONOUR EUGENE L. HILTON,** Assigned Circuit Judge, Civil Law Court, Sixth Judicial Circuit, Montserrado County, Respondents.

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

Heard October 21, 1985. Decided December 18, 1985.

1. The Supreme Court has no authority to extrapolate the intent of the Legislature beyond the specific wording of the statute. This limitation is even more mandatory where the statute in question specifies the only manner in which an act may be done.
2. The judicial construction of statutes is constitutionally restricted to a determination of the legislative intent, as stated in the statutes themselves.
3. Where the Legislature has made no exception to the positive terms of a statute, the presumption is that it intended to make none, and the Court will not introduce an exception by construction except where the necessity is imperious and where absurd or manifest unjust consequences would otherwise result.
4. Where during the pendency of a trial, an attorney dies, becomes physically or mentally incapacitated, or is disbarred, suspended, or otherwise disabled, at any time before final judgment, no further proceedings shall be taken without leave of court in the action against the party whom he represented until notice to appoint another counsel has been given that party either personally or in such manner as the court directs. Even then, no further action can be taken until thirty days have expired after the service of said notice.
5. A mere notice of assignment is not sufficient to constitute notice to a party to appoint another counsel where his or her counsel has died, or has become physically or mentally incapacitated, been disbarred, suspended or otherwise disabled. Such notice of assignment should properly only come thirty days after the affected party litigant has been duly notified by the court to appoint another attorney to represent his or her interest at the trial. Any procedure short of this requirement amounts to a violation of the statute.
6. Questions of property, especially real property, and human life are to be handled with every available care by the courts. Accordingly, judges are required to afford all

parties who stand to lose life and/or property every chance and patience to appear and to defend their cause according to the means afforded them by law.

7. Since the Constitution of Liberia guarantees to each citizen the right to acquire, protect and defend property, the legal procedure to contest this right should be meticulously and jealously prescribed and guarded, and for that reason, where a defendant in an action of ejectment is returned summoned but fails or refuses to appear, the plaintiff is not thereby, as in other cases, immediately entitled to a judgment by default.

8. A verdict or judgment in a party's favor is not conclusive evidence of title even as against the party whose interest is adversely affected by said verdict and judgment.

9. 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 the application is made.

10. While the writ of prohibition cannot be used as a substitute for an appeal, it will issue to prevent a trial tribunal from enforcing its judgment, or to undo that judgment where there has been notice of appeal therefrom, merely to restrain it from usurpation.

11. The 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, the court has attempted to proceed by rule different from those which ought to be observed at all times.

Petitioners sought a writ of prohibition to restrain the judge of the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, from enforcement of a default judgment entered against petitioners in an action of ejectment filed by co-respondent Ishmael B. Goodridge against the petitioners in 1963. Petitioners, whose attorneys had died several years prior to the entry of the default judgment, had failed to appear for the hearing in person or by counsel although it was alleged that one of the petitioners had received the notice of assignment. At the time of the rendition of the judgment also, the trial court judge had appointed an attorney to take the judgment for the petitioners. The appointed attorney excepted to the judgment and announced an appeal to the Supreme Court on behalf of the petitioners. The records did not indicate whether the judgment was served on the petitioners. What the records did indicate is that the petitioners opted to pursue prohibition, charging that (a) they had been denied their day in court as they had not been served with a notice of assignment for the hearing of the case, (b) the court had failed to give them notice to appoint new counsel in the face of the death of their counsel, which by law it was required to do, and (c) they had not been accorded an opportunity to be present in court to except to the judgment and announce an appeal to the Supreme Court as would have allowed the Supreme Court to review the matter. They prayed that the judgment be nullified and the case remanded for a trial *de novo*.

The Justice in Chambers held the proceedings in the trial court to be irregular, contrary to known and accepted practice, and a violation of proper ethical procedure. He therefore granted the petition and nullified the judgment. From this ruling, respondents appealed to the full Bench for a final review.

The Supreme Court affirmed the ruling of the Justice in Chambers, holding that the trial judge was in error in not notifying the petitioners to appoint new counsel following the death of their original counsel and giving them thirty days within which to do so. The Court noted that this was a mandatory duty imposed on the trial judge by the Civil Procedure law and that a failure to give the required notice not only violated the statute but also deprived the petitioners of the

opportunity to defend their property rights guaranteed by the Liberian Constitution and statute. A mere notice of assignment, the Court observed, was insufficient to constitute the notice to the petitioners to appoint new counsel. Any procedure short of the fulfilment of the requirement of the statute amounted to a violation for which prohibition would lie, the Court said. Adherence to this requirement (i.e. according the parties the right to appear and defend) was particularly applicable to matters involving the right to life and property, the Court opined. Indeed, the Court noted that where property is involved, the failure or refusal by a defendant to appear does not immediately entitled the plaintiff to a judgment by default, and that even a judgment in favor of such plaintiff is not conclusive evidence of title to the property in dispute.

The Court further noted, with regard to the contention that the petitioners were served with a notice of assignment for the hearing of the case, that it had reservations as the truthfulness of the allegation, observing that while the petitioners lived in Brewerville, the sheriff's returns showed that service of the assignment was made in Monrovia. Moreover, the Court said, the returns further showed that service was made on Sarah C. Kennedy who was eighty-five years old, rather than on the other co-petitioner who was much younger and who lived in the same house as co-petitioner Sarah C. Kennedy.

Regarding the failure of the petitioners to perfect their appeal, the Court opined that while prohibition was not damandable as a matter of right when another complete and adequate remedy is available, and that while it cannot be used as a substitute for an appeal, it was discretionary with the Court, under the circum-stances, whether to grant or refuse issuance of the writ. It is no abuse of the use of that discretion to grant the writ to prevent a trial court from enforcing its judgment or to undo such judgment, even where an appeal has been taken from such judgment, if the trial court had proceeded or is attempting to proceed by rules which ought to be observed at all times, the Court stated. The trial court, it said, was guilty of acting contrary to the statute which mandated it to give notice to the petitioners to appoint new counsel to represent their interest.

On the basis of the foregoing, the Court *affirmed* the ruling of the Chambers Justice, *ordered* the issuance of the peremptory writ of prohibition, *vacated* the judgment of the trial court, and instructed the Clerk to send a mandate to the trial court to resume jurisdiction of the case and dispose of same, beginning with the law issues.

Joseph Findley appeared for petitioners/appellees. *Stephen Dunbar* appeared for respondents/appellants.

MR. JUSTICE JANGABA delivered the opinion of the Court.

This prohibition proceeding is derived from an action of ejectment filed on September 25, 1963 in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, by respondent herein, Ishmael B. Goodridge, against petitioners. Pleadings in the action of ejectment progressed to sur-

rejoinder and rested. In 1980, while the matter was pending before the trial court, and prior to the disposition of the law issues, both counsels for petitioners herein, in person of Counsellors J. Henrique Willis and Wheaton S. Thompson, died. Thereafter, Judge J. Henrique Pearson disposed of the law issues on February 1, 1983, subsequently ruled the case to trial, stating that "... since indeed ejectment is an action of mixed law and facts and both parties are claiming title to the parcel of **land**, this case is therefore ruled to jury trial under the direction of the court. And it is go ordered."

We gather from the records that since the demise of the counsels for petitioners in 1980, no other counsel was appointed to carry their legal interest. We noticed also that several assignments were made and served on the petitioners for the disposition of both the law issues and the trial, and that without any representation by the petitioners, final judgment was rendered by Judge Eugene L. Hilton on February 4, 1985. One Counsellor Margaret Warner, being present in court, was deputized to take the judgment for the defendants, petitioners in this case. The said counsel excepted to the judgment and announced an appeal. It should be noted here that we possess no evidence showing that copy of said judgment was ever served on the petitioners.

It is against the said judgment that petitioners applied to the Justice in Chambers for a writ of prohibition to nullify the judgment below and to remand the case to the lower court for a trial *de novo* in order to afford all of the parties the opportunity to appear and defend their cause. The Chambers Justice held for petitioners, ordered the writ issued, set aside the judgment of the lower court, and instructed the Clerk of this Court to send a mandate to the court below ordering the judge presiding therein to resume jurisdiction and to dispose of the case, commencing with the law issues. The Justice in Chambers found the proceed-ings in the lower court to have been very irregular, contrary to known and accepted practice, and in violation of proper ethical procedure. He held therefore that these irregularities warranted issuance of the writ of prohibition in accordance with the ruling in *Montgomery v. Findley and Haddard[1961] LRSC 27;* , 14 LLR 463 (1961).

The foregoing judgment of the Justice in Chambers is the subject of the present appeal by the respondents/appellants.

Respondents contend basically that they are at a loss to under-stand how the writ of prohibition could have been issued in this case when the property in question had already been possessed by co-respondent Goodridge under the judgment of the lower court. They argued that petitioners were duly summoned and notified at all stages of the trial, but that they had consistently ignored the citations of the lower court. Further, they said, al-though the petitioners were not present at the final determination below, the court appointed counsel who received judgment on petitioners' behalf and announced an appeal for them. That appeal, the respondents argued, cannot be substituted by prohibition.

Petitioners, on the other hand, contended that the judgment rendered against them by His Honour Eugene L. Hilton was "a snap-shot judgment"; and that upon the death of their counsels in 1980, the court had failed to notify them regarding the appointment of new counsel as is required by section 1.8 (3) of the Civil Procedure Law which reads thus:

"Death, removal, or inability of attorney. If an attorney dies, becomes physically or mentally incapacitated, or is disbarred, suspended, or otherwise becomes disabled at any time before final judgment, no further proceeding shall be taken without leave of court in the action against the

party whom he represented until thirty days after notice to appoint another attorney has been given to that party either personally or in such manner as the court directs."

The petitioners also contended that the returns to the various assignments indicating that they were served were false and misleading since both Catherine Johnson-Whisnant (alias Thomas) and her mother Sarah C. Kennedy had both taken up residence in Brewerville in 1982. They produced an affidavit and a lease agreement to support the contention. The records, they said, show that Sarah C. Kennedy, who allegedly received said notices of assignment, was eighty-five years old and could not have been trusted with such things. They further contended that as Sarah C. Kennedy and the daughter lived under the same roof, the notices should have been better served on the latter, who was also a party to the suit. To further support their claims, they pointed out that on January 11, 1983, a notice was allegedly served on petitioners for the disposition of the law issues, while another was served for jury trial on January 21, 1985. They asserted that the co-respondent judge conducted a jury trial the next day at 2 p.m., and thereafter rendered final judgment against petitioners without according them ample opportunity to be heard. Petitioners therefore prayed that we uphold the Chambers Justice ruling nullifying the judgment of the court below and ordering a new trial in which all the parties are placed on an equal footing.
From the foregoing analysis, the main issues presented by this appeal are as follows:

1. Whether or not petitioners were duly notified to appoint another counsel and were duly cited to appear to defend their cause.
2. Whether or not prohibition will lie to return the party litigants to the *status quo* for a new trial in an action of ejectment where an appeal was announced from a judgment for the plaintiff.

Starting with the first issue on appeal, it is the opinion of this Court, judging from the records in the case, that notice to appoint another attorney, as envisaged by the provisions of Civil Procedure Law, Rev. Code 1:1.8 (3), was not given to petitioners below, and that they had not been duly notified to appear and to defend their cause.

This Court has held in several of its opinions that it has no authority to extrapolate the intent of the Legislature beyond the specific wording of the statute; that the limitation is even more mandatory where the statute in question specifies the only manner in which an act may be done. *George v. Republic of Liberia*, 1 LLR 239 (1892). This Court has also held that a judicial construction of our statutes is constitutionally restricted to a determination of the legislative intent, as stated in the statutes themselves. *Koffah v. Republic of Liberia*, 13 LLR 232 (1958); *Massaquoi v. Reginald Sherman*, [1938] LRSC 18; 6 LLR 320 (1938); *Brownell v. Brownell*, [1936] LRSC 3; 5 LLR 76 (1936). Again in the case of *Buchanan v. Arrivets*, [1945] LRSC 2; 9 LLR 15 (1945), this Court held that as a general rule where the Legislature has made no exception to the positive terms of a statute, the presumption is that it intended to make none, and the court will not introduce an exception by construction except where the necessity is imperious and where absurd or manifestly unjust consequences would otherwise result.
From the foregoing, we hold that it was the intention of the Legislature that in the event that during the pendency of a trial, an attorney dies, becomes physically or mentally incapacitated, or is disbarred, suspended, or otherwise disabled, at any time before final judgment, no further proceeding shall be taken without leave of court in the action against the party whom he

represented until notice to appoint another counsel has been given that party either personally or in such manner as the court directs. Even then, no further action in taken until thirty days have expired after the service of said notice. Civil Procedure Law, Rev. Code 1: 1.8 (3). There is nothing in the records to tell us that such a step of notification was adopted by the court at any stage of the trial after the death of petitioners' counsel in 1980. Rather, we see notices of assignment purportedly received by Sarah C. Kennedy whom, counsels on both sides agreed, is eighty-five years old. Additionally, while the petitioners showed evidence of their continued residence in the city of Brewerville since 1982, assignments issued after they moved to Brewerville were apparently served on them in Monrovia, as evidenced by the returns. Albeit, the law quoted above requires that upon the death of a litigant's attorney, he should be notified to have him re-placed. Certainly, a mere notice of assignment of the case for trial is not sufficient, but the notice of assignment should properly only come thirty days after said party litigant has been duly notified by the court to appoint another attorney to represent his interest at the trial. Any procedure short of the above in such case amounts to a violation of the statute.

Questions of property, especially real property, and human life are to be handled with every available care by our courts. If you deprive a man of his life, you deprive him of further existence on earth; if you deprive him of his real property unjustifiably, you deprive him of a basic means of existence that is seriously difficult for one to obtain in our time, and which stands to be more difficult to obtain in the years ahead. Our warning requires that our judges afford all parties who stand to lose life and/or property every chance and patience to appear and to defend their cause according to the means accorded them by law, and under no circumstances should it be maintained otherwise.

As far back as 1949, about thirty-six years ago, this Court held in the case of *Karnga v. Williams et. al.*[1949] LRSC 9; , 10 LLR 114 (1949), that since the Constitution of the Republic guarantees to each citizen the right to the acquisition, protection, and defense of property, the legal procedure to contest this right should be meticulously and jealously prescribed and guarded, and for that reason where a defendant in an action of ejectment is returned summoned but fails or refuses to appear, the plaintiff is not thereby, as in other cases, immediately entitled to a judgment by default. The Court further held that the statutes also provide that there shall be placed upon the property, the subject of the action, copies of the summons and resummons as further assurance that the defendants will have due notice of the pending action. That a verdict or judgment in a party's favor is not conclusive evidence of title even as against the party whose interest is adversely affected by said verdict and judgment.

The constitution referred to in *Karnga v. Williams et. al.* is now moribund, but the statutes remain, and none can be said to have overruled that opinion rendered since 1949. This stresses the importance of property to our individual liberty, and in fact to our very existence; it goes to show that questions involving ownership to property, like questions of life, must be treated with due care which ensures that unequivocal opportunity is afforded party litigants to appear and to freely defend before justifiable decisions can be taken against either or both parties.

Be that as it may, this piece of knot could not have been fully untied without a justification for the issuance of the writ of prohibition in the present circumstances, even in spite of the ap-peal announced by the court appointed counsel who received the judgment of the lower court. Our learned colleague had issued the writ on conviction derived from a perusal of the records and the hearing of arguments on both sides in these prohibition proceedings. He was convinced that the

trial in the ejectment proceedings was manifestly contrary to known procedure in this jurisdiction. We agree with those convictions and also hold that prohibition lies in these proceedings since the proceedings below fell far short of what was required for a fair trial in the circumstances of this case.

Although generally prohibition is not demandable as a matter of right when another complete and adequate remedy is avail-able, under certain circumstances the grant or refusal rests within the sound discretion of the court to which the application is made. *Kilpatrick v. Oost Afrikaansche Compagnie*, [1949] LRSC 3; 10 LLR 84 (1949). We hold also that the discretion to issue the writ was in no way abused by the Chambers Justice, but that his act was justified by the circumstances hitherto demonstrated in this opinion. While the writ cannot be used to substitute for an appeal, it will issue to prevent a trial tribunal from enforcing its judgment, or to undo that judgment where there has been notice of appeal therefrom, merely in order to restrain it from usurpation. *Fazzah v. Phillips*, [1943] LRSC 2; 8 LLR 85 (1943). In fact, it has been held by this Court that prohibition will lie to prevent the execution of a judgment in ejectment by a writ of possession directed to property held by a person who was not a party to the ejectment action where, although the parties to the action have taken appeals from the judgment, no proceeding has been instituted to correct the errors of the trial court. *Davies-Johnson v. Alpha*, 13 LLR 573 (1960).

As early as 1925, this Court held in the case of *Parker v. Worrell*, 2 LLR 525 (1925), 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, the court has attempted to proceed by rule different from those which ought to be observed at all times. The lower court was guilty of the latter when it refused to proceed according to the statute, following the demise of counsels for petitioners and for refusing to treat the question of property rights with justifiable fairness as it was required to do by law.

The foregoing reasons are the rationale for affirming the ruling of our colleague in *toto*. Consequently, the peremptory writ is ordered issued with costs against respondents. The judgment below is hereby vacated with immediate effect, and the Clerk of this Court in instructed to dispatch a mandate to the court below, ordering the judge to resume jurisdiction and to dispose of the case beginning with the disposition of the law issues. It is hereby so ordered.

Petition granted.

MR. JUSTICE NYEPLU *dissents.*

These proceedings in prohibition grow out of an action of ejectment filed in the Civil Law Court, Sixth Judicial Circuit, Montserrado County, by Ishmael B. Goodridge, co-respondent herein, in the year of our Lord, A. D. 1963, quite twenty-two years ago, against the petitioners. The complaint alleged that the petitioners had illegally withheld from the co-respondent prior to the suit, and had uncompromisingly continued to withhold from him lot No. l of Block G3, of original lot No.112A, which the co-respondent had purchased from one C. C. Burke, and for

which a warranty deed had been duly executed to him on the 4th of July, A. D. 1950.
The case in which the respondent was seeking to recover his property illegally withheld was filed with a view to obtaining transparent justice, as with all cases brought to court. But that transparent justice could not be obtained from 1963 up to and including the delivery of this dissenting opinion. It is quite amazing, and indeed beyond perplexity, for one to understand why the hearing and determination of this case, from l963-1985, became so permute when the parties to the suit are all alive and physically fit. Whatever may be the reason for such a denial which culminated into the co-respondent's recovery of his property being perverted, we cannot imagine why such a situa-tion should be allowed to find a place in our judicial system. However, as mentioned earlier, we will only proceed to dwell on the prohibition.

The case was heard in the court below by Judge Eugene L. Hilton, who rendered judgment placing the co-respondent in pos-session of his property, the subject of the suit. From respondent/ appellant's brief filed and argued, we gathered that several notices of assignment were issued and served on Sarah C. Kennedy, whom it is said is the principal defendant in this case.
Notwithstanding these assignments were ordered issued from a court of competent jurisdiction, defendant Kennedy, in avoidance of the hearing of the case, refused to receive and sign the notices of assignment, or even inform the bailiff of the death of their counsels. What a wanton disregard for the authority and dignity of the court by someone of Sarah Kennedy's background, having been born in and having lived within the perimeters and under the breath of the law in our urban City of Monrovia, to receive a notice of assignment and thereafter to deliberately refuse to sign same as one of the parties.
One can only legally deduce that defendant Kennedy's refusal to sign the several assignments have clearly demonstrated petitioners unwarranted disregard for the rule of law, and for which this case was permitted to linger on the docket of the Civil Law Court for twenty-two years. The judge having issued several notices of assignment requiring the defendant to appear, and one of the defendants/petitioners having refused to receive and sign the assignments, the plaintiff/respondent properly moved the court to proceed with the trial. The motion was granted and the case proceeded with which resulted into a final judgment, and from whence an appeal was announced by Counsellor Margaret Massaquoi who was deputized by the trial judge. Before we begin to address ourselves to the legal issues advanced and argued before this Court by both counsels, let us address the question of notice.
Notice is knowledge of facts which would naturally lead an honest and prudent person to make inquiry and does not neces-sarily mean knowledge of all the facts. *Wayne Bldg. & Loan Co. of Wooster v. Yar borough*, 11 Ohio St.2d 195, 228 N.E. 2d. 84, 841, 847, 40 0.02d 182. "Notice" means information, an advice, or written warning, in more or less formal shape, intended to appraise a person of some proceeding in which his interests are involved, or informing him of some fact which it is his right to know and the duty of the notifying party to communicate. A person has notice of a fact if he knows the fact, knew it, or has been given notification of it. RESTATEMENT 2d, *Agency*, § 9; BLACK'S LAW DICTIONARY 957 (5th ed.)
Ballentine's Law Dictionary has this to say on the subject:

"A written notice may be a sufficient 'notice in writing', although it is not signed, provided it purports to come from the person whose duty it is to give the notice. *Cohn v. Smith*, 37 Cal App 764, 174, p. 682.
Defendants having appeared and filed an answer since 1963, and being aware of the pendency of

the suit for which they were served with several notices of assignment for the hearing thereof since 1963, it cannot otherwise be interpreted but to say that defendants had sufficient notice to appear and defend their interests. Instead, they chose to disguise themselves under the cloak of Civil Procedure Law, Rev. Code 1.8 (3)3, when in fact, following the death of their counsels, they should have been the ones to notify the court of their counsels' death.
The appellants excepted to and announced an appeal from the ruling of our colleague in Chambers who granted the writ. and therefore filed a brief which contained eight counts. Counts 3, 4, 5 & 7 we hereunder quote:
Count three of respondent's brief states:

"That respondent/appellant say that prohibition does not lie for it will be issued upon the showing of unlawful exercise of judicial function, or where the trial court exceeded its jurisdiction or proceeded in a novel or unheard of manner; it will not be granted merely to correct a party's neglect to an act in his own interest, and where this cannot be shown the application will be denied".
Count four of respondent/appellant's brief avers:

"That respondent/appellant contends that the alleged errors of an inferior court in the exercise of its admitted jurisdic-tion are properly reviewable on appeal and do not justify a resort to a writ of prohibition. Respondent/appellant contends that there has been no abuse of power and that there exists other adequate remedies. Whatever power is conferred on the court may be exercised injudiciously or irregularly, but it amounts only to an error or excess of jurisdiction. Respondent/appellant maintain strongly that the trial court having jurisdiction, has not proceeded by any rule different from those which are to be observed at all times".

Count five of respondent/appellant's brief avers:

"That respondent/appellant says prohibition is a process which does not concern itself with irregularities and errors allegedly committed in the trial of causes. This is the function of appeal, writ of error and certiorari. Prohibition extends only to restraining the trial court from usurpation and cannot be used to substitute for an appeal".
Court seven of respondent/appellant's brief avers:

"Respondent/appellant says that the ruling of the Justice in Chambers is not supported by the facts outlined in the returns made to the petition for a writ of prohibition. The several returns prove above that the several assignments were made and served on petitioners/appellees, but they elected to abandon their cause, which could not be attributed to any violation of the law or irregularity on part of the trial judge. The only fair and correct interpretation to be given under the circumstances is that the appellees are guilty of waiver and laches due to their dilatory and diversionary action".

Appellant contended that appellees had sufficient notice to appear and defend their interests in the court below, but instead, they elected to take perfunctory refuge in what appears to be the construction of Civil Procedure Law, Rev. Code 1.8(3), 26 - 27. Granted as one may wish, that section 1.8(3) of the statute, relied on by appellees, made it mandatory for the court to give defendant thirty days notice to retain a counsel in consideration of the reasons stated therein, I

am of the opinion that it is prudentially incumbent upon the defendant to promptly notify the court following the death of his or her counsel. However, in the instant case, petitioners/appellees human frailty is so glaring that one needs no further explanation except to interpret their behavior as vowing to deprive the co-respondent of and continuing to withhold from him the property which is the subject of these proceedings. Further, it seems inconceivable that the intent of the statute relied upon has been misconstrued to the point that the defendant who has a case pending in court, much more a real estate, expects the court to miraculously assume that defendant's counsel is dead. How be it, the petitioners, having been served with several assignments, which they flagrantly disobeyed, and following which a trial was conducted, judgment entered against them and an appeal announced by Counsellor Massaquoi who was deputized by the court, and who gave a copy of court's final judgment to defendants, there was nothing left to be done except for the defendants to pursue the only remedy available to them, which was the perfection of their appeal.
Before proceeding further, let us address ourselves to the question of prohibition and say whether it lies in this case. We note that "it is well established that a writ of prohibition may not ordinarily be used as a process for the review and correction of errors committed by inferior tribunals". Mere errors, irregulari-ties or mistakes in the proceedings of a court having jurisdiction does not justify a resort to the extraordinary remedy by prohibi-tion, both because there has been no usurpation or abuse of power, and because there exist other adequate remedies.

Whatever power is conferred may be exercised, and if it be injudiciously or irregularly exercised, it amounts to an error merely and not a usurpation or excess of jurisdiction. If a court is entitled to exercise a discretion in the matter before it, a writ of prohibition cannot control such exercise or prevent its being made in any manner within the jurisdiction of the court. And it does not affect the jurisdiction that the errors or irregularities are palpable or gross. They are nevertheless merely errors and not usurpation of power. It may sometimes seem like usurpation when a court permits or authorizes some acts in the course of a proceeding which are clearly and manifestly erroneous, but all such acts amount only to an erroneous exercise of jurisdiction, and not to an excess of it, as the term "excess" is understood and applied by lawyers. Even the erroneous decision of a jurisdictional question is not ground for issuing a writ of prohibition, if the court has jurisdiction of the general class of cases to which the particular case belongs, since there is an adequate remedy by appeal. Of course, when the erroneous decision is one which operates as an unlawful assumption of jurisdiction, prohibition may be granted. Thus, where the jurisdiction of the trial court depends on the sufficiency of the complaint to charge a crime known to the law, the writ may be used to prevent the assumption of jurisdiction if the complaint is insufficient. 22 R. C. L., *Prohibition,* § 822, at 23 -24 (1918).
In Cyclopedia of Law and Procedure, the following is stated:

"If the inferior court or tribunal has jurisdiction of both the subject matter and of the person, prohibition will not lie to correct errors of law or fact, for which there is an adequate remedy by appeal or otherwise, whether such errors are merely apprehended or have been actually committed." 2 CYC, *Prohibition,* 617 (1909);
Further:

"Prohibition has been likened to the equitable remedy by injunction against proceedings at law. The object in each case is restraining of legal proceedings, and as the right to the remedy by

injunction implies a wrong threatened by the parties litigant against whom the relief is sought, so the right to the writ of prohibition implies that a wrong is about to be committed, not by the parties litigant, but by the person of court assuming the exercise of judicial power and against whom the writ is used. There is this vital difference, however, between them; an injunction against proceedings at law is directed only to the parties litigant, without in any manner interfering with the court, while prohibition is directed to the court itself, commanding it to cease from the exercise of a jurisdiction to which it has no legal claim. It is not an inferior affirmative remedy like mandamus, but purely negative, for it does not command that anything be done, but that something should be left undone. Moreover, prohibition is essentially jurisdictional and therefore judi-cial, while mandamus is purely ministerial. These two writs are the counterpart of each other, to the extent that one is prohibitory and the other mandatory; one acts on the person, the other acts on the tribunal; but beyond that, they have nothing in common. The writ of prohibition agrees with both injunction and mandamus in this: that, where there is an adequate remedy at law, it is not available". 22 R. C. L., *Prohibition,* § 82, at 3-4 (1918).

We have maintained and still maintain that the principal defendant, having been served with several notices of assign-ment, which they definitely ignored, having failed to appear as directed by the assignment, having failed to appear in court to give notice in regard to the death of their counsel, and having failed to perfect the appeal prayed for, their acts can only be construed to support a conclusion that the court below did not exercise any excessive power to warrant the granting of the writ, especially when there were adequate remedies available to the defendants. In this regard, we find support in Ruling Case Law, wherein it is stated:

"It should not be governed by narrow technical rules, but should be resorted to as a convenient mode of exercising a wholesome control over inferior tribunals. The scope of remedy ought to prevent the exercise of an unauthorized power than to be driven to the necessity of correcting the error after it is committed". *Id*., § 4, at 5.
The defendants/appellees in these proceedings had a case pending against them for twenty-two years to appear and defend their property. But rather than appearing and defending the case, they chose to the contrary to grossly defiled the court by not accepting the assignments. What more, if any, could the court have done to protect the poor aggrieved plaintiff. The court proceeded with the case, especially as it was not a funeral home to know how many lawyers had died since 1980. Courts of law are instituted among men to curb the perpetration of unnecessary evils that continuously plague society and increasingly confront mankind everywhere in the world. In this regard, both those who institute suits against others and those who are sued, must regard those charged with the administration of justice as men of high rectitude without a stain of any evil. Thus, judges, being the pillars that constitute the courts, must inculcate in themselves that their actions must always be transparent, and they must refrain from embracing evils, if evil should in any case creep in our courts.

We would like to postulate here that while we are conscious of the tenderness of the feelings of a number of friends, relatives, and acquaintances, bent on groaning under grievous affliction of having carelessly lost a real estate by means of judicial determination; and while, still further, laymen are affected by the acts of the courts, they having to do with dispossessing one family and lodging possession in another, yet we are and must concede first and foremost the obligation to lay correct legal principles and standards as we conceive the law from a judicial point of view.

Going to the second chapter in this unbearable and regrettable tragedy which may continue to confront appellant Goodridge for another thirty years to come, we observe that petitioners/ appellees filed a three-count brief which is basically contingent upon Civil Procedure Law, Rev. Code I: l.8(3). However, as we have already addressed the issue raised therein, we shall proceed to discuss the prohibition and why the ruling of the Chambers Justice is so obfuscating that same should be reversed. On the construction of a statute, legal commentaries have said the following: "Statutes are to be construed not according to their mere letter, but according to the intent and object with which they were made. It occasionally happens therefore that the judges who expound them are obliged, in favor of the intention, to depart in some measure from the words. And this may be either by holding that a case apparently within the words, is not within the meaning; or that a case apparently not within the words, is within the meaning. . . .” 1 Stephen, *Commentaries*, 71.
Further, it is said that "ordinarily, legislation speaks only in general terms, and for that reason, it often becomes the duty of the court to construe and interpret a statute if a particular act done or omitted falls within the intended inhibition or commandment of the statute. . . . There is always a tendency, it has been said, to construe statutes in the light in which they appear when the construction is given. . . . The true rule is that statutes are to be construed as they were intended to be understood when they were passed. Statutes are to be read in the light of attendant conditions and the state of the law existing at the time of their enactment". 25 R. C. L., *Statutes*, §§ 211 and 215.

Among the general principles laid down for construing statutes and the necessity at times for departing from the literal meaning of the words thereof, we find this: "It often happens that the true intention of the law making body, though obvious, is not expressed by the language employed in a statute when that language is given its literal meaning. In such cases, the carrying out of the legislative intention, which, as we have seen, is the prime and sole object of all rules of construction, can only be accomplished by departure from the literal interpretation of the language employed. Hence, the courts are not always confined to the literal meaning of a statute; the real purpose and intent of the legislature will prevail over the literal import of the words. When the intention of the statute is plainly discernible from its provisions, that intention is as obligatory as the letter of the statute and will even prevail over the strict letter. The reason of the law, as indicated by its general terms, should prevail over its letter when the plain purpose of the act will be defeated by strict adherence to its verbiage. It is frequently the case that in order to harmonize conflicting provisions and to effectuate the intention and purpose of the lawmaking power, courts must either restrict or enlarge the ordinary meaning of words. The legislative intention, as collected from an examination of the whole as well as the separate parts of a statute, will prevail over the literal import of particular terms, and will control the strict letter of the statute, where an adherence to such strict letter would lead to injustice, to absurdity, or contradictory provisions . . . . It is an old and well established rule of the common law, applicable to all written instruments that *‘verba intentioni, non e contra, debent inservire*; that is to say, words ought to be more subservient to the intent, and not the intent to the words. Every statute, it has been said, should be expounded, not according to the letter, but according to the meaning; for he who considers merely the letter of an instrument goes but skin deep into it’s meaning. Whenever the legislative intention can be discovered, it ought to be followed with reason and discretion in the construction of the statute, although such construction may seem contrary to the letter of the statute. It is a familiar canon of construction that a thing which is

within the intention of the makers of a statute is as much within the statute as if it were within the letter; and a thing which is within the letter of the statute is not within the statute unless it be within the intention of the makers. The principle that if a thing, although within the letter of the law, is not within the intention of the Legislature, it cannot be within the statute, has been applied in cases where there was presented a definite evil, in view of which the legislature used general terms with the purpose of reaching all phases of that evil, and thereafter, unexpectedly, it is developed that the general language thus employed is broad enough to reach cases and acts which the whole history and life of the country affirm could not have been intentionally legislated against, or cases which could not have been legislated upon because of constitutional limitations on the legislative power. . . ." 25 R. C. L., *Statutes*, § 222.

My distinguished colleagues hold that according to Civil Procedure Law, Rev. Code I :1.8(3), following the death of defendant's counsel, the court must give the defendant thirty days notice to find and retain another counsel to carry their legal interest in the case. While it is true that the statute so relied upon as grounds for the remand of this case imposes that obligation on the court, the intent of the law makers is readily discovered as it also imposes greater obligation on the defendant to promptly notify the court, as a matter of must, if not expediency. This obligation, the defendants abused and remained silent. This silence of the defendants, the law regards as acquiescence. This Court held in the case *Clark and Clark v. Lewis*:

"Ejectment supports the idea of adverse possession in the defendant.

When a man stands by and allows another to act with-out 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.

Acquiescence or standing by where there is a duty on the part of the person acquiescing to speak or assert a right amounts to a representation by him.

Negligence may, under certain circumstances, amount to a representation". [1929] LRSC 5; 3 LLR 95, (1929).

After maturely considering this case and the statute relied upon by the majority, we regret we cannot agree with the majority of the Bench and close our eyes, and with a single blow, overturn those well settled principles of law which have been handed down by our learned brethren on this Bench from almost the very commencement of the Republic. These principles have since become hoary with age. Also, why should we make this case an exception of the rule. There is no alternative but to adhere to those sacred principles. To abandon them and pursue a different course would not only cause the practice to be uncertain, but would also subject this high Court of resort to a just criticism of instability and fickleness in its opinions and judgments.

We feel bound to support the opinions of this Court which are also in accordance with the common law. It is therefore my opinion that while it is the duty of the court to give a defendant thirty days to retain another counsel upon the death of his or her counsel, to continue to prosecute the case, the intent of the statute is mandatorily clear that the defendant must take the initiative to inform the court of the death of his or her counsel, and not to unruly refuse notices of assignments.

It follows therefore that petitioners/appellees, having received sufficient notices, through Sarah

C. Kennedy, to appear, and which they neglectfully failed to do, their neglect amounted to representation at the trial for which they cannot now secure to themselves the benefits which they should have obtained had they diligently appeared in the court below.
For the reasons assigned, and the laws supporting same, I do not agree with my colleagues in confirming and affirming the ruling of the Chambers Justice. Hence my dissenting opinion.

Sorsor v Belleh et al [1985] LRSC 43; 33 LLR 430 (1985) (18 December 1985)

VINCENT SORSOR, Informant, *v.* **HIS HONOUR JAMES KENNEDY BELLEH,** Assigned Circuit Judge, Sixth Judicial Circuit Court, sitting in its June Term, A. D. 1985, HIS HONOUR NAPOLEON B. THORPE, Assigned Circuit Judge presiding over the September Term of the Sixth Judicial Circuit Court, sitting in its September Term, A. D. 1985, and S. EDWARD PEAL, Respondents.

INFORMATION PROCEEDINGS

Heard October 23, 1985. Decided December 18, 1985.

1. Where allegations in a bill of information, to the effect that a judgment by the court is void, since it was based on a matter no longer pending in the court, are shown by the court's records to be untrue, the information will be dismissed.
2. A lawyer who misrepresents a matter to the Court will be adjudged in contempt of court.

The informant, defendant in the trial court, filed a bill of information in the Supreme Court, contending that the trial court was attempting to enforce a void judgment. The informant, who had failed to perfect his appeal, taken from a judgment rendered against him by the trial court because of his failure to attend the trial of his case even though his counsel had received a notice of assignment for trail of the case, had also failed to contest a motion to dismiss the appeal or to attend upon the hearing of the motion. The Supreme Court, on application of the movant/ appellee, had therefore dismissed the appeal and ordered the enforcement of the trial court's judgment. It was thereafter that the appellant commenced these information proceedings.

The informant contended that the judgment of the trial court was void because the judge who presided in the trial court prior to the term presided over by the co-respondent judge herein had dismissed the plaintiff's action, leaving nothing before the lower court to be tried. Hence, he

said, the judgment entered by the lower court, out of which the information grew, was invalid and void.
The Supreme Court disagreed with the contention, noting that the records, as brought to the court's attention by the respon-dents, showed, on the contrary, that following the dismissal of the plaintiff's action by the trial court, a new action was filed. It was this new action which had been assigned and which the informant and his counsel had failed to attend. The judgment was valid, and therefore rendered the information dismissible, the Court said.
The Court also held that as the assertions contained in the information were a misrepresentation of what had transpired in the trial court, counsel for the informant should be adjudged in contempt of the Court. The therefore *denied* the information and fined the counsel $50.00.

J. Emmanuel R. Berry appeared for informant. *Joseph Findley* appeared for the respondents.

MR. JUSTICE MORRIS delivered the opinion of the Court.

Mr. S. Edward Peal instituted an action of ejectment in the Civil Law Court for the Sixth Judicial Circuit of Montserrado County against Vincent Sorsor, the informant herein. Trial was had and a verdict unanimously brought in favor of S. Edward Peal, after the dismissal of the first complaint and the withdrawal of the second complaint. The jury stated in substance, in its verdict, that the plaintiff was entitled to his **land**. Although Counsellor J. Emmanuel R. Berry, counsel for informant/ defendant was absent, a court appointed counsel announced an appeal on behalf of the informant/defendant. Counsellor J. Emmanuel R. Berry accordingly filed his bill of exceptions and perfected said appeal. A motion to dismiss the appeal was filed by counsel for S. Edward Peal and resisted by counsel for Vincent Sorsor, Counsellor J. Emmanuel R. Berry. The motion was assigned for disposition but Counsellor J. Emmanuel R. Berry did not attend the hearing of the motion, even though he had received and signed the notice of the assignment. The movant, on application to the Court, was permitted to argue his motion. The motion being tenable, same was granted by the Court *en banc* and the appeal accordingly dismissed during the March 1985 Term.
Counsellor J. Emmanuel R. Berry thereafter filed a bill of information before the full bench, contending essentially that His Honour Napoleon B. Thorpe tried an action that was in fact dismissed by his colleague Emma Shannon Walser and which action was never refiled. Therefore, he said, the judgment of Judge Napoleon Thorpe was a void judgment since there was no action pending before the court. This Court, he argued, cannot therefore order the enforcement of a void judgment.
Counsellor Joseph Findley, counsel for respondents, on the other hand, proved by record that after the action was dismissed by Judge Emma Shannon Walser on December 11, 1978, the plaintiff re-instituted his action, and that this second action was withdrawn after the filing of defendant's answer on April 9, 1978 and re-instituted on the 20th of April, 1979. The summons

and the complaint were served on the informant/defendant on the 25th day of April 1979. We quote the returns of the sheriff to the writ of summons:

"THE SHERIFF RETURNS

On the 25th day of April, A. D. 1979, Arthur K. Saye, CBCO, have served the within writ of summons on Vincent Sorsor, defendant, of Lamco, Buchanan, by serving him his copy for which he signed in the presence of witnesses. I now make this as my official returns before this Honour-able Court this 25th day of April, A. D. 1979.

Sgd. Signature not clear SHERIFF, MONTSERRADO COUNT, R. L."
We also quote the certificate from the clerk of the Civil Law Court:

"CERTIFICATE

THIS IS TO CERTIFY that from a careful inspection and perusal of the record in the above entitled cause of action a writ of summons was served on the defendant on the 25th day of April, A. D. 1979. Up to and including the issuance date of this certificate there is no answer filed. Hence, this CERTIFICATE.

Given under my hand and seal of this Honourable Court, this 9th day of November, A.D. 1979.

Sgd. Victor G. D. Bohlen

ASST. CLERK, CIVIL LAW COURT,
MO. CO., R. L."
The records show that there were several notices of assign-ment thereafter signed by Counsellor J. Emmanuel R. Berry for disposition of law issues and trial, but Counsellor Berry did not attend any of the assignments. Hence, the court proceeded with the trial. The informant contended that Judge Napoleon Thorpe's judgment was a void judgment, in that there was no action in court. The action of ejectment between the parties, he says, was dismissed by Judge Emma Walser when she was disposing of the law issues and no other action has been filed. This contention cannot stand and same is overruled in view of the documentary evidence mentioned *supra.* The Court views the misrepresenta-tion of Counsellor J. Emmanuel R. Berry as highly contemp-tuous. He is therefore guilty of contempt and fined Fifty ($50.00) Dollars to be paid within 48 hours from the handing down of this opinion.
In view of all we have narrated and the surrounded circumstances, the information is hereby dismissed with costs against informant. And it is hereby so ordered.

Information dismissed.

ALHAJI SAIBU WAGGAY, Plaintiff-In-Error, *v.* **HIS HONOUR JAMES KENNEDY BELLEH,** Assigned Circuit Judge presiding over the June Term of the Sixth Judicial Circuit, and **HAFEZ M. JAWHARY**, Defendants-In-Error.

INFORMATION PROCEEDINGS

Heard: November 27, 1985. Decided: December 18, l985.

1. A court has no legal authority to insist upon the hearing of an action which has been withdrawn by the plaintiff; nor is a trial judge clothed with the legal authority to bar a party-plaintiff from withdrawing his action, either with or without reservation.
2. In withdrawing an action all that is required of a plaintiff is that he pays the costs of the opposite party, if he decides to re-file. In such a case, the court may only dismiss the second action if the accrued costs are not paid or if the action is withdrawn more than once.
3. Under the Civil Procedure Law, Rev. Code 1:11.6(3), discontinuance may not be granted after the case has been submitted to the court or jury for a determination of the facts, except upon the stipulation of all of the parties.
4. It is only when a case has been submitted to the court or jury to determine the facts that it cannot be discontinued or withdrawn without the stipulation of the parties thereto.
5. Under the laws relating to pleadings, a party must deny those averments of an adverse party which are known or believed by him to be untrue, and admit those which are true. Thus, averments to which a responsive pleading is required are deemed admitted when not denied in the responsive pleading.
6. When a party-defendant admits to allegations contained in a complaint, the need to take evidence on the points so admitted is rendered non-existent, and a court does not commit error in not taking evidence on the admitted points.
7. The prime purpose of notifying the parties in litigation to be present at the rendition of final a judgment is for the losing party to note exception to the judgment and announce an appeal therefrom. Thus, where a party is absent, the court must appoint an attorney to take exception to the judgment and announce an appeal therefrom for such absent party, inform the absent counsel of record of the court's action, and deliver the records to that counsel, in order for him to take advantage of his client's right to an appeal.
8. Where the right of appeal of an absent party is protected and preserved by the court by noting exception to the judgment, the announcing of an appeal in his favor, and furnishing to him copies of the records in time, thereby affording him the opportunity to take advantage of his right to appeal, the purpose of the statute on notice is deemed to have been met and no harm is considered done to the absent party.

9. Where exception has been noted for an absent party and an appeal announced from the judgment, the losing party should proceed by appeal which is available to him, instead of proceeding by error.
10. Where a judge renders final judgment a day earlier than scheduled in order to be within term time, his action will not be considered an error if it does no harm to the losing party and his right of appeal is protected and preserved by the court.
11. The non-payment of accrued costs by a plaintiff-in-error is ground for denial of his petition for the remedial writ or error. It is therefore incumbent upon a plaintiff-in-error to pay the accrued costs in keeping with the orders of the Justice in Chambers who granted the hearing of the special proceedings.
12. When the Justice in Chambers orders the payment of accrued costs as a condition for issuance of the writ of error, the fact that the clerk of court issued the writ without payment of such costs by the plaintiff-in-error, and that the issuance may be viewed as an act of an officer of the court, cannot serve to the benefit of the plaintiff-in-error who, by his own negligence, failed to pay the required accrued costs.
13. A petition for a remedial writ is a special proceeding addressed to the sound discretion of the Justice in Chambers, in whose power the issuance of the writ resides exclusively.
14. A petitioner or his counsel must first obtain the written orders of the Justice directing the filing of the petition for error and issuance of the alternative writ or citation before proceeding to the clerk of court to file the petition.

Plaintiff-in-error/informant filed a bill of information and a petition for a writ of error, all growing out of the proceedings in the trial court. In the information, he contended that the trial judge had erred in denying the co-respondent request to withdraw his initial action of ejectment and to thereafter file a different action for cancellation after the Supreme Court had send a mandate to the lower court resume jurisdiction of the first action and to conduct a new trial beginning with the disposition of the issues of law. The plaintiff-in-error/informant asserted that in permitting this refiling, the trial court had violated the mandate of the Supreme Court. In the error proceeding, he contended that the co-respondent judge had erred in hearing the issues of law in the absence of plaintiff-in-error or his counsel, and in rendering a decree in favor of the co-respondent without hearing any evidence, and to render such decree one day before the scheduled date, in the absence of plaintiff-in-error or his counsel. These acts, the plaintiff-in-error said, denied him of his day in court and deprived him of the opportunity to take exception to the judgment and announce an appeal therefrom.

The Justice in Chambers granted the petition for error in spite of the failure of the plaintiff-in-error to pay the accrued costs as required by the statute, but forwarded the information to the full Bench for disposition.
The Court consolidated the two proceedings and ruled in both proceedings against the plaintiff-in-error.
With regard to the contention that the trial judge had violated the mandate of the Supreme Court in permitting the co-respondent to withdraw and refile and different action after the Supreme Court had send a mandate commanding the judge to try the first action anew, beginning with the disposition of the law issues, the Court held that the trial judge did not err or violate the Court's mandate since the withdrawal of the ejectment action and the filing of the cancellation

proceedings had occurred before the original case had been called for disposition of the law issues. The Court noted that the statute vests in a complaining party the right to withdraw his action if he does so before the submission of the case to the court or the jury for determination of the facts. Since the issues of law had not been entertained or disposed of, it said, the case had therefore not been submitted to the court or the jury. The Court opined that the plaintiff could at that stage withdraw his action, with or without reservation. It noted further that the statute did not require the agreement of the parties under such circumstances before the withdrawal could be made. All that was required of the plaintiff, it said, was the payment of accrued costs if the plaintiff intended to refile. The Court observed that its mandate had not been violated by the trial court judge because once the plaintiff had fulfilled the requirements of the statute and withdrawn the ejectment action, there remained nothing before the trial court to be disposed of. The trial court, it said, had no legal authority to insist upon hearing an action which had already been withdrawn or to bar the plaintiff from withdrawing said action.

The Court, addressing the contention that the trial judge had erred in entertaining hearing on the laws issues in the absence of the plaintiff-in-error or his legal counsel, held that the judge had the authority, under Rule 28 of the Circuit Court Rules, to entertain disposition of the law issues in the absence of the plaintiff-in-error who had been duly notified of the hearing, but who along with his counsel had failed to appear.

In addition, the Court also rejected the contention of the plaintiff-in-error that he did not have his day in court because he was not served with a notice of assignment for his appearance to take the final judgment. It held that while the purpose of notifying the parties to be present at the rendition of a final judgment was to have the losing party note exception to the judgment and announce an appeal therefrom, that purpose had been met when the trial judge, upon entering the decree, noted exception thereto for the plaintiff-in-error, announced an appeal therefrom in his behalf, and had the records delivered to him on time to ensure his exercise of the right of appeal. Under such circumstances, the Court said, the plaintiff-in-error cannot complain of having been deprived of an opportunity to appeal from the judgment, especially as he had not been prejudiced thereby and had suffered no harm. The plaintiff-in-error should have proceeded to complete the appeal process which was available to him, rather than move by error, it said.

Regarding the contention that the trial court had erred in rendering judgment one day before the assigned date, the Court held that the reason given for the trial judge's action (i.e. to be within term time) was tangible, especially as the plaintiff-in-error had not suffered harm as a result thereof and his right of appeal had been protected and preserved by the court.

The Court also opined that the trial judge did not err in entering judgment without first taking evidence since the plaintiff-in-error had admitted the allegations contained in the complaint or had failed to deny the same. The Court noted that where an admission is made by a defendant, or where there is a failure to deny, which is deemed as an admission, the necessity for the trial court to take evidence does not exist and no error is made in not taking such evidence.

Lastly, the Court addressed the issue of the failure of the plaintiff-in-error to pay the accrued costs as required by statute and as was mandated by the Justice who ordered the issuance of the alternative writ of error. The Court observed that as the plaintiff-in-error had failed to pay the accrued costs, the petition was dismissible. The Court rejected the contention of the plaintiff-in-error that even though the Chambers Justice had ordered the payment of such costs as a condition for the issuance of the writ, the issuance of the writ by the clerk without the payment of the

required costs should be regarded as an official act for which plaintiff-in-error should not be penalized. The Court noted that the requirement was mandatory, that the failure to make such payment was ground for dismissal of the petition, and that the plaintiff-in-error could not excuse his negligence in not paying the accrued costs because of the action of the clerk of court. It opined that the Justice in Chambers had erred in granting the writ in the face of this deficiency by the plaintiff-in-error. The Court therefore reversed the ruling of the Justice in Chambers and accordingly *denied* the petition.

Roger K. Martin and *Robert G. W. Azango* appeared for the appellants/defendants-in-error/respondents. *Joseph Kennedy* and *Joseph Williamson* appeared for the appellee/plaintiff-in-error/informant.

MR. JUSTICE SMITH delivered the opinion of the Court.

The appellee, Alhaji Saibu Waggay, plaintiff-in-error in these error proceedings, is also the informant in a bill of information filed in the Chambers of this Court against the respondents. The bill was forwarded to the full bench by the Justice in Chambers. Because the parties and their respective counsel in both proceedings are the same, and also because the said proceedings relate to the same subject matter, we ordered consolidation of the two proceedings and the hearing of argument thereon. This opinion therefore deals with the matters as so consolidated.

The bill of information grew out of an action of ejectment instituted by co-respondent Hafez M. Jawhary against informant Alhaji Saibu Waggay in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County. That action was dismissed by the lower court on the issues of law. On appeal to the Supreme Court, the ruling dismissing the ejectment action was reversed and the case remanded to the court below to be heard anew, beginning with the disposition of law issues. Following the reading of the Supreme Court's mandate, the plaintiff in the ejectment action, now co-respondent in these proceedings, withdrew the ejectment action with reservation to refile. He then filed a bill in equity for the cancellation of an agreement of conditional sale, a stipulation and an assignment of lease executed between himself and the informant.
Upon service of writ of summons in the cancellation proceedings, informant fled to the Supreme Court by this information, alleging substantially that it was contrary to law for the co-respondent to withdraw the ejectment action when the Supreme Court had mandated the court below to resume jurisdiction and hear and decide the ejectment action, beginning with the disposition of the law issues. He argued also that it was contrary to law and the mandate of the Supreme Court for the co-respondent judge to allow the withdrawal of the action of eject-ment which he had been mandated by the Supreme Court to hear and decide and to instead entertain the cancellation proceedings. The informant further contended that although the cancellation proceeding was filed less than fifteen days before the formal opening day of the June 1985 Term of the court to which the proceeding was venued, and the case was not on the docket of the June Term of court,

yet the co-respondent judge hastily proceeded to hear and pass upon the issues of law in the cancellation proceedings in said the June Term.
In our opinion, the bill of information filed by the informant is un-meritorious. The co-respondent judge did not act contrary to law or in disobedience to the Supreme Court's mandate; nor do we believe that he acted irregularly in the reading of the Supreme Court's mandate to warrant this Court's intervention by way of this bill of information.

According to the records, when the mandate of the Supreme Court was read, as is the normal procedure, the plaintiff in the ejectment action withdrew the said action. Therefore there was no action of ejectment pending any longer before the court. Under those circumstances, the court had no legal authority to insist upon the hearing of an action which had been withdrawn by the plaintiff; nor was the co-respondent judge clothed with the legal authority to bar a party plaintiff from withdrawing his action, either with or without reservation. All that is required of the plaintiff is that he pays the costs of the opposite party, if he desires to re-file, and the court may only dismiss the second action if the accrued costs were not paid or if the action was withdrawn more than once. In the instant case, all the acts done by the court below in the ejectment action had been nullified by the Supreme Court in its opinion delivered during the March 1985 Term, and by its mandate for a rehearing of the case beginning with the disposition of the issues of law. The Supreme Court order, in effect, placed the case at a stage where a withdrawal was possible and permissible before trial.
Counsel for informant argued that under section 11.6(3) of the Civil Procedure Law, Rev. Code 1, the withdrawal of the ejectment action should not have been permitted after submission and without stipulation of all parties. This section of the statute relied upon by the informant, reads as follows:

"Discontinuance after Submission. A discontinuance may not be granted after the case has been submitted to the court or jury to determine the facts except upon the stipulation of all parties."
This provision of the statute, relied upon by informant's counsel, is very clear and requires no further interpretation by the Court. It is only when a case has been submitted to the court or jury to determine the facts that it cannot be discontinued or withdrawn without the stipulation of all the parties thereto. In the instant case, the court below had not disposed of the issues of law raised in the pleadings, as ordered by the Supreme Court, when plaintiff withdrew his action, leaving thereby no case before the court to hear. The case was never therefore submitted to the court or jury for the determination of the facts when the action was withdrawn. Hence, it is our candid opinion that no irregularity was committed by the co-respondent judge to warrant the information; nor was the door closed on the party-plaintiff to withdraw his action before the law issues were disposed of. The bill of information must therefore be, and the same is hereby dismissed for being unmeritorious.

Coming now to the error proceeding, we observe that following the filing of the bill in equity for cancellation of the agreement of conditional sale, the stipulation and the assignment of lease by the co-defendant-in-error Hafez M. Jawhary, the appellant in the error proceedings, and the filing of returns thereto accordingly filed by the plaintiff-in-error, a notice of assignment for the disposition of the issues of law was issued by the court and acknowledged by counsel of record for both parties. The day and hour set by the court for the hearing was August 1, 1985, at ten o'clock in the morning. When the case was called for hearing, neither the counsel for the party-

plaintiff-in-error nor the plaintiff-in-error himself appeared, even though they were notified and in fact acknowledged the assignment. The trial judge thereupon proceeded to entertain hearing on the law issues, relying on Rule 28 of the Circuit Court Rules which reads as follows:

"The clerk shall enter upon the ordinary docket of the court all matters filed in his office, and whenever the pleadings are concluded, and issues joined in any suit, he shall notify the judge thereof, who shall assign a day for passing upon the issues of law and hearing all cases not dismissed on the questions of law, whether or not the counsel previously notified are present . . . ."

The ruling on the law issues was then reserved until August 7, 1985. However, on August 6, 1985, one day before August 7, 1985, for reason explained by counsel for appellant to be "expiration of the judge's term", the trial judge, without any notice of assignment being issued and served for ruling, entered a decree cancelling the agreement of sale, the stipulation and the assignment of lease. The judge then noted exception to the decree and announced an appeal in favor of the plaintiff-in-error. The records and the decree were then passed on to counsel for plaintiff-in-error for their information. On the 8th of August, that is to say two days after the court's decree was entered, the plaintiff-in-error filed the error proceedings, proferted thereto a copy of the decree and the records. These (the decree and the records) were clear evidence that the plaintiff-in-error was notified of the exception noted to the decree and of the announcement of an appeal, taken in his favor by the trial judge.

In his petition, the plaintiff-in-error alleged that: (1) he was not allowed his day in court, in that no notice of assignment was served on him to notify him of the day the court intended to enter its decree, so as to have afforded him an opportunity to be present, to except to the decree, and to announce an appeal therefrom. Moreover, he says, the trial judge did not appoint a lawyer to take the ruling of the court for the purpose of noting exception and announcing an appeal; (2) that despite the issuance and service in the information proceedings of an alternative writ from the Chambers Justice to the trial judge to stay all further proceedings, the co-defendant-in-error judge still proceeded to hear and determine the cancellation proceeding; (3) that the trial court entered a ruling before the day on which the ruling was scheduled to be given, and (4) that the trial court entered a decree without taking evidence.

The Chambers Justice heard the error proceeding and granted the petition, holding that the co-defendant-in-error judge, after ruling on the law issues, proceeded thereafter to render a final judgment without taking any evidence, without issuing a notice of assignment, and appointing an attorney to take the ruling on behalf of counsel of record for the purpose of excepting to the ruling and announcing an appeal. The learned Justice also held that his order for the payment of accrued costs was directed to the Clerk of Court, and that since he did not require the plaintiff-in-error to pay accrued costs except as contained in his orders to the clerk, plaintiff-in-error could not be prejudiced thereby. It is from this ruling that the defendants-in-error have appealed to the Bench *en banc* for review of the ruling of the Chambers Justice.

Counsel for the parties strongly argued before this Bench the points of their contention, as summarized herein above. We shall now address ourselves to the issues advanced, commencing first with the question of the trial judge entering judgment without first taking evidence.

For the benefit of this opinion, we quote word for word the four counts of the petition for cancellation:

“1. That petitioner is the owner of Holiday Inn Hotel (Liberia) Inc. situated and lying at No. 100 Carey Street, and following a period of negotiations, on June 30, 1980, petitioner and respondent executed three different instruments forming a conditional contract of sale, namely: (1) a bill of sale for the sale of Holiday Inn Hotel (Liberia), Inc., dated June 30, 1980, probated on the 18th day of August, A. D. 1980, and registered according to law in the office of the registrar of deeds for Montserrado County; (2) a stipulation of under-standing as to the manner in which the purchase price shall be paid and remedy adopted therein in the event of default, dated June 30, 1980, probated and registered according to law on the 18th day of August, A. D. 1980, and (3) an assignment of lease agreement for the parcel of **land** where petitioner built and furnished the said Holiday Inn Hotel (Liberia) Inc., dated June 30, 1980, probated on the 18th day of August, A.D. 1980, registered according to law in the office of the registrar of deeds for Montserrado County, copies of which are herein made proffered and marked respectively P/l, P/2 and P/3 to form constituent parts of this petition.

2. 2. That according to clause one (1) of the bill of sale mentioned above, P/1 herein, the purchase price was agreed upon to be Seven Hundred Thousand Dollars ($700,000.00) and the payment thereof was to be made between the period June 30, 1980 and December 31, 1982, in accordance with the various installment payments stipulated in the stipulation of understanding, P/2 herein, and following some partial payments in keeping with clause three of the said stipulation of understanding, the respondent herein defaulted, leaving an unpaid balance of $355,000.00 plus $17,212.21 which represents hotel receivables agreed upon by respondent to be collected and paid to petitioner but which was collected and not paid to petitioner, total balance $372,212.21.

3. Petitioner further complains against the respondent and says that on July 6, 1982, respondent was notified by petitioner through his counsel of said respondent's default, in a letter copy of which is hereto attached and marked P/4 to form a cogent part of this petition in which letter the respondent was requested to make full payment of the amount in default at the time, but to no avail; further on January 11, 1983, petitioner again called the attention of the respondent to said respondent's default in the amount herein above stated in a letter copy of which is hereto attached and marked P/5 to also form a part of this petition, but that the respondent has so far failed to pay the amount in default even though petitioner had declared in the letters of notice his intention to apply clause five of the stipulation of understanding which grants petitioner, upon default, the right to consider the above three instruments as cancelled null and void as well as the right to re-enter end repossess.

4. Petitioner avers and says that from the dates of the above notices to respondent up to the filing of this petition, the respondent has failed, refused and neglected to pay the unpaid balance of the purchase price as stated both in the bill of sale and the stipulation of under-standing hereto attached and has thus deliberately breached the conditional contract of sale consisting of the above three instruments between petitioner and respondent."

Clause five (5) of the stipulation, which is alleged in count three of the petition to have given rise to the cancellation proceedings, reads as follows:

“It is mutually also understood by the parties that in the event of failure to comply with the terms and conditions herein stated on the part of the party of the second part, the party of the first part, the seller, shall have no alternative but to consider the bill of sale and the agreement of lease as cancelled and void and to repossess the said building and damages with or without any court proceeding and any amount incurred during the said repossession same shall be borne by the party of the second part, the buyer."

To these allegations, the plaintiff-in-error filed a seven count returns. In count one thereof, he claimed ownership of the subject property by virtue of the same agreement of sale proffered to the petition and sought to be cancelled for breach of contract. In count four of said returns, plaintiff-in-error admitted paying $150,000.00 to co-defendant-in-error Hafez M. Jawhary against the value of the hotel, which he stated therein to be $700,000.00. However, he neglected and failed to traverse and deny counts 3 and 4 of the petition which alleged default and breach on plaintiff-in-error's part, and which gave rise to the institution of the cancellation proceedings. Pleadings, as defined by Black's Law Dictionary, is the process performed by parties to a suit or action, in alternately presenting written statements of their contentions, each responsive to that which precedes, and each serving to narrow the field of controversy, until there evolves a single point, affirmed on one side and denied on the other, called the "issue", upon which they then go to trial. *See* BLACK’S LAW DICTIONARY 1311 (4th ed.), *Pleadings.* Under the law of pleadings, a party shall deny those averments of an adverse party which are known or believed by him to be untrue and admit those that are true, but 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(l) and (3).
In our opinion, the admission on part of the plaintiff-in-error in count four of his returns that there was a contract of sale, that he had defaulted in paying the full purchase price of the hotel, in the amount of $700,000.00 as stipulated, and that he had paid only $150,000.00 without providing any excuse for the default, made it unnecessary for the court to take evidence. The only evidence needed in the case was to establish the existence of a conditional sale agreement and a breach thereof as a result of a default in payment. But these facts were admitted by the plaintiff-in-error in his returns. Hence, the necessity to take evidence did not exist. The contention, therefore, that no evidence was taken before the decree was entered is overruled.

The next issue for our determination is the entry of a final decree by the co-defendant-in-error judge without service of a notice of assignment on the plaintiff-in-error to afford him the opportunity to be present for the ruling, note exception thereto, and announce an appeal therefrom. The plaintiff-in-error also took issue with the judge's failure to appoint an attorney to take the ruling for the absent counsel of record for the purpose of noting exception to and announcing an appeal from the final decree. This practice, plaintiff-in-error says, is hoary with age in our courts of justice and is provided for by the statute relied upon by our distinguished colleague in Chambers. Let us see what is the purpose of notifying the parties in litigation to be present at the rendition of final judgment.
The prime purpose for the notice referred to is for the losing party to note exception to the judgment and announce an appeal therefrom. Thus, in the absence of such party, the court is man-dated to appoint an attorney to do the same (i.e. take exception to the judgment and announce an appeal), and to inform the absent counsel of record of the action and deliver the records to him so that he may take advantage of his rights to an appeal. We are of the opinion,

however, that where the rights of appeal of the absent party is protected and preserved by the noting of exception to the judgment, the announcing of an appeal in his favor, and the furnishing to him of the records in time, and thereby affording him the opportunity to take advantage of his rights of appeal as was done by the co-defendant-in-error judge in this case, the purpose of the statute had been fully met and no harm was done to the plaintiff-in-error. Plaintiff-in-error should therefore have proceeded by appeal which was made available to him instead of proceeding by error. The contention of not sending out notice of assignment and appointing an attorney under the circumstances is therefore not sustained.

The third issue is that the co-defendant-in-error judge rendered final judgment before the 7th day of August, 1985, the day he had assigned on record for the entry of said final judgment. During arguments, the Court sought to know why final judgment was rendered on the 6th of August instead of the 7th instant, the day scheduled on the minutes of court for the rendition of such judgment. In response, counsel for the appellant explained, without any denial on the part of counsel for the appellee, that August 6, 1985, was the last day of the judge's term to render judgment. In our opinion, the reason given for the judge's position in rendering judgment before the 7th of August, 1985, is tangible, especially as no harm was done to the plaintiff-in-error, and his right of appeal was protected and preserved by the court.
The last point of contention is the non-payment of accrued costs on the part of the plaintiff-in-error. During the argument, counsel for the plaintiff-in-error contended that the accrued costs was not paid because the Justice presiding in Chambers did not require the plaintiff-in-error to pay accrued costs; that this was a duty imposed on the Justice to do; and that although in his orders to the Clerk the Justice directed the issuance of the alternative writ of error upon payment of accrued costs by the plaintiff-in-error, yet the Clerk had issued the writ without requiring the payment by the plaintiff-in-error of the accrued costs. This act on the part of the clerk, he argued, cannot prejudice the interest of the plaintiff-in-error. Counsel for plaintiff-in-error cited to the Court as reliance the case *Leigh-Sherman v. Pupo and The Liberian Bank For Development and Investment*, [1984] LRSC 40; 32 LLR 300 (1984)

This argument of counsel for appellee/plaintiff-in-error is untenable. The statute makes non-payment of accrued costs by a plaintiff-in-error a ground for denial of his petition. In the *Leigh-Sherman* case, the order of the Justice in Chambers to the Clerk did not contain a clause directing the payment of accrued costs. In fact, the accrued costs in that case was paid by the plaintiff-in-error after the issuance of the writ and before returns thereto were filed by the defendants-in-error. The pertinent issue in that case was whether it was mandatory for the Justice to require the payment of accrued costs. The Court said that it was. In the instant case, however, the Chambers Justice directed the payment of accrued costs in the written orders directing the issuance of the alternative writ. It was therefore incumbent upon the plaintiff-in-error to pay the accrued costs in keeping with the orders he had obtained from the Justice presiding in Chambers granting the hearing of the special proceeding. The argument therefore that although the Chambers Justice had directed the payment of the accrued costs as a precondition to the issuance of the writ, but that because the issuance of the writ by the Clerk without the payment of such costs was an act of an officer of the Court, it should not prejudice the plaintiff-in-error, is a mere technicality intended by the plaintiff-in-error/appellee to benefit from his own negligence.
A petition for a remedial writ is a special proceeding addressed to the sound discretion of the Justice presiding in Chambers of this Court, in whose power the issuance of the writ resides

exclusively. Judiciary Law, Rev. Code 17:2.9. Thus, petitioner or his counsel must first obtain the written orders of the Justice directing the filing of the petition and issuance of the alternative writ or citation. In most cases, lawyers irregularly proceed directly to the clerk's office to file their petitions without first obtaining the written orders of the Justice presiding in Chambers simply to shun the Justice from requiring them to pay accrued costs in the proper case to avoid complying with the written orders of the Justice directed to the clerk.

In our opinion therefore, it was sufficient when the Justice presiding in Chambers directed the payment of accrued costs by the plaintiff-in-error in his written orders to the Clerk, and it was equally incumbent upon the plaintiff-in-error to have seen to it that the proceedings were properly brought under the jurisdiction of the court for hearing. Not having paid the accrued costs as ordered by the Justice presiding in Chambers, plaintiff-in-error's petition must therefore crumble.

In view of the all that we have narrated herein above and the law controlling, it is our candid opinion that the ruling of the Justice in Chambers be, and the same is hereby reversed, with costs against the plaintiff-in-error/appellee. And it is hereby so ordered.

Information and petition for error denied.

Cooper-Daniels v SLPDT [1986] LRSC 8; 34 LLR 60 (1986) (30 May 1986)

ESTHER LUKE COOPER-DANIELS,' only surviving executrix of the estate of the late HENRY LUKE, and his wife, WILLIETTE LUKE, Plaintiff/Appellant, v. **SOCIETA LAVORI PORTO DELLA TORRE**, by and thru its General Manager and/or Agent, and **VIANINI CONSTRUCTION**, by and thru its General manager and/or Agent, Defendants/Appellees.

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

Heard: May 7, 1986. Decided: May 30, 1986.

1. In the absence of a statute, the proper party plaintiff is the person in actual or constructive possession of the property. A person in possession of property at the time of the trespass has been held to be a real party in interest.
2. Where premises are leased, generally, the right to use them during the term is transferred from the landlord to the tenant. During the existence of the lease, the tenant is the absolute owner of the demised premises for all practical purposes for the term granted, the landlord's rights being confined to his reversionary interest.
3. In the absence of a contrary provision in the lease, the lessee has, within certain exceptions, the role and exclusive right to the occupation and control of the premises during the term of the lease, and the landlord has no authority during the term to enter or otherwise disturb the lessee in his occupancy or enjoyment or in any manner interfere with his rights to the management and control of the premises.

Appellant leased real property to appellees, a construction and public works contractor, for a period of 20 years certain with two consecutive optional periods of twenty years. Appellee

extended an invitation to two other companies (Societa Lavori Porto Della Torre and Vianini Construction) to move unto the leased premises to carry out similar business activities as lessee. When appellant complained about the presence of the two other companies on her premises, the lessee maintained that the invitees were business associates which were owned by the same investors as lessee. Being dissatisfied with the response from lessee, plaintiff/appellant filed two separate actions against appellees (the two companies invited onto the premises by lessee) for trespass.

The trial court dismissed the action on the grounds that the action had no legal basis and that the plaintiff/appellant had no standing to sue since she was not in actual or constructive possession of the premises.

The Supreme Court affirmed the ruling, holding that the question of whether the invitees were trespassers under the circumstances narrated in the case was a question of law for determination by the judge. The judge, the Court concluded, had not erred in the determination made on the law issues.

S. Raymond Horace, Sr., in association with Joseph Andrews, appeared for appellant. *H. Varney G. Sherman* of the Maxwell and Maxwell Law Offices appeared for appellees.

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

On October 12, 1957, an agreement of lease was executed between appellant and the Buccimaza Industrial Works for a term of 20 years certain with two conservative optional period of twenty years with rental amounts for said optional periods stated. Appellees, who have no privity of estate with appellant came on the premises by invitation of Buccimaza Industrial Works, lessee of the appellant. The appellees are contractors engaged in the, business of construction, road building projects, and other engineering works. When appellant contacted .Buccimaza Industrial Works, lessee of the appellant, about the presence of appellees on the demised premises, appellant was told that appellees were business associates of lessee, and that lessee and appellees were being directed and conducted by one general manager, and that all the businesses concerned were owned by the same investors. Being dissatisfied with this response and in view of the fact that appellees were engaged in several public works contracts out of which the appellees were to realize respectively the sums of $52,136,916.00 and $10,543,047.00, the appellant, plaintiff below, instituted separate actions of damages for trespass against the appellees. In the complaint, the plaintiff/ appellant alleged that the appellees had "without any

color of right, nor the knowledge, will or consent of the plaintiff, unlawfully wrongfully and illegally entered upon the premises of the demised estate and thereupon were conducting its business operations, prejudicially depriving plaintiff of the property rights and benefits in and of the said estate." The appellant therefore alleged that she "has been substantially damaged by virtue of such illegal and unwarranted entry and occupancy of said premise..." and therefore claims as special damages against the appellees the sums of $6,820,535.50 and $1,581,456.70, respectively, plus six percent punitive damages.

The trial judge dismissed the actions on purely issues of law, stating that the actions had no legal basis. The judge based his ruling on several counts of the defendants/appellees' answer, particularly counts 3 and 4 thereof which allege in substance that one who is neither in actual or constructive possession of a demised property has no standing in law to bring an action of damages for trespass against those entering on said premises by invitation of one having the right of possession to the premises by virtue of an agreement of lease. Both cases, having the same set of facts, were consolidated.

Appellant strenuously argued that the issues raised in the pleadings are those of mixed law and facts and, therefore, the matter should have been submitted to the jury for trial, and since that was not done, the cases should be remanded for a new trial.

The issue therefore is whether or not the judge committed reversible error in dismissing plaintiff/appellant's actions on the ground that the actions have no legal basis and that appellant has no standing in law to bring said actions.

In 87 C.J.S., § 679, p. 1013, it is stipulated that: "In the absence of statute, the proper party plaintiff is the person in actual or constructive possession of the property; a person in possession of property at the time of the trespass has been held to be a real party in interest'."

Also American Jurisprudence 2d. *Landlord and Tenant, §* 226, it is laid down that:

"Where premises are leased, generally the right to use them during the term is transferred from the landlord to the tenant. During the existence of the lease, the tenant is the absolute owner of the demised premises for all practical purposes for the term granted, the landlord's rights being confined to his reversionary interest. In the absence of a contrary provision in the lease, the

lessee has, within certain exceptions, the sole and exclusive right to the occupation and control of the premises during the term, and the landlord has no authority during the term to enter or otherwise disturb the tenant in his occupancy or enjoyment or in any manner interfere with his rights to the management and control of the premises . . ."

According to the records, appellant's lessee, who is in possession of the property, invited appellees onto the demised premises as its business associates. The issue as to whether these invitees are trespassers on the **land** under the circumstances narrated herein above, and if so who can bring suit against them, is an issue of law. Therefore the ruling of the trial judge, dismissing the actions on the legal grounds therein stated and supported by authorities herein cited, is hereby affirmed and confirmed with costs against appellant. And it is hereby so ordered.

Judgment affirmed

Doe v Mitchell [1986] LRSC 25; 34 LLR 210 (1986) (31 July 1986)

GABRIEL DOE, Respondent/Appellant, v. **LEE D. MITCHELL**, Petitioner/Appellee.
APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: July 3, 1986. Decided: July 31, 1986.

1. The Supreme Court determines causes appealed to it based on the records certified to it from the trial court.
2. The trial court should always dispose of issues of law prior to ruling on the factual issues in a case.
3. Rules of Court are laws by which the practice of the Supreme Court is governed, and should be scrupulously adhered to until they are abrogated or annulled.
4. The burden of proof is on the party who complains or otherwise alleges a fact, except that when the subject matter of a negative averment lies peculiarly within the knowledge of the other party, and the averment is taken as true unless disproved by that party.
5. When the material allegations of the complaint or other pleadings are not denied by the defendant, they are deemed admitted and obviates the necessity of the plaintiff producing evidence.

The appellee filed a petition in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, to cancel an agreement of lease entered into between the appellant and himself. After pleadings had rested, the trial court assigned the case for disposition of law issues. The trial court

thereafter, without ruling on the issues of law, entered its judgment ordering the cancellation of the lease agreement. From this judgment, an appeal was taken to the Supreme Court. On appeal, the Supreme Court held that the trial judge had erred in proceeding to the merits of the case without first ruling on the issues of law raised in the pleadings. The Court therefore reversed the ruling of the trial court and remanded with instructions that the law issues be disposed of.

The Berry Law Firm appeared for the appellant/respondent. *The Tubman Law Firm* appeared for the appellee/petitioner.

MR. JUSTICE DENNIS delivered the opinion of the Court.

An agreement of lease was entered into between Mary Benson McClain, now deceased, as lessor, and Kamal A. Wahab, as lessee, for a parcel of **land** with buildings thereon, situated and lying on Mamba Point, City of Monrovia, Liberia, known as block no. 98.

On May 17, 1977 the within named petitioner/appellee and respondent/appellant entered into an addendum of lease in which they mutually agreed that respondent/appellant Gabriel Doe would pay to the petitioner/appellee, Lee D. Mitchell, for the use and occupancy of the said demised premises a valuable consideration of four thousand dollars, commencing June 1, 1980 and ending May 31, 1985.

The aforenamed petitioner/appellee, being dissatisfied with the acts of respondent/appellant, filed a petition in the March, A.D. 1985 term of the Civil Law Court, Sixth Judicial Circuit, praying for cancellation of the said indenture of lease and addendum thereto. He further prayed for possession of the said demised premises as well as required the within named respondent/appellant to pay to petitioner/appellee the sum of four thousand dollars representing lease money from June 1, 1984 to May 31, 1985.

Pleadings in this case progressed as far as to the filing of a reply by petitioner/appellee. There are mixed issues of law and facts pleaded in the answer and reply.

On the 15th day of August A. D. 1985, the trial judge rendered the following ruling:

"Wherefore and in view of the foregoing, the petition of the petitioner is hereby granted. Counts one to four of the reply are sustained. Counts one to four of the returns are overruled. The lease agreement or the indenture of lease with an addendum entered into by and between the petitioner and respondent are ordered cancelled and declared null and void."

The Clerk of this Court is hereby ordered to prepare a bill of cost for the collection of the amount of $4,000.00 per annum for the period covered by the lease agreement, which the respondent has failed or defaulted to comply with, and it is so ordered". To this ruling, appellant, respondent in the lower court, excepted and announced an appeal. In substance, appellant complained against the alleged irregular conduct of the case by the trial judge as follows:

"That arguments on the issues of law raised in the written pleadings were heard on the Pt day of August A. D. 1985, at which time ruling thereon was reserved and further hearing of the case suspended. Nevertheless, the trial judge without previous assignment and a hearing of the case proceeded with and rendered final judgment against respondent.

Further, respondent, now appellant, complained that the trial judge, in proceeding with the case omitted hearing evidence from the petitioner in support of the allegations of his petition, and that notwithstanding this fact, the said judge nevertheless proceeded on the 15 th of August 1985 to enter final judgment in favor of petitioner by ordering the cancellation of the said lease agreement. The respondent also submitted the following error by the trial judge:

"And also because respondent further submits that the non-payment of rent is not a ground for the cancellation of the lease agreement since the rent could be recovered, according to respondent's bill of information, either by an action of debt or an action of damages.

And also because respondent further submits that the legal basis for the institution of cancellation proceedings is fraud couple with misinformation and misrepresentation."

This Court in pursuing the just disposition and determination of causes appealed to it does so based upon matters of record only and the bill of exceptions as such cannot depart from this procedure. Vide: *Bryant v. African Produce Co.*, [1940] LRSC 4; 7 LLR 93 (1940).

Regarding counts one and two of the bill of exceptions, we note that the trial judge, without previous assignment being made and a hearing held as required by the Revised Rule of Court, ruled upon the factual issues without a prior disposition of the law issues. This is violative of numerous opinions of this Court which hold that the disposition of the issues of law should always precede the hearing and disposition of factual issues. As such it was erroneous for the trial judge not to have firstly disposed of the issues of law before arriving at a final ruling granting the petition for the cancellation of the agreement of lease. Vide: *Thomas v. Dayrell*, [1963] LRSC 28; 15 LLR 304 (1963). Rule 7 of the Revised Rules of the Circuit Court, reported in *Steinberg v. Greywood*, 2 LLR 237 (1916), state the following: "Rules of Court are laws by which the practice of this court is governed, and should be scrupulously adhered to until they are abrogated or annulled."

Reverting to the omission of the trial judge to have heard evidence prior to the rendition of a ruling cancelling the agreement, the burden of proof is usually on the party who complains and raises affirmative matters, the exceptions being in the circumstance of a negative averment. Vide: Civil Procedure Law, Rev. Code 1: 25.5, *Burden of Proof*

It is a well known principle that mere allegations are not proof, except under the following two circumstances when evidence is required of the plaintiff to substantiate allegations in a complaint: (a) when a negative averment is pleaded the burden of proof shifts to the party so pleading; (b) when the material allegation(s) of the complaint or another pleading is not denied by the defendant it is deemed admitted and obviates the necessity of producing evidence. Vide: *Bank of Monrovia v. Enemy Property Liquidation Commission*, [1945] LRSC 21; 16 LLR 324 (1945), text at 339; Civil Procedure Law, Rev. Code 1:9.8(3). *"Effect offailure to deny"*.

We have perused appellant' s/respondent's four-count returns as follows: (1) That the non-payment of rental is no ground for cancellation of an agreement of lease; (2) That fraud is indispensable to the institution of cancellation proceedings; (3) That as to counts one, two, three, four, five and six of the petition the same savour of and are suited to an action of debt; (4) Lastly, appellant/respondent denies petitioner's assertion that respondent's refusal to meet the annual rental payment for the demised premises as is stipulated in the addendum of lease is sufficient in law to cancel the said agreement of lease.

One can hardly read these four counts and the prayer of respondent's returns without arriving at an inescapable conclusion that they contain legal issues which should have been disposed of by the trial judge prior to the granting of the petition for the cancellation of the said agreement of

lease. There are several opinions of this Court mandatorily requiring that issues of laws must first be disposed of. Nevertheless, there is no indication that the trial judge adhered to prior court rulings or that the respondent waived his rights to a hearing on the law issues.

It is the ruling of this Court that since the trial judge departed from and acted contrary to the statutes as enumerated above, the ruling cancelling the lease agreement is hereby reversed and the case is remanded with instructions to the court below to dispose of the issues of law, and if the case is ruled to trial, to proceed to hear evidence since mere allegation is not proof. This is especially necessary since the respondent has, in count four of his returns, specifically denied count seven of the petition which refers to the alleged failure of the payment of the rent.

This Court holds that it is only when the averments of a pleading, more especially the allegations of a complaint or petition, are not denied that the necessity of the production of evidence is obviated.

In view of this fatal irregularity and omission, the judgment is reversed and the case is hereby remanded with strict instructions that the law issues be disposed of. Cost to abide a final determination of this case. And it is hereby so ordered.

Judgment reversed; case remanded.

Intestate Estate of Swary v Sarnor et al [1988] LRSC 20; 34 LLR 787 (1988) (25 January 1988)

THE INTESTATE ESTATE OF THE LATE JEBAH SWARY, by and thru the Administrator, VAMMA B. S. ZWANNAH, Plaintiff\Appellant, v. **SIAFA SARNOR**, **et al.**, Defendants\Appellees.

APPEAL FROM THE CIRCUIT COURT FOR THE ELEVENTH JUDICIAL CIRCUIT.

Heard: December 3, 1987. Decided: January 25, 1988.

1. An order determining a motion, whether made by a court or a judge, shall be in writing if made upon supporting papers. It shall be signed by the judge who made it, state the court of which he is judge along with the place and date of his signature, recite the papers used, and give the determination or direction.

2. A trial judge must dispose of and pass upon a motion for a declaratory judgment in which he has entertained arguments before proceeding to the rendition of final judgment.

The appellant, who had filed in the Circuit Court for the Eleventh Judicial Circuit for Bomi County, an action of summary ejectment against the appellees to recover possession of real property claimed by it as part of the intestate estate of the late Jebah Swary, made application, during the trial, for a declaratory judgment. Arguments were had on the application and the case suspended to await ruling thereon.

However, when the hearing resumed, the trial judge proceeded to render final judgment dismissing the action. From this judgment of dismissal, the appellant appealed to the Supreme Court.

The Supreme Court *reversed* the judgment, holding that the trial court should have first disposed of the application for a declaratory judgment which had already been argued before the court. The case was therefore *remanded* for proper disposition of the application for declaratory judgment by the lower court.

Roger K Martin and *David D. Gbala* appeared for the appellant. *Francis Y S. Garlawulo* and *J. Laveli Supuwood* appeared for the appellees.

MR. JUSTICE AZANGO delivered the opinion of the Court.

The records transmitted from the lower court to this Court reveal that appellant filed an action of summary proceedings against the appellees to recover possession of real property. During the proceedings in the lower court, the appellant filed an application or motion for the entry of declaratory judgment. The application/motion reads word for word as follows:

"To declare the legal rights of Seku Swary, Massah Swary and Jendoa Swary under the deed bearing the name of their late father, Jebah S wary, in whose name the deed for said intestacy was made, which deed was admitted into evidence without objection from defendants".

He further said that the failure of the trial judge to have made an order determining the motion of appellant prior to the rendition of the final judgment violated the Civil Procedure Law, Rev. Code I:10.9.

The appellees resisted the motion as follows:

"Appellees contend that under the law, a court consolidates actions involving a common question of law or fact pending before it, this may be done upon motion by any party, or the court *sua sponte* may order a joint trial and properly rule thereon". Civil Procedure Law, Rev. Code I: 6.3.

The case was then suspended to resume September 2, 1986, both appellant and appellees have submitted arguments *pro et con* on the action for declaratory judgment.

When the case resumed, the trial court proceeded to render final judgment as follows, instead of disposing of the motion: "Administrator Vamma B. S. Zwannah applied for letters of administration to administer the intestate estate of the late Jebah Swary. This petition was granted. Vamma B.S. Zwannah, one of the grand children of the late Jebah Swary was qualified as administrator of the said estate of the late Jebah Swary. After a brief time, the said administrator instituted an action of summary ejectment to eject Saifa Samor and others from the said parcel of **land**.

During the trial, it was discovered that the late Jebah Swary had four (4) children, namely: Hawah Swary, Jendoah Swary, Massah Swary, and Sekou Swary. As the trial proceeded, we discovered that Jawah Swary died without leaving children or issues of her body and Massah Swary, who also died, left issues or children, one of whom is Vamma B. S. Zwannah who is now the administrator. At the trial we came to know that Jendoah Swary is not in favour of the ejectment proceedings which was filed by the administrator, and that as a result she registered a strong contention against the ejectment proceedings which was filed by the Administrator Vamma B.S. Zwannah. As a result, she disassociated herself with the said action of ejectment.

Since the property of the late Jebah Swary should be handed down to his children, in keeping with the Decedent Estates Law, Rev. Code 8: 3.2 (b), and since indeed Jendoah was one of the lawful heirs of the late Jebah Swary and who also had the legal right to the property as the other children of the late Jebah Swary, the property of the late Jebah Swary would have to be apportioned equally among the surviving heirs; but since Jendoah Swary is presently against the action of summary ejectment filed against Siafa Samor et. al. and the property has not been divided for each of the heirs to have their rightful portion, the said action of ejectment is hereby dismissed.

Furthermore, the letters of administration granted Vamma B. S. Zwannah is hereby revoked, since his appointment did not meet the approval of all the living children of the late Jebah Swary. The curator of Bomi County, Joseph B. Parker, is hereby ordered to take charge of the said property, take an inventory and submit same to the court below. The said curator is to be in charge of the property until the relatives of the family shall have appointed some one from each of the two living children of the late Jebah Swary, and also someone from the late Massah Swary, to be .appointed as administrators, to administer the intestate estate of the late Jebah Swary to avoid misunderstanding."

Under the statutes of Liberia, a motion should be determined by order determining same. "An order determining a motion, whether made by a court or a judge, shall be in writing if made upon supporting papers. It shall be signed by the judge who made it, state the court of which he is judge and the place and the date of the signature, recite the papers used on the motion and give the determination or direction in such details as the judge deems proper". Civil Procedure Law, Rev. Code 1: 10.8. Also, the statute states that "an order determining a motion shall be entered and filed by the clerk of the court where the action or proceeding is triable". Civil Procedure Law, Rev. Code 1: 10:9.

The trial judge was obliged under the law to dispose of and pass upon the motion for declaratory judgment in which he had entertained argument before he proceeded to render the final judgment. He therefore erred.

In view of the foregoing, the case is remanded with instruction that the motion for declaratory judgment be disposed of, i.e. heard and ruled on before the final determination of the case. Costs are hereby ruled against appellees. And it is hereby so ordered.

Judgment reversed; case remanded.

Doe v Wolo [1972] LRSC 8; 21 LLR 62 (1972) (21 April 1972)

PENTI TARPEH, J. N. DOE, and A. B. DOE, Executors of the Estate of C. B. WILLIAMS, Appellants, v. BETEA KRU and MATTHEW D. WOLO,
Appellees.
APPLICATION FOR AN ORDER TO MONTHLY AND PROBATE COURT, MONTSERRADO COUNTY, TO ENFORCE JUDGMENT.

Argued March 22, 1972.
Decided April 21, 1972. 1. Delay in transmission of the record on appeal to the appellate court beyond the ninety days allowed therefor
is not a ground for dismissal of an appeal.

An application was made by appellees for an order to the lower court to resume jurisdiction and enforce the judgment against appellants, who were the unsuccessful objectors to the probate of a deed to realty. Various procedural
defects in perfecting the appeal were advanced by the applicants, including the failure to transmit the record to the appellate court
within ninety days after judgment. Application denied.
Matthew D. Wolo for appellees. and J. N. Doe for appellants. Edward N. Wollor

MR. JUSTICE the Court.

WARDSWORTH

delivered the opinion of

In disposing of the objections filed by Penti Tarpeh et al., objectors,
against the probation and registration of a warranty deed for Lot No. I1, situated at Logantown, Monrovia, Montserrado County, the
Commissioner of Probate for Montserrado County rendered final judgment against the said objectors, from which final judgment they
announced an appeal to this Court. For the benefit of this opinion we quote the relevant portion of the said judgment.
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"The deed of respondent Matthew D. Wolo having been shown from the evidence to be legally invalid should not and
is not admitted into probate. However, in order that the property of Solomon K. Wisseh may be legally administered in keeping with
law, and since this court is empowered by law to supervise, control and administer estates whether they be testate or intestate,
the Curator for Montserrado County is hereby ordered to immediately take over the control of the intestate estate of Solomon K. Wisseh
and make its report as to what real and personal properties comprise said intestate estate within three weeks from the date of this
judgment. Messrs. B. T. Kru and Wesseh Sanyone are ordered to deliver up and turn over all real and personal properties which they
may have in their possession belonging to the intestate estate of Solomon K. Wisseh to the Curator. It having been conclusively established
that respondent Matthew D. Wolo incurred some financial expenses for the heirs of Solomon K. Wisseh, he should present his claims
to the Curator and should there be no monies found in said estate to pay said claims the Curator is hereby ordered to dispose of
some of the real property found in said estate to settle said claims. Respondent Matthew D. Wolo should be and is given preference
to that portion of **land** covered and described in the deed offered for probation should sale be necessary. The objections are therefore
overruled and dismissed for want of sufficient legal proof. Costs of these proceedings ruled against objectors and respondents, to
be paid equally. "Given under my hand and Seal of Court, this 31st day of July, 1970. "CHAS. H. D. SIMPSON, SR." Appellees at the
call of this case for hearing, submitted an application for an order to authorize the trial court to resume jurisdiction and enforce
its judgment on

many procedural grounds, including the failure to file an approved bill of exceptions.
The appellants have opposed the motion and claim their appeal is an order and was properly taken. We observe that the final judgment
in these proceedings was rendered on July 31, 1970, the approved bill of exceptions was filed on August io, 1970, and an appeal bond
was approved by the Commissioner of Probate, Montserrado County, on September 2, 1970, and the sheriff's official return to the notice
of appeal in this case was made on September 8, 1970. The affidavit of the sureties and also the statement of property valuation
are attached to the appeal bond in this case, emanating from the office of Alfred B. Duker, Justice of the Peace for Montserrado County, and over the signature

of a Treasury official, the acting Chief Accountant. As far as we have gathered from the record certified to us in these proceedings,
we observe that the jurisdictional steps, including the service, filing, and return of the ministerial officer to the notice of the
completion of the appeal, were all taken between July 31, 1970, and September 8, 1970. As a result, the appeal was perfected within
less than forty days from the rendition of final judgment. Consequently, the appeal in this case was completed well within the statutory
time allowed. It is clear from the foregoing that appellants did not fail in any procedural aspect. The delay in transmission of
the appeal record beyond ninety days allowed by law therefor is no ground for the dismissal of an appeal. In view of the foregoing,
the application of appellees for an order of the court to the trial court to resume its jurisdiction and enforce its judgment is
hereby denied. Costs to abide final determination.

Application denied.

Kru et al v Tarpeh [1970] LRSC 15; 19 LLR 472 (1970) (29 January 1970)

BETEA KRU and MATTHEW D. WOLO, Appellants, v. PENTI TARPEH, SR., J. N. DOE and A. B. DOE, Executors of the estate of C. B. Williams,
Appellees.
APPEAL FROM THE MONTHLY AND PROBATE COURT, MONTSERRADO COUNTY.

Argued October 21, 1969. Decided January 29, 1970. 1.
The pendency of another action over the same subject matter between the same parties, in another court, is ground for the dismissal
of an action. 2. But when the other action relates only to the same subject matter when the parties are not identical, it is not
a ground for dismissal. 3. An interlocutory judgment does not give rise to the right of appeal, which comes into being only in the
case of a final judgment. 4. The controlling quality of a final judgment is that it puts an end to a suit or action.

In the course
of a proceeding in the probate court, the judge held at the time the issues of law were presented for adjudication, that the matter
was to be suspended pending the determination of another action in another court involving the identical subject matter but not the
identical parties. The respondents in the probate court excepted to the ruling and announced their intention to appeal, not recognized
by the lower court but nonetheless, pursued in accordance with statute. During the pendency of the appeal, the appellees moved to

dismiss, contending that the decree of the court below was interlocutory in nature and not final, as judgments are required to be
for appeals to be considered. The opinion of the Supreme Court rendered on the motion recognized the interlocutory nature of the
decree appealed from, but pointed also to the statutory grounds for dismissal of appeals, in which it was not embraced. However,
by stipulation of the parties, which the Court lent its sanction to, the case was remanded to the lower court for adjudication, after
the decree was set aside, the subject matter of 472

the pending other action not being one involving
the identical parties.
Matthew D. Wolo for appellants. for appellees. Edward N. Wolo

MR. CHIEF JUSTICE WILSON delivered the opinion
of the court. The record in this case reveals that on May 3, 1966, J. N. Doe, A. B. Doe and Penti Tarpeh, in their capacity as executors
of the estate of C. B. Williams, filed in the office of the clerk of the probate court a caveat against the probation of any instrument
of transfer in favor of Matthew D. Wolo, which might convey a portion of the aforesaid estate. On the very same day after the filing
of the caveat, Matthew D. Wolo presented to the probate court for probation a warranty deed executed in his favor by B. T. Kru and
Wissah Saryaneh. The caveators were duly informed of the presentation of said deed and on May I I, 1966, filed objections to the
probation of the said warranty deed. Pleadings progressed as far as the reply and rested. On April 9, 1968, the parties having been
duly cited, appeared and argued the issues of law contained in the pleadings. Ruling was reserved until further notice. On May 5,
1968, the judge in ruling on the issues of law, held in paragraphs 4. and 5, as follows : "As much as we would like to pass upon
the law issues as prOvided by statute and thereafter go into the merits and facts, we find ourselves incapable and unable to do so,
primarily because objections in count three of their reply plead that an ejectment suit is filed in the Circuit Court, Sixth Judicial
Circuit, Montserrado County, over the same parcel of land in question and also strongly argued this before court. Any attempt on
our part to pass upon the law issues

and/or facts involved would surely have a prejudicial effect on the case itself and may have a tendency to inflame the mind of the court and jury. "In view of the foregoing, we have no alternative but to suspend the entire proceedings until final determination of the ejectment suit. Costs of these proceedings to abide final determination of the matter." Although our L. 1963-64, ch. III, Civil Procedure Law, § H02 (d), provides that the pendency of another action over the same cause in a court of Liberia is a ground for dismissal of an action, the statute specifically requires that the action must be between the same parties. In the absence of any showing that there was such an action pending, we fail to see by what authority the court below acted, especially when appellants are not shown to be parties in any other action. More than this, had an action between the same parties herein been pending in the Circuit Court, we are of the opinion that this fact could not operate as a stay to a ruling on the issues of law.

The minutes reveal that respondents below, now appellants, excepted thereto and announced an appeal to this Court. To this announcement the court entered the following ruling: "The exceptions are noted, and this not including the determination of the matter, but being an interlocutory ruling, the appeal is denied. Matter sus-. pended." The record further reveals that the respondents again gave notice that they would appeal and accordingly perfected an appeal to this Court on a bill of exceptions containing seven counts. When this case was reached on our trial docket and called for argument, we were informed by the Clerk that the appellees had filed a motion to dismiss the appeal on the ground that the decree appealed from was interlocutory in nature, and not final, as required to be appealable.

Appellants opposed. The question now arises whether the ruling or judg-

 ment from which this appeal is taken is final or interlocutory. A final judgment is defined as : "One which puts an end to a suit or action . . . one which puts an end to an action at law by declaring that the plaintiff either has or has not entitled himself to recover the remedy he sues for."

Whereas an interlocutory judgment is : "One given in the progress of a cause upon some plea, proceeding, or default which is only intermediate and does not finally determine or complete the suit. One which determines some preliminary or subordinate point or plea, or settles some step, question, or default arising in the progress of the cause, but does not adjudicate the ultimate rights of the parties, or finally puts the case out of court." BLACK'S LAW DICTIONARY. Relating these definitions to that portion of the ruling quoted, it must be conceded that the ruling was interlocutory, from which an appeal may not be taken, for our statute provides when

an appeal may be taken: "Every person against whom any final judgment is rendered shall have the right to appeal from the judgment
of the court except from that of the Supreme Court." L. 1963-64, ch. III, Civil Procedure Law, § 5102. In looking at our statute
controlling dismissal of appeals, we find : "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." L. 1963-64, ch. III, Civil Procedure Law, § 5116. It is evident that the grounds of this motion
are not suf-

ficient to warrant dismissal. This was conceded by the appellees during argument before
this Court when they requested leave to change their demand for dismissal to a request for remand, to which the appellants acquiesced.
In view of the foregoing, the ruling of the court below is hereby set aside, and the request for remand granted, with instructions
to the court below to proceed, commencing by ruling on the issues of law already argued, costs to abide final determination of the
case. And it is hereby so ordered.
Suspension order set aside, case remanded pursuant to stipulation of parties.

Moore & Son v Cooper et al [1881] LRSC 1; 1 LLR 134 (1881) (1 January 1881)

G. MOORE & SON, Plaintiffs, vs. **G. C. COOPER** and **MARINDA COOPER**, Defendants.

[January Term, A. D. 18811

Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.

Partition of Real Property.

1. Where a will creates a charge upon the devisee personally, in respect to the estate devised, he will take a fee by implication, though there are no words of limitation, on the principle that he might otherwise suffer.

2. An application for the partition of such an estate to satisfy claims against one of the devisees is warrantable.

This case was tried in the Court of Quarter Sessions, Montserrado County, at its September term, A. D. 1880. The plaintiffs in their bill complain that Randolph C. Cooper, deceased, in his lifetime was indebted to them to the amount of three hundred and thirty-six dollars and fifty-nine and a half cents; for which amount the said plaintiffs sued the estate of the said Randolph C. Cooper in the June term of this court, A. D. 1877, and obtained judgment for the same; but sufficient assets could not be found to satisfy the judgment, because the said defendants, Garriet C. Cooper and Marinda Cooper, refused to disclose the property of the said Randolph C. Cooper, though he was, during his lifetime, entitled to one-half of all the real estate of his late father, Reid C. Cooper, by virtue of the last will and testament of his said father.

Therefore, the said plaintiffs pray that a decree of partition of the real property of the said Reid C. Cooper be rendered, and that suitable persons be appointed to partition the said real property of the said Reid C. Cooper between his two sons, etc.

The court below, after hearing the arguments by counsel for plaintiffs and defendants, rendered the following decree:—

"By the terms of the will of the late Reid C. Cooper, his wife Marinda Cooper was given a life estate, and that after his death his two sons, Randolph C. Cooper and Garriet C. Cooper, shall have the remainder as tenants in tail. In view of the character of the case, this court decrees that a partition of the property named in the will cannot be ordered, as Randolph C. Cooper had not possession of any part of his father's estate at his death, nor could claim any part until the death of his mother, Marinda Cooper. Therefore this court decrees that the complaint of the plaintiffs is dismissed and plaintiffs ruled to costs."

The doctrine upon which the above-stated decree is founded is destitute of the necessary ingredients that would harmonize it with the great principles of justice and equity; therefore, for the want of legal vitality, it must crumble.

We proceed now to the points under consideration. In respect to the life estate of Marinda Cooper (decreed to her by the court below) this court feels warranted in saying that by the legal terms of said will Marinda Cooper was not given a life estate in the property of the said Reid C. Cooper, but a legacy in the charge given by her husband to the two sons, Randolph C. Cooper and Garriet C. Cooper, and no part of the said property could she claim by virtue of the will, though she is entitled to a part in it by her right of dower.

The next point which claims our attention is "that Randolph C. Cooper and Garriet C. Cooper after the death of their mother shall have the remainder of the said life estate given their mother, as tenants in tail." Now is it not an undoubted fact that the said Reid C. Cooper charged his two sons, Randolph C. Cooper and Garriet C. Cooper, personally with the burden of taking care of their mother whilst living, and that the said charge is in respect to the estate devised? And just here the court would remark that the phrase "take care," in this connection admits of a very liberal construction, for it seems to put the fact beyond a doubt that the said Reid C. Cooper by the use of the term intended to impose upon his two sons the duty of providing for their mother food, raiment and medicines, and to keep in good condition the estate devised. Therefore the said Randolph C. Cooper and Garriet C. Cooper did take in the lifetime of Reid C. Cooper a fee in the said estate. For the general rule is that if the testator creates a charge upon the devisee personally, in respect to the estate devised, as if he devises lands to B. on condition of his paying such a legacy, the devisee takes the estate on that condition, and he will take a fee by implication, though there be no words of limitation, on the principle that he might otherwise be a loser. (See Kent's Commentary, Vol. IV, p. 540.) We might cite numerous authorities, but it is unnecessary in this plain case.

Therefore, it is the decree of this court that the decree rendered in this case by the Court of Quarter Sessions, Montserrado County, at its September term, A. D. 188o, is hereby reversed and made void and of no effect whatever, either in law or in equity. And the clerk of this court is hereby ordered to send down to the Court of Quarter Sessions a mandate informing the court below of the reversal of the judgment rendered in this case by said court, commanding that the said court at its next term shall proceed to appoint suitable persons to appraise the property of the estate real and personal of the late Reid C. Cooper, and as soon as said appraisement shall have been completed, the said widow, Marinda Cooper, shall have the right to one-third of the estate, as her dower, which shall be given her; because it would be unjust to have her dependent upon her sons altogether when considering the uncertainty of this present life.

And the said Court of Quarter Sessions shall order a partition of the remaining two-thirds of the said property, one-third to go to Garriet C. Cooper and the other third to Randolph C. Cooper's heirs, after the said Randolph C. Cooper's debts shall have been paid. And to carry into effect the directions of this mandate, the said Court of Quarter Sessions may make such rules as would best effect the ends of justice. And the plaintiffs recover from the defendants all costs in this case.

Neufville v Kla Seton [1968] LRSC 42; 19 LLR 54 (1968) (14 June 1968)

MERCY B. NEUFVILLE and WLEH NEUFVILLE heir and nephew, respectively, of JOHN WA NEUFVILLE, deceased, and NYEBA KLA NEUFVILLE, Appellants,
v. SAMUEL KLA SETON, Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT, MARYLAND COUNTY.

Argued March 14, 1968.
Decided June 14, 1968. 1. In an action of ejectment, a plaintiff may not recover upon the weakness of the defendant's title, but upon the strength of his own. 2. Where good cause is shown, the Supreme Court will grant the joint request of counsel for a remand sought in the interest of justice.

In an action of ejectment, judgment was rendered against plaintiffs after trial by jury, from which the appeal was taken. When the cause was called for argument, counsel for both parties joined in requesting a remand of the case, agreeing that the plaintiffs, in their pleadings, had not proferted an instrument proving their title. The judgment of the lower court was reversed and a remand ordered.
G. P. Conger Thompson for appellants. 0. Natty B. Davis for appellee.
MR. JUSTICE SIMPSON delivered the opinion of the

court. During the February 1964 Term of the Fourth Judicial Circuit Court, Maryland County, an action of ejectment was filed by Mercy B. Neufville and Wleh Neufville, heir and nephew, respectively, of the late John Wa Neufville, and Nyeba Neufville, against Samuel Seton, for the recovery of lot number 8o, situate on the corner of March and Center Streets, in the City of Harper, Maryland

County. The complaint also called for damages in the amount of $5oo.00.
At the termination of count one of the aforesaid complaint, profert was made of a copy of a public land sale deed from the Republic to John Wa Neufville, which deed was executed in the year 1928 by C. D. B. King, the then President of Liberia. The appellee, defendant

in the court below, thereupon filed a formal appearance and subsequent thereto an answer, consisting of nine counts. In count three
of the answer, defendant averred that the plaintiffs had failed to show title in themselves and, therefore, were unable to recover
against him. Additionally, count five of the answer held that the feoffee of the original grant from the State had died intestate
and no document had been proferted showing that title had been transferred to any or all of the plaintiffs, who were suing in their
own capacities and not by virtue of any legal relationship established by the Probate Division of the court. After the answer, a
reply was filed by the plaintiffs, who also filed a motion to dismiss the answer of the defendant. Of course, to this an opposing
affidavit was filed, and upon argument the motion was denied. The trial of the cause was thereafter held, the jury returning a verdict
in favor of the plaintiffs. A new trial was prayed for by defendant through a regular motion, but was denied. Thereupon, an appeal
was perfected to this Court for final review of the several rulings and judgment of the court below. When this case was called for
hearing before this Court, counsel for both appellant and appellee appeared and, speaking for both, counsel for appellee requested
that the case be remanded for a new trial for, after a perusal of the records, it had been discovered by both of them, who were not
in court during the trial in the lower court, that several irregularities had been permitted in the lower court.

To begin with, a review of the pleadings clearly shows that the plaintiffs never proferted any instrument that would show
the court that the fee was theirs. It is a cardinal principle in actions of ejectment that a plaintiff may not recover from a defendant
in possession merely upon the weakness of the defendant's title. The recovery must be had upon the strength of the plaintiff's own
title. It is evident that this did not prevail in the present cause. In the circumstances, and by virtue of the joint request made
by the parties hereto to have a remand of the case, this Court will permit a remand so that the issues of law may be determined anew and, thereafter, a trial of the facts held.
Costs are ruled against appellant. And it is hereby so ordered. Reversed and remanded.

Freeman v Cooper et al [1968] LRSC 35; 19 LLR 9 (1968) (14 June 1968)

JOSIAH FREEMAN, Appellant, v. ELIZABETH COOPER and FRANCIS J. SAWYER, Appellees.
MOTION TO DISMISS THE APPEAL FROM THE CIRCUIT COURT
OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued March 20, 1968. Decided June 14, 1968. 1. When the failure to transmit
the record on appeal from the lower court to the Supreme Court within the time prescribed by statute is the result of clerical omission,
such ministerial failure cannot be charged to appellants, and a motion to dismiss the appeal on such ground will be denied.

Appellees,
in effect, sought to dismiss the appeal taken from a judgment in their favor in an action of ejectment, on the ground that the record
in the appeal had not been transmitted to the appellate court z to days after judgment in the lower court. The omission was clearly
shown to have resulted from clerical failure in the lower court and that appellant had complied in all respects with the statutes
governing appeal procedure. The petition seeking dismissal of the appeal was denied. J. Dossen Richards for appellant. James G. Bull
for appellees. MR. JUSTICE WARDSWORTH delivered the opinion of the court. This petition is based on the fact that an action of ejectment
was instituted by the petitioners herein against the respondent in the Sixth Judicial Circiut Court, Montserrado County, final judgment
having been rendered in favor of plaintiffs-petitioners in said case and defendantrespondent having allegedly failed to exercise
diligence in causing the appeal record to be forwarded to this Court, in order that the appeal be heard and disposed of without unnecessary
delay. Appellees filed a petition before this Court which is suggestive of a prayer for the dismissal of
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the appeal, to order the trial court to resume jurisdiction and enforce its judgment. For the benefit of this opinion we quote hereunder
the four counts in said petition : That final judgment was rendered by Hon. John Dennis in the above entitled ejectment suit in favor

of plaintiffs on the 17th day of February, 1967, to which judgment respondent excepted and announced an appeal to this Court. "2.
That even though respondent, defendant below, announced an appeal to this Court since the 17th day of February, 1967, a period of
over 210 days from the said 17th of February up to the date of the filing of this petition, he, the said defendant, has not perfected
and prosecuted his said appeal. "3. That to all intents and purposes respondent does not intend prosecuting his appeal but has abandoned
the same as can be more fully seeen from attached certificate from the clerk of the Court, Sixth Judicial Circuit, Montserrado County.
"4.. That as a result of the announcement by respondent of said appeal, respondent continues to occupy and enjoy the rents and profits
of petitioners' **land**, subject of the ejectment suit in the court below, and intends to hold said appeal and case in suspense to the
great loss, embarrassment and inconvenience of petitioners." In opposing the petition, the respondent filed a twocount affidavit
which we quote hereunder: "1. Because respondent says that the entire petition is baseless and not entitled to the favorable consideration
of this Court, because as to count two of said petition, respondent denies that he has not perfected and prosecuted his appeal. The
fact, to the contrary, is that he had done so by filing an approved bill of exceptions and approved appeal bond and the notice of
the completion of the appeal has been duly issued,

served and returned. This is all the law requires
for the completion of the appeal. "2. And also because respondent says, that having completed and prosecuted his appeal, this Court
acquired jurisdiction over both the subject matter and the parties to the action, and the failure of the clerk of court to transmit
the records provides no support to the petition; more than this, by a long line of decisions it has been held that the failure of the clerk of court to transmit the records on appeal is no ground either for the dismissal of the appeal or for an order for the
enforcement of the judgment of the lower court." The subject matter of the petition is tantamount to importuning this Court to dismiss
the appeal due to the fact that appellant has failed to superintend his cause to the extent of having the record on appeal in the
abovementioned case before this Court within the time prescribed by law for the transmission of the record on appeal from the trial
court to the Supreme Court. Reverting to the statute which furnishes grounds for the dismissal of appeals, it is discovered that
the ground upon which the petition is predicated is not included in the statute. Civil Procedure Law, 1956 Code 6:1o20. It is a well-established

principle of law that the appellant in any given case must avoid procedural pitfalls, but in this case the alleged failure of the
appellant to have caused the record on appeal to be transmitted to this Court before now is no legal ground for this Court to refuse
jurisdiction of the appeal and order the trial court to resume jurisdiction and enforce its judgment. Having carefully considered
the petition from every legal angle, the Court fails to recognize any merits therein contained that will warrant granting the relief
sought. Therefore, in view of the foregoing, the petition is hereby denied, with costs to appellees. And it is hereby so ordered.
Petition denied.

Liberia Agricultural Co. v Reeves et al [1990] LRSC 21; 36 LLR 867 (1990) (9 January 1990)

LIBERIA AGRICULTURAL COMPANY (LAC), Plaintiff-In-Error, v. **HER HONOUR C. AIMESA REEVES,** Judge, Debt Court for Montserrado County, and **REBECCA TARR**, Defendants-In-Error

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

Heard: December 6, 1989..Decided: January 9, 1990.

1. Despite the fact that a party had failed to appear or plead, the trial court has a duty to have him notified of the trial proceedings, even as a last or final chance of appearing in the matter.

2. No party can be said to have failed to proceed to trial who has not been duly informed of the hearing.

3. Rule 7 of the Revised Rules of the Circuit Courts applies whether or not a defendant files an answer or the plaintiff files a reply; but under all circumstances, a notice of assignment of the hearing must have been issued first before the said rule can be applied with any legal justification.

4. When an essential allegation in a pleading is not denied in the subsequent pleading of the opposing party, the allegation is deemed admitted.

5. A writ of error shall be granted when a party against whom a judgment has been rendered has, for good reason, failed to make a timely announcement of the taking of an appeal from such judgment and after complying with the other necessary statutory requirements for applying for a hearing on said writ.

Co-defendant-in-error, Rebecca Tarr, instituted an action of debt against the plaintiff-in-error in the Debt Court for Montserrado County, claiming the sum of $42,000.00 as debt owed her by the plaintiff-in-error. A writ of summons was issued and returned unserved. A writ of re-summons was subsequently issued and served on the general manager of plaintiff-in-error, but it did not file an answer. The case in the debt court was called without an assignment being issued. Upon the call of the case, and plaintiff-in-error not being present, codefendant-in-error moved the court to enter a default judgment against the plaintiff-in-error, and same was granted by codefendant-in-error, Judge Reeves, without any plea of not liable entered for the plaintiff-in-error. Co-defendant-in-error Judge Reeves then heard Rebecca Tarr's side of the case and thereafter rendered final judgment against the plaintiff-in-error, and without designating a counsel to receive the judgment on behalf of plaintiff-in-error and announce an appeal therefrom. Plaintiff-in-error therefore filed a petition for a writ of error before the Justice in Chambers, alleging that it was denied its day in court and the right to appeal against an adverse ruling of the trial judge.

Co-defendant-in-error, Rebecca Tarr filed her returns and thereafter plaintiff-in-error withdrew its petition and later filed an amended petition. Defendant-in-error filed amended returns without it being verified. Plaintiff-in-error then filed an answering affidavit, attacking the amended returns for being unverified in keeping with law; but in her replying affidavit to the answering affidavit, co-defendant-in-error (Rebecca Tarr) failed to traverse the issue of verification. The Justice in Chambers heard the petition for the writ of error but dismissed it on ground that the trial judge had no duty to notify the plaintiff-in-error or designate a counsel to receive judgment on its behalf. The plaintiff-in-error then appealed to the full bench of the Supreme Court.

On appeal, the Supreme Court held that the failure of the trial judge to have plaintiff-in-error notified by an assignment of the hearing of the case is evidence of a denial of the said party's day in court. The Court also held that there can only be default judgment after returns by a sheriff of a written assignment, in which case there will be sufficient indication of an abandonment by the defaulting party. The Court further held that codefendant-in-error admitted the allegations of plaintiff-in-error that she did not verify her returns to the petition for a writ of error. The petition for the writ of error was therefore granted and the ruling of the chambers Justice reversed.

Roger K Martin appeared for the plaintiff-in-error. *George Odoi and Philip A. Z Banks, III,* appeared for defendant-in-error.

MR. JUSTICE GBALAZEH delivered the opinion of the Court.

Plaintiff-in-error applied to the Chambers Justice for the issuance of a writ against the defendant-in-error for denial of its day in court for not being served with a notice of assignment in order to be present at the hearing of the matter in the court below before rendering a judgment by default. Co-defendant-in-error, Rebecca Tarr, brought an action of debt in the Debt Court for Montserrado County against the plaintiff-in-error, Liberian Agricultural Company, claiming the sum of $42,000.00 owed her by said company on a contract to clear up 1,400 acres of **land** at $30.00 per acre. The co-defendant-in-error allegedly performed and was paid $1500.00 by plaintiff-in-error, leaving a balance sum of $40,500.00, which plaintiff-in-error was alleged to have refused to pay. The first summons was returned unserved, according to the returns of the sheriff, and defendants-in-error contended that in fact the personnel director of the defendant company had refused to accept the precepts on the ground that he had no authority to receive same. A writ of re-summons was later served, and this time the general manager of the company was served, but plaintiff-in-error contended that the writ was not legally served because the sheriff of Montserrado County, and not the sheriff for Grand Bassa County served same. The plaintiff-in-error, as defendant below, neither appeared nor filed an answer.

On the day of the hearing, counsel for the plaintiff in the debt court, now the co-defendant-in-error, prayed for judgment by default under Rule 7 of the Revised Rules of the Circuit Court. It was not disputed that no notice of assignment was issued to the defendant, now the plaintiff-in-error. Upon calling said defendant at the door of the court three times, the trial judge proceeded to grant the plaintiffs motion for judgment by default, but without any plea of not liable entered for defendant. The trial judge accordingly heard the plaintiffs side of the matter. At the conclusion of the trial, the trial judge rendered a judgment by default against defendant (plaintiff-in-error), but also without designating any counsel to receive the judgment and announce an appeal form it on behalf of the absent defendant.

It is those acts of the trial judge that plaintiff-in-error referred to in its petition as a denial of its day in court, and also a denial of its right to appeal against an adverse ruling in the trial court.

Plaintiff, now co-defendant-in-error, filed her returns to the petition for a writ of error, and thereafter plaintiff-in-error withdrew its petition and later filed an amended petition. Defendant-in-error thereupon filed amended returns, but never had said returns verified. The plaintiff-in-error then filed an answering affidavit attacking the amended returns for being unverified according to law; while in her replying affidavit, defendant-in-error failed to traverse the said issue of verification.

The Chambers Justice heard the matter upon due notice and with both sides represented. Judgment was rendered dismissing the petition for a writ of error on the grounds that the trial court had no duty to give plaintiff-in-error a notice of the hearing or trial, or to have designated a counsel to receive judgment on its behalf. Therefore, the plaintiff-in-error appealed from said ruling to the full bench of this Court.

Upon a close study of the records before us, we will address the following issues:

1. Whether or not a party failing to appear and to plead after service of summons before trial is entitled to notice of assignment of the hearing of the matter?

2. At what time does Rule 7 of the Revised Circuit Court Rules apply - when an answer is filed or when notice of the hearing is given?

3. What happens to an attack on the pleading that is not rebutted or denied?

4. Whether or not the Chambers Justice was right in denying the writ of error in the circumstances of this case.

Starting with our first issue here: whether or not a party failing to appear or plead, after service of summons is, notwithstanding, entitled to a notice of assignment of the hearing of the matter. The answer to this issue is yes. Despite the fact that a party has failed to appear or plead, the trial court has a duty to have him notified of the trial proceedings, even as a last or final chance of appearing in the matter. No party can be said to have failed to proceed to trial who has not been duly informed of the hearing. Failure by the trial court to have plaintiff-in-error notified of

assignment of the case for hearing is evidence of a denial of the said party of his day in court. Civil Procedure Law, Revised Code 1:4.1; *Pan American Airways Corporation v Obey* and *Badio[1982] LRSC 65; ,* 30 LLR 324 (1982).

We next proceed to our second issue. At what time does Rule 7 of the Revised Rules of the Circuit Court apply to a pending matter in court? Is it when an answer is filed, or when notice of the hearing is given?

We are convinced that Rule 7 of the Revised Rules of the Circuit Court apply whether or not defendant files an answer, or the plaintiff files a reply, but under all circumstances notice of assignment of the hearing must have first been issued before the said rule can be applied with any legal justification. The rule provides substantially as follows:

"**. . .A failure to file a motion for continuance or to appear for trial after returns by the sheriff of a written assignment s shall be sufficient indication of the party to 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. . .." (our emphasis).

Clearly, there can only be a default judgment, ". . .after returns by the sheriff of a written assignment," in which case, there will be sufficient indication of an abandonment by the defaulting party.

Let's come to the third issue. What happens to an attack in the pleadings that is not rebutted or denied? It is the law that "when an essential allegation in a pleading is not denied in the subsequent pleading of the opposing party, the allegation is deemed admitted." *Chenoweth v. Liberia Trading Corporation,* [1964] LRSC 31; 16 LLR 3 (1964). Hence, it is our conclusion on this issue that co-defendant-in-error admitted the allegations of plaintiff-in-error that she had failed to have her returns to its petition verified as required by law. Civil Procedure Law, Revised Code 1:9.4(1).

Finally, we now consider whether or not the Chambers Justice was justified in denying the petition for a writ of error in the circumstances of this case. The answer here is in the negative. The statute on the writ of error provides that:

"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 review by the Supreme Court by writ of error." Civil Procedure Law, Revised Code 1:16.24(1).

From all the circumstances of this case, plaintiff-in-error has established and satisfied us that it had "for good reason failed to make a timely announcement of the taking of an appeal" from the judgment of the trial court in this matter, and after having complied with the other necessary requirements for applying for a hearing on this writ, we have decided that it is entitled to the benefits of the writ of error. Hence, the Chambers Justice was not justified in denying the writ under the conditions of this case. The petition is therefore granted and the ruling of the Justice in Chambers reversed.

The Clerk of this Court is therefore ordered to send a mandate to the presiding judge in the court below to resume jurisdiction over this case and to hear the case anew. Costs are disallowed. And it is hereby so ordered.

Ruling reversed; case remanded for new trial.

Sherman et al v Watson [1966] LRSC 47; 17 LLR 419 (1966) (30 June 1966)

ARTHUR SHERMAN and REGINALD SHERMAN, Administrators of the Intestate Estate of REGINALD A. SHERMAN, Deceased, Appellants v. ALEXANDER
B. CLARKE, Sole Surviving Heir of EVA WATSON, Deceased, Granddaughter of R. J. B. WATSON, Deceased, Appellee.
APPEAL FROM THE CIRCUIT
COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued May 9, 10, 1966. Decided June 30, 1966. 1. A pleading may be once
amended by leave of court after assignment of a case for hearing, but before trial, when the opposing party itself has requested
a continuance, thereby demonstrating the absence of any prejudice by reason of delay. 1956 CODE 6 :320. 2. The use of the word "fraud"
in a reply will not be deemed a departure in pleading from a complaint which, in substance, alleged fraud although it omitted the
word. 3. In an ejectment action, defendant's plea of adverse possession impliedly admits plaintiff's color of title. 4. A defendant

who has occupied real property only 12 years cannot succeed in a plea of adverse possession in an ejectment action under a 20-year
statute of limitations.

On appeal in an ejectment action, a judgment for the plaintiff below was affirmed. Garber Law Firm for appellants.
for appellee. Simpson Law Firm

MR. CHIEF JUSTICE WILSON delivered the opinion of the Court. Situated on Ashmun Street in the City
of Monrovia, Montserrado County, is Lot No. 103 which was sold by one J. B. Watson, now deceased, of Grand Cape Mount County, the
grandfather of the present appellee, to one Reginald A. Sherman, also now deceased, a resident of the same county and the father
of the present appellants.
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This piece of property was devised by the last will and testament of
the late R. J. B. Watson to his granddaughters, Eva and Clarissa Watson, the daughters of the aforesaid J. B. Watson. Clara Watson
having predeceased her sister Eva without leaving any heirs, fee title to the property vested exclusively in Eva who was the mother
of the present appellee. He claimed that the property had not been disposed of by his mother before her death; that his grandfather,
J. B. Watson, the father of his mother, was not the owner of the property and therefore could not dispose of it, and that the sale
of the property to appellants' father was illegal and therefore without any color of right. Appellee's effort to regain possession
of his property because of what he considered an illegal transaction of his grandfather failed ; hence these ejectment proceedings.
Appellants on their part admitted that title to the property had descended by inheritance to appellee's mother, but contended that
the property was acquired by honest purchase and that since this transaction of sale and the occupation of the property had matured
beyond a period of 2o years, the statute of limitations barred appellee from contesting their right of ownership, their late father,
Reginald A. Sherman, having been in open, notorious, and adverse possession of the property for more than zo years. Pleadings in
this case progressed up to and including the surrebutter. At the March 1962 term of the Circuit Court of the Sixth Judicial Circuit,
Montserrado County, His Honor Joseph P. Findley passed on the law issues and ruled the case to trial. Exceptions were noted against

this ruling, and trial of the case on its merits proceeded. At the October 1964 term of this Court, the case came up for review and
a submission of all of the legal and factual issues was presented. Because of the challenge to the jurisdiction of the trial judge
to enter upon trial of the

case due to the expiration of his term time, priority to this jurisdictional
issue took precedence in this review. Exceeding term-time jurisdiction by the trial judge, that is to say, beyond the 42 days allowed
by statute, was substantially established and would have resulted in the entire proceedings being declared a nullity but for the
waiver by neglect of appellants to prohibit the trial judge from proceeding with the case; hence this Court decreed a remand of the case to be tried de novo by the said trial
court. The retrial thus commanded took place at the February 1965 term of the Circuit Court of the Sixth Judicial Circuit, Montserrado
County, and resulted, as before, in favor of appellee; hence the case has found its way back on appeal to this Court. Before passing
on the merits of the claims of ownership and title to the property in question, we must look at the bill of exceptions listing only
five counts, the first two of which charged reversible error against the trial judge for sustaining Counts 2 and 3 of plaintiff's
complaint as well as the amended reply against defendants' plea of statute of limitations raised in their answer and other issues
recited in their subsequent pleadings. The appellants contended that undue delay was caused by the withdrawal of appellee's original
reply and surrejoinder 21 days after the filing of the surrejoinder and two days after the case had been assigned for hearing. Relying
on the statutes controlling in this point, the trial judge ruled, and we quote : "It is clear from the record before us that the
withdrawal of plaintiff was before trial ; for no trial had commenced on the matter; the defendants had themselves tendered a motion
for continuance for the next two or three days when, at the earliest, trial could have commenced. "Furthermore, law writers on amendments
even encourage amendment after trial has commenced, so that this court could only sustain an amendment within our

statutory requirement which specifies that the same be made before trial which, in the opinion of this court, is one
and the same as the hearing of the issues of law and fact." Without comment on the exception to the rule permitting amendment after
the case has commenced, claimed to be encouraged by law writers, since this exception is inapplicable to the case, we must take a
look at the statute to determine whether or not the opinion expressed by the trial judge is legally supported. Our Civil Procedure
Law provides that: "At any time before trial, any party may, insofar as it does not unreasonably delay trial, once amend any particular
pleading made by him. . . ." 1956 CODE 6:32o. The record shows that there was no undue delay in the trial of this case because of
this claimed belated amendment. Moreover, the continuance of the case by the trial judge on application of appellants makes the ruling
of the judge denying Count i of the rebuttal sound in law; hence same is hereby sustained. Appellants' allegation of a departure
in pleadings by appellee's use of the word "fraud" in the reply, which word was not specifically used in the complaint, does not
strike us as well-founded, since appellee's complaint alleged an unauthorized disposition by sale of appellee's property and referred
to the disposition of the money of the proceeds from which appellee got no financial benefit. These allegations, if proved, would
have tainted the transaction with fraud as charged in appellee's complaint. The ruling of the trial judge overruling the charge of
departure is therefore sustained. The third point for our consideration in the judge's ruling on the law issues is that raised by
the plaintiff in contending that the statute of limitations could not be pleaded in bar without confessing ownership in the plaintiff.
This objection does not seem to be legally and log-

ically supported, since the raising of such a plea
impliedly confesses ownership in the plaintiff while alleging that title has been lost by reason of undisturbed, adverse, and notorious
possession of the property by the defendants for more than 20 years. Consequently it was not necessary to specifically plead and
confess plaintiff's former title. This principle is upheld by the following authority. "A plea in confession and avoidance must give
color; that is, admit the apparent truth of the plaintiff's allegations and give him credit from an apparent or prima facie right of action, which the new matter in
the plea destroys. Color may be expressed or implied. "Implied color is the tacit admission of the plaintiff's prima facie case by

failure to deny it." SHIPMAN, COMMON LAW PLEADING 350 § 200, 201 (3rd ed. 1923). The judge's ruling overruling Count i of the amended reply and Count 2 of the second surrejoinder is therefore sustained. Infancy on the part of appellee and ignorance of his mother's right to the property which on her death descended to him and the concealment of the transaction of sale of this lot to appellants by appellee's grandfather must now be resolved by recourse to the factual side of the case. This is covered and presented for review in the final ruling of the trial judge on the law issues, to wit: "The case is therefore ruled to trial on the complaint and answer using the defendant's deed only to tack his tenure of possession as a mere matter of evidence relevant to Counts 2 and 3 of the amended reply on the point that the facts of the accrual of plaintiff's cause of action were concealed from him and his mother by the machination and chicanery of defendant's father and the father's grantor together, excluding, of course, the matter of the fraudulent procure-

ment of the deed proferted with the answer, is alleged in Count 5 of the amended rejoinder wherein defendants denied that they so concealed such facts as stated by plaintiff in his reply; and this to the exclusion of the hypothetical matter of probation of the will in question, as noticed, to exclude the fact of concealment of such facts against plaintiff's interest. Costs to abide final determination of this action ; and it is so ordered." That appellee is the legitimate'and only surviving heir of his mother Eva, to whom was willed jointly with her sister Clara the lot in question by their grandfather R. J. B. Watson, has not been disputed since there is nothing of record to show that Clara, the sister with whom Eva held joint title to the property, left heirs of her body. There is nothing disclosed by the record to indicate that appellee's mother Eva disposed of this property by sale to anyone prior to her death except that one of the appellants' witnesses, Gaika Freeman, testified that it was of his certain knowledge that the father and mother of appellee gave their consent to the widow and sole executrix of the will of R. J. B. Watson for the sale of the property ; yet the deed was not executed by appellee's mother. It is also clear from the record that the property was sold to appellants by appellee's grandfather J. B. Watson and not by Eva, his daughter, who was the fee title owner of this property ; and this fact was established by the deed which was presented at the trial by appellants to tack their tenure of possession. It

remains now to be determined whether or not claiming the right of ownership because of open, notorious, and adverse possession of
the property for more than zo years with the alleged knowledge of appellee, or the circumstances which did not prevent him from knowing
that the property was his by descent, has been established at the trial. Appellee has pleaded ignorance, first of the existence of
the will which bequeathed the property to his

late mother. At the time of the probation of the will,
appellee was not born, the will having been probated in the year 1919 and he having been born in the year 192o. He alleged that he
left Cape Mount where he was born, and came to Monrovia in the year 1929 at the age of 9 years, and that he was completely ignorant
of the disposition of the property to appellants by his grandfather, who had no title right to same, and that it was done by fraudulent
concealment. This charge of fraudulent concealment was strongly contested by appellants as being without foundation in point of fact
because of the public probation and registration of said transfer deed in the probate court of Grand Cape Mount County. Appellee also alleged and contended
that the first information he got of the sale and transfer of this property was from a Mr. A. Dondo Ware in the year 1949, and that
his late mother Eva was not aware of her right of possession of the property up to the time she took ill and went into the interior
for medical treatment, whereat she died. It was in 1949 when the said A. Dondo Ware, according to his statements, was shown an old
copy of the will and a promise was made to him to secure a copy from the clerk of court in Cape Mount County, which he did in 196o.
Witness Ware testified in confirmation of what appellee had alleged and we state hereunder some of the relevant points mentioned
in his testimony as follows : "That the late R. J. B. Watson, great grandfather of appellee, died in Liverpool, England, in the year
1913, leaving a will in which he bequeathed the property in question to his two granddaughters, Clara and Eva; and that Clara came
to her death through drowning, which vested the title right to the property, which was jointly held, in appellee's mother. "That
Lucretia D. Watson, widow and executrix of said last will of R. J. B. Watson, was in knowledge of and connived in the sale of the
property in question to

appellants by appellee's grandfather, J. B. Watson, and that by this act of hers and knowledge of the property being that of Eva and her sister in which she, Lucretia, only had life interest thereafter to pass to these two sisters, concealed this information of title from Eva until she died ; and that the sale of this property by J. B. Watson to appellants was within her, the executrix's knowledge." Strenuous efforts were made to discredit the testimony of this witness by trying to show that his statement in favor of appellee and against appellants was influenced by prejudice and evil motives because of enmity that he had nourished against appellants' father. In this connection a witness, Gaika Freeman, was brought to the stand by appellants. Said witness testified, among other things, that the lot in question was sold to appellants by J. B. Watson and Lucretia Watson, widow of the testator and executrix of said last will, claiming also that she did it with the consent of appellee's mother and her husband, the father of appellee. Said witness also stated that the property was sold to satisfy a foreign debt which Counsellor L. A. Grimes had gone to Grand Cape Mount to collect from J. B. Watson, and, as disclosed in other parts of the record, to save him, J. B. Watson, from serious embarrassment and disgrace. If the statement made by appellants' witness Gaika Freeman is accepted as true, then it seems to go in corroboration of the charge of concealment of this transaction from appellee's mother by the act of the testator's widow and executrix, since she was in complete knowledge of the fact that she only had a life interest in the estate which, according to the will, was due to pass to appellee's mother and sister, and that if she was not privy to this concealment, she would have disclosed information of this title to the appellee's mother, which the record does not show she did ; rather she is alleged to have actually been a party to the arrangement of sale of the prop-

erty to appellants by J. B. Watson who had no title to the same. What strikes us as strange in reference to the statement of appellants' witness Gaika Freeman is that, if the property was sold with the consent of appellee's mother, then why was the deed of transfer executed by J. B. Watson and not by Eva, the owner of the property? This brings us to the conclusion that the property could not have been sold with the knowledge and consent of appellee's mother, hence her title right in said property remained in effect up

to the time of her death. Very strong efforts were made to discredit the testimony of witness Ware confirming appellee's statement to the effect that the said witness was appellee's first and only source of
information of the existence of this will and that this was not until the year 1949. Appellants endeavored to show the improbability
of this statement of witness Ware since because of the relationship that existed between himself and appellee it was not possible
for him to have been in knowledge that the right vested in appellee's mother by the will had been sold to appellants and to have
concealed this information for a long period of time. Ware testified that he personally knew the testator and was in Cape Mount County
and knew said will had been proved, probated, and registered. Whilst it may be fair to assume this probability, it cannot be denied
that this contention is hypothetical, since there was no compelling circumstances which made it imperative that Ware was required
and legally obliged to convey this information to appellee before the time he did. Hence in the absence of any evidence to prove
that the information was conveyed to appellee before the year 1949, we must conclude that Ware did not make known this fact to appellee
before 1949. Appellants contended that the probation and registration of the deed in question was of public record and it was not
likely that interested parties to this transaction of

sale of said property could not know of the property
having been sold when the record was publicly made and publicly recorded. This, we say, presents another hypothesis which cannot
be accepted as conclusive in determining that it could not have been without the knowledge of appellee before he was informed by
Ware in the year 1 949We have not been able to discover anything in the record otherwise showing that appellee or his mother had
knowledge of this transaction. In the circumstances, we have no alternative but to decide that the allegation of ignorance by him
of this transaction until the year 1949 has not been successfully disproved and must therefore be accepted as being true. The statute
of limitations, as it relates to asserting a right to recover real property from one in unlawful possession thereof and the limitation
of time within which the action is to commence and the cause of action accrue, provides that: "The time within which to commence
civil actions after the cause of action has accrued shall be as follows : "(a) In an action to recover possession of real property,
twenty years. . . . "Failure to commence an action within the period specified therefore shall constitute a valid defense ; but the

party who wishes to avail himself of such defense must expressly plead the limitation." 1956 CODE 6 :50. And this Court has held
that: "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 active 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 for title and real 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 (193o) Syllabus 3. There was insufficient proof of the property in question having been disposed of by sale by Eva, the mother of
appellee, she being the fee title owner of said property up to the time of her death. Nor does the deed of transfer show upon its
face that she was the grantor of said transfer to appellants. There is absent fom the record conclusive proof of appellee's being
in knowledge before 1949 of the existence of the will which vested life interest in the property in the widow of testator to be passed
in fee after her death to appellee's mother and her sister who predeceased her without heirs. Not until 1949 was appellee informed
of the will. The lapse of time from 1949 to 1961 covers only 12 years and does not entitle appellants to assert the claim of the
statute of limitations, they not having occupied and owned in open and notorious adverse possession of said property for a period
of 20 years as the statute prescribes, before the assertion of title right by this action of ejectment which has been the subject
of review on appeal by this Court. The verdict of the jury and judgment of the court below declaring ownership of said property in
appellee, and that he be put in possession thereof should be, and the same is, hereby affirmed with costs against appellants. And
it is hereby so ordered. Judgment affirmed.

Katri v Commercial Bank of Lib [1966] LRSC 46; 17 LLR 413 (1966) (30 June 1966)

ELIE KATRI, as Representative of CONSTRUCTION & DEVELOPMENT CORP. (CODEVCO) and of LIBERIAN EUROPEAN CONSTRUCTION CO., Appellants,

v. COMMERCIAL BANK OF LIBERIA, by and through its Manager, J. MEDAWAR, and His Honor, Judge JAMES W. HUNTER, Appellees.
APPEAL FROM
RULING IN CHAMBERS ON APPLICATION FOR WRIT OF CERTIORARI.

Argued May 5, 1966. Decided June 30, 1966. 1. Statutory proceedings for
the foreclosure of a chattel mortgage should be summarily disposed of in conformity with the provisions of the controlling statute.
1956 CODE 29 :155. Operational expenses should not be awarded in chattel mortgage foreclosure proceedings. 1956 CODE 29 :155. Certiorari
will not lie against an order which conforms with and effectuates a statutory provision.

2. 3.

Appellants applied to the Justice
presiding in Chambers for a writ of certiorari to review orders of the respondent judge in chattel mortgage foreclosure proceedings.
The Justice presiding in Chambers ruled that the application for a writ of certiorari should be denied. Appellants thereupon appealed
to the full Supreme Court which affirmed the ruling of the Justice presiding in Chambers.
Joseph W .Garber for appellants. Morgan,
Grimes and Harman Law Firm (J. Dossen Richards of counsel)

for appellees.
MR. JUSTICE MITCHELL

delivered the opinion of the

Court.
These certiorari proceedings relate to orders made by His Honor Judge James W. Hunter, presiding over the

December 1965 term of the circuit court. The orders in question were directed to James W. Brown, Esq., as sheriff of Montserrado
County, commanding him to take into his custody all of the mortgaged properties of petitioners in certain chattel mortgage foreclosure
proceedings. Bills in equity had been filed for foreclosure of chattel mortgages against the Construction and Development Corporation
(CODEVCO) and the Liberian European Construction Company, both represented by Elie Katri who was named in both bills as a respondent.

Both of these bills were filed in the December 1965 term of the court below. Pleadings were filed as far as the reply in both cases.
Before the resting of pleadings, His Honor Judge James W. Hunter, then presiding over the circuit court, issued the following orders
to James W. Brown, Esq., Sheriff of Montserrado County. "You are hereby commanded to take into your custody all of the mortgaged
properties enumerated, mentioned, or otherwise referred to in the above-named actions, and to place in escrow in a reputable bank
within the City of Monrovia, Montserrado County, Republic of Liberia, all of the proceeds, rents, income, other cash assets accruing
to or flowing from said mortgaged properties and to there keep the same until such time as this Honorable Court shall have given
further orders or these foreclosure proceedings should have been judicially determined. "You are further commanded to keep a strict
account of all properties so entrusted to your care and custody and to render unto this Honorable Court accurate and proper accounts
of your conduct and handling thereof. "You are further commanded to make returns to this Honorable Court from time to time as to
the manner in which you shall have executed these orders. "And it is hereby so ordered." The present appellants filed a petition
praying for the

issuance of a preliminary writ of certiorari for a review of the above-quoted order
and stated, in substance, as grounds for the same : I. That in their respective answers to the foreclosure proceedings in equity,
they had denied the right of the respondent bank to institute the proceedings against them. "2. That pleadings in the mortgage proceedings
had not rested and they had not been informed or served with notice to appear to defend their rights prior to the issuance of such
orders by the presiding judge ; and this being done in their absence was illegal and prejudicial to their interests because it was
done on the application of the respondent bank. "3. That the respondent judge made no provision or allowance in his said orders for the expense involved in petitioners'
operation or operating expenses, which made the judge's act both illegal and materially prejudicial." On the filing of this petition,
respondents made their returns, alleging, in substance: That the alternative writ should be quashed because under the provisions
of the statutes controlling on chattel mortgages simultaneously with the ordering of the writ of summons by the judge, he may make
an order directing the sheriff forthwith to take possession of the mortgaged property or such part thereof as he can find and turn

same over to the mortgagor upon the execution of a bond by the mortgagor. This was done in the instant case in harmony with the provisions
of the law. 2. That Count 2 of the petition is groundless because it is not a requirement of the law that pleadings in the case or
cases should necessarily be rested or that petitioner should have been notified. The respondent judge therefore having acted in strict
conformity with the law, certiorari will not lie.
(("

3. That the petition is further without merit
because the statutes controlling make no provision for operating expenses and other such things, especially when the petitioners
were adequately indemnified. Hence the act of the respondent judge was not illegal nor prejudicial to any of the parties concerned."
Before entering upon the issues raised, we shall first direct our attention to the applicable law. Here is the controlling statutory
provision. "If the principal amount secured by the mortgage and the interest thereon or any part of such principal and interest be
not paid at the original date of maturity, as therein stated, or any extension of such maturity granted by the mortgagee and noted
in writing by him upon the mortgagor's duplicate of the instrument, the mortgage may be foreclosed in the following manner.

* *
*
"(b) If the amount due as shown by the mortgage and the endorsements thereon be not less than that so stated by the mortgagee,
the judge of the Circuit Court sitting in chambers shall order a summons to be issued for the mortgagor to appear in or out of term
time, and to show cause why the mortgage should not be foreclosed and the Judge shall simultaneously make an order in writing, together
with the said writ of summons, directing the sheriff or any officer of court to take possession forthwith of the mortgaged property
or such part thereof as he can find, and make returns as to how he has executed the writ and the order. The property shall then immediately
be turned over to the mortgagee upon his executing an indemnity bond in one and a half times the amount of the value of the property
so seized to secure the mortgagor against any injury or damage he may sustain by reason of the failure of the mortgagee to successfully
prosecute said

LIBERIAN LAW REPORTS 417 foreclosure proceedings. After the appearance of the mortgagor or, in case of failure to
appear, within three days after service of the summons, the judge shall proceed to hear and determine said case and render final
judgment thereon.

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" (f) If the mortgagor appears and contests the right of the mortgagee to foreclose the mortgage, the court
shall hear the cause summarily and render judgment according to the law and facts presented by the parties." 1956 CODE 29:155. In
contemplation of the spirit and intent of the law, we cannot understand in the first place why a chattel mortgage foreclosure proceeding
should undergo all of the formalities of the procedure provided for in other civil cases when the statutes controlling are positive
and unambiguous. It is our understanding that the law contemplates a summary disposition of such matters in order to offset undue
delay and suspense. If our judgment is correct, then obviously there was no necessity for a resting of pleadings at the stage of
rebutter before the interests of both parties could be conserved and secured. Legislative enactments may become a proper subject of interpretation by this
Court when they are in contradiction with the Constitution which is the basic law of the **land** , and not otherwise. In this case, the
law is crystal clear and must be complied with. This case was heard in Chambers by Mr. Justice Wardsworth who concluded his ruling
as follows : "Notwithstanding there is no provision in law for the making of allowance for operational expenses, yet as I gather
from the argument of respondents' counsel, this phase of the matter has had some judicial attention to the extent that allowance
for operational expenses is already made, which I hereby approve and direct the trial judge and/or the trial court to super-

vise and carry into effect without prejudice to any of the parties herein. "The sheriff is hereby ordered
to continue controlling the daily intake of petitioners' business, placing same in escrow, less the amount necessary for the continued
operation mentioned supra. "Therefore, in view of the foregoing, the alternative writ of certiorari in these proceedings is hereby
quashed and the peremptory writ denied, with costs ruled against the petitioners. And it is hereby so ordered." We are in agreement
with the ruling of our Chambers Justice in this case; but that which the law does not offer, it does not give. The law makes no provision

for operational expenses in chattel mortgage foreclosure proceedings; and for that reason among others, it requires a summary disposition
of such matters. However, since the major aims were met by the denial of the peremptory writ which, if issued, would have frustrated
the aims of the law, the ruling in our opinion, is sound and in harmony with law. The ruling of the Justice presiding in Chambers
from which this appeal has come before the full bench is therefore affirmed ; and the clerk of this Court is hereby ordered to send
a mandate to the court below ordering the judge presiding to assume jurisdiction immediately and proceed into a hearing of the foreclosure
proceedings now pending before the said court in which the appellants and appellees herein are respectively, respondents and petitioners
below. Costs in this case are hereby adjudged against the appellants. And it is hereby so ordered. Ruling affirmed.

Lartey et al v Corneh et al [1966] LRSC 19; 17 LLR 268 (1966) (21 January 1966)

BOIMA LARTEY, ALHAJI J. D. LANSANAH, MUSA FONJEH, FRIMA KAMARA, TETEE OF MANDO, et al., Surviving Heirs, Descendants, and People
of the Late CHIEF MURPHEY, and VAI JOHN, Resident of Vai Town, Bushrod Island, Monrovia, Appellants-Respondents, v. ALHAJI VARMUYAH
CORNEH, Attorney in Fact for the People and Tribal Authority of Vai Town, and SUNDIFOO SONI, Paramount Chief of Vai Town, and All
Other Persons Acting Directly or Indirectly on behalf of the People and Tribal Authority of Vai Town, Appellees-Movants.
MOTION TO
DISMISS APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued, November 22, 1965. Decided January
21, 1966. Where a counsellor at law with the connivance of clerical officers of a circuit court has tampered with court records for
the purpose of deceiving and misleading the Supreme Court, the counsellor will be disciplined and the clerical officers punished.

On appeal from dismissal of an action of ejectment, a motion to dismiss the appeal was denied. Laurence A. Morgan and J. Dossen
Richards for appellants. Joseph F. Dennis, 0. Natty B. Davis, and Nete Sie Brounell for appellees.

MR. JUSTICE WARDSWORTH delivered
the opinion of the Court. In the year 1931 while the late Edwin J. Barclay was President of Liberia, an aborigine's grant was issued
to Chief Murphey and residents of an area in Monrovia known as Vai Town.

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At the death of Chief Murphey
the property allegedly descended to his heirs, the appellants in this case. A dispute arose between the parties herein which resulted
in an action of ejectment against appellees to recover possession of the **land** in dispute. In ruling on the law issues presented in
the pleadings pro et con, His Honor John A. Dennis, presiding over the Circuit Court of the Sixth Judicial Circuit, Montserrado County,
in its March 1965 term, dismissed the said action, to which ruling appellants excepted and prayed an appeal to this Court of last
resort for review. The case having been duly assigned for hearing, appellees interposed a motion to dismiss the said appeal. This
motion embraces five counts in which it is substantially averred inter alia that this Court lacks jurisdiction over the matter on
appeal because : ( ) Although certified copies of the trial records have been transmitted, the original copy of the appeal bond has
not. (2) The copy of the notice of appeal does not show the date of issuance and does not show that it has been served and returned.
(3) The copy of the notice of appeal in the appeal returns differs from the copy secured from the circuit court clerk's office. (4)
It is grossly misleading, besides being in contravention of controlling procedure, for records to be forwarded to the Supreme Court
as if they were certified copies of the existing originals in the clerk's office. In resisting the motion to dismiss the appeal,
appellants, on the basis of an affidavit sworn and subscribed to by Counsellor Jacob Ellis, charged Counsellor Joseph Dennis with
having extracted the bill of exceptions, appeal bond, and notice of appeal from the files of the clerk of the Circuit Court of the
Sixth Judicial Circuit, Montserrado County. We recite hereunder verbatim for the benefit of this opinion the said affidavit, as follows.

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LIBERIAN LAW REPORTS "AFFIDAVIT:

"Personally appeared before me, the undersigned, a duly qualified Justice of the Peace in
and for Montserrado County, at my office in the City of Monrovia, Jacob H. Willis, Counsellor at Law, who upon oath, did solmenly
swear as follows: "That he was approached by Counsellor Joseph F. Dennis of the City of Monrovia, who requested him, the said Counsellor

Jacob H. Willis, to extract from the files of the Morgan, Grimes and Harmon Law Firm the records in the case of Boima Lartey, et
al. versus Alhaji Varmuyah Corneh et al. and deliver them to him, Counsellor Dennis, for which he would pay Counsellor Jacob H. Willis
a fee. "That he, Counsellor Jacob H. Willis, refused and later told Counsellor Lawrence A. Morgan, in the presence of Counsellor J. Dossen Richards, of the act of Counsellor
Dennis. "-Wherefore, I, the undersigned, have issued this affidavit to avail when and where required. "Sworn and subscribed to before
me, this 22nd day of November 1965. [Sgd.] "JOHNATHAN CAMPBELL,
"Justice of the Peace for Montserrado County, R.L.

[Revenue stamp
affixed.] "Issued at Monrovia this 22nd day of November 1965. [Sgd] "JACOB H. WILLIS,
"Counsellor at Law."

Despite these serious
and grave charges hurled at Counsellor Dennis by appellants in his immediate presence based on the allegations set forth in their
resistance, which undoubtedly were aimed not only to defeat his motion to dismiss the appeal under consideration but also to impugn
his ethical and professional conduct, he elected not to ut-

ter a solitary expression in his defense.
However, in the interim, and before arriving at a conclusion, the Court deemed it appropriate to refer the subject matter of appellants'
resistance to the Grievance and Ethics Committee for investigation and findings. The said Grievance and Ethics Committee, after having
made its investigation, submitted its findings and recommendations. In respect of the charges made against Counsellor Joseph F. Dennis
bearing on these proceedings, the Committee said, inter alia: "Summing up, it is the opinion of the Committee in view of the surrounding
circumstances and facts which emerged during the investigation of both cases that Counsellor Joseph F. Dennis did lend aid to and
was responsible for the extraction of the documents hereinbefore mentioned from the files and is therefore guilty of unethical and
unprofessional conduct, unbecoming a counsellor of the Honorable Supreme Court of Liberia." It is observed that counsel for appellees,
that is to say, Counsellor Joseph F. Dennis, strongly condemns the certified copies of the appeal records in this case because they
were taken from the records of appellants' counsel, forgetting to realize that these records were the same documents he had endeavored

to influence Counsellor Jacob H. Willis to extract from the files of the Morgan, Grimes and Harmon Law Firm. The correctness of the
records was not assailed. They were attacked solely upon the ground that the procedure of having counsel scrutinize them in view
of the missing originals was not utilized. There was therefore a tacit admission of the correctness of the record as sent to this
Court; and in virtue of the extenuating circumstances attending this case, the records, including the bill of exceptions, appeal
bond, and notice of appeal as forwarded to this Court, will be used in the determination of this case. In face of the surrounding
circumstances prevailing in

this case, the Court is left with no alternative but to approve the Committee's
findings and/or recommendation. Wherefore, in view of the foregoing, we are of the considered opinion that Counsellor Dennis did
commit the acts charged against him, that is to say that to defeat the ends of justice in these proceedings, he did, in a clandestine
manner, extract or cause to be extracted the documents enumerated in his motion to dismiss the appeal now under review, with the
view of enjoying the benefits which might have accrued from these unprofessional acts of his. The records of courts are always to
be guarded with the utmost of sacrosanctity. This Court reviews matters solely upon the records transcribed and transmitted to us
from courts of lesser jurisdiction, save in the few instances where we are by the Constitution duly authorized to invoke original
jurisdiction. These records protect the lives, liberties, and properties of citizens and foreigners resident within our borders.
Therefore, this Court abhors and deprecates the actions of any individual in an endeavor to clandestinely extract records from the
files. The facts in this case show conclusively that Counsellor Joseph F. Dennis secured the tampering with the records in the lower courts, as can be seen from the motion
to dismiss as filed by Counsellor Dennis. These illegal acts were designedly perpetrated for the sole purpose of preventing this
Court from exercising appellate jurisdiction in this matter. Realizing the gravity of the complaint lodged against a counsellor of
this bar by the Morgan, Harmon and Grimes Law Firm, this Court decided to have the matter referred to the Grievance and Ethics Committee
of the Montserrado County Bar Association for an investigation into the authenticity of the allegations leveled against Counsellor
Dennis. We have earlier in this opinion quoted the investigatory findings of the above named committee. Turning to the clerks of
the court, and paying special at-

tention to the clerk and assistant clerk of the Circuit Court of the
Sixth Judicial Circuit, Montserrado County, who have sole custody of the records filed in that court, it is conclusively eestablished
that their complicity in the thwarting of justice was manifest. It was actually the assistant clerk of that court, Mr. Jonathan Campbell,
whose action led to the extraction of the missing portion of the record. However, the ultimate responsibility for the safeguarding
of these records always devolves upon the clerk and, therefore, he cannot be held blameless in the premises. In view of the above
cited irregularities, it is hereby recommended that the assistant clerk of the Circuit Cotirt of the Sixth Judicial Circuit, Montserrado
County, be dismissed and that the clerk of said court be suspended from office for a period of 3 months. It is further our determination
that Counsellor Joseph F. Dennis be suspended from the practice of law either directly or indirectly within the Republic of Liberia
for a period of 3 calendar years, commencing from the time of publication of this opinion. The motion to dismiss the appeal in these
proceedings is hereby denied and the case is to be kept on the docket for hearing on its merits. And it is hereby so ordered.
Motion
denied.

Wahab v Sonni et al [1965] LRSC 38; 17 LLR 105 (1965) (18 June 1965)

HAWAH KIAZOLU-WAHAB, a Tribal Resident of Vai Town, Monrovia, Appellant, v.
SONIFU SONNI, Tribal Chief of Vai Town, Monrovia, and
ALHAJ VAMUYAH CORNEH, MAMBU SONNI, CIAFFA JALAIBA, JENEKA BALLAH-FONDO, et al., Residents of Vai Town, Monrovia, Appellees.
APPEAL
FROM RULING IN CHAMBERS ON APPLICATION FOR WRIT OF ERROR.

Argued March 16, 1965. Decided June 18, 1965. 1. A writ of error will
be issued only where a party has for good reason failed to take an appeal, in which case the writ may be issued at any time within
six months after rendition of judgment provided that the judgment is not fully satisfied. 2. A letter addressed to counsel by the
court is sufficient notice of assignment for trial. 3. When counsel with notice of the assignment of a case for trial neither appears

nor moves for continuance, the court may proceed to try the case in his absence. 4. The full Court may attach a condition in granting
an appeal from a ruling in Chambers. 5. Costs may be assessed against a defendent who failed to file an answer. 6. A court of equity
may grant relief in a manner not specifically prayed for.

On appeal to the full court from a ruling in Chambers denying issuance
of a writ of error to the Circuit Court of the Sixth Judicial Circuit, Montserrado County, in an action for reformation of a lease,
the ruling was affirmed.
Joseph F. Dennis and Clarence L. Simpson, Sr., for appellants. D. Bartholomew Cooper for appellee.

MR.
Court.

JUSTICE

MITCHELL delivered the opinion of the

This is an appeal to the full bench from a ruling which comes from the Chambers
of Mr. Justice Mitchell on a petition filed by the within-named plaintiffs in error pray105

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ing for
the issuance of the writ of error against the defendants in error, now appellees. This petition was brought to seek a review of a
decree made by His Honor Roderick N. Lewis, presiding over the equity division of the Circuit Court of the Sixth Judicial Circuit,
Montserrado County, in the September 1964. term. The records certify that Hawah Kiazolu-Wahab, petitioner in the court below, filed
a bill in equity for reformation of a lease agreement which had been entered into between herself and Sonifu Sonni, Tribal Chief
of Vai Town, Monrovia, Alhaj Vamuyah Corneh, Mambu Sonni, Ciaffa Jalaiba, Jeneka Ballah-Fondo, et al., leading inhabitants of the
said Vai Town. The law issues in the case were heard and the trial judge below dismissed the case at that point. Petitioner excepted
to this ruling and an appeal was taken to this Court at its October 1963 term. The case was called and heard at the March 1964 term
of the Supreme Court when, as reported at [1964] LRSC 38; 16 L.L.R. 73 (1964), the judgment of the court below was reversed and the case remanded for a consideration of all of the issues of law raised

in the pleadings which the trial judge had omitted to hear and traverse. This mandate of the Supreme Court was executed by His Honor
D. W. B. Morris, presiding over the June 1964. term of the circuit court, who ordered the case to trial on the facts. Before trial
began, respondents below, now appellants, filed a notice of change of counsel. Counsellor James H. Smythe of the Henries Law Firm,
was substituted for Counsellor Joseph F. Dennis of the same law firm. This act portrays an intention to baffle and delay justice
on the hearing of the cause; and no sooner this mysterious change was made, Counsellor Smythe moved the court for continuance of
the cause to the next term of the court on the ground that he was about to travel abroad on a governmental delegation ; hence the
continuance was granted and the case
traveled to the September term of the court.

Before the convening
of the court in the aforesaid Septetnber term, Counsellor Smythe returned from his trip and resumed his routine legal duties. Some
time after the convening of the court, the case was assigned for trial on the facts, but neither Counsellor Smythe nor the respondents
appeared on the day assigned. Yet before the judge undertook to enter upon a hearing, His Honor Roderick N. Lewis, presiding, ordered
the clerk of the court to communicate with the counsellor reminding him of the assignment made and inviting his presence in court
for the trial. To this letter respondents' counsel made the following reply : "May it please Your Honor : "I am in receipt of your
letter written to me by the clerk of court by your direction. This is to inform you that I have not received any notice of assignment
of the Wahab case. "Further, I am not well. I have been ill for the past few days. I am still not able to come conduct any case in
court. I am therefore requesting that this case be continued under the December 1964 term of court. I am sending you later today
one medical certificate from my doctor. Please don't consider this as an abandonment." Upon receipt of this letter which had no place
according to our court procedure, the counsellor neither appeared nor did he move the court by formal continuance, and worse in the
game was that he even refused to dispatch the medical certificate according to his letter. This act could not have been interpreted
to mean anything less than the outright attempt to make a mockery of the court and baffle the ends of justice; hence the court considered

it to be an abandonment of the cause and proceeded into the trial which continued for 5 days including an intermediate Sunday and
a holiday; but from the records on appeal, at no time during the course of the trial did the respondents or their counsel, except
Jeneka Ballah-

Fondo, feel it worth while to ascertain the status of the said matter. And what is particularly noticeable is the fact that, 7 days after the court had made its decree and everything to be done in completion of its execution
had been done, Counsellor Joseph F. Dennis whose representation had been transferred to Counsellor James H. Smythe applied to the
Chambers of Mr. Justice Mitchell with a petition in assignment of error in the interest of the same respondents who had just, at
the June term of the circuit court, dispensed with his legal service. In this connection we feel it necessary to observe that our
statutes, the common law, and our rules of court specifically and mandatorily provide that the writ of error will lie only when a
party has for good reason failed to take an appeal in a matter, in which case the writ may issue or be granted at any time within
6 months after the rendition of judgment, decree, or decision of the court, provided that execution of the judgment is not fully
satisfied. (See 1956 CODE 6 :123o.) Said petition alleged that respondents did not have notice of the assignment of the case and hence they could not be present in court for the trial.
We have wondered what they interpreted this notice to mean. If, regardless of the letter sent from the court to Counsellor Smythe
and his reply thereto, they still maintain that they were without notice, then that confirms our opinion that their main objective
or intention was to baffle and delay the trial. To say the least on this all important question before passing, we are compelled
to express that this is a strategy that permeates throughout the subordinate courts in Montserrado County and as far down as the
courts of first instance ; and it necessarily lends aid to a continually crowded docket especially prevailing in the civil law court,
which practice this appellate court is determined to strike with a death blow because it is a practice that is against the ethics
of the profession and renders lawyers liable to disciplinary measures against them. This case was heard by the Chambers Justice,
and a

very comprehensive and exploratory ruling was made denying the peremptory writ and quashing the
interlocutory writ. From that ruling, this appeal took its birth. Predicated upon Rule XII (2) of this Court, the appeal was granted
upon the condition that in case the necessity arose during the pendency and before the final determination of the appeal for the
appellee, Hawah KiazoluWahab, to renew her lease agreement already entered into with her lessees who occupy the very premises that
constitute the subject of the reformation proceedings, then and in that event she woud be authorized to do so. The case came to the
full bench for a review of the aforesaid ruling and was assigned, called and heard at the March 1965 term of this Court. Appellants'
counsel in the course of this argument raised the following points : It 1. That the ruling which is the subject of their appeal is
grossly prejudicial to their interest because the Chambers Justice, on granting the aforesaid appeal, did so under the invocation
of the rule of Court by authoring the appellee to renew her lease agreement if these arose a necessity to do so during the pendency
of the appeal, because it infringed upon their statutory rights, which should not have happened, since the rule does not and cannot
supersede their rights under the statutes. "2. That the trial judge below deprived them of their right by refusing to order the issuance
of a notice of assignment or reassignment on which they could have been returned notified, but had a letter sent to Counsellor Smythe
which was irregular and against the strict wording of the rule of court. "3. That it was irregular and illegal for Jeneka Ballah-Fondo
to have paid the costs in the court below because he was automatically severed from his corespondents by virtue of his failure to
file a formal appearance and file an answer. "4. That the writ of summons which brought the

parties
under the jurisdiction of the court below was never served upon Jeneka Ballah-Fondo and Ciaffa Jalaiba because their names did not
appear on the face of the said writ; hence the decree of the court could not have affected them. "5. That petitioner's petition for
reformation of lease agreement prayed to have the agreement reformed only by eliminating the clauses with respect to the fixed term
of 20 years and the rental payment to be made thereon, but it did not seek reformation by conversion into a tribal title deed conveying
that portion of the Vai Town communal **land** which is covered by a communal tribal title deed from the Government of Liberia for the

benefit of the inhabitants of the said Vai Town ; therefore it was error for the trial court below to have undertaken to change the
nature of the instrument in its entirety and create a new and different one. "6. That the ruling which is the subject of this appeal
is contrary to the provisions of law on the question of probate and registration of instruments (written) relating to real property because the Chambers Justice held the view
that there was no necessity for the probate of a decree of the court below which embodied a regular title deed in reformation of
a contract." Appellees' counsel, countering this trend of his adversary, stressed the fact that the writ being irregularly applied
for, according to the strict provisions of the statutes in vogue and the rule of court, appellants could make no collateral attacks
on the said decree; nor would the writ lie after the decree had been fully executed. Moreover, appellees' counsel contended that
the appellants had deliberately failed to avail themselves of their right of a regular appeal; and also that Jeneka Ballah-Fondo
having been named in petitioner's petition as a party respondent, named in the writ of summons and returned sum-

moned as such, had been brought under the jurisdiction of the court, and his failure to have filed appearance and answer did
not import a severance according to law; hence he was bound by the decree entered in the case and as liable as any other respondent
under the same and therefore was entitled to pay the costs. These arguments have had our close scrutiny, but before proceeding to
determine their legal efficacy we will first address our attention to this one point, that the emblem of this Court, or rather the
judicial emblem--the blind goddess of justice--knows no east, no west, no north, and no south; but as interpreters of the law and
dispensers of justice, it is our only and major concern to have justice done to all men alike. It is not within our province to raise
issues but to decide them only upon their merits; and as the emblem judges between ourselves and the law, so equally it should constantly
remind the lawyer of his professional obligation to his client and move him to be diligent and conscientious in the building of matters
appertaining to the client's interest. Now to the grounds of the arguments. It is elementary that the rules of this Court which govern
its procedures and practice are not supersedeas to the statutes nor can we harmonize our conclusions in that regard with the arguments
of appellants' counsel. The right of appeal from the ruling which is now under review was never denied the appellants ; and directing

the condition upon which the appeal was granted was no infringement of the statutory rights of the appealing parties, nor was it
in abridgment of any statute, but rather, to the contrary, it was the exercise of a prerogative under the rule to offset injustice.
During the sitting of this Court, there has been much emphasis laid on the question of notice. Lawyers arguing before this bar have
on several occasions made attempts to screen themselves under the cloak of not having notice in the courts below for the hearing
of their cases; hence our attention has been closely drawn to this point of
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argument. As a matter
of fact there has been no citation of law produced as yet interpreting what notice is considered in law to be; so now we will divert
our attention to some authority on the common law for an interpretation : "Notice has been said to be equivalent to 'information,'
intelligence,' or 'knowledge.' This may be true as a general definition, but it is not strictly accurate, for 'notice' is not always
synonymous with 'knowledge,' and facts which do not show actual knowledge may suffice to satisfy a requirement of 'notice.' However
closely actual notice may in many instances approximate knowledge, there may be actual notice without knowledge." 39 AM. JUR. 233-234 Notice and
Notices §
2.

This citation of law may appear to be peculiar in its application, but in our opinion it is clear, unambiguous,
and sufficiently convincing to satisfy all misconceived conclusions on the question. It is therefore our opinion that the letter
addressed to appellants' counsel by the court reminding him of the assignment already made for the hearing of the case and inviting
him to appear for the hearing was sufficient notice and his refusal to appear or file a regular motion for a continuance was an act
in defiance of the law and nothing less than an abandonment of the cause; hence the trial judge did not err by proceeding into the
hearing of the case. Whereas it is important that notice be given to all parties or their representatives engaged in litigation of
the hearing of their causes, and this Court frowns upon any arbitrary act of any subordinate judge in denying this right to parties,
yet this Court will not encourage an abuse of this right by counsel. We cannot forget that jurisdiction over the person is not conferred

by consent of parties. It is by due process of law that all parties are brought under the jurisdiction of any court either by summons
or by voluntary submis-

sion, and once brought under the jurisdiction, they cannot be discharged except
by judgment or other legal means. Jeneka Ballah-Fondo, made a party-respondent by petitioner's petition, was accordingly summoned
as such and submitted himself to the jurisdiction of the court; therefore he became subject to judgment or decree made in the case
and the question of his not having appeared or pleaded made no difference. If it appeared that Jeneka Ballah-Fondo had filed a separate
plea from that of his corespondents it would have been tantamount to a severance because he could rely upon his plea separately.
But not having pleaded at all, he could not maintain that he had severed his interest from the other respondents. Besides, there
was no motion filed seeking a severance, which motion alone under the law, besides a separate plea, would have authorized a severance.
Whilst we admit that there is a difference between a severance of action and a severance of parties, yet basically the principle
appertains to the same fundamental right. "Severance may consist in the adoption by several defendants of separate pleas instead
of joining in the same plea; the pleading of a separate defense for himself by one of several defendants, the separation by defendants
in their pleas." 57 C. J. 538 Severance § 2. Jeneka Ballah-Fondo, therefore, not having pleaded separately, was not legally severed
from his corespondents. Moreover, as is the case with other suits in equity, the allowance and apportionment of costs in a suit for
the reformation of a written instrument is a power within the legal discretion of the court. Hence if the court, within its sound
discretion, awarded costs which were paid by Jeneka Ballah-Fondo as a party, that was not error.
Appellants contended that it was
error for the court below to transcend petitioner's prayer by granting a tribal title deed when petitioner only prayed for reformation
on clauses laid in the agreement concerning the period of

time and rent contracted to be paid. On recourse
to the petition, this point of argument seems to be unfounded. The prayer made in the petition reads as follows. "Wherefore your

petitioner prays that the existing lease agreement be rectified and/or reformed by eliminating the clauses for the fixed term of
zo years and the payment of rent so as to impress the definite intention and understanding of the parties to said instrument, and
that your petitioner be also granted all necessary relief to which she is entitled under the circumstances of the case." A decree
in reformation as a judicial determination of the agreement between the parties should express the true intent of the parties. And
again, the law holds that, in a proper case, relief other than mere reformation may be embraced in the decree, depending on the facts which have been proved to the court
and applying general rules. A decree in reformation is not subject to collateral attack. In a reformation and enforcement proceeding
although the grounds may be stated as a cause of action, the decree may be granted by the court in any manner in which the necessary
equitable relief can be effectively given. Hence, it goes without saying that there could be no legal written agreement without some
specific period of time specified, nor can a leasehold agreement be conclusive unless some stated amount is fixed for the period
of time granted. Those were the main provisions that petitioner prayed to have reformed by their elimination according to the mutual
understanding between the parties concerned. Hence, under the theory of ancillary equitable relief, the court was justified, in our
opinion, to close the gap against a newly called action. We have been careful to traverse all of the grounds of appellants' argument,
not because they were pertinent or cogent to the main point of whether or not error would lie, but for the express purpose of exploring
all of the issues raised in argument; and having done so with all dili-

gence, we now express the opinion
that the ruling of the Chamber Justice, being sound under the law, is hereby affirmed with costs against the appellants; and the
clerk of this Court is hereby ordered to send a mandate to the lower court informing it of this judgment. And it is hereby so ordered.
Ruling affirmed

Clarke v Scott [1994] LRSC 46; 37 LLR 900 (1994) (16 December 1994)

CHARLES A. CLARKE, Petitioner, v. **HER HONOUR GLORIA M. SCOTT**, Judge, Monthly and Probate Court, Montserrado County, Respondent.

PETITION FOR A WRIT OF MANDAMUS TO THE MONTHLY AND PROBATE COURT FOR MONTSERRADO COUNTY.

Decided December 16, 1994.

1. If a person fails to have any instrument affecting or relating to real property probated and registered as provided by law within four (4) 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.

2. The law does not require that a written petition supported by affidavit be filed as a requirement for the probation and registration of deeds in the Probate Court.

3. Mandamus is a special proceeding to obtain a writ requiring the respondent to perform an official duty. Civil Procedure Law, Rev. Code 1:16.21 (2).

4. Mandamus will lie against a Probate Judge who has received into probate an instrument such as a deed to be probated and registered, and has neglected and failed to probate said deed over a period of three (3) days in the absence of a written objection thereto filed by an adverse party. Charles Clarke, petitioned the Justice in Chambers for a writ of mandamus to compel the respondent judge, Her Honour Gloria M. Scott, of the Monthly and Probate Court for Montserrado County, to sign and admit into probate for registration an administrator's deed for which he had filed a formal petition. When the petitioner filed the petition in the Probate Court hearing was had on the said petition and ruling reserved. However, the judge failed and neglected to pass upon the petition after the three days statutory period expired. When the petition for mandamus was served on the judge, she filed her returns to the petition and averred that because of the pendency of the controversy between several estates, the court had not ruled on the petitioner's petition to admit the deed in question to probate. She also averred that Counsel for the petitioner had not returned to the court for ruling on his petition for probation. Accordingly, she prayed the Chambers Justice to dismiss the mandamus proceedings and to order petitioner to proceed to the probate court for the ruling on his petition for probation of the deed.

The Chambers Justice found that the averments of the respondent judge had no bearing on the delay in admitting into probate petitioner's administrators deed; and that there was nothing in the judge's returns indicating that her delay or failure to admit the subject deed into probate was due to objections filed in court against the probation of the deed which had not been heard and disposed of. The Chambers Justice held that mandamus will lie against a probate judge who has

received into probate an instrument such as a deed to be probated and registered, and has neglected and failed to probate said deed over a period of three (3) days in the absence of a written objection thereto filed by an adverse party. Accordingly, the Chambers Justice granted the writ and ordered the respondent judge to immediately admit into probate and order the registration of petitioner's administrator's deed.

Appearances not indicated.

MR. JUSTICE SMITH, presiding in Chambers.

This mandamus proceeding was filed in the Chambers of this Honourable Supreme Court of Liberia by the petitioner, Charles Clarke, against the respondent judge, Her Honour Gloria M. Scott of the Monthly and Probate Court for Montserrado County, to compel the said Judge to sign and admit into probate for registration an administrator's deed which was offered into probate by the petitioner. Under our statute, mandamus is a special proceeding to obtain a writ requiring the respondent to perform an official duty. Civil Procedure Law, Rev. Code 1:16.21 (2).

The records of this proceeding reveal that Boimah Gray and Rebecca Faysine, the Administrator and Administratrix of the Intestate Estate of the late Wilber Faysine by virtue of their Letters of Administration issued to them on July 11, 1989, by the Probate Court for Montserrado County, under the signature of Judge Harper S. Bailey, then probate judge of said Court, obtained a decree of sale from the respondent Judge on the 8thday of September, 1993 to sell 115 acres of **land** lying and situated in Brewerville, Paynesville, and Bushrod Island, Montserrado County, so as to meet government tax and other obligations of the estate. Relying on the decree of sale, the petitioner, Charles Clarke, purchased from the Administrators and obtained administrator's deed for 4.75 town lots in Bushrod Island, Monrovia, Liberia and on September 13, 1994, filed a petition offering into probate the said deed for probation and registration. On October 3, 1994, the petitioner, represented by his Counsel, Counselor McDonald J. Krakue, appeared and argued his said petition before the respondent Judge for the probation of the deed. The respondent judge noted in the minutes of court that the matter was suspended until October 6, 1994.

The respondent judge filed her own returns to the petition and appeared in Court to argue her said returns. In her 4-count returns, the judge states in substance that because the petitioner's petition for probation of his deed was not served on any adverse party, she sought the advice of

Counselors Felicia Coleman and Emmanuel S. Koroma on the matter. That she received a letter dated July 5, 1993, signed by Attorney Amymusu Jones informing the court that the Administrator of the William Faysine's estate had conducted a survey and planted corner-stones within the premises owned by Momolu Dukuly and leased to CEMENCO. The respondent Judge talks about the estate of the late Momolu Dukuly and that of Wilbur Faysine for which she ordered a survey in order to ascertain the metes and bounds of both estates. She said also that a protest was filed against the survey she had ordered by the Administrator of the estate of the late Solomon Mensah who claimed not to have been notified of the survey for which the court had to order a re-survey. And that because of the pendency of the controversy between several estates, the court had not ruled on the petitioner's petition to admit the deed in question to probate. The respondent Judge argues that Counsel for the petitioner had not returned to the court for ruling on his petition for probation, she therefore prays for dismissal of the mandamus proceeding and requests the Chamber Justice to order the petitioner to come to the Probate court for the ruling on his petition for probation of the deed.

These averments of the returns of the respondent Judge have no bearing on the intestate estate of the late Wilbur Faysine, located in Busbrod Island and sold to petitioner Charles Clarke upon the decree of sale under her signature; nor is the controversy between the several estates for which she had to order survey and re-survey connected with the intestate estate of the late Wilbur Faysine to have caused the delay in admitting the subject deed into probate. We have not also found any fact in her returns that her delay or failure to admit the subject deed into probate is due to an objection filed in court against the probation of the deed which had not been heard and disposed of.

The procedure hoary with age in our jurisdiction in the probation of instruments has been to appear in open court and upon permission of the court, enter upon the minutes of court an application for probation of such instrument, which application, for instance, may read as follows:

"May It Please Your Honour:
Counselor McDonald J. Krakue most respectfully offers into probate one Administrator's Deed for 4.75 town lots from Boima Gray and Rebecca Faysine to Charles Clarke for probation and registration, and respectfully submits".

The judge will then make the following record on the minutes of Court:

"THE COURT: "The application is noted, the clerk of this court is hereby ordered to receive the deed into his custody and placard notices at the Courtroom door for a period of three (3) days notifying the public of the offering of the deed for probation and registration. That any per-son or persons having any objection to the probation and registration of the deed may file same and they shall be heard, otherwise, the said deed shall be admitted into probate and ordered registered after expiration of the three (3) days. AND IT IS HEREBY SO ORDERED".

After expiration of the three (3) days, and no caveat or objection having been filed, the counsel or person offering the deed into probate will return to the court, and having the blessing of the court, makes the following application:

"May It Please Your:
Counselor Krakue says that on the 13' day of September, 1994, he appeared in open court and offered into probate for probation and registration, administrator's deed issued to Charles Clarke.

Because since the offering of this deed three days have passed and no objection thereto has been filed against its probation. The Counsel therefore respectfully requests Court to cry said deed at the Courtroom door for probation. And respectfully submits".

The judge will thereupon order the probation of the deed and order that it be registered at the Archives of the Republic. She will then accordingly sign the deed.

Under our law, if a person fails to have any instrument affecting or relating to real property probated and registered as provided by law within four (4) 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. For reliance, see Property Law, 1956 Code 3:3 & 6, pp. 1013-1014.

We are not aware of any law in this jurisdiction requiring a written petition supported by affidavit to be made for the probation and registration of deeds in the probate court in which an argument is entertained with supporting laws cited and ruling reversed to be made thereafter as the minutes of the Probate Court in this case has been shown. However, be as it may, mandamus will lie against a probate judge who has received into probate an instrument such as a deed to be

probated and registered, and has neglected and failed to probate said deed over a period of three (3) days in the absence of a written objection thereto filed by an adverse party.

In view of the foregoing, the petition for a writ of mandamus is hereby granted. The Clerk of this court is hereby ordered to send a mandate to the respondent judge to immediately admit into probate and order the registration of petitioner's administrator's deed since indeed, from the 13' day of September, A. D. 1994 to the present when the deed was offered, there has been no objection thereto filed. Costs disallowed. And it is hereby so ordered.

Petition granted.

J.J. Arbu Enterprises v Wright et al [1995] LRSC 24; 38 LLR 12 (1995) (27 July 1995)

J. J. ARBU ENTERPRISES, by and thru its General Manager, Plaintiff-In-Error, v. **HIS HONOUR M. WILKINS WRIGHT**, Resident Circuit Judge, Sixth Judicial Circuit, Montserrado County, and **LEMUEL URIAS**, Defendants-In-Error.

PETITION FOR A WRIT OF ERROR TO THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: April 7, 1995. Decided: July 27, 1995.

1. If a defendant has failed to appear, plead, or proceed to trial, or if the court orders a default for any other failure to proceed, the plaintiff may seek a default judgment against him.

2. A denial of a day in court cannot be claimed as ground for the issuance of a writ of error when counsel declines appearance after service of a notice of assignment on the day the case is to be heard, and after the hour noticed therein, when the case is actually heard more than an hour after such service.

Plaintiff-in-error entered into a lease agreement with the co-defendant-in-error for a period of fifteen (15) years. After the plaintiff-in-error failed to comply with the terms and conditions of the lease, the co-defendant-in-error filed a petition for cancellation of the lease agreement in the Civil Law Court, Sixth Judicial Circuit, Montserrado County. The writ of summons and the petition were served on the plaintiff-in-error but he failed to appear or file an answer. According to the records, when the plaintiff-in-error received the summons and other relevant documents

for the petition for cancellation, he met the petitioner/co-defendant-in-error's counsel, to whom he immediately paid the rent that was due for the second period. According to the plaintiff-in-error, the defendant-in-error's counsel promised that he would withdraw the case from court and that it was because of this promise that the plaintiff-in-error never bothered to file an answer or appear for trial, even though he received a notice of assignment for the hearing. Consequently, the codefendant-in-error moved the court for default judgment, which was granted and made perfect following the presentation of evidence by the co-defendant-in-error. It is from this ruling that the plaintiff-in-error petitioned the Supreme Court for a writ of error

The Supreme Court denied the writ, holding that the denial of a day in court cannot be claimed as ground for issuance of a writ of error when the counsel for the plaintiff-in-error declined appearance after receipt of a notice of assignment. The Court noted that if indeed the plaintiff-in-error had paid the rent due, for which the cancellation was filed, and the lawyer for the co-defendant-in-error had promised to withdraw the case, he or his counsel should have appeared in court and brought this fact to the attention of the judge. The court opined that the failure to appear, upon a notice of assignment, was fatal to the plaintiff-in-error's cause. The Court therefore *denied* the petition.

B. Mulbah Togbah and *Moses K Yangbe* appeared for the plaintiff-in-error. *J. D. Baryogar Junius* appeared for the defendant-in-error.

MR. JUSTICE MORRIS delivered the opinion of the Court.

Plaintiff-in-error entered into a lease agreement with codefendant-in-error, Lemuel Urias, on the 4 th day of September A. D. 1992, for a period certain of fifteen (15) years, commencing from September 4, A. D. 1992, up to and including September 4, A. D. 2008. According to the agreement, the plaintiff-in-error was to pay five thousand forty dollars ($5,040.00) for the second period beginning from September 4, 1993 to September 4, 2000. The plaintiff-in-error was also to construct a one-story building on the leased property, but no special time was given in the agreement for the construction.

The plaintiff-in-error, having failed to pay the five thousand forty dollars ($5,040.00) for the second period, the co-defendant-in-error, Lemuel Urias, on October 5, 1993, filed a petition for cancellation of the lease agreement in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, before His Honour M. Wilkins Wright. According to the records, the writ of summons and the petition were served on the plaintiff-in-error on the e h day of October, A.

D. 1993. From the 6th day of October, A. D. 1993, up to October 27, 1993, the time on which the petition was called for hearing, the plaintiff-in-error had not filed an answer and, on the date of the hearing, did not appear. Accordingly, counsel for co-defendant-in-error, Lemuel Urias, moved the court for the application of Rule 7 of the Circuit Court Revised Rules, as well as the Civil Procedure Law, Rev. Code 1:42.1, both of which we quote hereunder:

"The issues of law having been disposed of in the 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 the 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 a party's abandonment of a defense in the said case, in which instance the court may proceed to hear the plaintiff's side of the case and decide thereon, or dismiss the case against the defendant and rule the plaintiff to costs, according to the party failing to appear. 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." *Rule 7 of the Revised Circuit Court Rules.*

If a defendant has failed to appear, plead, or proceed to trial, or if the court orders a default for any other failure to proceed, the plaintiff may seek a default judgment against him." Civil Procedure Law, Rev. Code 1:42.1.

In this case, the plaintiff-in-error never appeared or filed returns or an answer after the service on him of the writ of summons with a copy of the petition. Moreover, a notice of assignment was duly issued and served on him for the trial of the case and he again refused and neglected to appear or file a motion for continuance.

Consequently, the petitioner/co-defendant-in-error's re-quest for default judgment was granted and he was permitted to bring witnesses to substantiate his case, which he did. The records show that the co-defendant-in-error produced two witnesses in the court below. For the benefit of this opinion, we shall quote counts 1 and 4 of the petition for cancellation:

"1. That on the 4th day of September, A. D. 1992, petitioner entered into a lease agreement with the above named respondent in which respondent agreed to lease from petitioner his parcel of **land** containing one acre which is situated at Sinkor, in the City of Monrovia, Republic of Liberia; that in keeping with the terms of said agreement, the respondent agreed to make rental payment of $5,040.00 on September 4, 1993 for the demised property for the second period; that in spite of the binding effect of the aforesaid lease agreement, the respondent has failed to honour the agreement by making payment of its rent for the second period. Petitioner attaches herewith a copy of said agreement as exhibit 'A'.

4. And also because your humble petitioner submits that since the demise of his premises to the respondent, the respondent has abandoned the said demised premises and his whereabouts is not known; that if the aforesaid lease agreement is not cancelled and the petitioner placed in possession of his premises, the premises will continue to deteriorate, all to the detriment of the petitioner."

The plaintiff-in-error admitted that he received the writ of summons and other relevant documents for the petition for cancellation, but did not appear or file an answer. He also acknowledged receiving the notice of assignment for the trial of the petition on October 27, 1993, at the hour of 9:30 a.m. He again refused to attend the trial. He has given as his reason that after the filing of the petition for cancellation, he met with petitioner/co-defendant-in-error's counsel, in person of Counsellor Flaawgaa R. McFarland, to whom he immediately paid the five thousand forty dollars ($5,040.00) for the second period. According to him, Counsellor McFarland promised that he was going to withdraw the case from court and that it was because of this promise that he did not file an answer or appear for trial, even though he received the notice of assignment for the hearing.

The Court would like to observe that if the plaintiff-in-error had paid the rent due, for which the cancellation petition was filed, and the lawyer for the co-defendant-in-error had promised to withdraw the case, the plaintiff-in-error or his counsel should have appeared in court and brought this fact to the attention of the judge. Instead, he chose not to appear for the trial, even though he was served with the notice of assignment. The Civil Procedure Law provides that:

"On an application for judgment by default, the applicant shall file proof of service of the summons and complaint, and give proof of the facts constituting the claim, the default, and the amount due." Civil Procedure Law, Rev. Code 1: 42.6.

Under our statute, a writ of error is a writ by which the Supreme Court calls up for review a judgment of an inferior court from which an appeal was not announced on rendition of judgment. *Ibid, 1:16.21(4).* This Court has repeatedly held that error will be granted when the petitioner has been denied his day in court. However, this Court has also held that "denial of a day in court cannot be claimed as a ground for the issuance of a writ of error when counsel declines appearance after service of notice of assignment on the day the case is to be heard, and after the hour noticed therein, when the case is actually heard more than an hour after such service." *Mulbah et al. v. Dennis[1973] LRSC 33;* , 22 LLR 46 (1973).

In the instant case, as stated earlier, the plaintiff-in-error received the petition for cancellation and the relevant documents, along with the writ of summons, but he neither appeared nor filed an answer or returns. He was also served with a notice of assignment for the trial of the case but he failed to appear for the hearing. Accordingly, he cannot claim that he did not have his day in court.

In view of all we have said hereinabove, the writ of error is hereby denied and the alternative writ of error quashed, with costs against the plaintiff-in-error. The Clerk of this Court is hereby ordered to send a mandate to the court below commanding the trial judge therein presiding to resume jurisdiction over the case and enforce the judgment as rendered. And it is hereby so ordered.

Petition denied.

Hood-Adams v Jackson [1963] LRSC 43; 15 LLR 431 (1963) (10 May 1963)

LOUISE HOOD-ADAMS, by her Husband, S. 0. ADAMS, Appellant, v. REGINALD H. JACKSON, ELIZA CRAYTON, by her Husband, ISAAC CRAYTON, and LUCRETIA HERRON, Appellees.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued March 20, 1963. Decided May 10, 1963. Where an appellant in an ejectment action establishes to the satisfaction of the Supreme Court that a testamentary instrument containing a devise which would have constituted material evidence on the trial of the action was discovered afer rendition of judgment by the court below, the Supreme Court will grant a motion to remand the case with instructions that the

trial judge resume jurisdiction and order the parties to replead commencing with the answer.

On appeal from a judgment in an action
of ejectment, the Supreme Court granted appellant's motion for relief on the ground of newly discovered evidence, and ordered that
the case be remanded with instructions to replead.
Momolu S. Cooper and T. Gyibli Collins for appellant. Samuel B. Cole for appellee.

MR. Court.

JUSTICE

HARRIS delivered the opinion of the

At the call of this case for hearing, appellant informed this Court that
he had filed a motion for relief from judgment on ground of newly discovered evidence, the body of which motion we quote hereunder
as follows : "1. That after the rendition by Judge Morris of the final judgment hereinabove referred to, and the completion of the
appeal now pending before this Honorable Court, appellant, through Counsellor Momolu S. Cooper, came across the will of the late
Mary E. Schweitzer, daughter of President
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Daniel B. Warner, original owner of the property, Lot
Number 295, subject matter of the aforesaid ejectment suit, the fourth clause of which will vests title to one-half of said property
in appellants, the same being worded as follows : " 'FOURTH. I give, devise and bequeath unto my grandniece, Louise Hood, all my
right, title, interest and possession in the homestead lot and dwelling house of my late father, D. B. Warner, the same being situated
on Front Street in the City of Monrovia, County and Republic aforesaid, same being the house and lot presently occupied by my sister,
Rebecca A. Demery, unto her, the said Louise Hood, her heirs and assigns forever in fee. The interest, title and right of possession
herein devised and bequeathed extends to one-half of said property.' "A copy of the above-quoted will is herewith filed as Exhibit
A and forms a part of this motion. "2. And also because your humble petitioner submits that this newly discovered evidence, the existence
of which she was not aware of until same was brought to her notice by counsel, is material to the proof of her side of the ejectment

action brought against her by appellees, and that with the aid of such pertinent and material evidence connecting, as it does, the
devise made and contained in the will of Rebecca A. Demery, sister of testatrix Mary E. Schweitzer, as to the location, ownership
and identity of the property in question, quite an opposite result would have been reached at the trial below. Wherefore, appellant
prays a remand of the case so as to enable her to furnish her opponents with a copy of Mary E. Warner-Schweitzer's will, in harmony
with the decisions of this Honorable Court in Cess-Pelham v. Pelham, [1934] LRSC 6; 4 L.L.R. 54 (1934), and Adjavos v. Frey & Zusli, [1934] LRSC 33; 4 L.L.R. 226 (1934).

"3. And also because appellant-petitioner says that, in the preparation of her answer, her counsel, T. Gyibli Collins, did not make profert the will of her grandaunt, Rebecca A. Deanery, who devised to her a one-half interest in
and to Lot Number 295, Front Street, Monrovia, as more fully appears from said will, copy whereof is filed herewith as Exhibit B
and forms a part of this motion, which one-half interest, when added to the one-half interest already devised to her by Mary E. Warner-Schweitzer,
her other grandaunt, entitles her to the whole of said parcel of **land**; but because said will was not admitted into evidence by the
trial court, the jury did not have a clear-cut and complete picture of her side of the case. Appellant submits that, under the circumstances,
the ends of justice demand that the case be remanded with instructions that the parties be ordered to replead." Newly discovered
evidence which by due diligence could not have been discovered in time to move for a new trial constitutes a statutory ground for
relief from a judgment. See 1956 Code, tit. 6, § 890 (2) (b). The above-quoted motion was not resisted. On the contrary, counsel
for appellees conceded the propriety of remanding the case for the purpose of giving appellant an opportunity to put into evidence
a document which was unavailable at the time the answer was filed. There being no resistance to the motion, and in order that substantial
justice may be rendered, this case is remanded to the court below with instructions to the judge thereof to resume jurisdiction and
order the parties to replead, commencing with the answer, costs to abide the final determination of the case. And it is so ordered.
Remanded.

Harmon et al v Draper [1963] LRSC 16; 15 LLR 272 (1963) (8 February 1963)

MARY HARMON, ALBERT SCOTT and JOHN HARMON, Representing Themselves as Widow, Uncle, and Foster Son, respectively, of CHARLIE HARMON, Deceased, v. WILLIAM TOMPO and GEORGE DRAPER, Uncle and Next of Kin of said Decedent.
APPEAL FROM THE MONTHLY AND PROBATE COURT OF MONTSERRADO COUNTY.

Argued November 8, 1962. Decided February 8, 1963. 1. Marriage by tribal customary law confers no right of dower on the widow of such marriage. 2. Where adverse petitioners for letters of administration of an intestate estate present issues of fact as to identity of the decedent's next of kin, the probate court should fully hear and determine such issues before finally granting such letters of administration.

On appeal from a ruling of the probate court revoking letters of administration of the intestate estate of Charlie Harmon, deceased, previously granted to appellants, and granting such letters to appellees, reversed and remanded.
A. Gargar Richardson for appellants. 0. Natty B. Davis for appellees.
MR. JUSTICE MITCHELL

delivered the opinion of the

Court.
Charlie Harmon died intestate in Monrovia on July 26, 196o. Thereafter, Mary Harmon and John Harmon petitioned the probate court, praying to be granted letters of administration to administer the aforesaid intestate estate of their late husband and foster father, alleging that the said decedent had died possessed of real, personal and mixed property and that they applied for the administration of the estate to prevent waste.

On August I5, 196o, the court considered the petition and ordered that the same be granted and that petitioners be required to file a complete inventory of all the property of the estate within zo days from the date of the court's order, and tender a bond for the faithful discharge of their duty in a sum double the value of the estate involved. After entering this order, and before Mary and John Harmon entered upon their duties as administrators, Counsellor A. Gargar Richardson, representing the petitioners, requested the court to permit one Albert Scott, a relative of the purported widow,

Mary Harmon, to represent John Harmon because he was under legal age. This request was granted by the court, and the parties were
accordingly qualified and assumed the administration of the aforesaid intestate estate. After a few days, Counsellor 0. Natty B.
Davis, as counsel for William Tompo and George Draper, uncle and next of kin of the said late Charlie Harmon, petitioned the probate
court for revocation of the letters of administration previously granted to Mary Harmon, John Harmon and Albert Scott, who had represented
themselves to be widow, foster son and uncle of the intestate, on the ground that they were not related to him, but that they had
misrepresented such facts to the court for the purpose of enjoying the benefits of an estate to which they were not legally entitled.
Pleadings proceeded as far as the reply, and on October 28, 196o, the commissioner of probate made the following ruling: "The court
says that Charlie Harmon died on July z6, 196o, and Counsellor A. Gargar Richardson, for the widow, presented to the court a petition
for letters of administration. Same was granted ; and in the exercise of such power, the widow was opposed by one William Tompo who
alleges that he and one George Draper are, respectively, uncles and next of kin of the deceased, and that the woman in question was
not the

legally dowried wife of the deceased at the time of his death ; and, hence, they requested the court to revoke the letters already granted. "This court says that, until the legislature can enact a law granting to native marriages
a dower right in the property of the husband, and unless the deceased or testator so declares in his will, a native wife has no right
to administer the intestate estate of her late husband, even if she was legally dowried according to law; for to do so would be infringing
upon customs and traditions. A native woman is also a part and parcel of the man's estate, and hence she cannot, under the law, claim any portion
of her husband's estate. The issue before the court now is whether the woman in question was the legal dowried wife of the late Charlie.
Harmon. She contends yes, and the family contends no. But even if her contention is correct, the issue would be whether, as the man's
dowried wife, she could control her husband's property when she is also part of the property to be administered by the family. "In
view of this, the petition heretofore granted, together with the letters of administration issued, are hereby cancelled and made
null and void, and the petition for revocation thereof is hereby granted. And the clerk of this court is hereby ordered to issue

letters of administration in favor of the uncles and next of kin for the administration of the estate, and they are required to file
an inventory within. 20 days with this court, and a bond twice the value of the said inventory with sureties sufficient to indemnify
them for any loss or damage they may sustain." Appellants excepted to the above ruling, and came forward on appeal before this Court.
When the case was called for hearing before this bar, both sides having filed their briefs, the appellants proceeded to argue, and
their counsel contended that Mary Harmon, one of the appel-

lants herein, is the legal widow of the
deceased, Charlie Harmon; that she was regularly dowried and remained the wife of the late Charlie Harmon up to the time of his death;
and that the probate court did not hear any evidence to determine the legal issues--in other words, to decide, upon the facts, whether
or not their union had been dissolved before the death of her said late husband --but arbitrarily proceeded to render a ruling on
the mere allegations of the appellees, and granted unto them the right to administer the estate, revoking the previous orders without
legal justification. Continuing his argument, appellants' counsel further contended that, under the basic law of the **land** as well
as the statutory provisions controlling native and Christian marriages, both types of marriages carry the same effect in law, because
both are predicated upon the same rights under our Constitution; hence, if a widow who was married according to Christian rites is
entitled to enjoy her dower right, it is obvious that a widow who was married according to native custom should also enjoy the same
right, because both these marriages are recognized by law and are of the same effect in the sight of the law. In conclusion, appellants'
counsel argued that, since appellees' petition in the court below for revocation of appellants' letters of administration, which
petition was granted, did not specify that appellants had no legal interest in the estate of the decedent, and did not allege that
appellants had committed some arbitrary act against the interest of the heirs in the estate in their effort to administer the same,
the court below was without legal authority to reverse its previous order and turn the estate over to the appellees for administration,
since it is a firm principle of law that courts do not raise issues. Countering the foregoing arguments, appellees' counsel argued
that, under the native customary laws in vogue, which have been legalized by legislative enactment, there is no authority for the
admeasurement of dower, since a native wife surviving her husband has no legal interest

in her husband's
estate, as would be the case if the marriage had been a civil or Christian one. A native wife, upon the death of her husband, becomes
the property of her deceased husband's family and may be wedded to any other member of the said family, unless she refunds the dowry
paid by her late husband for her. Appellees' counsel further contended that the aforesaid Mary Harmon, purported widow of the deceased,
merely demanded in the lower court that she should be permitted to continue as co-administratrix of the estate, together with the appellees, who are blood
relatives of the deceased, and that, since she did not present any constitutional issue in respect to her suffrage or equal right
under the law to enjoy dower, such an issue could not now, for the first time, be raised in this Court. During the course of this
argument, the Court's attention was called to the case : Jartu v. Estate of Konneh, [1950] LRSC 6; 10 L.L.R. 318 (195o), in which this Court held, inter alia that there is no provision in our law which authorizes a woman married by native customary
law to be entitled to the dower of her husband's estate. Taking recourse to the above-cited decision, we are of the opinion that
our law does not permit the admeasurement of dower to women married according to our tribal customary law; and it is our opinion
that the reason for the rule is that, under tribal customary law, a husband can wed two or more wives. Our courts, however, are required
to take notice of the circumstances, and to administer the native customary laws in a manner that may be applicable to the particular
tribe or tribes interested in the dispute. Although we have endeavored to review this question of dower right, yet it is conceded
that it was not the point of contention in the court below. From the records, it is seen that the primary issue in the court below
concerned the granting of the petition made and filed for revocation of the letters of administration on the ground that the

appellants, petitioners below, had falsely represented themselves to be the widow, son and uncle, respectively,
of the decedent, which relationships were denied by the parties who moved for revocation. Although it is certified to us that the

court revoked its orders, there is no showing that the court attempted to satisfy itself by a preponderance of evidence as to relationship
before giving its orders. It is, therefore, our opinion that the case should be remanded with orders to the court below to hear evidence
on both sides and determine who are the next of kin to the deceased and entitled to be authorized to administer the aforesaid estate.
The clerk of this Court is hereby ordered to send a mandate to the court below, ordering it to resume jurisdiction and proceed immediately

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Administrators of the Estate of Washington v Lloyd [1878] LRSC 10; 1 LLR 104 (1878) (1 January 1878)

ADMINISTRATORS OF THE ESTATE OF A. WASHINGTON, Appellants, vs. **MARIA A. LLOYD**, Appellee.

[January Term, A. D. 1878.]

Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.

Ejectment.

A person who has been absent from the country for more than seven years, of whom nothing has been heard, is presumed in law to be dead.

Where in an estate of joint-tenancy one of the tenants has been absent from the country beyond a period of seven years and respecting whom nothing has been heard, the surviving tenant 'becomes the sole tenant by the doctrine of survivorship and may maintain an action in his sole right.

At the January term of this court in the year A. D. 1875, a mandate was directed by this court to the Court of Quarter Sessions, Montserrado County, ordering said Court of Quarter Sessions to try the said case over again; because on the appeal from the said court it did not appear on the record in said case, on account of the mixture of questions of law and fact, for which party judgment ought to have been given.

In obedience to the said mandate the said court below admitted the said case to its jurisdiction and submitted the same to a second trial by a jury empanelled for that purpose, upon which a verdict was returned for the appellee and judgment rendered thereon. An appeal, however, having been prayed for by the appellants, it was granted them, upon which this case is again before this court. Therefore the court proceeds 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, then, to be considered and disposed of, is set forth thus: "The motion made by the defendants at the last September session of the court, to set aside the verdict and grant a new trial on the ground that said verdict is contrary to the law and the evidence of said case, Your Honor at this December session decided that said verdict is not contrary to the law and the evidence; and therefore a new trial shall not be granted."

The evidence in the case marked "number one" is proof conclusive that the title to said property vests in the appellee, notwithstanding it shows that Meta Ann Lloyd was a joint tenant with the appellee; because the fact having been fully established by the said evidence that all the right, title and interest whatever that the said John D. Johnson, Joseph H. Turpin and Charles B. Dunbar had to and in the said property hath been lawfully transferred by them to the appellee and one Meta Ann Lloyd ; but the said Meta Ann Lloyd having been absent from this Republic beyond a period of seven years, she is presumed in law to be dead, and therefore Maria Ann Lloyd, being a joint tenant with the said Meta Ann Lloyd, takes the whole of the property by operation of law.

Therefore this court says that the judge of the court below was right in deciding that the said verdict is not contrary to the law and the evidence, and therefore a new trial shall not be granted.

The second point to which exception is taken is comprehended in the following statement: "Because the court decided that the verdict of the jury rendered at the last term of the court is hereby ordered to be recorded, thereby giving Maria Ann Lloyd exclusive right to the property; and the defendants are ruled to pay all costs."

The second point involves the same questions which have been disposed of under the first head of appellants' bill of exceptions, therefore the court says the court below was right in ordering to be recorded the verdict of the jury.

And here it ought to be remembered that fraud is not to be presumed as the object of the contract from the mere act of the husband's interposition in effecting the contract for the purchase of property for his wife, unless such contract was made in violation of some statutory regulation. Nor does it appear from evidence on record in this case that at the time of the purchase of said property Leo L. Lloyd was largely in debt; because the purchase of said property was effected over three years before any suit was brought against him. But suppose he was in debt at the time, it was his duty to interpose and do whatever his wife desired, which was not in violation of law or tending to fraud; for in the eye of the law the husband is the proper custodian of the wife's property, and as such the law requires him to join with her in all actions, of whatever kind they may be, to recover her rights or to redress any injury she may have sustained.

In this action, however, the defendants, having failed to file their answer within the time prescribed by the statute, have waived their right to object to the nonjoinder of the appellee's husband and her joint tenant, and were therefore compelled by the statute to rely upon the denial of the truth of the facts stated in the plaintiff's complaint, and to rest on that defense only.

Therefore the court, in confirmation of the judgment of the court below, adjudges that the appellee, Maria A. Lloyd, recover against the appellants, C. A. H. Washington, administratrix, S. J. Cambell and R. H. Jackson, administrators of the estate of A. Washington, appellants, the **land** mentioned in the complaint of the appellee (plaintiff in the court below), and the sum of sixty dollars for her costs in this action.

Larsannah v Armah [1961] LRSC 42; 14 LLR 599 (1961) (15 December 1961)

BOYMAH LARSANNAH, Appellant, v. ARMAH PASSAWE, Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO
COUNTY.

Argued October 26, 1961. Decided December 15, 1961. Trial by jury is mandatory in an ejectment action where there is any
question of fact to be tried. 1956 Code, tit. 6, § 1125.

On appeal from a judgment dismissing the complaint in an action of ejectment, reversed and remanded.
Smallwood Law Firm for appellant. Firm for appellee. Dukuly Law

MR. JUSTICE

HARRIS

delivered the opinion
of the Court.

The above-entitled case was filed against the abovenamed defendant-appellee by Boymah Passawe, the abovenamed plaintiff-appellant,
during the September, 196o, term of the Circuit Court of the Sixth Judicial Circuit, Montserrado County. The pleadings progressed
as far as the rejoinder of the defendant and were rested. On November 7, 196o, trial of the law issues was had by Judge Joseph Findley,
and ruling thereon was reserved until November 17, 196o, when the said judge entered a ruling on the law issues dismissing the case
with costs against the plaintiff, to which ruling the plaintiff took exceptions and announced an appeal to this Court upon a bill
of exceptions containing one count as follows : "Because on the 4th and 7th days of November, 196o, Your Honor, having heard arguments
pro et con on the law issues in the case did, on the 17th day of November, 196o render a ruling sustaining Count '3' of the answer
in the following words : 'The complaint

with its reply is therefore denied and overruled, Count "3"
of the answer sustained, and the case ordered dismissed with costs against plaintiff' ; to which ruling plaintiff then and there
excepted and prayed an appeal to the Supreme Court of Liberia at its March, 1961, term." The question now arises : can a court, that
is, the judge alone, without the aid of a jury, try an action of ejectment when the issues raised in ejectment are mixed issues of
both law and fact? As this Court said many years ago : "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." Reeves v.
Hyder, 1 L.L.R. 271, 272 (1895) 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 a possessory action which supports the idea of adverse possession, and hence a trial
of the legal titles of the contending parties. Our statutes provide that such trial is to be by a jury if there is any question of
fact to be tried. (1956 Code, tit. 6, § 1125.) It is therefore among the peculiar trials wherein the court may not only assist, but

may direct the jury in coming to the conclusions warranted by law and facts in the case. Hence, it is not error 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. We are therefore of the considered opinion that the judge should have empanelled
a jury to try the case under his direction as the law mandatorily commands. The

judge having deviated
from the law in such case made and provided, the judgment of the lower court in this case is reversed, and the case remanded to be
tried by a jury under the direction of the court. Costs to follow the final determination of the case. And it is so ordered. Reversed
and remanded.

Kennedy et al v Carlton Petroleum Inc. [1997] LRSC 4; 38 LLR 360 (1997) (22 July 1997)

RUFUS KENNEDY, represented by DEXTER TIAN, and **GENERAL PETROLEUM CORPORATION (GETCO)**, represented by its authorized representative, Appellants, v. **CARLTON PETROLEUM INCORPORATED**, by and thru its Director, JOHN W. GBEDZE, Appellee.

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

Heard: April 30, 1997. Decided: July 22, 1997

1. It is mandatory under the Civil Procedure Law that every party against whom a judgment is rendered in the trial court shall secure the approval of an appeal bond and file the same with the clerk of the trial court within 60 days of the date of rendition of the judgment.

2. Ordinarily, the notice of completion of appeal must not only be issued by the clerk of the trial court within 60 days after judgment, but must also be served within such time.

3. The essence of an appeal bond is to indemnify the appellee from any injury he may sustain should the appeal be unsuccessful.

4. The sole purpose of securing and serving a notice of completion of appeal is to give the Supreme Court jurisdiction over the appellee.

5. The failure of an appellant to file an approved appeal bond and secure and file a notice of completion of appeal within 60 days deprives the Supreme Court of jurisdiction over the appellee and constitutes grounds for the dismissal of the appeal.

6. While the Supreme Court has the constitutional and statutory right to hear and determine causes that are brought before it, it cannot discharge this duty where the Court does not have jurisdiction over a party litigant due to the failure of an appealing party to file an appeal bond and serve and file a notice of completion of appeal within 60 days of the date of the trial court's judgment.

7. The failure of an appellant's counsel to file a resistance to a motion to dismiss an appeal and to appear for the hearing of said motion constitute neglect and an abandonment of the cause, which are grounds for dismissal of the appeal.

The appellants, who were defendants in an action of ejectment in the lower court and against whom the trial jury had returned a verdict and on which the trial court had entered judgment, appealed to the Supreme Court for a review of the verdict and judgment. However, the appellants failed to file an approved appeal bond and to serve and file a notice of completion of appeal within 60 days, as required by the Civil Procedure Law. As a consequence of this failure, the appellee filed a motion to dismiss the appeal.

No resistance was filed to the motion to dismiss the appeal and no appearance was made by the appellants or their counsel for hearing of the motion, although said counsel had acknowledged receipt of the notice of assignment for the hearing of the motion. The Court therefore permitted counsel for appellee to argue appellee's side of the motion.

In its opinion, the Court opined that the failure by the appellants to file a resistance to the motion to dismiss and to appear for the hearing of the motion, upon due notice, constituted abandonment of the case and grounds for the dismissal of the appeal. The Court noted further that the requirements of the statute regarding the filing of an approved appeal bond and the service and filing of a notice of completion of appeal were mandatory, and that a failure to comply with said requirements within the 60 day period specified by the statute constituted grounds for dismissal of the appeal. Additionally, the Court said, the failure to serve and file a notice of completion of appeal within the statutory time deprived the court of jurisdiction over the person of the appellee and, as such, the Court was prevented from going into the merits of the appeal. The Court therefore *granted* the motion to dismiss the appeal and *ordered* the appeal *dismissed.*

James E. Jones appeared for the appellants. *James E. Pierre* of Brumskine and Associates appeared for the appellees.

MR. JUSTICE MORRIS delivered the opinion of the Court.

The appellee, movant herein, Carlton Petroleum Incorporated, by and thru its director, John W. Gbedze, of the City of Monrovia, instituted an action of ejectment against the appellants/respondents, Rufus Kennedy, represented by Dexter Tiah, and the General Petroleum Corporation (GEPCO), represented by its authorized representative, also of Monrovia, at the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, sitting in its September Term, A. D. 1996, presided over by His Honour William G. Metzger, Assigned Circuit Judge. The appellee obtained a verdict of US$60,000.00, which said verdict the trial judge, on the 12thday of November, A. D. 1996 confirmed and affirmed, awarding the appellee/movant the sum of US$60,000.00 and the possession of the premises. The appellants/respondents excepted to the judgment and announced an appeal to this Honourable Court of last resort for appellate review and determination.

When the case was called for hearing, counsel for appellants/respondents did not appear. Counsellor James E. Pierre, who appeared for the appellee/movant, by application, brought to the attention of the Court a motion to dismiss appellant's appeal. This Court, pursuant to Rule IV, Part 6 of the Revised Rules of Court of 1972, permitted counsel for appellee to argue appellee's motion. We also observed that there was no resistance filed to the motion to dismiss appellants' appeal.

Appellee/movant strongly contended that appellants' appeal is subject to dismissal for reasons that the final judgment was rendered on the 12thday of November, A. D. 1996, but that appellants filed their approved appeal bond on the 16th day of January, A. D. 1997, five (5) days beyond the statutory period of 60 days. The counsel. for movant also strenuously argued that the notice of completion of the appeal was not filed and served until the 10th day of February, A. D. 1997, thirty (30) days without the statutory period of 60 days. Movant obtained and attached a clerk's certificate dated the 15thday of April, A. D. 1997, marked exhibit "C". Appellee/movant therefore requested this Honourable Court to grant its motion and dismiss appellants/respondents' appeal because of the latter's failure to file an approved appeal bond and to secure, file and serve a notice of completion of the appeal within 60 days, as required by law.

The salient issue for the determination of this case is whether or not appellants' appeal bond and the notice of completion of the appeal were filed and served within 60 days as required by law?

A careful perusal of the records revealed that final judgment in the ejectment suit was rendered on the 12thday of November, A. D. 1996, but that appellant's approved appeal bond was not filed until the 16th day of January, A. D. 1997, five days beyond the statutory period of 60 days. The records also revealed that the notice of the completion of the appeal was secured, filed and served on February 10, 1997, 30 days beyond the statutory period of 60 days.

The Civil Procedure Law, Rev. Code 1: 51.8, provides:

“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. . ."

It is clear from the language of the portion of the above quoted statute that it is mandatory that every party against whom a judgment is rendered in the trial court, except the Supreme Court, shall secure the approval of an appeal bond and file same with the clerk of the trial court within 60 days of the date of the judgment. This has been and is still a statutory obligation of an appealing party and a requirement for the hearing of an appeal by this Court of denier resort.

In the *case The Liberia Federation of Labour Unions and McGill v. Ankra 'et aL, and the Ministries of Labour and Justice,* [1989] LRSC 21; 36 LLR 343 (1989), decided July 14, 1989, Mr. Chief Justice Gbalazeh, speaking for the Court, said:

"Ordinarily, the notice of completion of appeal must not only be issued by the clerk of the court within sixty days after judgment, but must also be served within such time." See also *Gallina Blanca S.A. v. Nestle Products, Ltd,* [1975] LRSC 14; 24 LLR 203 (1975). Civil Procedure Law, Rev. Code 1:51.16.

The essence of an appeal bond is to indemnify the appellee from any injury he may sustain should the appeal be unsuccessful and the sole purpose of securing and serving a notice of completion of appeal is to give the Supreme Court jurisdiction over the appellee. Thus, this Court has held:

"Moreover, it is the requirement of the law that failure of the appellants to file an approved bond and secure and file a notice of completion of the appeal within 60 days deprives the Supreme Court of jurisdiction and of course ground for dismissal of the appeal." *Sherman and Sherman v. Sillah et al.[1990] LRSC 28; ,* 36 LLR 918 (1990), decided January 9, 1990.

It is our constitutional and statutory obligation to hear and determine causes that are brought before us, but we are reluctant in some instances, as in the instant case, to discharge such duties imposed upon us by the organic and statutory laws of the **land** where this Court does not have jurisdiction over a party litigant, due to the intentional failure of an appealing party to file an appeal bond and to secure, file and serve a notice of completion of the appeal within 60 days, as contemplated and mandated by the appeal statute in this jurisdiction.

Furthermore, we observed that there was no resistance filed to the appellee's motion to dismiss appellants's appeal, and we take notice of the non-appearance of appellants' legal counsel, although he had acknowledged the notice of assignment for the hearing of the motion. The failure of appellants' counsel to file a resistance to the motion to dismiss its appeal and to appear for the hearing of said motion is a neglect of appellants' legal interest and an abandonment of the cause, which are indeed grounds for the dismissal of appellants' appeal. For reliance, see Civil Procedure Law, Rev. Code 1: 51.16, *Dismissal of Appeal for Failure to Proceed.*

The motion of appellee being legally sound, and in compliance with the controlling laws, we hold that the failure of appellants to file an approved appeal bond and to secure, file and serve a notice of completion of the appeal within 60 days are grounds for the dismissal of appellants' appeal as this Court of final resort did not acquire jurisdiction over the appellee. The motion is hereby granted and the appeal is dismissed.

Wherefore, and in view of the foregoing, it in our considered opinion that the motion to dismiss appellants' appeal should be and the same is hereby granted. The appeal is ordered dismissed.

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 assessed against the appellants.

Motion granted; appeal dismissed.

Jeff et al v Hall et al [1997] LRSC 8; 38 LLR 396 (1997) (22 July 1997)

JEFF, **JOH**, **FORKPAH**, **et al.**, Informants, v. **HIS HONOUR SEBRON J. HALL** and **HER HONOUR AMYMUSU K. JONES**, Assigned Judge, Civil Law Court, Sixth Judicial Circuit, Montserrado County, and Stipendiary Magistrate, Monrovia City Corporation, Respondents.

INFORMATION PROCEEDINGS.

Heard: May 28, 1997. Decided: July 1997.

1. A party litigant in a judicial proceeding before a magistrate or justice of the peace, whose rights have been abridged by the arbitrary action of such magistrate or justice of the peace, is entitled to institute summary proceedings against such magistrate or justice of the peace in the circuit court of the county where the action occurs.

2. The circuit judges have the power, authority and jurisdiction exclusively to issue or order the issuance of writs of injunction and writs of summary proceedings, in the nature of prohibition, addressed to inferior courts and their officers in exercise or aid of their appellate jurisdiction over them.

3. Summary proceedings against magistrates and justices of the peace and summary proceedings to recover the possession of real property are two different proceedings under the statutes; the former being a remedial process dealing with arbitrary and irregular acts of justices of the peace and magistrates brought to a circuit court by a party whose legal rights are violated, and the latter dealing with possessory rights to recover possession of real property.

4. A Chambers Justice errs legally in ordering the enforcement of a ruling after an appeal from said ruling has been announced and granted.

5. An appeal, when announced, serves as a supersedeas to any further disposition of the particular matter by the court from whose judgment the appeal has been announced.

6. An order granting a provisional remedy is annulled immediately on judgment for the defendant unless an appeal is taken.

7. The taking of an appeal continues a provisional remedy in effect until a final judgment is rendered.

8. 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 be in force pending decision on the appeal.

Informants filed a bill of information before the full bench of the Supreme Court against the decision of the Justice in Chambers to order the enforcement of his ruling notwithstanding the announcement and granting of an appeal. An action of summary proceedings to recover possession of real property had been instituted against the informants by one Mamadee Daramie, administrator of the intestate estate of his late wife, in the magisterial court of the City of Monrovia. Prior to the hearing of the case, a motion to intervene was filed by Ciatta Sherman, claiming to be a niece of the deceased. Following the granting of the motion to intervene, Ciatta Sherman informed the magisterial court that an action was pending in the Monthly and Probate Court for Montserrado County to revoke the letters of administration issued to Mamadee Daramie. Based on this, the magistrate suspended hearing of the case pending disposition of the revocation proceedings in the probate court. From this decision, Mamadee Daramie sought summary proceedings in the Circuit Court for the Sixth Judicial Circuit, Montserrado County, against the magistrate.

The circuit court judge granted the summary proceedings against the magistrate and ordered that the magistrate proceed with the disposition of the summary proceedings to recover real property. When the magistrate tried to enforce the ruling of the circuit court, the informants filed prohibition before the Justice in Chambers. Following a hearing, the Justice in Chambers denied the petition. From this ruling, an appeal was taken and granted. Notwithstanding the appeal, the Justice in Chambers, on application of the respondents therein, ordered the magistrate to resume jurisdiction over the summary proceedings to recover real property and enforce its judgment. It was from this latter ruling that the informants filed a bill of information.

The Supreme Court granted the information, holding that once the appeal had been announced and granted, the Justice in Chambers, could not thereafter order the enforcement of his ruling. The Court noted that the matter against which the petition for a writ of prohibition was filed was the summary proceedings (investigation) against the magistrate which was determined by the circuit court, as distinguished from the summary proceedings to recover possession of real property which was not before the Chambers Justice. Hence, the Court said, the announcement and granting of the appeal by the Chambers Justice served as a supersedeas to any further action. The Court therefore concluded that the Chambers Justice acted without the law when he ordered the enforcement of the judgment. The Court therefore *ordered* that the parties remain in *status quo* until the appeal taken from the ruling of the Chambers Justice was determined.

Frederick A. B. Jayweh of the Civil Rights Association of Liberia appeared for the informants. *Joseph Constance* of the Laws Chambers of White and Associates.

MR. JUSTICE TULAY delivered the opinion of the Court.

This bill of information comes to us as a result of an appeal from the ruling of the Chambers Justice rendered on the 17th day of January A. D. 1996 in a prohibition proceeding filed before him by the informants herein.

Upon the complaint of Mamadee Daramie of the City of Monrovia, Liberia, an action of summary proceedings to recover possession of real property was instituted against informants herein in the Monrovia City Magisterial Court on August 28, 1995. The prayer of the summary proceedings to recover possession of real property was to oust, evict and eject the informants from a house lying and situated at the corner of Benson and Newport Streets, Monrovia, Liberia, owned by the Late Madam Kutu Koiwoin, wife of respondent herein, Mamadee Daramie.

When the summary proceedings to recover possession of real property case was called for hearing by the Monrovia City Magisterial Court, Temple of Justice, one Ciatta Sherman, claiming to be a niece of the Late Kutu Koiwoin, filed a motion to intervene for and on behalf of the informants herein, then defendants. This motion was granted by the magisterial court.

Following the granting of her motion to intervene, Ciatta Sherman informed the said court that there was pending before the Monthly and Probate Court for Montserrado County, Temple of Justice, a petition for the revocation of the letters of administration issued in favour of Mamadee Daramie to administer the intestate estate of the late Kutu Koiwoin which was awaiting determination by that court. Upon receiving the information about the pendency of another case between the parties before the Monthly and Probate Court for Montserrado County, the magistrate suspended the hearing of the summary proceedings to recover possession of real property action and referred the parties to the Monthly and Probate Court for the hearing of the revocation proceedings. From the ruling of the magistrate, Mamadee Daramie fled to the Sixth Judicial Circuit, Civil Law Court, Montserrado County, where he filed a petition for summary proceedings against the Magistrate. Returns were filed by the informants to this petition, along with a motion to strike the petition.

The judge, His Honour Sebron J. Hall, then presiding by assignment over the Sixth Judicial Circuit Court, Montserrado County, assigned the case for hearing. Informants and their counsel failed to appear although the notice of assignment was acknowledged and signed by informants' counsel. Judge Sebron J. Hall heard the case, as per assignment, granted the petition for the summary proceedings, and ordered the clerk of court to send a mandate to the magisterial court to resume jurisdiction over the summary proceedings to recover real property and to oust, evict and eject the informants therefrom and place Mamadee Daramie in possession of the house in question.

The Magistrate, Her Honour Amymusu Jones, upon receiving the mandate from the Civil Law Court, proceeded to execute same by ousting, evicting and ejecting the informants from the subject premises.

Informants then fled to the Justice in Chambers, His Honour Fulton W. Yancy, Jr., praying for the issuance of a writ of prohibition. The alternative writ was ordered issued, but on January 17, 1996, the petition for the writ of prohibition was denied by Justice Yancy, Jr. Informants announced an appeal from said ruling to the full bench and same was granted.

Respondent's counsel in the prohibition proceedings then requested the Chambers Justice to order the enforcement of the ruling appealed from by the informants on the ground that an appeal is not a supersedeas in summary proceedings to recover possession of real property. The Chambers Justice granted the request and ordered the enforcement of his ruling. It was from this latter decision that informants then and there filed this bill of information.

The issue for consideration by this Court in determining the information is whether the Chambers Justice erred when he ordered the enforcement of the ruling appealed from after he had granted the appeal?

In answer to the question, and from the facts herein stated, it is very clear that the case that was before the Chambers Justice was the petition for prohibition against ousting and evicting the informants as a result of the judgment entered in the summary proceedings case against the magistrate, and not the summary proceedings to recover the possession of real property, as the latter was and still remains before the magisterial court, Temple of Justice, undetermined. For the purpose of this opinion, we deem it necessary to quote the statutes on summary proceedings/investigations and summary proceedings to recover possession of real property.

SUMMARY PROCEEDINGS/INVESTIGATION

"A person or party litigant in a judicial proceeding before a magistrate or justice of the peace whose rights shall be abridged by the arbitrary action of such magistrate or justice of the peace shall be entitled to institute summary proceedings against such magistrate or justice of the peace in the circuit court of the county where the action occurs. If such action occurs in any of the territories, summary proceedings shall be instituted in the Provisional Monthly and Probate Court. As used in this section, arbitrary action shall be any act or action on the part of a magistrate or justice of the peace which violates the legal right of a party litigant or which is not in keeping with law or judicial practice under the statute." Judiciary Law, Rev. Code 17:8.12 *(Summary Proceedings Against Magistrate and Justice of the Peace).*

THE NATURE OF SUMMARY PROCEEDINGS AND POWER OF CIRCUIT COURT JUDGES.

"The circuit judges shall have the power, authority and jurisdiction exclusively, to issue or order the issuance of writs of injunction and writs of summary proceedings, in the nature of prohibition, addressed to inferior courts and their officers in exercise or aid of their appellate jurisdiction over them." Judiciary Law, Rev. Code 17:3.3 *(Circuit judges to issue writs of injunction and writs for summary proceedings in nature of prohibition).*

SUMMARY PROCEEDINGS TO RECOVER POSSESSION OF REAL PROPERTY

"Where title is not in issue, a special proceeding to recover possession of real property may be maintained in a circuit court or a court of a justice of the peace or a magistrate. The court of the justice of the peace or magistrate shall have jurisdiction only of cases in which the amount of judgment demanded does not exceed three hundred dollars." Civil Procedure Law, Rev. Code 1: 62.21 (Right to maintain summary proceedings to recover possession of real property).

We have quoted these statutes to distinguish summary proceedings from summary proceedings to recover possession of real property.

From the above quoted statutes, it is very clear that summary proceedings against a magistrate or justice of the peace and summary proceedings to recover possession of real property are two separate and distinct proceedings under our statutes. Summary proceedings deal with arbitrary acts and irregular acts of justices of the peace or magistrates brought to a circuit judge by a party whose legal rights are violated by such justices of the peace or magistrates. Summary proceeding is a remedial process. In the *case Smith v. Stubblefield and Brown*, *[1963] LRSC 32*; *15* LLR 338 (1963), this Court held: "Summary proceeding investigation is a proceeding by circuit courts against justices of the peace, magistrates and constables and are criminal in nature." Also, in the *case King v. Ledlow*, 2 LLR

283 (1916), this Court held that "the Act of 1902 providing for summary proceedings against justices of the peace, city magistrates and constables, is intended to give the judges of the circuit courts jurisdiction to investigate the actions of said officers and to give immediate relief to all concerned." *Id.* at 284. The Court further elaborated as follows: "Summary proceeding is a proceeding controlled by the state, prosecuted upon information of the informant. The penalty in cases of conviction is a fine to be paid immediately or be imprisoned and suspended from office." *Id*, at 285.

On the other hand, summary proceedings to recover possession of real property deal with possessory rights of party litigants to a piece of **land** and/or a house or houses. As we said earlier, and considering the differences and functions between and of summary proceedings against justices of the peace and magistrates, and summary proceedings to recover the possession of real property, we are of the opinion that the Chambers Justice erred when he ordered the enforcement of his ruling after granting the appeal. We hold this view because the appeal announced by the informants herein and granted by the Chambers Justice was from the ruling growing out of the circuit judge's ruling on the summary proceedings against the magistrate for some alleged illegal and/or irregular acts, but not from the ruling or judgment in the summary proceedings to recover possession of real property between the informants and Mamadee Daramie, since that case is still pending before the Monrovia City Magisterial Court at the Temple of Justice, undetermined.

We find support for our position in the case *Sadatonou, Hall et al. v. Bank of Liberia, Inc.*, 20 LLR 517 (1971), wherein, at Syl. 1, this Court said: "An appeal, when announced, serves as a supersedeas to any further disposition of the particular matter by the court from whose judgment the appeal has been announced." The Court further held in the said case that: "An order granting a provisional remedy is annulled immediately on judgment for the defendant unless an appeal is

taken. The taking of an appeal continues a provisional remedy in effect until final judgment is rendered."

Id., at 516. In the instant case, an appeal was taken by the informants and same was granted by the Chambers Justice; yet, the said Chambers Justice ordered the enforcement of the judgment appealed from. We feel and hold that once the Chambers Justice had granted the appeal prayed for by the informants, he could not legally order the enforcement of said judgment. By ordering the enforcement of the judgment appealed from, the Chambers Justice erred, and by such act, he tampered with the legal right of a party to appeal, especially since the case before him was not the summary proceedings to recover possession of real property. Thus, the act of the Chambers Justice violated the statute. The Civil Procedure Law, Rev. Code 1:51.20, under the caption *"Effect of Appeal as a Stay"*, states: "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 be in force pending a decision on the appeal."

Wherefore, and in view of the above, and the laws cited and quoted herein, it is our considered opinion that the information should be granted. The information is therefore granted. The parties are to remain in *status quo* until the appeal is determined by this Court. And it is hereby so ordered.

Information granted.

MCC et al v Brown [1998] LRSC 2; 38 LLR 512 (1998) (22 January 1998)

MONROVIA CITY CORPORATION, by and thru its Mayor, DANIEL JOHNSON, et al., Appellants, *v.* J. MAXWELL BROWN, Attorney-In-Fact for MRS. IDA POTTER PEAL, Appellee.

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

Heard: November 17, 1997. Decided: January 22, 1998.

1. A prerequisite to the completion of an appeal is that the appellant must secure the approval of the appeal bond by the trial judge and file the same within sixty days after the rendition of judgment.

2. A jurisdictional step for perfecting an appeal is that the appellant must apply to the clerk of the trial court for issuance of a notice of completion of appeal, serve the same on the appellee, and file the original thereof with the clerk of the trial court.
3. The purpose of an appeal bond is to secure to the appellee all costs or injury which may result in consequence of the appeal, if unsuccessful, and to assure the appellate court of compliance with its judgment.
4. It is the statutory obligation of a party appealing to the Supreme Court to comply with all of the legal requirements so as to enable the Court to acquire appellate jurisdiction over the person of the appellee.
5. The appeal statute provides that the Supreme Court may dismiss an appeal for failure of the appellant to appear for hearing of the appeal, to file an appeal bond, or to serve a notice of the completion of the appeal.

In an action of ejectment in which the appellants failed to file an answer, and had therefore been ruled to a bare denial of the complaint, a jury trial was regularly held and, upon proof duly presented, a verdict was returned in favor of the appellee, ejecting the appellants from the premises, and finding a liability of ten thousand Liberian dollars. A motion for new trial having been filed, argued and denied, and final judgment having been entered confirming the verdict, an appeal was announced to the Supreme Court.

However, when the case was called for hearing, the Court was notified of the filing of a motion to dismiss the appeal because of the failure of the appellant to file an approved appeal bond and to file and serve a notice of completion of the appeal. Moreover, the appellant did not appear for the hearing of the appeal and to file a brief as required by the Rules of the Supreme Court, although duly notified by assignment of the hearing.
The Court, in disposing of the motion, agreed with the contentions of the appellee and ordered the appeal dismissed because of the failure of the appellants to file an approved appeal bond and to file and serve a notice of completion of appeal, both of which the Court noted were mandatory prerequisites for the completion of the appeal and to confer jurisdiction of the Court over the person of the appellee. The Court observed that the purpose for requiring an appeal bond was to secure the appellee against costs and injury in the event the appeal did not succeed, and to assure the Court of compliance by the appellants with the judgment of the Court. With respect to the notice of the completion of the appeal, the Court said that it could only acquire jurisdiction over the appellee and the subject matter of the case by the service of said notice on the appellee and filing thereof with the clerk of the trial court. Hence, the Court opined, in the absence of compliance with those requirements, the appeal was rendered dismissible.
Moreover, the Court added that under the statute, the appeal was also dismissible for failure of the appellants, after due notice of the hearing, to appear for such hearing. On the basis of the foregoing, the Court *dismissed* the appeal, *ordered enforcement* of the judgment, and *suspended* the appellants' counsel from the practice of law for three months.

No one appeared for the appellants. *Marcus R. Jones* appeared for the appellee.

MR. JUSTICE SACKOR delivered the opinion of the Court.

The appellee, movant herein, Mrs. Ida Potter Peal, by and thru her attorney-in-fact, Mr. J. Maxwell Brown, of the City of Monrovia, Liberia, on February 22,1995 instituted an action of ejectment in the Circuit Court for the Sixth Judicial Circuit Court, Montserrado County, against the appellants. Appellee claimed title to a parcel of **land** situated and lying in Old Kru Town, now West Point, upon the strengths of a government deed, and requested the trial Court to oust, evict and eject Momo Kai and Seah Barclay therefrom.

A writ of summons was accordingly issued, served and returned served. The records certified to us show that the appellants failed and neglected to file an answer to appellee's complaint, for which they were ruled to a bare denial, as provided for by the statute governing pleadings. The case was regularly tried and the trial jury, on January 6, 1997, returned a verdict holding appellants liable and awarding appellee the sum of Ten Thousand Liberian Dollars (LD10,000.00) as damages. To this verdict, appellants excepted. A motion for new trial was filed, assigned, heard and denied. The trial judge, His Honour M. Wilkins Wright, rendered a final judgment on January 23, 1997, confirming and affirming the unanimous verdict of the jury. Appellants excepted to the judgment and announced an appeal to this Court of last resort for our final review and determination.

The records further show that on the 3rd day of February A. D. 1997, appellants filed a twelve-count bill of exceptions, one of the jurisdictional steps for perfection of an appeal to this Court. We observeed from the records in this case the absence of an appeal bond and a notice of completion of the appeal.

On the 22nd day of May, A. D. 1997, appellee filed a two-count motion to dismiss appellants' appeal because of appellants' failure, neglect and refusal to file an appeal bond and a notice of completion of the appeal within the prescribed statutory period of 60 days. The motion was supported by a clerk's certificate dated April 5,1997, over the signature of Jacob F. Nyumah, assistant clerk of court. Appellee therefore requests this Court to dismiss appellants' appeal and to mandate the trial court to resume jurisdiction over the case and enforce its judgment.

The case was assigned for hearing twice, but counsel for appellants failed and neglected to file a brief and to appear in obedience to the notices of assignments duly issued and served on both parties by this Court. Counsel for appellee moved this Court in pursuant to the Rules of Court to dismiss the appeal for the failure, neglect and refusal of appellants' counsel to filed a brief and to appear for the hearing of the case at bar, which act he considered as an abandonment of the appeal. He therefore prayed the Court to dismiss the appeal and order the trial court to resume jurisdiction and enforce its judgment.

The issue which we consider pertinent for the determination of this case is:

Whether the failure of appellants to appear for a hearing, file an appeal bond and to serve and file a notice of completion of the appeal renders the appeal dismissible?

We observe from the records certified to us that appellants failed and neglected to file an approved appeal bond and to serve and file a notice of completion of the appeal, both of which are jurisdictional steps required by law to perfect an appeal to this Court. Section 51.8 of our Civil Procedure Law, Rev. Code 1, provides 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." Further, the appellant shall also apply to the clerk for the trial court to issue a notice of completion of the appeal, serve same on the appellee and file the original thereof in the office of the clerk of the trial court. Civil Procedure Law, Rev. Code 1: 51.9.
The purpose of an appeal bond is to secure to the appellee all costs or injury in consequence of the appeal, if unsuccess-ful, and to also assure the appellate court of compliance with its judgment. Civil Procedure Law, Rev. Code 1: 51.8. The object of securing, serving and filing a notice of completion of an appeal is to confer appellate jurisdiction over the person of the appellee. *Citibank N.A. v. Barrow*, 37 LLR 754 (1994). It has been, and still is, the statutory obligation of a party litigant wishing to perfect an appeal to this Court to comply with all the legal requirements so as to enable this Tribunal to acquire appellate jurisdiction over the person of the appellee.

The appeal statute provides that the Supreme Court shall dismiss an appeal for failure of the appellant to appear for hearing of the appeal, to file an appeal bond, or to serve a notice of completion of the appeal. Civil Procedure Law, Rev. Code1: 51.16. This Court has also held in the past, and still holds today, that "it is the requirement of the law that failure of the appellant to file an approved bond and secure and file a notice of completion of the appeal within 60 days deprives the Supreme Court of jurisdiction over the case and the person of the appellee, and constitutes grounds for dismissal of the appeal." *Carlton Petroleum Incorporated v. Kennedy et al.*, 38 LLR 348 (1997), decided July 18, 1997; *Sherman and Sherman v. Silah et al.[1990] LRSC 28;* , 36 LLR 918 (1989), decided on January 9, 1990.
This Court also observed the non appearance of counsel for appellants, Counsellor Joseph H. Constance, upon whom two notices of assignment were duly issued, served and acknow-ledged, and returned served by the Marshal. Further, this Court noticed the absence of a resistance to appellee's motion to dismiss appellant's appeal as well as the absence of a legal brief. Some lawyers constantly continue to recklessly and carelessly handle cases entrusted to them against the legal interest of their clients notwithstanding a long line of cases decided by this Court relating to the grounds for dismissal of an appeal to this Court. We take note further that in acting as they do, our lawyers regularly disregard the injury that they cause their clients in failing to perfect appeals before this Court of last resort. This Court disfavors the conduct of Counsellor Joseph H. Constance, who, upon receipt of two notices of assignment from this Court for the hearing of this case, disregarded, disobeyed and failed to appear without any justifiable reason. Counsellor Constance is therefore suspended from the practice of law in all courts of the Republic for the period of three months, as of the date of rendition of this opinion, for gross disrespect and disobedience to the precept of this Honorable Court, and for neglecting the interest of his client, contrary to his oath of ethics to the legal profession.

This Court reiterates that clients of our legal practitioners have always entrusted their cases to their lawyers with the hope and expectation that they would exhibit a high degree of legal professionalism, and thereby justify the confidence reposed in them in handling the client's cases in the interest of the clients. We therefore sound a strong warning to our legal practitioners to always carefully handle their clients' cases so as to safe-guard the interest of their clients, and that a reoccurrence of such outright neglect, by a lawyer of his client's interest, will result in a disbarment rather than just suspension from the practice of law.
The failure of appellants to comply with the jurisdictional steps in perfecting their appeal to this

Court deprives this Court of appellate jurisdiction over the appellee, and this neglect constitutes a ground for the dismissal of the appeal.
Wherefore, and in view of the foregoing, it is the consi-dered opinion of this Court that the motion to dismiss appellants' appeal should be and the same is hereby granted, and the appeal is dismissed. Counsellor Joseph H. Constance is hereby suspended from the practice of law in all courts in the Republic of Liberia for the period of three months, as of the date of rendition of this opinion, for acts of gross disrespect and disobedience to the precept of this Honourable Court, and for his neglect of the interest of his client, contrary to his oath of ethics of the legal profession. The Clerk of this Court is hereby ordered to send a mandate to the trial court informing the judge presiding therein to resume jurisdiction over the case and to enforce its judgment. Costs are assessed against appellants. And it is hereby so ordered.

Motion granted; appeal dismissed.

Mirza v Barclay [1960] LRSC 44; 14 LLR 95 (1960) (6 May 1960)

ELIAS G. MIRZA for his Wife, ANISSA MIRZA, Sole Heir of the Late KALIL ZYBE, Appellant, v. T. L. CRUSOE, E. L. DIGGS-ROBERTS, E.
M. DIGGSBARCLAY, and J. C. TETTEH, for the Executors and Executrix of the Estate of the Late M. D. CRUSOE, Appellees.
APPEAL FROM
THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued March 22, 1960. Decided May 6, 1960. An option clause
which provides for renewal of a lease on terms and conditions to be agreed upon by the parties is unenforceable for uncertainty.

On appeal from a decree dismissing a bill in equity for cancellation of a lease agreement, judgment affirmed.
J. C. N. Howard for
appellant. Lawrence A. Morgan

for appellee.
MR. CHIEF JUSTICE WILSON

delivered the opinion of

the Court.* Briefly stated, the
history of this case from the record certified to us reveals the following: On October 13, 1937, appellant's late father contracted
a lease agreement with appellees for Lot Number 325, situated on Water Street in the City of Monrovia. The period of lease covered

by this contract was twenty years certain with an option of another twenty years, terms and conditions of the option to be agreed upon between the contracting parties. Three years before the expiration of the first twentyyear term, the appellees contracted a lease of said premises to one Ameen H. Saad, operative as from the expiration of the said term.
* Mr. Justice Harris was absent because of illness and took no part in this case.

Appellant considered this subsequent lease to be in violation of the agreement made by appellees with her late father, and therefore moved for cancellation of the Saad lease, claiming same to be surreptitious and an attempt to defraud her of the optional right reserved. Appellant further contended that to deprive her of her rights under the option would be unfair, considering that a building had been erected on the premises by her late father at a cost of $7,000, and that the lease payments made to appellees over a twenty-year period could not be amortized if the option right were not enforced. Appellees resisted the bill of complaint of appellant as being without legal merit and void of sufficient grounds to warrant cancellation of the Saad lease, alleging, in substance, as follows : 1. That the lease by the heirs of the late M. D. Crusoe and Ameen H. Saad having been executed to commence after the expiration of the agreement between appellant's late father and appellees, a bill in equity to cancel appellee's agreement with Ameen H. Saad could not be sustained. 2. That appellant's complaint was void of any showing of any of the following grounds, namely : latent ambiguity or fraud ; actual fraud of the defendants in which plaintiff has not participated; fraud against the public, in which case, even though plaintiff had participated by allowing it to stand, public policy would be defeated ; or constructive fraud by both parties; but they are not in pan delicto.

3. That the optional term reserved in an agreement without consideration is void and does not create an estate in a lessee to such agreement; consequently lessee had no right to pray the cancellation of an agreement regularly executed, probated and registered without objections. 4. That appellant is not entitled to any equitable con-

sideration having stood by and permitted, without objection
the execution, probation and registration of the lease agreement now sought to be cancelled. It was at this point, that is to say,
the filing of appellee's answer, that pleadings in the case rested. Appellant and appellee having joined issue on the merits of the
pleadings, the trial judge dismissed the complaint on the ground that: "Plaintiff's option by the first lease not being enforceable
because of uncertainty, he has no estate, nor can he so exercise same in the **land**, the subject of these proceedings beyond the certain
period of this leasehold which ended October 13, 1957." The bill for cancellation was therefore denied, and the lease agreement which it sought to have cancelled was upheld and ordered
not disturbed. The ruling handed down by the trial judge is a summation of all of the points raised in the complaint and answer;
and these, besides the history of the transaction involving the twenty-year lease, strike us to be only two, namely, the option clause
in said lease, and a clause which binds the contracting parties to a faithful fulfilment of the terms and conditions of said lease.
For the sake of this opinion we will quote them as follows : "Lessee is also hereby granted an option of twenty (2o) calendar years,
terms and conditions to be agreed upon. "It is mutually agreed by the parties hereto that this lease shall be binding upon both parties,
their heirs, assigns, administrators and executors for the term of twenty years herein agreed upon; the lessee has the privilege
of twenty years on terms and conditions to be agreed upon." Appellant's bill of exceptions merely goes to rehearse the court's decree
from which this appeal has come, insisting that it was error for the court to have so ruled. It remains now with this Court, after
taking into con-

sideration the points raised in the pleadings and the lower court's ruling thereon made,
to say whether this ruling should be affirmed. There is no showing by plaintiff, now appellant, in her complaint, of any claim of
violation of the contract of lease made between her late father and appellees, save that the optional period of twenty years, secured
to her by said lease, should be enjoyed by her, and that the act of appellees in contracting a lease of said premises to a third
party after the expiration of the said first twenty years was in violation of said lease contract. The only issue, therefore, which
presents itself for our consideration is whether a lease agreement which reserves an option for a future period under terms and conditions

to be agreed upon is binding on lessors and therefore enforceable merely because appellees agreed to be bound by the terms of said
contract. Authorities agree that a contract which covenants a renewal upon terms and conditions to be agreed upon is void. "Like
other contracts or agreements for a lease, the provision for a renewal must be certain in order to render it binding and enforceable.
Indefiniteness, vagueness, uncertainty in the terms of such a provision will render it void unless the parties by their subsequent
conduct or acts supplement the covenant and thus remove an alleged uncertainty. The certainty that is required is such as will enable
a court to determine what has been agreed upon. A covenant to renew upon such terms as may be agreed upon is void for uncertainty.
..." 32 Am. JuR. 8o6 Landlord and
Tenant § 957. What possibly could have been in the mind of the appellant's late father when he contracted said lease
and secured no definite conditions under which the optional period would be enjoyed, could not be explained, when questioned from
this bench on the point.

Because of the ineffectiveness and unenforceable nature of a contract providing
no conditions under which an option to a lease may be enjoyed by a lessee, the lessee runs the risk of not being able to come to
any satisfactory terms with the lessor when the optional period becomes due. Such speculation and risk cannot be recognized as a
vested right for a continued occupation of said premises under this uncertain optional clause and against the right of appellee of
leasing said premises to a third party at the end of the first twenty years of the contract which carried the conditions under which
said first twenty years were to be enjoyed by lessee, appellant herein. Thus, from all of the facts and circumstances disclosed by
the record certified to us, the arguments advanced by lawyers for both parties and the law statutory and common, cited, supra, we
are of the considered opinion that the ruling of the trial judge dismissing the complaint of the present appellant is legally sound
and is therefore affirmed with costs against appellant; and it is so ordered.
Affirmed.

Horace v Howard [1958] LRSC 9; 13 LRSC 200 (1958) (19 December 1958)

SARAH HORACE, for Herself and Her Minor Children, JOSEPH HORACE and JOSEPHINE HORACE, Heirs of the Late THOMAS HORACE, Appellants,
v. THOMAS F. HOWARD, Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued October 14,
1958. Decided December 19, 1958. 1. When an appellee has failed to appear, the appellate court may conduct a hearing and render a
judgment in favor of the appellant. 2. Failure to file an approved appeal bond constitutes ground for dismissal of the appeal. 3.
When an appeal has been granted, the lower court is divested of authority to resume jurisdiction over the case and enforce its judgment
except as authorized by the appellate court. 4. Upon an appellant's failure to perfect an appeal or to appear before the appellate
court, the inferior court may be ordered to resume jurisdiction and enforce its judgment.

On appeal from an order dissolving an
injunction, a
motion that the court below be ordered to resume jurisdiction and enforce its judgment was granted.

No appearance
for appellants. for appellees.
MR. JUSTICE MITCHELL

Momolu S. Cooper

delivered the opinion of the

Court. A review of the records
in the matter now before us shows that, on June 14, 1956, Sarah Horace, for herself and her minor children, Joseph Horace and Josephine
Horace, of the City of Monrovia, filed in the Equity Division of the Circuit Court of the Sixth Judicial Circuit, Montserrado County,
an action of injunction, enjoining, restraining, and prohibiting Thomas F. Howard from receiving and collecting rents from one Mrs.
Kellogg, a

tenant residing on a portion of Lot Number 21, situated on Camp Johnson Road in the City of Monrovia. This piece of property the plaintiffs claim to be the lawful property of the late Thomas Horace, which he bought from
the defendant during his lifetime. He died leaving the same for the plaintiff and her minor children. During the March, 1957, term
of this Honorable Court, Thomas F. Howard, defendant-appellee, made the following application to this Court: (t 1. That on June 14,
1956, the plaintiffs instituted an action of injunction against the defendant in the court below, enjoining, restraining, and prohibiting
him from receiving and collecting rent from one Mrs. Kellogg, a tenant of his, and from bargaining and selling a portion of Lot Number
21 of Camp Johnson Road, Monrovia, which parcel of **land** plaintiffs claim was bought of the defendant by the late Thomas Horace, husband
and father of the said plaintiffs, as will more fully appear from the bill of complaint filed by said plaintiffs, copy whereof, marked
Exhibit 'A,' is herewith filed and forms a part of this application. 2. That your humble petitioner further showeth unto the court
that, although the said injunction suit was, on October 3, 1956, dissolved by His Honor, William E. Wardsworth, then Circuit Judge
presiding over the Circuit Court of the Sixth Judicial Circuit, Montserrado County, at its September term, and that plaintiffs excepted
to the ruling of Judge Wardsworth and filed an approved bill of exceptions, which is one of the jurisdictional steps to be taken
by a party who intends to appeal to this Honorable Court, yet said plaintiffs failed and neglected to file an approved appeal bond
within the time prescribed by law; consequently no notice of the completion of said appeal has been served on your petitioner up
to the date of the filing of
"

this application. Wherefore, petitioner prays Your Honors for an order
of Court to be issued and directed to the court below commanding the Judge thereof to resume jurisdiction over said action of injunction
and to enforce the judgment rendered against the appellants, with all costs of these proceedings." In substantiation of the foregoing
application of two certificates from the clerk of the lower court and this Court, respectively, we quote hereunder the one from the
clerk of the lower court: "From a careful inspection of the records and relevant documents filed in the office of the clerk of this Honorable Court in the above-entitled
action, it is hereby certified : "r. That the said injunction was, on October 3, 1956, dissolved by order of His Honor, Judge William

E. Wardsworth, then assigned Judge presiding

over the September, 1956, term of this Court. "2. That, subsequently thereto, plaintiff filed an approved bill of exceptions praying an appeal to the Honorable Supreme Court of Liberia at its ensuing March, 1957, term, which appeal was approved October 12, 1956. "3. That, effective as of date hereof, plaintiff-appellant has not filed an appeal bond in said action, as is evidenced by the records filed in said case. Dated February 14, 1957." When the case was called for hearing before us, the appellees failed to appear either in person or by counsel, which left this Court with no alternative but to proceed to hear argument on behalf of petitioner in accordance with the following rule : . where the appellee shall fail to appear when the case is called for trial, the court may hear argument on behalf of the appellant and render judgment in his favor." R.Sup.Ct. XI,2 (2 L.L.R. 667).

We have made reference to the above rule of this Court not only for the benefit of the case in point, but also in order that counsel and parties engaged in litigation may be alert. It is clear from the records before us in the case, and from the arguments made thereon, that the plaintiff below in the action of injunction failed to perfect the appeal according to law. Failure to file an approved appeal bond within statutory time is an incurable blunder which, if the appeal had been prosecuted to its completion, would be legal ground for a dismissal thereof. But the case at bar presents another picture because of appellant's complete failure to file her appeal bond which, when approved and filed in the office of the clerk, authorizes the issuance of the necessary notice of the completion thereof. 1956 Code, tit. 6, § 1013. On the other hand, exceptions having been noted to the judgment of the court, and an appeal prayed for and granted by the court, although a bill of exceptions may be filed, the inferior court is without jurisdiction to enforce its judgment except authorized by the appellate court to do so. "In some jurisdictions the view is taken that the giving of the statutory appeal bond is jurisdictional and therefore cannot be waived by the appellee in the absence of statutory authorization, as the provisions of law requiring a bond on appeal are not solely for the benefit of the appellee, but are based partly upon considerations of public policy, to discourage frivolous and vexatious litigation." 3 AM. JuR. 185 Appeal and Error § 513. Sounding the important note once again before we conclude this opinion, we would like to repeat ourselves.

This Court often has pointed out the great danger and disadvantages parties in litigation are exposed to when those in whose hands
their legal interest is entrusted are neglectful in the discharge of so great a trust. Besides

being
a deliberate, unethical act, it has a discreditable and destructive effect on the integrity of the profession. But as much as the
situation appears regrettable, we are without legal authority to cure the blunder. The application, therefore, being well founded,
this Court hereby grants the same and orders the court below to resume jurisdiction in the case and enforce its judgment as rendered
on October 3, 1956, with costs against the plaintiff below. And it is hereby so ordered.
Order granted.

Daye et al v Brown [1957] LRSC 25; 13 LRSC 109 (1957) (20 December 1957)

J. A. KARMO, Gbandi Tribal Chief, for Himself and the Gbandi Community, Kakata Township, Appellants, v. JOHN M. YEMGBIE, Appellee.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued November 5, 1957. Decided December 20, 1957.
1. A contract is an agreement entered into by the assent of two or more minds, by which one party undertakes to give some valuable
thing, or to do, or omit, some act, in consideration that the other party shall give, or has given, some valuable thing, or shall
do, or omit, or has done, or omitted, some act. 2. A mortgage agreement must possess the basic requisites of an enforceable contract.

On appeal from a judgment dismissing an action to foreclose a mortgage, judgment affirmed.
Joseph F. Dennis for appellants. No appearance
for ap-

pellees. MR. CHIEF JUSTICE SHANNON delivered the opinion of the Court. This appeal is before us on a bill of exceptions
containing one count which reads as follows : "Because when, on December 31, 1956, Your Honor rendered ruling on the law issues dismissing
said action, to which ruling the said petitioners then and there excepted and prayed an appeal to the March, 1957 term of the Supreme

Court of Liberia." The pleadings show that the appellee advanced an amount to members of the Gbandi Community of Kakata, Liberia,
and issued to them an instrument of the following tenor : "REPUBLIC OF LIBERIA
MONTSERRADO COUNTY GBANDI COMMUNITY AGREEMENT TOWNSHIP
OF KAKATA, LIBERIA

"This is to certify that I have this day delivered to the Gbandi Community of Kakata,
Liberia, my house in the Community and other properties such as one sugar cane mill and one still as security for the sum of five
hundred thirty-seven dollars and fifty cents ($537.50) to be paid by me on or before the 2oth day of July, 1954. "Upon my failure
to pay said amount to the said Community of Kakata at the time signed by me, said Community shall (have) the right to the said sum
of money. "Dated at Kakata, this loth day of March, 1954· "Witnesses : [Sgd.] (1) SANA D. GORMA [ ] (2) PAYLAY (my cross) ["] (3)
GEORGE SALLY [Sgd.] JOHN YEMGBIE" Upon his failure to make payment as stipulated in the document quoted above, the Chief of the Gbandi
Community, for himself and the said Community, instituted these proceedings in foreclosure of mortgage, claiming the said document
or instrument to be a mortgage. The pleadings went as far as the rejoinder. Upon hearing the law issues involved, the trial Judge
dismissed the suit with costs against petitioners. The main points raised in the answer of the respondent are : (I) that the purported
Gbandi Community is not a body corporate and politic that may sue by that name; (2) that the instrument purporting to be the mortgage
agreement was not registered and probated according to law relating to such instruments, and hence is void or voidable; and (3) that
the petitioners chose the wrong form of action, in that they should have brought an action of debt on the instrument, and not sued
for foreclosure of mortgage. Replying, the petitioners denied that said answer was sufficient in law to topple the suit, contending
that the issues raised were not tenable. The trial Judge,

in passing upon those issues, overruled the
attack on the capacity of the petitioners as "Gbandi Community of Kakata" to sue, but sustained the second count, which went to the
failure to have said instrument probated and registered within four months after execution. Because of this, said Judge did not think

it necessary to pass upon the other law issues raised in the pleadings. Consequently the suit was dismissed with costs against petitioners.
It is upon the correctness of the ruling of the said Judge dismissing the suit that we must pass in this opinion. It would appear
from the pleadings of both parties litigant that they conceded that the instrument, the basis of this suit, is a mortgage or possesses
the feature of one, and hence should be a subject for admission to probate and registration; and the trial Judge accordingly heard the law pleadings
upon this concession ; so that, upon the hypothesis of this concession, we cannot but find ourselves in agreement with the ruling
of the said trial judge. What would have struck a death knell to the entire suit is an issue that was not at all raised in the pleadings,
but which we deem it necessary to say something about, so as to put pleaders straight hereafter.
A mortgage is an agreement or contract
and under our statutes: "A contract is an agreement entered into by the assent of two or more minds, by which one party undertakes
to give some valuable thing, or to do or omit some act in consideration that the other party shall give or has given, some valuable
thing, or shall do, or omit, or has done, or omitted, some act." 1841 Digest, pt. II, tit. I, sec. 8; 2 Hub. 1516. It is obvious,
definitely, that the instrument quoted above as the basis of this suit is not an agreement showing the assent of two or more minds,
neither does it possess the features of an agreement, and hence cannot be a mortgage agreement.
Added to the above, if we are to
accept the hypothesis that the instrument is a mortgage, then **land** was intended

to be involved in the
placing of a lien on the house, in which case the consistency or propriety of blending realty with personalty should have been also
raised and considered, since there are separate and distinct statutory provisions controlling the mortgage of real property on one
hand, and of personal property on the other, as provided in our recent statutes regulating chattel mortgages. On the whole, there
was no merit at all in the suit; and the trial Judge correctly dismissed same ; which ruling is hereby affirmed with costs against
the appellants, petitioners below. And it is hereby so ordered.
Affirmed.

Catholic Relief Services v Junius et al [1999] LRSC 5; 39 LLR 397 (1999) (22 January 1999)

WILLIAM T. KNOWLDEN, Informant, v. **WILLETTE R. JOHNSON et al.**, Respondents.

INFORMATION PROCEEDINGS AND APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE GRANTING THE PETITIONS FOR THE WRITS OF CERTIORARI AND PROHIBITION.

Heard: (Undated): Decided January 21, 1999.

1. A concurrent or succeeding judge cannot review and/or reverse the decision or acts of another concurrent or preceding judge.

2. Propertied deeded remains the properties of the owners in whose names the deeds were issued, and which deeds have been probated and registered, especially where the grantors do not disclaim their acts.

3. Persons in whose names administrators deeds have been issued have the right to take possession of and exercise full control over properties deeded and their benefits.

4. Prohibition will lie to prohibit a succeeding judge from reviewing the acts of his predecessor.

5. Illegitimate children who have not been legitimized or otherwise recognized as provided by statute may not inherit from their putative father.

6. The invitation by legitimate children to their illegitimate sisters and brothers does not confer legitimacy on the illegitimate children, but the rights conferred by such invitation are not limited to the extent of the invitation.

7. The voluntary invitation by legitimate children to illegitimate children to share or benefit from inherited property of a deceased parent is based on acknowledgment by the legitimate children that the illegitimate children are brothers and sisters, and as such creates a duty on the legitimate to continue to regard the illegitimate children as brothers and sisters with equal rights to share or benefit in the intestate estate of their deceased father, share and share alike.

8. By their voluntary invitation to their illegitimate brothers and sisters to share in the benefit of the intestate estate of their father, the legitimate children thereby waive their rights to asset themselves a legal heirs with the exclusive rights of inheritance and are estopped from denying the illegitimate children the right to benefit equally.

9. The illegitimate children who have been extended a voluntary invitation to share in the benefit with their legitimate brothers and sisters of the intestate estate of their deceased father cannot be deprived of the right or be prevented from making a demand for accountability.

10. Legitimate children who voluntarily invite illegitimate children to share in the benefit of the intestate estate of their deceased father suffer from lashes and waive their right to assert the illegitimacy of the invitees, and having dealt with such illegitimate children as if they had inheritable blood, they (the legitimate children) cannot disavow their act.

11. The waiver by legitimate children to assert the right of exclusive inheritance to the exclusion of illegitimate children does not confer legitimacy on the illegitimate children but only confers the right on the illegitimate children to benefit from the estate and to demand accountability.

12. Admission, whether of law or fact, which has been acted upon by another is conclusive against the party making it in all cases between him and the person whose conduct had been influenced.

13. Where, by failure to diligently act, an antiquated demand is raised, the Supreme Court will invoke the doctrine of lashes and refuse to interfere in a matter so as to preserve the peace of society.

14. The plea of estoppel is a good plea and will prevent a party from denying his own acts, if well founded; and neither law nor equity will permit a party to disclaim his acts.

15. When a man stands by and permits another to act without objecting, when from the usage of trade or otherwise, there is a duty to speak, his silence will preclude him as much as if he proposed the act himself.

16. Acquiescence or standing by, where there is a duty on the part of the person acquiescing to speak or assert a right, amounts to a representation by him.

17. Section 3.2 of the Domestic Relations Law stipulate the conditions under which an illegitimate child or his issue shall inherit from his lineal or collateral relatives.

18. Waiver is the intentional or voluntary relinquishment of a known right, or such conduct as warrants an inference or the relinquishment of such right, or when one dispenses with the performance of something he is entitled to exact or when one in possession of any right, whether conferred by law or contract, with full knowledge of the material facts, does or forbears to do something, the doing of which or the forbearance to do which is inconsistent with the right or his intention to rely on it.

19. Lashes is the neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to an adverse party, operates as a bar in a court of equity.

20. Conduct of a party which has placed another party in a situation where his rights will be imperiled and his defenses embarrassed is a basis of lashes; knowledge, unreasonable delay, and change of position are essential elements.

21. Estoppel by lashes is a failure to do something which should be done or to claim or enforce a right at a proper time; a neglect to do something which should be done or to seek to enforce a right at a proper time.

22. One an alternative writ is issued with a stay order, the matter remains in status quo.

23. The statutory period for keeping open an intestate estate is one year.

Informants and petitioners, legitimate heirs and beneficiaries of the intestate estate of the late Kaiser A. A. Knowlden, at various times filed information and petitions for certiorari and prohibition against the illegitimate children of the deceased and the trial judge for errors allegedly made in the handling of said estate, including the review and reversal by the probate judge of the acts and decisions of his predecessor. The petitioners, amongst other issues, contended that the administrators could not make any further deeds to the illegitimate children of the deceased, in favour of whom in the first partial distribution of the estate properties deeds had previously been issued, since the said illegitimate children had no inheritable rights. Amongst the contentions of the informants were that the trial judge had reversed the ruling of his predecessor approving the issuance of administrators' deeds to the children of the deceased, and that in the request of certain of the illegitimate children he had ordered that the rents of persons to whom deeds had been issued be held in escrow rather than paid to such persons, that an accounting be undertaken, and that certain property claimed to have been sold by one of the children of the deceased while the deceased was still alive be cancelled.

The Supreme Court consolidated the various petitions and information, and proceeded to resolve the various issues raised therein. On the issue of whether the illegitimate children were entitled to inherit from the decedent and to bring action for accountability by the administrators of the intestate estate, the Court expressed its agreement with the ruling of the Chambers Justice that the previous issuance of deeds to the illegitimate children was a mere invitation to them and did not thereby confer on them the status of legitimacy, but disagreed that the illegitimate children, as invitees, were not entitled to further inheritance from their deceased father. The Court held that extension of the initial invitation by the legitimate children to the illegitimate children to share in the benefits of the estate was a recognition by the legitimate children of the illegitimate children as their brothers and sisters. That invitation, the Court said, conferred on the illegitimate children the right of inheritance to share in the benefit of the estate the same as the legitimate children. The Court noted that by extending the invitation, the legitimate children waived their right to regard the illegitimate children as illegitimate not entitled to the right of inheritance, suffered lashes, and were estopped from challenging the illegitimate children right of inheritance.

The Court further opined that the illegitimate children having been extending the invitation under which they became entitled to the right of inheritance, they acquired the right to demand an accounting by the administrators of the estate.

On the issue of the reversal of the probate judge of the decision of his predecessor, the Supreme Court held that the said judge was without authority to review and reverse the ruling of his predecessor and that his action constituted a reversible error. The Court therefore ordered the release of the funds which the probate judge had directed be held in escrow.

With regard to the execution of a deed by one of the children of the deceased allegedly conveying property of the deceased while the latter was still alive, the Court said that not only could this not be legal, but also that while the deceased was still alive he had denied that his child had issued or had the authority to issue such deed. Hence, the property held by Mr. Sesay remained the property of the estate and that the judge of the monthly and probate court should therefore proceed to serve a writ of execution on Mr. Sesay and to have the estate take possession of the said property.

Ishmael P. Campbell of the Legal Aid Inc., appeared far the informant and *Cyril Jones* of the Jones and Jones Law Firm, in association with the *David A. B. Jallah Law Firm*, appeared for the informant/respondent/petitioners in prohibition. *Salia A. Sirleaf* of the Henries Law Firm appeared for petitioners and informant/petitioner in prohibition discovery proceedings. *David A. B. Jallah, Cyril Jones, Frederick Cherue* and *Benedict F. Sannoh* of the Center for Law and Human Rights appeared for respondents.

MADAM CHIEF JUSTICE SCOTT delivered the opinion of the Court.

This matter involving the intestate estate of the late Kaiser A.A. Knowlden has, come before this Court on two petitions for a writ of prohibition and three bills of information. This Court, sitting *en banc*, therefore ordered a consolidation of all pending causes before it involving the said intestate estate.

The facts in these cases, as revealed by the records, are that Kaiser A. A. Knowlden died intestate on April 20, 1983. Upon petition duly filed before the Monthly and Probate Court for Montserrado County, letters of administration were issued in favor of Winston Knowlden, Walmsley Garber Knowlden and Samuel Knowlden. Walmsley Garber Knowlden was objected to on the ground that he was the offspring of holy matrimony between Cynthia Garber and Joseph Garber. This objection was sustained by the Monthly and Probate Court for Montserrado County and the name of Walmsley Garber Knowlden was dropped and deleted as one of the administrators of the intestate estate of the late Kaiser A.A. Knowlden.

Some time thereafter, a partial distribution was made of the said intestate estate and administrators deeds were issued, registered and probated, and turned over to beneficiaries. This act was approved by the judge of the Monthly and Probate Court for Montserrado County, Heir Honour Luvenia Ash-Thompson. This judge was succeeded by His Honour Harper S. Bailey who, on the 16thday of May, A. D. 1989, issued letters of administration *de bonis non* in favor of

Benjamin Knowlden, Williette R. Johnson and Samuel Knowlden. On May 22, 1989, a petition for the closing of the said intestate estate was filed by Co-administrators Williette R. Johnson and Samuel B. Knowlden. Also presented along with the petition were twenty-two administrators deeds, and Co-administrator Benjamin Knowlden, and Barbara Knowlden objections to the closure of the estate and request for an accounting of monies collected by the petitioners. The judge of the Monthly and Probate Court for Montserrado County, His Honour Harper S. Bailey, sustained the objections and ordered the previous partial distribution approved by the preceding probate Judge, Her Honour Luvenia Ash-Thompson, declared null and void and further ordered the appointment of two appraisers, Counsellors T. Edwin Swen and Osborne K. Diggs, to work along with the administratrix and administrators for an impartial distribution and subsequent closure of the said intestate estate. The judge so ruled that pending the filing of the final report of the said intestate estate, all rental payments in favor of the intestate estate shall be made to the sheriff of the monthly and probate court who shall thereafter proceed to open a bank account in favor of the distributees, of the late Kaiser A.A. Knowlden. The respondents in these objection proceedings took exceptions to the action of the judge and took recourse to the Chambers Justice praying for the issuance of a writ of prohibition to prohibit His Honour Harper S. Bailey, judge of the Monthly and Probate Court for Montserrado County, from enforcing his ruling on the objections to the closing of the said intestate estate. The alternative writ of prohibition was ordered issued on June 12, 1989, which ordered a stay in the proceedings in the matter in the monthly and probate court pending the final determination of the petition for prohibition filed before the Chambers Justice, His Honour James K. Belleh.

During the pendency of the petition for a writ of prohibition, Co-administratrix Williette Johnson, by and thru her counsel, Jones and Jones Law Firm, on October 26, 1989, filed a bill of information before the presiding Chambers Justice, David D. Kpomakpor. The informants brought to the attention of the Chambers Justice that in violation of the stray order issued in the alternative writ of prohibition Corespondents Benjamin Knowlden and Hilary Knowlden were leasing and collecting rentals from real properties part and parcel of the intestate estate of the late Kaiser A. A. Knowlden.

On January 3, 1990, Justice David D. Kpomakpor, presiding in Chambers, handed down a ruling on the petition for the writ of prohibition. The petition for the writ of prohibition was granted and the peremptory writ of prohibition ordered issued. The respondents announced as appeal from the ruling of the Chambers Justice to the Supreme Court *en banc.*

On June 15, 1990, the then Clerk of the Honourable Supreme Court, upon orders of the presiding Chambers Justice, Associate Justice J. D. Baryougar Junius, wrote the following letter to Judge Harper Soe Bailey to further restrain him from proceeding in the said intestate estate. The letter read:

June 15, 1990
His Honour Harper Soe Bailey
Probate Court Judge
Montserrado County
Monrovia, Liberia

May It Please Your Honour:
Attached, Your Honour is a self-explanatory ruling handed down by the then Chambers Justice, His Honour David D. Kpomakpor.

Our minutes of Court show that an appeal to the Full Bench was announced from said ruling and granted by the Chambers Justice, leaving the probate court powerless to handle any aspect of said matter pending disposition by the Full Bench.

The Associate Justice now presiding in Chambers, His Honour J. D. Baryougar Juinus, directs that Your Honour adhere to the appeal announced from the attached ruling.

Please be informed Your Honour that as of June 1990, the marshal of the Supreme Court has been instructed to collect all rents due the properties subject of the appeal.

You are further informed that any amount of money collected from the properties subject of the appeal will be counted for by the Probate Court for Montserrado County, presided over by Your Honour.

Thanks for your kind cooperation.
Kindest regards,
Respectfully yours,
Emily M. Badio
CLERK, SUPREME COURT OF LIBERIA

On the 29th day of June A. D. 1990, Co-administrator Benjamin Knowlden, along with Barbara Knowlden, filed a bill of information before this Court. The said bill of information informed the Court that while the appeal on the writ of prohibition remained pending before this Court, Co-respondent herein, Jennifer Knowlden, represented by Shirley Carter, had proceeded to receive rents and filed a petition for cancellation of lease agreements for premises part and parcel of the intestate estate of the late Kaiser A. A. Knowlden and that as a result of the filing of the said petition, the assigned judge of the Sixth Judicial Circuit Court, His Honour Sebron Hall had ordered the sequestration of future rentals of the said property.

On the 4thday of July A. D. 1989, Co-administrator Benjamin Knowlden instituted discovery proceedings in the Monthly and Probate Court for Montserrado County, against Sekou Sesay, complaining that the said respondent, Sekou Sesay, was withholding a portion of **land** containing a building which was owned by the late Kaiser A. A. Knowlden. In defense, Respondent Sekou Sesay in his returns contended that he had purchased the said real property located near the Barclay Training Center on United Nations Drive in Monrovia, from William T. Knowlden, son of the late Kaiser A. A. Knowlden and brother of Petitioner Benjamin Knowlden, on November 8, 1980 for an amount of $59,000.00.

Proceedings in this matter were held in the Monthly and Probate Court for Montserrado County wherein it became clear that the purchase of the property by Respondent Sekou Sesay ways made in 1980 prior to the death of Decedent Kaiser A. A. Knowlden who, at the time of his death in 1983, was seized of title to the real property in issue. The judge of the Monthly and Probate Court for Montserrado County upheld the discovery proceedings and ordered the respondent ousted and evicted from the said premises which he declared to be part and parcel of the intestate estate of the late Kaiser A. A. Knowlden. Respondent fled to the presiding Chambers Justice on a petition for a writ of prohibition, to which an alternative writ was issued restraining the Judge of the monthly and probate court from proceeding pending the determination of the petition for a writ of prohibition.

The issues considered by this Court to be decisive of this matter are:

(1) whether or not a succeeding probate judge may review and reverse the acts and decision of the preceding probate judge?

(2) whether or not a probate judge can order that rentals and other incomes from real properties of an intestate estate which have been distributed by administrators' deeds and the beneficiaries have been put in full control and possession of their real properties placed in escrow?

(3) whether or not a beneficiary under an intestate estate who has been issued an administrators' deed which was duly registered and probated can become true owner of and alienate that portion of the intestate estate subject of the administrators deed?

(4) whether or not illegitimate children who were included in the partial distribution of an intestate estate may also benefit from a subsequent distribution with the same rights and privileges as legal heirs?

(5) whether or not illegitimate children born posthumously after the death of their putative father may inherit from their said father

We shall now examine the issues beginning with issues Nos. 1, 2 & 3.

This Court has held in a long line of cases that a concurrent or succeeding judge cannot review and/or reverse the decision or acts of another concurrent preceding judge. It follows therefore that one probate judge cannot review the acts of another probate judge. Accordingly, we confirm the portion of the then Chambers Justice, Associate Justice David D. Kpomakpor's ruling, now before this court on appeal, which reads:

"The fact that Judge Baily recalled those deeds from persons to whom they have been issued and interfered with the payment of rents, he thereby committed reversible error. In the case *Balla v. Johnson*, [1978] LRSC 62; 27 LLR 343 (1978), at page 438, this Court ruled that "whatever might be one's personal feelings, we cannot ignore fundamental principled of law, in particular, in this case, the principle that a commissioner of probate cannot review a ruling of his colleague or predecessor, another commissioner of probate. "Prohibition will therefor lie to restrain Co-respondent Judge Bailey from recalling or attempting to review any of the acts of his colleague or predecessor, Her Honour Judge Ash-Thompson, especially as it relates to the undoing or cancellation of deeds probated and registered while Judge Ash-Thompson presided over the trial of the Knowlden estate. Every such fact of his is set aside and made null and void ...

....the petition for a writ of prohibition is hereby granted and the peremptory writ of prohibition ordered issued against the respondents herein. The orders of the co-respondent judge and his ruling ordering the petitioner to return all deeds issued by orders of Her Honour Luvenia Ash-Thompson, which were probated and registered, and ordering all rents accruing from leases made by Winston Knowlden, Gloria Knowlden, Stalin Knowlden, Roland Knowlden, Jennifer Knowlden, Levi Knowlden and William Knowlden to be collected by the sheriff of the monthly and probate court to be controlled by the co-respondent judge are hereby ordered set aside, they being null and void."

Justice Kpomakpor also dealt with issue no 3, which is whether one in whose favor an administrators deed has been issued can take possession, exercise control over anal receive rental and other income from the property covered by the deed?

This is the contention raised by Informant William Knowlden, Benjamin Knowlden and Barbara Knowlden in their respective bills of information filed against Jennifer Knowlden Anderson, by and thru her legal representative, Shirley D. Cooper, and other beneficiaries of the partial distribution. Once again Associate Justice Kpomakpor soundly expressed in the said ruling referred to and quoted above the clear view of this Court on this point. We herewith quote the relevant portion of the said ruling: "....It was also disclosed that Corespondents/Co-informants Barbara Knowlden and Benjamin Knowlden received real property through the Probate court".

We hold that all properties deeded, probated and registered shall remain the properties of the owners in whose names the deeds were issued and which deeds hard already been probated and registered, especially where, as here, the grantors are not disclaiming their acts. Petitioners also informed this Court that some of the beneficiaries of the distribution, had entered into lease agreement and were receiving rents from properties, for which they had deeds in their names and that the co-respondent judge issued judicial orders for the proceeds from the said lease agreements to be brought within the Knowlden estate and paid to the sheriff of the Probate Court for Montserrado County and held in escrow. This act of the co-respondent judge is over-ruled and the parties ordered returned to *status quo ante. Fazzah Bros. v. Collins, [1950] LRSC 1; 10* LLR 261 (1950)".

Benjamin Knowlden and Barbara Knowlden, the records reveal, had received personal control and possession over their benefits under the partial distribution and were entering into lease rind sale of real property for which administrators deeds were issued in their favor. Yet they sought the authority of this court to prevent Jennifer Knowlden Anderson from entering into and

canceling lease agreements and receiving rental and income for premises or real properties for which administrators' deeds had been issued in favor of the said Jennifer Knowlden Anderson. We believe that this is unfair and petitioners have not come to this Court in good faith. Hence this court will disallow the bills of information and the Sixth Judicial Circuit Court is ordered to proceed to hear and determine the cancellation proceedings filed by Jennifer Knowlden Anderson, by and thru her representative, Shirley D. Carter. Further, the order of Co-respondent Judge Sebron Hall to sequestrate rental from the premises, subject of the cancellation proceedings is erroneous and reversible and hereby declared null and void.

In this same vein, the order of then Chambers Justice J. D. Baryougar Junius told the marshal of the Supreme Court to collect rental from the entire intestate of tile late Kaizer, A. A. Knowlden is hereby lifted and declared null and void. Persons in whose favor administrators' deeds have been issued can now take possession and exercise full control over their benefits. The *administrators de bonis* non are ordered to administer the undistributed portion of the intestate estate, including the real properties in the United States and Great Britain, and the twenty-two deeds presented to the probate court for the final distribution of the said intestate estate.

The marshal of the Supreme Court is ordered to turn over all such amounts collected to the owners and the administrators of the said intestate estate. Persons who illegally received monies from the real properties in question herein may be held accountable.

This brings us to the issue which is the crux of the controversy in these proceedings. Can illegitimates who were invited to share in the intestate estate of their putative deceased father by administrators and legal heirs, assert the same rights and privileges as the legal heirs?

All parties to this controversy, with the exception of Sekou Sesay, claim that the late Kaiser A. A. Knowlden was their father. This fact is uncontroverted amongst the claimants.

The controversy exists between the six children of Williette R. Johnson, namely, Winston Knowlden, Gloria Knowlden, the late Stalin Knowlden, Roland Knowlden, Jennifer Knowlden and Levi Knowlden all of whom were duly legitimized on one side. On the other side is William Knowlden who was legitimize, along with the children of Williette Johnson, Benjamin Knowlden, Barbara Knowlden and the rest of the children who are illegitimate.

The first partial distribution in this intestate estate, done by one of the original co-administrators, Winston Knowlden, included all the children, illegitimate as well as legitimate. The letters of *administration de bonis non* was issued by the Monthly and Probate Court of Montserrado County in favor of Williette Johnson, representing her children who were legitimized by law, and Benjamin Knowlden, the illegitimate child. No contention of legitimization was raised up to this point. Benjamin Knowlden, Barbara Knowlden and others were accepted and dealt with as children of the decedent. All the children, legitimate as well as illegitimate and other persons, benefitted from the initial partial distribution.

The controversy arose when Co-administratrix Williette R. Johnson petitioned the Monthly and Probate Court for Montserrado County to close the said intestate estate, and presented twenty-two (22) administrators' deeds representing the final distribution of the said intestate. Co-administrator Benjamin Knowlden and Barbara Knowlden formally objected to this petition and requested the court to order an accounting of the personal properties of the intestate and further informed the Court that the twenty-two (22) administrators deeds did not include real properties in the United States and Great Britain. The objectors also contended that the previous administrators had distributed the choicest prime property in the heart of Monrovia to the children of Co-administratrix Williette Johnson in the partial distribution. This abjection was upheld by Judge Bailey who also erroneously proceeded to review and recall the partial distribution approved by his predecessor, Judge Luvenia Ash-Thompson. To prohibit the erroneous recall and review of the judicial act of Judge Ash-Thompson by Judge Harper Bailey, Co-administrator Williette Johnson filed a petition praying for a writ of prohibition before the Chambers Justice. The Chambers Justice granted the petition for a writ of prohibition and ruled that:

(1) prohibition will lie to prohibit a succeeding probate judge from reviewing the act of his predecessor probate judge.

(2) that the statutory provision that illegitimates may not inherit from their deceased putative father is upheld. The Chambers Justice held that the illegitimate children were invitees of the legitimate heirs to share in the intestate of their father. This invitation, did not confer legitimacy on the illegitimates; hence, they could have only as much rights and benefits as the legitimate children would allow them to have.

The respondents announced an appeal to the full bench to review the decision of the Chambers Justice.

We concur in part with the finding of Associate Justice Kpomakpor that the invitation by the legitimate children to their illegitimate sisters and brothers does not confer legitimacy on the illegitimate. But this court disagrees that as a result of the invitation the rights of the illegitimate children are limited to as far as the invitation extends and no more.

This Court sitting *en banc* holds that the invitation to share or benefit is based on the premise that petitioners acknowledge the respondents and other illegitimate children as brothers and sisters. We believe this acknowledgment was the basis of the voluntary invitation extended to the illegitimate children to share in the partial distribution. We hold that the acknowledgment and voluntary invitation created a duty to continue to regards the respondents and other illegitimate children as brothers and sisters with equal rights to share or benefit in the intestate estate of their deceased father, share and share alike. By this act of voluntary invitation, petitioners have waived their rights to assert themselves as legal heirs with the exclusive rights of inheritance and are estopped thereafter from denying the respondents the right to benefit equally. Neither can the illegitimate be prevented from making a demand for accountability.

This Court further holds that the petitioners, by petitioners own voluntary act of knowingly dealing with respondents as persons who have inheritable blood., suffered laches and therefore waived the right to assert that respondents are illegitimates Under the circumstances, petitioners cannot disavow their act or halt it in midstream. Petitioners must maintain their posture of dealing with respondents as persons with inheritable blood until the laid intestate estate is finally closed. The voluntary waiver by legitimate children to assert right' to exclusive inheritance but includes illegitimate brothers and sisters does not confer legitimacy but confers the right for illegitimate children to benefit share and share alike and the right to demand accountability.

This Court has held:

I. An admission, whether of law or of fact which has been acted upon by another is conclusive against the party making it in all cases between him and the person whose conduct has thus influenced. It is immaterial whether the thing admitted was true or false. *Smith et al. v. Barbour[1944] LRSC 5*; , 8 LLR 229 (1944).

II. *Freeman v. Firestone Plantations Company,* [1974] LRSC 53; 23 LLR 276 (1974), "Waiver is the intentional relinquishment of a known right by a party".

III. In *Tuning et al. v. Thomas et al.*[*[1972] LRSC 5*; , 21 LLR 33 (1972), at Syl. 6, this Court held: "Where, as in the case at bar, by failure to diligently act, am antiquated demand is raised, the Supreme Court will invoke the doctrine of laches and refuse to interfere in a matter, so as to preserve the peace of society.

And further that:

"There is a defense peculiar to courts of equity founded on lapse of time and staleness of claim where no statute of limitations directly governs the case. In such cases, the courts often act upon their own inherent doctrine of discouraging for the peace of society antiquated demands by refusing to interfere where there has been gross laches in prosecuting rights or long acquiescence in the assertion of adverse rights." *Id.*, at 42.

Moreover, in *Clarke et al. v. Lewis*[*[1929] LRSC 5*; , 3 LLR 95 (1929), at Syl. 2, 3, 4 and 5, this Court said:

"(2) The plea of *estoppel* is a good plea and will prevent a party from denying his own acts, if well founded; neither law nor equity will permit a parry to disclaim his acts. The same rule applies to privies.

(3) When a man stands by and allows another to act without objecting, when from the usage of trade or otherwise, there is a duty to speak, his silence would preclude him as much as if he proposed the act himself.

(4) Acquiescence, or standing by, where there is a duty on the part of the person acquiescing to speak or assert a right, amounts to a representation by him. Clearly put, acknowledgment as children followed by an expressed invitation to illegitimates by persons who have exclusive right of inheritance creates a duty to continue to ensure that the illegitimate children benefit equally until the estate is closed. The acknowledgment and voluntary invitation does not confer legitimacy, but , the laches and waiver create a duty to ensure that illegitimate children and legitimate children benefit share and share alike.

This Court affirms and uphold its previous opinions, which reads:

"It must be remembered that the law of decent is founded on good reason, that it encourages good order in society and makes it certain to whom estates of deceased persons shall come. *Fuller v. Johnson*, 1 LLR 56 (1872), text at page 57.

In our Domestic Relations Law, Rev. Code 8:3.5, we also find the following support for the position which we have taken. The section states:

"Sec. 3.5. INHERITANCE BY, FROM AND THROUGH ILLEGITIMATE CHILDREN.

An illegitimate child and his issue shall inherit under the provisions of section 3.2 from his mother and from her lineal and collateral relative shall inherit from such child and his issue as if he were legitimate. An illegitimate child and his issue shall inherit under the provisions of section 3.2 from his father and his lineal and collateral relatives shall inherit from such child and his issue as if he were legitimate under any of the following conditions:

(a) If the child is adopted by his father; or

(b) if the .father acknowledges his paternity in writing before a justice of the peace or notary public and such acknowledgment is probated and registered; or

(c) If the parents marry subsequent to the birth; or

(d) If the child has been legitimated under the provisions of the Domestic Relations Law; or

(e) If the paternity of the child has been adjudicated by a court of appropriate jurisdiction. Such child shall be treated as if he were the legitimate child of his mother, and, if any of the conditions

enumerated in this section is present, as the legitimate child of his father, for the purpose also of receiving benefits under sections 4.3 and 4.4."

The Black's Law Dictionary (6thed.) gives the following definitions:

(1) *Waiver.* The intentional or voluntary relinquishment of a known right, or such conduct as warrants an inference of the relinquishment of such right, "or when one dispenses with the performance of something he is entitled to exact or when one in possession of any right, whether conferred by law of by contract, with full knowledge of the material facts, does or forbears to do something the doing of which or the failure of forbearance to do which is inconsistent with the right, or his intention to rely upon it. The renunciation, repudiation, abandonment, or surrender of some claim, right, privilege, or of the opportunity to take advantage of some defect, irregularity, or wrong. An express or implied relinquishment of a legal right. A doctrine resting upon an equitable principle, which courts of law ill recognize. *Atlas Life Ins. Co. v. Schrimsher,* 179 Old. 6453, 66 P.2d 944, 948. Essential to waiver is the voluntary consent of the individual. See e.g. Fed. R. Crim. p. 44(a).

(2) Laches. "Doctrine of laches," is based upon maxim that equity aids the vigilant and not those who slumber on their rights. It is defined as neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as bar in court of equity. *Wooded Shores Property Owners Ass'n, Inc. v.* Neglect for an unreasonable and unexplained length of time under circumstances permitting diligence, to do what in law, should have been done. *Lake Development Enterprises, Inc. v. Kojetinsky,* Mo. App., 410 S.W. 2d 361, 367. Conduct of party which has placed other party in a situation where his rights will be imperiled and his defenses embarrassed is a basis of laches. *State v. Abernathy,* 159 Tenn. 175, 17 S. W. 2d 17, 19. Knowledge, unreasonable delay, and change of position are essential elements. *Shanik v. While Sewing Mach. Corporation,* 25 Del. Ch. 371, 19 A.2d 831, 837. Laches requires an element of estoppel or neglect which has operated to prejudice of defendant. *Sacrbrough v. Pickens,* 26 Tenn. App. 213, 1709 S.W. 2d 585, 588. See also Equitable estoppel.

(3) Laches, estoppel by. A failure to do something which should be done or to claim or enforce a right at a proper time. *Hutchinson v. Kenney,* C.C.A.N.C., 27 F 2d 254, 256. A neglect to do something which should do, or to seek to enforce a right at a proper time.

"An element of the doctrine is that the defendant's alleged change of position for the worse must have been induced by or resulted from the conduct, misrepresentation, or silence of the plaintiff. *Croyle v. Croyle*, 184 Md. 126, 40 A.2d 374, 379. Delay in enforcement of rights until condition of other party has become so changed that he cannot be restored to his former state.

This brings us to the next issue, which is whether or not real property purchased from the son of the true owner who is seized of title but in which the owner has not made a conveyance, or transfer prior to the owner's death may be considered part and parcel of the intestate estate of the deceased owner?

Prior to his death, the decedent, Kaizer A. A. Knowlden wrote the following letter:

K.A.A. Knowlden, Sr.
Corner of Carey & Randall Streets
Monrovia, Liberia
July 25, 1982
Mr. Yellah T. Kebbeh
Capitol Building
Capitol Hill
Monrovia, Liberia

Dear Mr. Kebbeh:
Relating to our discussion held on July 20th, 1982 between one Sasay Sekou of, Guinea and 1, K.A.A. Knowlden, Sr.. Mr. Kabbeh, I done know really what's happening to the legal system of Liberia. How can we allowed a nation of over hundred and thirty years of legality allow itself to go so low; it's a shame.

Mr. Kabbeh, we have a Mandingo man who rented one bed room in my house on U.N. Drive at the rate of 50.00 dollars a month and he could not afford to pay on time. Mr. Sekou some time ago asked if he would collect my rent from the other tenants at the end of every month. Mr. Sekou would bring the total amount of two hundred and fifty (250) dollars at my office. Mr. Sekou started to play trick, when he collected said rent he would eat part of the money and lie to me by saying certain amount has not yet been paid. When I found out this trick, I took this criminal to the Ministry of Justice to be jailed and his son Samuel Sekou stood his bond that he would produce his father and later my money be paid, but to my surprise this criminal had manipulated most of the Liberian tenants out and brought in his Mandingo tribal people.

Now, this criminal was paying rent up to the time my little son William left the country in 1981. It was Mr. Sesay Sekou who brought two sheets of paper stating that he had bought my house, and it was only when I sent to collect rent in March 1981. A house that I, K. A.A. Knowlden, Sr. rented only one room to Mr. Sekou.

Mr. Kebbeh, this Guinean Sekou, he is a criminal and nothing more: (1) The writing and signatory on that piece of paper, Mr. Sekou has is not the writing nor the signatory of my son. (2) That is no deed from me, Mr. Knowlden, Sr. to Sekou presented, and Sekou has no deed. (3) According to Mr. Sekou, the deal to buy the house started on October 29, 1980, and by November 8th 80, which only eight day, Mr. Sekou supposed to have given my minor son fifty nine thousand (59,000.00) dollars only after knowing my son for: eight days without consulting the, owner of the property, it's a lie. (4) If Mr. Sekou claimed to have bought my house on November 8, 1980, then why was he paying rent up to 1981 and did not say nothing about buying house until my son left the country.

Mr. Kebbeh, no one can sell any of my property while I am alive and know one that include my children have any of my deeds nor can any one get to them simply because all of my deeds are placed in Chase Manhattan Bank. And Mr. Sekou who could not afford to pay rent and stole my rent money in the pass can stand before me and say that he bought my house from my fifteen year old son, its nothing but a big lie and I am requesting my house balance rent and damages done my building.

Kind regards and best wishes.
Sincerely yours,
K.A.A. Knowlden, Sr."

This letter, signed by decedent Kaiser A. A. Knowlden prior to his death, is clear that the said decedent died seized of the premises that Sekou Sesay claims he purchased from the son of Kaiser A. A. Knowlden. This is the basis for the discovery proceedings filed by Co-administrator Benjamin Knowlden in the Monthly and Probate Court for Montserrado on the 4th day of July, 1989. The court granted the petition and ordered the said real property returned and repossessed as part and parcel of the intestate estate of the late Kaiser A. A. Knowlden.

The respondent herein, Sekou Sesay, filed with the Chambers Justice a petition praying for the issuance of a writ of prohibition to prohibit the Judge of the Monthly and Probate Court for Montserrado county from placing the said premises in the possession of the intestate estate of Kaiser A. A. Knowlden. An alterative writ containing a stay order was issued by the Clerk of the Supreme Court on the 17t h day of August 1989.

The brief filed by counsel for Sekou Sesay also informed the Court of a second undetermined petition for a writ of prohibition prohibiting the Ministry of Justice from ousting and evicting him from the same said premises.

We note that this intestate matter is before the Supreme Court not on a regular appeal, but all of the several actions which are before the Supreme Court at the Chamber Justice level and the Court en bane; are remedial writs. Once the alternative writ is issued with a stay order the matter remains in *status quo.* The tactic has kept the said intestate estate opened for more than 15 years; far beyond the statutory period of one year.

The first petition for a remedial writ was filed by Sekou Sesay on July 4, 1989, almost 10 years ago. The said petition remain heard and determined. The second writ of prohibition filed by Williette Johnson et al has also been pending for nearly 10 years. This Court *en bane* has decided to consolidate all the matters growing out of the intestate estate of the late Kaizer A. A. Knowlden pending before the Supreme Court to ensure that the process of the closing of this intestate estate is begun and that all persons who stand to benefit are put in possession and control of their inheritance.

This Court will not encourage the numerous filing of petition for remedial processes and indefinite suspension of that matter. We believe remedial writs have been used to delay, baffle, and deny people their rights indefinitely. Thus, where an aspect of a cause of action comes squarely before the Supreme Court *en bane* and another aspect is lingering before the Chambers Justice, this Court shall consolidate all of the various causes of action and make a determination.

Sekou Sesay in his petitions for a writ of prohibition informed the Court that he purchased the premises on November 8, 1980, from William T. Knowlden. The records in the matter of the intestate estate of the late Kaizer A. A. Knowlden revealed that prior to the death of the said decedent he became aware of Sekou Sesay's claim and decedent protested and sought relief from the rent commission of the People's Redemption Council. The records further reveal that the premises in question was included in the partial distribution and was distributed to William T.

Knowlden. The decedent died in 1983. Up to his death, the decedent was seized of the premises in question. This premises in question are therefore part and parcel of the intestate estate of the late Kaizer A. A. Knowlden.

Petitioner Sesay contended that the probate judge had, among other things, proceeded by wrong rules when, without duly serving the writ of execution on the petitioner personally, he proceeded to enforce his final ruling in the discovery proceedings. This Court now holds that the premises withheld by Sekou Sesay is part and parcel of the intestate estate of the late Kaizer A. A. Knowlden. Hence, the judge of the monthly and probate court should proceed to serve the writ of execution as provided for by law and return the premises to the said intestate estate.

We note further from the records that the premises in question are included in the partial distribution. In view of this, after the intestate takes possession of the premises, same should be placed in the possession of the distributees. This holding does not preclude or prevent Petitioner Sekou Sesay from pursuing legal action against William Knowlden. This Court will not go into other aspects of the petition for disco-very proceedings for this matter is not before us on a regular appeal. Instead, we are reviewing the matter from the court below brought to us on a remedial writ, a petition for a writ of prohibition.

We shall now handle a very interesting issue raised by William Knowlden, Benjamin Knowlden and Barbara Knowlden. The contention raised by these three informants in two separate bills of information and their briefs filed before this court is that Stalin Knowlden, Jr. and Stalina Knowlden are illegitimate children fathered by their late brother Stalin Knowlden. The said minor children were born by separate mothers out of wedlock after the murder of the said Stalin Knowlden, their putative father. The informants contend that all the benefits from the intestate estate of the late Kaiser A. A. Knowlden in favor of the late Stalin Knowlden should revert to the estate instead of being distributed to the said illegitimate children of Stalin Knowlden who were born posthumously, as had been done in the partial distribution.

It was brought to the attention of the Court that Barbara and Benjamin Knowlden were accused of the murder of their brother Stalin. Benjamin and Barbara were tried and convicted of manslaughter and served their respective sentences.

The transaction complained of is included in the partial distribution and this Court has held that the partial distribution was not appealed from. Also, we have held that the succeeding probate

judge had no authority whatsoever to recall and review the act of his predecessor. Hence, we will not review same.

Wherefore and in view of the foregoing we herewith affirm the decision of the Chambers Justice with the modification, as follows:

(1) that it was erroneous for the succeeding probate judge to recall and review the act of preceding probate judge. The partial distribution is a completes act and all persons benefitting therefore shall take possession of their inheritance as all administrators deeds issued under the partial distribution are valid.

Further, the Court is ordered to resume jurisdiction of the said intestate estate and all of the remaining properties wherever situated whether in Liberia or abroad, shall be included in the inventory and the Court should proceed to close the estate and all of the children of Kaizer A. A. Knowlden shall benefit, with children not borne of the body of Williette Johnson given the right to benefit along with those children borne of the said Williette Johnson's body. The final closing of the said intestate estate must be done within the statutory period as of the date of this opinion.

(2) The monthly and probate court is also ordered to resume jurisdiction in the discovery proceedings matter and proceed as provided by law to recover the premises being withheld and to further proceed as per the partial distribution.

(3) The marshal of the Supreme Court is ordered to turn over all monies collected from the premises for which beneficiaries possess Administrators' deeds to the true owners and al such other moneys which belong to the intestate estate to the administrators of the said intestate estate of the late Kaizer A. A. Knowlden..

(4) The bill of information against Respondent Jennifer K. Anderson, et al is denied and Sixth Judicial Circuit Court is hereby ordered to resume jurisdiction in the cancellation proceedings filed by Jennifer K. Anderson, by and thru Shirley Carter, and all rentals held in escrow are ordered paid over to the said Jennifer Knowlden or her authorized representative.

(5) The bills of information filed by Petitioners William T. Knowlden and Williette Johnson respectively is dismissed. Costs are assessed against the petitioners and informant.
And it is hereby so ordered.

Petition and information denied.

Nartey v RL [1957] LRSC 20; 13 LRSC 92 (1957) (20 December 1957)

REPUBLIC. OF LIBERIA, Appellant, v. J. DANIEL POTTER, et al., Appellees.
APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued May 23, 1957. Decided June 14, 1957. The Legislature not having enacted any waiver of the sovereign immunity
of the Republic of Liberia with respect to actions to recover or try title to property, an action of ejectment will not lie against
the State, the sole statutory remedy for taking of property in such case being an action for compensation.

On appeal from a judgment
of the court below in an ejectment action, appellant's motion to dismiss the case and vacate all proceedings therein for lack of
jurisdiction of the subject matter was granted; the action was dismissed; and the judgment was vacated.
Assistant Attorney General
J. Dossen Richards for appellant Momo/u S. Cooper and K. S. Tamba for appellees.

MR. JUSTICE WARDSWORTH delivered the opinion of
the Court. This case of ejectment entered against the Republic of Liberia was tried and determined during the June, 1956, term of
the Circuit Court of the Sixth Judicial Circuit, Montserrado County. Upon rendition of final judgment, appellant entered exceptions
and prayed an appeal to this Court of last resort. At the call of the case for hearing, the appellant submitted a motion to dismiss
the case and all proceedings had therein in the court below for want of jurisdiction over the subject matter. We quote hereunder
relevant portion of the said motion, as follows : "1. Because appellant says and respectfully submits

that the trial court had no jurisdiction over the subject matter of the cause, nor any authority of law to try and determine said
cause, because under the provision of Article I, Section 17th of the Constitution of Liberia, suits may be brought against the government
in such manner and for such causes as the Legislature shall by law direct. Appellant submits that there is no legislative authorization
for institution of an action of ejectment against the government, nor has it prescribed the manner in which such an action might
be brought; hence the trial court had no authority and was without jurisdiction over the subject matter to hear and determine said
cause." Appellees, in resisting appellant's motion, as quoted, supra, especially in Counts "r" and "z" thereof, which this Court
considers worthy of attention, contended as follows : "1. Because the proposition advanced by appellant in the motion is untenable
in law, and should not be entertained by this Court; for apart from the fundamental principle that there can be no injury without
a remedy, the provision of our statute apparently sought to be relied upon by the appellant is being deliberately misconstrued ;
for closer examination of the Revised Statutes discloses : " 'And whenever any person shall sustain any loss by the application of
any part of his property by the Republic for its own use, or otherwise, he shall enter his complaint according to law in the Court
of Quarter Sessions and Cornmon Pleas [now the Circuit Court] ( ), naming the Republic of Liberia as defendant, Rev. Stat., § 283.
"It is thus patent that the contention of the appellant is void of merit, and should be denied and overruled ; and appellees so pray.
"2. And also because appellees submit that the Legis-

lature of this country has, in addition to the
statute cited in Count `i,' made provisions as to how suits may be brought against the Government, the relevant portion of which
law reads : `. . . and any person, who may sustain any injury to his person or property by any wrongful act of the Government, shall
have a right of action against the Government in any Court of competent jurisdiction under the laws relating to actions and special
procedings. No writ, however, shall issue in any such action; but the party shall file his complaint with the Justice of the Peace,
or the Clerk of the Court, naming the "Republic of Liberia" as defendant.' Rev. Stat., § 1401." As to the question of what manner of suit may be brought against the Republic, the citations
of law submitted by appellees in support of their resistance have no reference to or bearing on an action of ejectment. "The claim

shall be tried before a jury, and the Plaintiff shall receive such compensation as a Jury shall award." Rev. Stat., § 283. "If final
Judgment should be entered against the Republic, the Clerk shall deliver to the party a certified copy thereof. Upon the presentation
to the President of such judgment, he shall endorse thereon an order directing its payment by the Secretary of the Treasury, or a
Sub-Treasurer and the same shall be paid forthwith." Rev. Stat., § 1401. The above quotations are the concluding portions of the
statutes cited in support of the resistance as aforesaid which, as it would appear, appellees studiously omitted. It is obvious that
the spirit and intent of the abovequoted passages of law are in perfect agreement with and unequivocally support the principle that
any persons who sustain damages to or loss of property by the application

of the same to the use of the
Republic should be accorded pecuniary consideration therefore; and could not be construed to provide for the recovery of possession
or title to real property. Let us examine briefly the purpose or object of an action of ejectment. The definition given in the "Old
Blue Book" is as follows : "Ejectment is an action to recover possession of real or immoveable property, wrongfully withheld by the
defendant from the plaintiff. . . ." 1847 Dig. pt. I, tit. II, ch. I, sec. 14; 2 Hub. 1526. Ejectment has also been authoritatively
defined as : "A form of action by which possessory titles to corporal hereditaments may be tried and possession obtained. "A form
of action which lies to regain the possession of real property, with damages for the unlawful detention." BOUVIER, LAW DICTIONARY
976 Ejectment (Rawle's 3rd rev. 1914). It has been further stated that: "In a general way, it may be said that ejectment is a form
of action in which the right of possession to corporal hereditaments may be tried and the possession obtained. In some States, it
is defined by statute as `an action to recover the immediate possession of real property.' At common law, ejectment is a purely possessory
action; and even as modified by statute, and though based on title, it is essentially of that nature." 18 AM. JUR. 7 Ejectment § 2. It is evident that ejectment, being a purely possessory action having for its sole object the recovery of the possession
of real property, is not listed among the suits which the Legislature has authorized to be brought against the Republic; hence, this
form of action is not maintainable against the State. In view of the foregoing it is the opinion of this Court

that appellant's motion should be granted, the entire proceedings in this case vacated and made null and void, and costs
disallowed. And it is hereby so ordered.
Judgment vacated.

MR. CHIEF JUSTICE SHANNON dissenting. It is my opinion that the issue
upon which this case has been decided and dismissed is of such vital, basic, and momentous importance that not only should I indicate
my disagreement with my colleagues as to the majority opinion just read, but that I should also express the grounds of my said disagreement;
hence this dissent. J. Daniel Potter and others entered an action of ejectment against the Republic of Liberia for a certain parcel
of **land**, situated on Ashmun Street in Monrovia, on which the building presently occupied by the Department of Justice is located.
The Republic of Liberia lost the case in the court below, and has brought the matter up here on appeal. Among the issues saved on
exceptions for the appeal is the question of an alleged inhibition against any person bringing an action of ejectment against the
Republic of Liberia, based upon both the Constitution of the Republic and the statute laws thereof ; so that when the appeal was
called up, instead of allowing the court to fully enter the records certified to it, the Republic of Liberia, appellant, presented
a jurisdictional motion involving only the issue of the constitutional inhibition. It is true that the Constitution in Article I,
Section 17th, provides that: "Suits may be brought against the Republic in such manner, and in such cases as the Legislature;may,
by law direct." It is also true that the Legislature has made provisions whereby suits may be brought against the Republic, and in
what cases. It is from these statutes that the Republic of Liberia finds basis for her contention that appellee is without right
to enter an action of ejectment against her, since ejectment

is not mentioned as one of the causes for
which actions may be brought against her; which contention has found support in the majority opinion. It is useful to state that
no specific forms of action have been enumerated in the enabling act, but rather in the first section there is provision for persons

aggrieved "by the non-performance of any contract or contracts made on the part of the Government by any person or persons whose
duties it shall be to make such contracts, having authority for that purpose from the Government," which section obviously would
not involve actions of ejectment not founded on contracts or the violation thereof; but from the third section of said act we find
the right given any person or persons who "shall receive any damage by the application of any part of his or their property by this
Republic to its use, or otherwise, so as to occasion any damage or loss," to commence an action or suit in manner as provided in
section two of said act. It is my opinion that to conclude that, because ejectment has not been specifically named in this act, no
action can lie against the Republic for an alleged or claimed unlawful possession and withholding from a person of his real property,
which in effect would be a damage and a loss to him, would be actually unjust, unethical, unfair, and inequitable; especially so,
since no distinguishing point is made in said act between real and personal property. To hold otherwise would, further, in my opinion,
mean that the Republic could with impunity dispossess a party of his property and indefinitely hold same against him without being
made liable in law for said unlawful possession because, as the majority opinion seeks to establish, ejectment is no suit for claim for loss or damage in money. Further, it would be establishing
the doctrine that, if even the aggrieved party suffered any "loss or damage" to his realty consequent upon the unlawful possession
and witholding by the Republic, only an action for such loss and damage as might be assessed in terms of money could like, and none
for dispossession.

The situation thus created by the majority opinion is what law writers call "damnum absque injuria," and is not favored by the law. I am, therefore, of the opinion that an action of ejectment can lie against the Republic
by force of the provisions of the statutes found in the "Old Blue Book" and Revised Statutes; and hence this dissent.

Savage v Dennis [1871] LRSC 1; 1 LLR 51 (1871) (1 January 1871)

R. R. SAVAGE, Appellant, vs. **H. W. DENNIS**, Administrator de bonis non, Appellee.

[January Term, A. D. 1871.]

Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.

Ejectment

1. A plaintiff in ejectment must recover upon the strength of his own title and not upon the weakness of his adversary's title.

2. An administrator cannot lawfully convey to himself any portion of the estate over which he has been granted letters testamentary.

3. An administrator is in the stead of the intestator, and as such cannot contract with himself; such contracts are void in law.

The court is of the opinion that for the Supreme Court of the Republic of Liberia to overthrow this well founded principle of law, which declares that "in an action of ejectment the plaintiff shall recover upon the strength of his own title and not upon the weakness of the defendant's title," would not only bring reproach upon it, but it would be the source of endless litigations, it would disturb the quietude of communities and families, it would obstruct the progress of improvement and enterprise, and give encouragement to oppression, fraud and injustice.

It is very obvious that the title under which the appellee claims, is defective in point of law, because an administrator of an estate cannot transfer property of the estate to himself. And the reason is because an administrator, while acting under the authority with which he is vested by his letter testamentary, is legally the person represented under such letter testamentary and is therefore incapable of purchasing, transacting or transferring any property of the estate to himself. And the reason for this is, the moment the administrator attempts to purchase property of the estate for himself, he renders himself legally incapable (by the very same act) of acting for and in behalf of the intestator. Therefore there would be no one legally authorized to transfer the property of the estate to him, the administrator. It is very clear that to constitute a purchase of property claimed, there must be two contracting parties, one of which must be capable of alienating such property; otherwise the possession of such property is a proof of the unlawful taking of the same. A second party is indispensable to a contract. A deed is unquestionably a contract, and, I may add, one of the highest character, because by the warranty the grantor is put under a perpetual obligation to defend the grantee against any one disturbing the grantee's

peaceful possession, or claiming any part of the premises so conveyed. And for the nonperformance of the contract, the grantee may recover at law damages from the grantor.

Now upon this principle, if this deed was valid, would not Johnston's heirs, executors, and administrators have a remedy against James Thomas' estate? Certainly they would. But I would ask by what method of reasoning could Daniel Johnston, as administrator, by this act bind the estate of James Thomas to him made by a contract made with himself, by himself, and for himself? No human being possesses the extraordinary ability to act in two distinct capacities which are adverse to each other at the same time. It shows very clearly that a contract of the kind is founded in absurdity and therefore it is void in law and equity so far as it relates to Daniel Johnston, his heirs, executors, administrators or assigns, but good for the whole of the lands expressed in the deed to James Thomas, and all who may claim under him.

With regard to the effect of estoppels, let it be remembered that a grantor cannot estoppels the effect of his own act against himself, but a grantee can estoppels the effect of the act of grantor against him, the grantee.

The court adjudges, therefore, that the judgment of the lower court is erroneous, and that the same is hereby reversed, and that the appellant recover all costs incurred in this action since the appeal has been taken to this court.

Vargas v Eid [1999] LRSC 38; 39 LLR 720 (1999) (16 December 1999)

MANUELLA PADILLA VARGAS, Appellant, v**. EZZAT N. EID**, Appellee

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

Heard: November 1, 1999. Decided: December 16, 1999.

1. Where parties to a contract, such as a sub-lease agreement, anticipated the damage or destruction of the demised premises and provided for such risk in the agreement, e.g. insurance of the property, the terms of that agreement are binding and enforceable.

2. A risk known by the parties at the time of execution of the sub-lease agreement and required by said sub-lease agreement to be insured by the sub-lessee ought to be complied with pursuant to the aforesaid contract, but not otherwise.

3. The obligation of the tenant to insure the property is not nullified, on ground of impossibility of performance, because certain insurers refuse to accept the risk, but the lessee will be excused from performance where the insurance is prevented by the acts of the lessor's grantee.

4. Where the tenant agrees generally to repair, he is bound to furnish, at his own expense, the materials for the needed repairs.

5. The fact that the leased premises become defective through decay or deterioration does not impose on the landlord the duty of making repairs. In the absence of a covenant to do so, he is not required to rebuild when the premises are condemned, unsafe, or are injured or destroyed by fire or other accidental cause, although he may have received the proceeds of insurance.

6. In the absence of any statute or special agreement, a landlord is not generally liable to his tenant for repairs made by the latter to the demised premises, and is under no obligation to reimburse him for such expenditure and the same rule applies where the tenant has bound himself by the lease to repair.

7. In the absence of a statute or a provision in the lease to the contrary, the destruction of demised buildings, during the term, by a natural cause or through violence or public enemy, does not relieve the tenant of his obligation to pay rent, if some part of the premises demised by the lease are still habitable.

8. A tenant remains liable for the agreed rent for the demised premises so long as any part thereof remains in existence, capable of being occupied or enjoyed by him, irrespective of injury or destruction by fire or other casualty.

9. Partial payment of an obligation under an agreement negates the contention that the obligor is exempted from liability to pay the balance on the basis of common law. So where partial

payment of rent is made for a period during which the tenant does not occupy the building due to fault not attributable to the tenant, the tenant cannot be exempted from payment of the balance of the rent for the period of her non-occupancy on the basis of common law.

Appellant, as sub-lessee, entered into a sub-lease agreement with appellee, as sub-lessor for a four-storey building located in Sinkor and in which appellant operated a hotel and entertainment business. After paying the rent for the period, November 1, 1995 to October 31, 1996, in April, 1996, there was a resurgence in the hostilities of the Liberian civil crisis. This forced appellant to leave the premises and the premises were a subject of looting and vandalism.

Initially, appellant delayed in renovating the property; but after appellee instituted an action of damages and took other actions to compel appellant to repair and renovate the property, appellant wrote a letter to appellee committing herself to renovate the property as she did not obtain the insurance policy required by the sub-lease agreement to cover damages to the demised premises. Appellant also actually proceeded to and did renovate the building. However, when appellee demanded payment of the rent, appellant refused; and appellant contended that firstly the rent already paid should be pro rated over the period that she did not occupy or enjoy the demised premises as a consequence of the resurgence of hostilities in the civil crisis and that the cost of renovation should be shared between appellant and appellee.

When appellee refused to concede to these claims by appellant, appellant filed a petition for declaratory judgment against appellee. In response, appellee prayed the court to deny the petition and instead declare that appellant is liable to appellee for the full overdue and unpaid rent. After a hearing, the trial court denied appellant prayer and granted appellee's prayer. Appellant therefore excepted and announced an appeal to the Supreme Court.

The Supreme Court found that the sub-lease agreement clearly established appellant's obligation to repair and renovate the demised premises in the event of damages to it. The Supreme Court also said that in the absence of an agreement, the landlord is not required to make the property habitable after damages; and when the property is capable of being occupied and the tenant does retain possession, the tenant is responsible for the payment of the rent.

Accordingly, the Supreme Court *affirmed* the judgment of the trial court.

Tiawan S. Gongloe appeared for Appellant. *Musah Dean, Jr.* and *Momodu T.B. Jawandoh* appeared for Appellee.

MR. JUSTICE JANGABA delivered the opinion of the Court.

This is an appeal from the judgment of the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, denying appellant's petition for declaratory judgment. Appellant, Manuella Padilla Vargas, filed a petition for declaratory judgment on 28 February, A.D. 1999 against Ezzat N. Eid, appellee, praying the trial court to declare the rights of the parties in litigation with respect to the payment and nonpayment of rent and the obligation of said parties for the renovation of the demised premises as a result of damage done to the subject property due to the April 6, 1996 crisis.

Appellee, as sub-lessor, and appellant, as sub-lessee, entered into and executed a sub-lease agreement on the 21' day of August, A. D. 1992 for a parcel of **land** with a four-storey building constructed thereon on Tubman Boulevard, Sinkor, Monrovia, known as part of lot number nine (9), presently housing the Hotel Boulevard. We shall determine the relevant provisions of the sub-lease later in this opinion. What is important now is that appellant alleged in her petition that she paid the sum of US$50,000.00 (Fifty Thousand United States Dollars) as rent, covering the period, November 1, 1995 to October 31, 1996. She submitted, however, that she did not enjoy the benefits of rent already paid under the terms of the sub-lease agreement due to the April 6, 1996 crisis, which allegedly damaged the subject premises. Appellant asserted that she undertook renovation work on the said premises at the cost of US$92,773.12 (Ninety-Two Thousand Seven Hundred Seventy-Three United States Dollars and Twelve Cents) without any input from appellee.

Appellee filed his returns on March 5, 1998, which in essence denied the legal sufficiency of appellant's petition, and alleged appellant's breach and violation of article IV of the sublease agreement by appellant's failure, refusal and neglect to obtain and maintain an insurance for the property against fire and its allied risks. Appellee also alleged appellant's breach and violation of article I and article XI of the sub-lease agreement by her failure, refusal and neglect to pay the rent due. Appellee denied that he has any obligation under the law for the repairs of the demised premises, and declined to allow any deduction from the rent to cover the cost or to share in the cost of the repair of the demised building by appellant. Finally, appellant claimed the sum of US$175,000.00 (One Hundred Seventy-Five Thousand United States Dollars) from appellant as overdue and unpaid rent, prayed the trial court to dismiss the petition, and to declare his rights to payment of the US$175,000.00 (One Hundred Seventy-Five Thousand) by appellant.

Appellant filed a reply on 17 March A.D. 1999, and pleadings rested in this case.

Appellant then filed a motion for a jury trial, which was resisted and denied by the trial judge for having been filed beyond the statutory period of ten (10) days subsequent to the resting of pleadings. Appellant fled to this Court upon a petition for a writ of certiorari before Mr. Justice John Nathaniel Morris, then presiding in Chambers during the October 1988 Term of this Court. Mr. Justice Morris forwarded the petition to the Full Bench of the Supreme Court to determine the issues, since, by its nature, the claim to a right to trial by jury in a case raises constitutional issue.

The petition for the writ of certiorari was resisted by appellee, heard by this court and denied; whereupon, this Court ordered the trial judge to resume jurisdiction and proceed with the hearing and determination of the petition for declaratory judgment without the aid of a jury. *Vargas v. Eid*, [1999] LRSC 6; 39 LLR 368 (1999).

The trial judge, upon hearing this case as ordered, rendered a final judgment on May 24,1999, denying appellant's petition for declaratory judgment in its entirety, granting appellee's cross prayer for declaration of appellant's monetary liability to appellee for overdue and unpaid rent, and ordering appellant to pay to appellee the sum of US$175,000.00 as overdue and unpaid rent. Appellant, being dissatisfied with the judgment of the trial judge, excepted thereto and appealed to this Court of last resort on a fourteen-count bill of exceptions.

This Court deems only counts 11 and 13 of the bill of exceptions decisive for the final determination of this case.

Appellant alleged in count 11 of her bill of exceptions and her counsel argued before this Court that the trial judge erred when he ruled that the parties herein did not provide for exemption from the obligations of the sub-lease agreement due to the resurgence of hostilities in the Liberian civil crisis, whereas Article XIII of the aforesaid agreement provides exemption for "other causes." Appellant also contended that she is exempted from liability for rent during the period of her non-occupancy of the leased premises without her fault, as she was relocated therefrom by ECOMOG to a safe area. She averred that the building was subsequently looted and vandalized by the military forces during the April 6, 1996 crisis. Thus, she argued that the demised premises

remained unused by her until she substantially repaired it and resumed business thereat in July, 1997.

It is alleged by appellant in count 13 of the bill of exceptions and strongly argued before this Court that the trial judge erred in holding her liable for the renovation of the leased premises damaged during the April 6, 1996 by both public authorities and public enemy. Appellant maintained that she is exempted from the renovation of the demised property under the common law. Appellant also contended that Article XII of the sub-lease agreement provides that she shall quietly and peaceably yield up and surrender the demised premises unto appellee in as good and tenantable condition but acts of God and damage and/or destruction by other causes or agencies under Article IV of the sub-lease agreement are excepted. Appellant averred that she is therefore exempted from the obligation to repair the demised building as the condition in which the demised premises should be surrendered at the expiration of the term is also an exception to the covenant to repair during the term of the sub-lease agreement.

Appellant therefore prayed this Court to reverse the judgment of the trial court, and to enter judgment exempting her from paying rent for the period of non-occupancy of the subject property from April 6, 1996 to July, 1997. Appellant also prayed this Court to render judgment ordering that appellant and appellee share in the cost of renovation of the demised premises.

Appellee on the other hand, raised four (4) issues in his brief. The first issue raised and argued by Appellee is that appellant, as a tenant under the sub-lease agreement, remains liable for the agreed rent for the demised property, so long any part thereof remains in existence, capable of being occupied or enjoyed by appellant, irrespective of injury or destruction by fire or other casualty. Appellee also contended that in the absence of a specific statute to the contrary, the destruction during the term of the lease of the demised property by fire, inevitable accidents, violence of nature or public enemy, not so complete as to leave no part of the demised premises in existence, does not relieve the tenant from the obligation of her covenant to pay rent, neither does it entitle her, the tenant, to an abatement of a proportional part of the rent. It was further argued by appellee that there is no showing by appellant that the demised four-storey building was so badly looted in the wake of the April 6, 1996 crisis that it was incapable of being occupied, or that it was not in existence at all so as to relieve her from the obligations of her covenant in the sub-lease agreement to pay rent, or to entitle her to an abatement of a proportional part of the rent.

Appellee's second issue of contention is that appellant's obligation to repair and renovate the subject property is established in Article IV of the sub-lease agreement, wherein it is required that appellant, as sub-lessee, will obtain two (2) insurance policies, one of which was specifically

stated to be used to repair any damage or destruction of the demised premises to the extent of such damage or destruction and in the event of any damage or destruction. It was averred by appellee that Article V of the sub-lease agreement establishes appellant's obligation for all maintenance and repairs, both minor and major, of the demised property at her own cost and expense without any exception. Thus, appellee contended that it is not provided in the sub-lease agreement that depending on the nature of the agent for the damages, appellant would be relieved from her obligation to repair the demised premises.

It was the contention of appellee that appellant defaulted on her obligation to obtain the insurance policies pursuant to the sub-lease agreement to repair the damages; and as such, she was obligated to use funds from other resources to repair the premises as in keeping with the intent and express language of the sub-lease agreement.

Thirdly, appellee contended that appellant's letter of October 8, 1996 specifically and clearly establishes her obligation to renovate the subject property, in that, she said absent any insurance proceeds, she had definite plans to renovate and rehabilitate the demised premises but was hesitant to do so only because the United Nations allegedly said that the Sinkor area was unsafe in October, 1996. Appellee averred that counts 33, 37 and 42 of appellant's answer in a certain action of damages sued out by appellee against appellee for the same subject matter clearly reveal that appellant knows that pursuant to the terms of the sub-lease agreement, she is exclusively obligated to renovate and repair the demised premises and that she would do so. Appellee argued that appellant is estopped by her admission and she is precluded from denying her obligation to exclusively make the repairs and renovations of the demised premises.

The fourth item of appellee's argument is that appellant has withheld the rent only on her submission that appellee should share in the cost of such repairs, when in fact, she is exclusively responsible for the repairs and renovations of the leased property pursuant to the sub-lease agreement, including repairs which became necessary as a consequence of the looting during the wake of the April 6, 1996 crisis. Appellee contended that appellant is responsible and liable to pay all overdue and unpaid rent which may have accrued up to and including the date of this Court's final judgment in this case.

Appellee therefore prayed this Court to affirm the judgment of the trial court and that appellant be ordered to pay all overdue and unpaid rent up to and including the date of this Court's final judgment, which amounts to US$175,000 (One Hundred Seventy-Five Thousand United States Dollars) with 6% interest per annum for the wrongful withholding of the rent.

The facts and circumstances in this case present the following questions to be resolved by this Court for the determination of this case:

1. Whether or not appellant is exempted from liability for rent under the sub-lease agreement during the period of her non-occupancy of the leased premises without her fault.

2. Whether or not appellant is contractually liable or obligated under the sub-lease agreement to repair and renovate the leased premises, which were damaged without her fault.

The above stated issues shall be resolved by this Court in the reverse order.

As to the issue of whether or not appellant is contractually liable or obligated under the sub-lease agreement to repair and renovate the leased premises damaged without her fault, this Court observes that the parties in litigation entered into and executed a sub-lease agreement on the 21st day of August, A. D. 1992, wherein their rights, obligations and liabilities are prescribed and provided. Thus, the intent of the parties can clearly be gathered from the express language of the sub-lease agreement with respect to their obligations and liabilities for the repair and renovation of the demised premises as a result of the April 6, 1996 crisis.

In Article IV(a) of the aforesaid agreement, it was understood and mutually agreed by the parties that the sub-lessee, appellant herein, shall at her own cost and expense, provide and maintain two (2) adequate insurance policies, one of which was designated for the demised premises and the other for the goods, furniture and fixtures for appellant, as sub-lessee. It was required that the insurance policies would be obtained from a reputable insurance company operating within Liberia against fire and allied risks in the event of any damage or destruction to or of the demised premises, and that any insurance payment received by the sub-lessee by reason thereof will be applied to the repair of such damage or to the extent of such damage or destruction. The parties also agreed in Article IV(b) of the sub-lease agreement that the sub-lessee (appellant) shall surrender the demised premises in the event of any damage or destruction should she so desire not to repair and restore the premises; provided, however, appellant shall pay unto appellee the proceeds of any insurance payment for such damage or destruction as shall be adequate to cover the cost of the restoration of the demised property. The proceeds from the insurance payment shall be applied to the replacement of sublessee's goods, furniture and fixtures that may be destroyed.

We shall hereunder quote verbatim Article V of the sublease agreement for the benefit of this opinion:

"It is further mutually agreed and understood by the parties hereto that the sub-lessee shall be responsible for and undertake, at her own cost and expense, all routine maintenance and repairs, both minor and major, in respect of the demised premises."

The first question that comes to the mind of this Court is, what was the intent of the parties that the sub-lessee shall procure and maintain two (2) adequate insurance policies at her own cost and expense? The intent of the parties is clearly stated in Article IV (a) of the sub-lease agreement that the proceeds from the payment of insurance shall be used by appellant in the event of any damage or destruction to or of the demised premises, to repair such damage or destruction to the extent of such damage or destruction without any input for appellee. Notably, the proceeds from the other insurance policy were intended and understood by the parties to be used by the appellant for the replacement of her goods, furniture and fixtures that may have been destroyed. The parties further agreed and mutually understood in Article V of the aforesaid agreement that appellant shall have the exclusive responsibility and obligation at her own cost and expense for both minor and major repairs in the events of any damage or destruction to or of the demised premises as contemplated by them in Article IV(a).

It is also important to note that the parties in litigation entered into and executed this sub-lease agreement on August 21, 1992; which is a time when Liberia was still in the state of civil conflict; and as such the parties contemplated the resurgence of said conflict which would possibly result into the looting, vandalism and damage and/or destruction of the demised premises. The intention of the parties is evidenced by Article IV (a) of the sub-lease agreement when they mutually understood and agreed that the appellant shall procure two (2) adequate insurance policies at her own cost and expense for repair and renovation of the demised property in the event of any damage or destruction of the subject property, as well as to replace the goods, furniture and fixtures owned by appellant if they may be damaged. It is clear therefore that appellant and appellee anticipated the damage or destruction of the demised premises by the resurgence of the Liberian civil conflict, as they contemplated and provided for such risk.

We shall now peruse appellant's letter of 8 October, 1996, paragraph five (5) of which is germane to the determination of this case and we hereunder quote it verbatim for the benefit of this opinion, as follows:

"Further and relative to Article IV of the contract on the Picasso Palace Hotel, whilst it is true that the same demands that two separate insurance policies be obtained by our client, it must be understood that major insurance companies in and out of the bailiwick of the Republic of Liberia, are not willing to grant coverage in consequence of the ongoing Liberian civil crisis; this is the prevalent position of all major insurance companies as was proved correct by the incident of April-May 1996. Besides, absence any insurance proceeds, our client has definite plan to renovate and rehabilitate the premises; however she has been very hesitant to do so against the background that the Sinkor area is still maintained by the United Nations as a non-thorough fare zone. As soon as the area can be declared safe, renovation and rehabilitation works shall commence immediately, as can be evidenced by the security squad currently maintained by our client at the site, since our closure of the hotel."

It is clear from the plain language of appellant's letter of 8 October 1996 to appellee that appellant indeed acknowledged Article IV of the sub-lease agreement to procure two (2) separate insurance policies, but defaulted due to the refusal of major insurance companies in and out of Liberia to grant coverages as a result of the ongoing Liberian civil crisis. Besides, the appellant, in the absence of insurance proceeds, agreed and accepted her exclusive obligation to renovate and rehabilitate the premises as soon the United Nations declared the Sinkor area safe. Consequently, appellant renovated and rehabilitated the demised premises in the absence of any insurance proceeds pursuant to the contract without requesting appellee for any contribution therefor.

Appellant rightly and legally renovated and rehabilitated the demised property as required by the contract without the aid of appellee, as her failure to procure insurance policies for an insurance company did not preclude her from the renovation and rehabilitation of the subject property.

It is a settled principle of law that: "The obligation of the tenant to insure is not nullified, on ground of impossibility of performance, because certain insurers refuse to accept the risk, but the lessee will be excused from performance where the insurance is prevented by the acts of the lessor's grantee." 51 C.J.S., *Landlord and Tenant, §* 380.

In the instant case, there is no evidence that the appellant failed to procure and maintain two (2) separate adequate insurance policies as required by the contract in consequence of the acts of appellee's grantee. Appellant is therefore not excused from the performance of her obligation since she was not prevented from doing so. Further, the agreement of the tenant to repair the demised premises pursuant to the contract and her letter of 8 October 1996, is legally and contractually binding on her. It is also held that "Where the tenant agrees generally to repair, he

is bound to furnish, at his own expense, the materials for the needed repairs." 51 C.J.S., *Landlord and Tenant, §* 368(e).

It is also contended by appellant that she is not obligated under the common law to repair and renovate the demised premised damaged by public forces and public enemy in the wake of the April 6, 1996 crisis without her fault. This Court disagrees with appellant's contention as there is a contract entered and executed by the parties, wherein appellant has her exclusive obligation to repair and renovate the leased property in the event of any damage or destruction of the subject property. It is a fundamental principle of law that: "The fact that the leased premises become defective through decay or deterioration does not impose on the landlord the duty of making repairs. In the absence of a covenant to do so, he is not required to rebuild when the premises are condemned unsafe, or are injured or destroyed by fire or other accidental cause, although he may have received the proceeds of insurance..." 51 C.J.S., *Landlord and Tenant, §* 366.

Further in her prayer, appellant urged this Court to render judgment ordering both parties to share the cost of renovation of the demised premises. This Court perceives no legal reason to render such judgment requiring and commanding that appellee share in the cost of renovation of the subject property in the absence of an agreement to do so. Law writers have held that in the absence of statute or special agreement, a landlord is not generally liable to his tenant for repairs made by the latter to the demised premises, and is under no obligation to reimburse him for such expenditure and the same rule applies where the tenant has bound himself by the lease to repair. 51 *C.J.S.,-Landlord and Tenant, §* 369.

This Court holds that a risk known by the parties at the time of execution of the sub-lease agreement and required by said sub-lease agreement to be insured by the sub-lessee ought to be complied with pursuant to the contract, but not otherwise.

Every contract ought to be construed according to the intention of the parties thereto. Appellant in the case at bar had covenanted for the exclusive repair and renovation of the demised property pursuant to the terms of the sub-lease agreement as well as her letter of 8 October, 1996. She is not excused from her exclusive obligation to renovate the subject property, neither can she now repudiate her covenant just because her position or interest has been changed.

The second and last issue for our determination is: Whether or not appellant is exempted from liability for rent under the sub-lease agreement during the period of her non-occupancy of the demised premises without her fault.

A recourse to paragraph two of appellant's letter of February 3, 1998 reveals that she paid the rent for the period November 1, 1995 to October 31, 1996; which period elapsed while the hotel remained closed as a result of the crisis. We further observe on page two (2) of said letter that appellant made payment of US$25,000.00 (Twenty-Five Thousand United States Dollars) to appellee as partial payment of annual rent of US$50,000.00 (Fifty Thousand United States Dollars) for the period November 1, 1996 to October 31, 1997, the period for which he alleged that the lease attained no benefit to her. Thus, the balance US$25,000.00 (Twenty-Five Thousand United States Dollars) is still outstanding.

The partial payment of US$25,000.00 (Twenty-Five Thousand United States Dollars) by appellant to appellee as rental for the period November 1, 1996 to October 31,1997 is acknowledgment of appellant's obligation for rental payment of US$50,000.00 (Fifty Thousand United States Dollars) for the aforesaid period, and is therefore an admission of her liability to pay the full rental for the period she claimed that she attained no benefit of the lease. Her payment of US$25,000.00 (United States Dollars Twenty-Five Thousand) as rent also presupposes her intention to pay the balance US$25,000.00 (Twenty-Five Thousand United States Dollars) for the period November 1, 1996 to October 31, 19977. She is therefore required under the sub-lease agreement to make full payment of her rental obligations to appellee, as her partial payment negates her contention that she is exempted from liability to pay rent for the period of her non-occupancy without her fault as required by common law.

The common law provides that: " In the absence of a statute or a provision in the lease to the contrary, the destruction of demised buildings, during the term, by a natural cause or through a violence or public enemy, does not relieve the tenant of his obligation to pay rent, if some part of the premises demised by the lease are left for occupancy." 49 AM JUR 2d., *Landlord and Tenant, §* 586.

The records in this case are devoid of any evidence that the demised premises have been substantially damaged or destroyed to the extent that a part thereof does not remain in existence, capable of being occupied by appellant. This conclusion is supported by appellant's own letter of October 8, 1996, indicating that she maintained security squad at the demised premises subsequent to its closure in consequence of the April 6, 1996 crisis.

It is also a settled principle of law that a tenant remains liable for the agreed rent of the demised premises so long as any part thereof remains in existence capable of being occupied or enjoyed by him, irrespective of injury or destruction by fire or other casualty . Thus, in the absence of a

provision in the lease, the destruction during the term of buildings upon the leased premises by fire, inevitable incidence, the violence of nature, or public enemy, not so complete as to leave no part of the subject matter of the lease in existence, does not relieve him of the obligation of the rent or entitle him to an abatement of a proportional part of the rent. 49 AM JUR 2d., *Landlord and Tenant, §* 591.

Appellant is also contractually obligated for the payment of the agreed rents for the demised premises consistent with Articles I and XI of the sub-lease agreement executed by the parties on August 21, 1992. This Court disagrees with the contention of appellant that Article XII of the agreement exempts her from the payment of rent since the aforesaid Article provides that the demised premises should be surrendered to the appellee in as good and tenable condition, excluding acts of God and damage and/or destruction by other causes or agencies under Article IV of the lease. This Court says that Article IV(b) of the contract provides that appellant, as sub-lessee, shall surrender the demised premises to the appellee, as sub-lessor, with the provision that the appellant shall pay the insurance proceeds to appellee for any damage or destruction of the subject property as shall be adequate to cover the cost of the restoration of the demised property. Thus, the cost of the restoration of the demised premises is provided for in Article IV(b) of the lease should the sub-lessee elect to surrender. So while appellant is not obligated under Article XII for the restoration of the demised premises at the expiration of the sub-lease agreement and when she surrenders same to appellee at that time, appellant is obligated for the restoration of the subject property in the event of damage as provided for under Article IV(b).

It is important to note that appellant, sub-lessee, has been in possession of the demised property from July, 1997 up to and including the date of this opinion without the payment of her rent for the period herein above stated.

Wherefore, and in view of the foregoing, it is the candid opinion of this Honourable Court that the judgment of the trial court should be, and the same is hereby affirmed that appellant shall pay to appellee the sum of US$175,000.00 (One Hundred Seventy-Five Thousand United States Dollars) for all overdue and unpaid rents up to and including the date of this opinion with 6% legal interest per annum for the wrong withholding of the rents. The Clerk of this Court is hereby ordered to send a mandate to the court below commanding the judge presiding therein to resume jurisdiction and enforce this judgment. Cost against appellant. And it is hereby so ordered.

Judgment affirmed.

Diagne v Dukuly [1999] LRSC 44; 39 LLR 789 (1999) (16 December 1999)

BIRAHIM DIAGNE, Appellant v. **OSMAN DUKULY**, by and through his attorney-in-fact, **DR. DEIMEI DUKULY**, Appellee

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

Heard: November 22, 1999. Decided: December 17, 1999.

1. Where title is not in issue, a special proceeding to recover possession of real property may be maintained in a circuit court or a court of a justice of the peace or a magistrate.

2. In summary proceedings to recover possession of real property, the trial court can grant to a petitioner a relief, which may include a judgment for rent due and for damages for wrongful entry on or withholding of property, subject of the proceeding.

3. The court shall grant summary judgment if it is satisfied that there is no genuine issue of dispute as to any material fact and that the party in whose favor judgment is granted is entitled to it as a matter of law.

4. A judge cannot review, alter or modify the ruling, judgment or judicial acts of another judge with concurrent jurisdiction.

5. A succeeding judge cannot entertain or pass upon a judicial act of his predecessor having concurrent jurisdiction, upon a motion for summary judgment after the case had been ruled by his predecessor to a regular trial.

6. While the ruling on a motion to intervene in a suit at the trial court is pending before the Supreme Court on appeal, it is both premature and erroneous for the trial court to proceed to conduct a trial of the main suit.

7. An agreement of majority co-tenants of a property held by them as tenants in common with the minority co-tenants for the lessee of the property to exercise the option to renew the lease on terms specified in that agreement is binding on the minority co-tenants.

The late Momolu Dukuly and the Cestos Nimba Corporation executed a lease agreement for a certain period of ten years with option for renewal for another period of ten years. The annual rent for the certain period was stipulated in the least agreement; but the annual rent for the optional period was agreed to be negotiated. While the certain period of the lease was still in force, the Cestos Nimba Corporation assigned its leasehold interest to appellant, who was one of the major shareholders of the Cestos Nimba Corporation. Appellant continued to perform under the lease agreement until the certain period ended.

At the time of appellant's exercise of the right to the optional lease period, Momolu Dukuly was dead and appellee (his son) and his three daughters had succeeded to the late Momolu Dukuly's interest in the property. So negotiation for the annual rent for the optional period had to be concluded with the consent of all four heirs of Momolu Dukuly.

With the three daughters, appellant reached an agreement for the annual rent; but with appellee, appellant never reached an agreement. Appellee therefore instituted an action of summary proceedings to recover possession of real property, claiming that he was acting for himself and his three sisters. Appellee also asked for damages in the amount of US$300,000.00 for the wrongful withholding of the property by appellant.

In his answer, appellant contended that he had an agreement with the three sisters and that appellee, as a co-tenant-in-common could not institute legal action to recover the property from appellant. Appellant also contended that summary proceedings to recover possession of real property would not lie since title, in the form of the lease agreement, was in issue.

Appellee's three sisters, who had reached an agreement with appellant for the renewal of the lease, filed a motion to intervene in the case, but this was resisted by appellee. Thereafter the motion to intervene was heard and denied by the judge; and these three sisters appealed to the Supreme Court for a review.

While the appeal from the ruling denying intervention was pending before the Supreme Court, the judge called the case for hearing at the trial court. Disposition of the law issues was argued and the judge ruled certain issues to trial.

When the succeeding judge came into jurisdiction over the trial court, he entertained a motion for summary judgment, filed by appellee and resisted by appellant. The succeeding judge granted the motion for summary judgment on the grounds that appellant had admitted to the main issue that he was occupying the demised premises without a lease agreement. In addition to ordering the ouster and eviction of appellant from the demised premises, the succeeding judge also held him liable to appellee for the amount of US$300,000.00 in damages as unpaid rent. Appellant appealed to the Supreme Court for a review; but pending the appeal, the succeeding judge had appellant evicted and ousted from the demised premises as allowed in summary proceedings to recover possession of real property.

On appeal the Supreme Court held that even though the case ought to be tried by a judge without the aid of a jury, the succeeding judge had reviewed the judicial act of his predecessor when he entertained and passed upon a motion for summary judgement after the case had been ruled by his predecessor to a regular trial. This conduct of the succeeding judge, the Supreme Court held, is contrary to the rule that a judge has no power to review the act or ruling of another judge of concurrent jurisdiction. In addition to the succeeding judge's error in granting a summary judgement after the case had been ruled to a regular trial by his predecessor, the Supreme Court also ruled that the motion for summary judgment should not have been entertained when the ruling on the motion for intervention was still pending. The Supreme Court ruled that trial of the summary proceedings to recover possession of real property should have awaited the outcome of the intervention proceeding on appeal.

Notwithstanding these errors committed by the succeeding judge, the Supreme Court said that even though the succeeding judge erred, its review of the case would not dwell on this erroneous acts of the succeeding judge but instead on the facts and circumstances of the case.

Based on that position, the Supreme Court found that an agreement for rent for the first five years of the optional period had been concluded based on what appellee's three sisters had concluded with appellant. The Supreme Court, however, also found that appellant had not paid that rent and ordered that the rent for the first five years be paid. The Supreme Court also ruled that the issue of damages should not have been decided in the summary judgment since it was an issue of fact alleged by appellee and disputed by appellant. The Supreme Court held that the issue of damages should await the final determination of the appeal from the intervention proceeding and then that issue should form a part of the summary proceeding to recover

possession of real property. On the issue of whether a co-tenant in common can recover possession of real property under lease by his other co-tenant to a lessee, the Supreme Court said that such issue is properly disposable in the appeal on the intervention proceeding and so did not pass on it in this case.

The Supreme Court finally ruled that the parties remain in *status quo* until the trial of the summary proceeding to recover possession of real property has been conducted at the court below. The judgement of the trial court was therefore *affirmed with modification.*

F. Musah Dean, Jr. and *G. Moses Paegar* appeared for appellant. *Frederick D. Cherue* appeared for appellee.

MR. JUSTICE JANGABA delivered the opinion of the Court.

It is provided by our Civil Procedure Law, Rev. Code 1, that where title is not in issue, a special proceeding to recover possession of real property may be maintained in a circuit court or a court of a justice of the peace or a magistrate. Civil Procedure Law, Rev. Code 1:62.21.

The trial court can grant to a petitioner in such a proceeding a relief which may include a judgment for rent due and for damages for wrongful entry thereon or withholding of said property, subject of the proceeding. *Ibid, § 1:62.22.* Thus, a party against whom a judgment is rendered is required to pay rent due and damages for wrongful entry on or withholding of the subject property.

Our revised Civil Procedure Law also provides the basis for granting summary judgment in our jurisdiction. The relevant statutory provision provides, *inter alia,* that the court shall grant summary judgment if it is satisfied that there is no genuine issue as to any material fact and that the party in whose favor judgment is granted is entitled to it as a matter of law. Civil Procedure Law, Rev. Code 1: 11.3(3). This statutory provision provides the grounds upon which a court can grant a motion for summary judgment. Firstly, the court granting such a motion should be satisfied that there exists no genuine issue of any material fact which warrants a full trial; and secondly, a judgment in a motion for summary judgment can be rendered in favor of a party who is entitled to it as a matter of law.

This case is before us on appeal from the judgment in a motion for summary judgment, growing out of a summary proceedings to recover possession of real property.

The facts, as gathered from the certified records forwarded to us, show that Osman Dukuly, appellee, by and thru his attorney-in-fact, Dr. Meimei Dukuly, for himself and his three sisters, Neh Dukuly Tolbert, Dah W. Dukuly and Bindu Dukuly, instituted an action for summary proceedings to recover possession of real property on January 21, 1993 against Birahim Diagne, appellant, in the Civil Law Court of the Sixth Judicial Circuit during its December 1993 Term, praying said court to oust, evict and eject appellant from certain premises described in the complaint and place them in possession thereof. Appellant claimed that he and his three sisters are heirs of the late Momolu Dukuly, who died possessed of a parcel of real property located in Billima, Bushrod Island, Monrovia, Liberia, containing 27.10 acres of **land**, out of which a 9.0 acre compound, with buildings thereon, was leased to the Cestos Nimba Corporation for ten (10) years, commencing June 10, 1982 and ending June 9, 1992. An optional period of ten (10) years was reserved to the Cestos Nimba Corporation.

It was alleged that the Cestos Nimba Corporation subsequently assigned its leasehold rights to appellant for and during the remaining term of the lease, ending June 9, 1992. Appellee further alleged that the leasehold right expired on June 9, 1992, but that appellant refused to re-deliver possession of the property and has since then illegally and wrongfully occupied and withheld possession of the subject property from appellees and his three sisters without the renewal thereof, notwithstanding the exchange of communications between the parties. Appellee therefore prayed the trial court to oust and evict appellant from the demised premises and repossess him and his three sisters of said premises; appellee also prayed for the sum of US$300,000.00 (Three Hundred Thousand United States Dollars) as damages for the illegal and wrongful withholding of the demised premises by appellant.

On February 1, 1993, appellant filed returns to the petition, alleging that he was one of the three shareholders of the Cestos Nimba Corporation, the original lessee which constructed all the buildings on the subject property, and thereafter appellant subsequently purchased the leasehold rights from the aforesaid Cestos Nimba Corporation. Appellant also alleged in his returns that he was surprised to receive letters from appellee Osman Dukuly because, he, appellant, had previously negotiated with the agents of appellee's three sisters with respect to his exercise of the option reserved to him for renewal of the lease agreement for another period of ten years, commencing June, 1992. Appellant submitted that he and the agents for appellee's three sisters arrived at an agreement for the optional period for the lease and an agreement for rent of US$16,000.00 (Sixteen Thousand United States Dollars) per annum.

Appellee also contended that the appellee Osman Dukuly's demand for US$75,000.00 (United States Dollars Seventy-Five Thousand) as annual rental for his 1/4 share of the property was exorbitant and was not made in good faith; instead such demand is tantamount to coercion and harassment. It was also alleged by appellant that he could not negotiate with appellee Osman Dukuly personally because of the absence of both appellee and his agent from Liberia.

Appellant further challenged the authority of appellee Osman Dukuly to sue as agent for and behalf of his sisters pursuant to his power of attorney and that there was no authority from the said other three co-owners of the property either to appellee Osman Dukuly or his agent, Dr. Deimei Dukuly, authorizing him to sue on their behalf. Another issue raised by appellant is that the four owners of the property are tenants in common and that a co-tenant in common cannot evict a lessee who has an agreement with the other three cotenants in-common.

Appellant denied illegally withholding possession of the demised premises from the appellee on ground that he has in good faith exercised the option and has an agreement for the continuation of the occupancy and enjoyment of the property. As such appellant contended that summary proceedings to recover possession of real property could not lie because title was in issue.

Based on these contentions and submission, appellant prayed the trial court to dismiss the petition.

A reply was filed by appellee and the pleadings in this case rested.

On April 27, 1993, the law issues in this case were disposed of by His Honour M. Wilkins Wright, then Resident Circuit Judge, who ruled the case to trial of the facts. On the 29thday of April, A. D. 1993, the three sisters of appellee Osman Dukuly filed a four-count motion for intervention along with a thirteen-count returns to the action of summary proceedings to recover possession of real property.

The intervenors alleged in their motion to intervene that neither Meimei Dukuly nor Osman Dukuly has been authorized by them to represent their interest in the summary proceedings to recover possession of real property; and as such, they prayed to be permitted to intervene as

party respondents in the main suit as their interests and aspirations were adverse to appellee, Osman Dukuly. The intervenors also alleged in the returns substantially that appellant has their authority and agreement to, enjoy, use and possess the subject property. Hence, they prayed the trial court to dismiss the petition for summary proceedings to recover possession of real property.

Appellee Osman Dukuly filed a seven-count resistance principally contending that he has the right as one of the tenants-in-common to preserve the property of his late father on behalf of his sisters in the absence of any power of attorney from them, and to evict appellant from the property for the benefit of all his co-tenants. Appellee Osman Dukuly prayed the trial court to deny the motion to intervene. The trial court, presided over by His Honour M. Wilkins Wright, the Resident Circuit Judge, ruled on May 20, 1993, denying the motion of the intervenors, to which ruling exceptions were noted and an appeal announced to this Court. That appeal is pending undetermined.

A motion for summary judgment was subsequently filed by Appellee Osman Dukuly, praying the trial court to render a judgment as a matter of law, on ground that there was no genuine issue as to material facts to warrant a full trial. This motion was resisted.

On the 11th day of November, A. D. 1997, His Honour Timothy Z. Swope, Assigned Circuit Judge, granted the motion for summary judgment, holding that appellant should be evicted and ousted from the demised premises and also that appellant is liable for damages in the amount of US$300,000.00 (Three Hundred Thousand United States Dollars) as rent due for the period appellant wrongfully withheld the subject property. Appellant excepted to this judgment and announced an appeal to this Court; however, as provided by law, appellant was evicted pending the hearing and determination of his appeal.

On appeal, appellant, though his counsel, raised and argued five issues before this Court contending: (1) that summary judgment cannot be granted where a case has been ruled to trial as a consequence of the disposition of laws issues; (2) that summary proceedings to recover possession of real property will not be granted when there is a dispute between the same parties as to the existence of a valid lease agreement between them for the tenant to continue his use and enjoyment of the property under the optional term; (3) that a summary judgment in an action for summary proceeding will not lie when there is a dispute between the parties as to the quantum of damages; (4) that by entertaining and passing on the motion for summary judgment, Judge Swope reviewed the ruling of Judge Wright, both of whom had concurrent jurisdiction, since Judge Wright had ruled the case to trial before the motion for summary judgment was filed; and (5) that a motion for summary judgment cannot be entertained and granted while an appeal from a denial of the motion to intervene is still pending before the Supreme Court.

Based on these submissions and issues, appellant prayed this Honourable Court to reverse the judgment of the lower court, repossess appellant of the property to continue his enjoyment thereof.

Appellee on the other hand raised three issues before this Court for our consideration. Appellee contended that Judge Swope acted properly when he granted the motion for summary judgment and awarded damages, since there was no genuine issues of material facts in dispute; that is, all the material issues of fact had been admitted by appellant. This material issue of fact, alleged to be admitted by appellant, was identified by appellee to be that appellant was in possession of the premises without a lease agreement, whether *de jure* or *de facto.*

As to the issue of damages, appellee contended that he and his co-owners of the property are entitled to damages for the illegal withholding of the premises by appellant without paying any rent.

Appellee also submitted that Judge Swope did not review the ruling of his colleague, Judge Wright, since the case was ruled to trial by a judge, sitting alone as trier of the issues of law and trier of facts. Accordingly, co-appellee Osman Dukuly stressed that Judge Swope properly terminated the case summarily when he was satisfied that all of the issues of facts submitted had been admitted by appellant and that there were no genuine issues of material fact in dispute.

We are in disagreement with the assertion of appellee Osman Dukuly that Judge Swope did not review the judicial acts of Judge Wright, when indeed Judge Wright was satisfied that there existed a genuine issue of material fact and therefore ruled the case to trial but Judge Swope subsequently entertained and granted a motion for summary judgment in favor of appellee as a matter of law. The ruling of Judge Wright on the disposition of the law issues, which ruled the case to trial, constitutes a judicial act, and the entertainment and subsequent granting of a motion for summary judgment by Judge Swope is a review of such judicial act.

This Court has consistently held and still holds that a judge cannot review, alter or modify the ruling, judgment or judicial acts of another judge with concurrent jurisdiction. *Dennis et al. v. Philips, et al.* [1973] LRSC 14; 21 LLR 506, 514 (1973); *Donzo v. Tate,* [1998] LRSC 23; 39 LLR 72 (1998).

The trial judge erred in this respect. However, the conduct of Judge Swope in reviewing the acts of his colleague of concurrent jurisdiction is not the basis upon which this case will be decided.

The facts and the legal issues raised in the briefs and argued by counsel for both parties present one cardinal issue for the determination of this case, which is, whether or not appellant wrongfully withheld the subject property after the expiration of the lease agreement.

A recourse to the records in this case indicates that the appellant, as lessee, wrote a letter dated May 29, 1992 to the heirs of the late Momolu Dukuly, expressing his desire to them for the renewal of the lease agreement for another ten (10) years, in exercise of his right of option for such renewal, and requested a meeting with them for that purpose. It is shown by said letter that appellant talked with various heirs, who expressed their interest in his continuous occupancy and enjoyment of the property, but they preferred the payment of United States dollars instead of Liberian dollars as rent for the optional period. Appellant therefore wanted advice from the heirs as to how much United States dollars they would require him to pay for the optional period, which he considered as the crucial point for negotiation for his enjoyment of the optional period.

We also observe from the records in this case that several communications were exchanged between the legal counsel of appellee's three (3) sisters and appellant's legal counsel in July, September and October, 1992, regarding the terms and conditions for the optional period of the lease agreement. On September 26, 1992, the three (3) sisters through their counsel, wrote and proposed that appellant pay the amount of US$16,000.00 (Sixteen Thousand United States Dollars) per annum and requested his reply. On October 14, 1992, appellant agreed and accepted the terms of the optional period as modified by a letter of the three (3) heirs and therefore agreed to pay US$16,000.00 (Sixteen Thousand United States Dollars) per annum for the first two (2) years. Thus, the letters exchanged between the three (3) other heirs of the late Momolu Dukuly and appellant concluded the terms of the optional period of the lease agreement.

It is shown by the records in this case that at the time the terms of the optional period were concluded, appellee Osman Dukuly, was out of the bailiwick of Liberia and also had no agent here.

Subsequently, Osman Dukuly appointed Dr. Meimei Dukuly on the 30th day of October, A.D. 1992 as his attorneyin-fact to transact and handle his business and matters relating to his 1/4

share or interest of the property. He authorized and empowered his agent to attend meetings along with his counsel and the representatives of his sisters, as well as with appellant, with the view of negotiating and concluding the terms of an extended agreement in keeping with his written proposals. This power of attorney was probated and registered on November 6, 1992.

On November 20, 1992, Osman Dukuly also wrote a letter to appellant informing him to pay his one-fourth share of the rent for the property, and demanding an annual rent of US$75,000.00 for the first five (5) years, and an amount to be agreed upon for the final five (5) years. He also informed appellant to negotiate with his agent due to his engagement abroad and attached his proposals for the optional period of the lease to said letter. Three other letters from his counsel were sent to appellant informing him to meet with the terms of the optional period, failing which, he would seek legal redress.

The September 26, 1992 letter of the three (3) sisters of appellee Osman Dukuly to appellant and his reply of October 14, 1992 thereto, concluded the terms of the optional period of the lease agreement. This conclusion of the terms of the optional period authorizes and empowers the appellant for the continuous use, occupancy, enjoyment and possession of the subject property pending the execution of a written contract consistent with the agreed and accepted terms of the parties in their letters. This Court cannot ignore the express consent of the three (3) other heirs of the late Momolu Dukuly in the absence of the other heir or his agent in Liberia at that time. The latter proposals of Osman Dukuly as to the terms of the optional period resulted to the failure of the heirs to agree for the consummation of the contract by all parties concerned. The lessee therefore, acted in good faith in exercising the optional period of the lease, and he is not therefore responsible for the failure to consummate the contract when all the heirs were not in one accord.

The records in this case show that the three (3) sisters filed pleadings in the court below claiming that they authorized and empowered appellant, the lessee, to continue to use and occupy, enjoy and possess the premises. Their appeal from the denial of their motion to intervene is presently pending before this Court undetermined. This Court therefore holds that the appellant could not have illegally and wrongfully withheld the premises in the face of the written letters of the other heirs as well as their judicial declarations and admissions, authorizing and empowering appellant to possess and enjoy the property. Until the contrary can be established, appellant is not liable to pay damages in the contemplation of the statute of wrongful withholding of the premises.

Appellant accepted and agreed to pay the annual rental of US$16,000.00 (Sixteen Thousand United States Dollars) for the optional period and remained on the premises without any payment of said rental. He is therefore liable for the sum of US$80,000.00 (United States Dollars Eighty

Thousand) as rent due from 1992 up to and including 1997, at which time he was evicted from the premises.

The other issues raised by both parties in their briefs as to the capacity of one co-owner of a tenant-in-common being able to evict a lessee without authority of all the tenants will be decided in the appeal of the intervenors pending before this Court. For, to do so at this time, we will delve into the merits of such appeal perfected before us.

We reiterate that the trial judge erred when he granted a motion for summary judgment where there were genuine issues of material facts as shown by records in this case, as well as the pendency of an appeal before this Court from the denial of a motion to intervene.

Wherefore, and in view of the foregoing, it is the considered opinion of this Court that the judgment of the court below appealed from should be, and the same is hereby affirmed in part, with modifications, as follows: (1) that appellant is only liable for the payment of the annual rental of US$16,000.00, totaling the sum of US$80,000.00 as rent due for the period of five (5) years commencing from 1992 up to 1997; (2) that the issue of damages should await the final determination of the intervenors' appeal and the matter of summary proceeding to recover possession of real property; (3) that all parties in this litigation should remain in status quo pending the final determination of this case.

The Clerk of this Court is hereby ordered to send a mandate to the court below commanding the judge presiding therein to resume jurisdiction and give effect to this opinion. Cost to abide final determination of this case. And it is hereby so ordered.

Judgment affirmed, with modifications.

Yunis et al v Davis et al [1953] LRSC 3; 11 LLR 330 (1953) (29 May 1953)

M. YUNIS and FLORENCE HOWARD, Petitioners, v. WILLIAM R. DAVIS, ANNETTE POTTER, by her Husband URIAS A. POTTER, J. E. CRUSOE, ELLA FINDLEY, Heirs and Next of Kin of the Late WILLIAM A. JOHNSON, and G. C. N. TECQUAH, Justice of the Peace, Montserrado County, Respondents.
APPEAL FROM THE CHAMBERS OF MR. JUSTICE REEVES.

Argued April 20, 21, 1953. Decided May 29, 1953. 1. A Justice of the Peace is without jurisdiction to try a summary ejectment action wherein title to real property is at issue. 2. Prohibition will lie against a Justice
of the Peace to prevent usurpation of jurisdiction.

Plaintiffs, respondents-appellants herein, instituted an action of summary ejectment against defendants, petitioners-appellees herein, in the Justice of the Peace Court of the Commonwealth District of Monrovia. Defendants
contested the jurisdiction of the trial court over an action involving title to real property, and applied for a writ of prohibition
in the chambers of Mr. Justice Reeves, who issued the writ after a hearing. On appeal to this Court, en banc, from the issuance of
the writ of prohibition, order affirmed.

D. Bartholomew Cooper and Richard A. Henries for respondents-appellants. T. Gyibli Collins for petitioners-appellees.
MR. JUSTICE SHANNON delivered the opinion of the Court. Petitioners applied for a writ of prohibition
in the chambers of Mr. Justice Reeves who, upon hearing said

cause, granted the writ. It is from this
ruling that an appeal is before us. A motion was filed to dismiss the petition on the ground that the trial judge, Justice of the
Peace G. C. N. Tecquah, had lost jurisdiction because of an executive order which abrogated the functions of the said Justice of
the Peace within the territorial limits of the Commonwealth District of Monrovia. This motion was, however, rightly denied on the
ground that, even though the said justice of the peace was disabled from functioning as such, nevertheless, with respect to actions
previously instituted before him, according to the said executive order: "All matters pending before Justices of the Peace that may
not be disposed of shall be turned in by them to the Department of Justice who will pass them on to the Magisterial Court of the
City of Monrovia for disposal." This created a succession and : "As the general rule, an action for a writ of prohibition is not
abated by the fact that the Respondent has gone out of office and been succeeded by another." so C. J. 706, Prohibition, § 133. The
following facts have been culled from the pleadings. William R. Davis and co-plaintiffs, petitioners herein, instituted an action
of summary ejectment against M. Yunis and Florence Howard before Justice of the Peace G. C. M. Tecquah, specifically for the purpose

of ousting M. Yunis and Florence Howard from occupancy of lot number 305 in the City of Monrovia, to which the plaintiffs claimed
ownership, alleging same to have descended to them from their ancestor William A. Johnson. Defendants, respondents herein, contended
that the said Justice of the Peace was without jurisdiction to try the said case by reason of the fact that they were erecting their
shop under a lease by the Commissioner of the Commonwealth District of Monrovia to Florence Howard, one of the defendants, who, in
turn, demised the said premises to

M. Yunis. In support of this contention the defendants prof erred
copies of a rent receipt from the Commissioner of the Commonwealth District to Florence Howard, and a lease agreement between the
said Florence Howard and M. Yunis, the other defendant. When the defendants took such a position an issue of title arose, and the
said Justice of the Peace had no jurisdiction to hear or determine same. Although the summary ejectment statute confers upon Justices
of the Peace jurisdiction to try and determine summary ejectment matters, as soon as an issue of title was presented the following
statutory provision applied : "That nothing in Section 3 of this Act shall be construed to give to Justices of the Peace or Magistrates the right to determine an action
of Ejectment where title to real property is involved, they shall be tried and determined by the Circuit Courts of the Republic,
or where the damages claimed exceed the sum of three hundred dollars such an issue together with that of the right of possession
shall be determined by aforesaid Circuit Courts." L. 1945-46, ch. VIII, § 4. The above-quoted statutory provision clearly demonstrates
the intention of the Legislature to deny jurisdiction to Justices of the Peace in ejectment actions where title is involved. Furthermore,
the statute in question is concerned with tenants who, even though they have overstayed their tenure, refuse to vacate the premises.
It can not be presumed that the Legislature would enact a law giving a Justice of the Peace a right which it expressly withholds
from a superior court--the right of independently deciding title to land without the aid of a jury. Consequently, for the respondent
Justice of the Peace to try an action of summary ejectment wherein title is involved would constitute usurpation of jurisdiction;
and prohibition would lie. Vide: so C.J. 663, Prohibition, §20; 22 R.C.L. 19-22, Prohibition, §§18-20; 42 Am. Jur. 156-57, Prohibition, §§ 18-20.

The ruling of Mr. Justice Reeves, granting the writ of prohibition, is therefore affirmed, with costs against respondents-appellants, but without prejudice to further proceedings in the proper forum for the redress of the wrong they claim to have suffered; and it is hereby so ordered.
Order affirmed.

Beysolow v Coleman et al [1946] LRSC 4; 9 LLR 156 (1946) (10 May 1946)

THOMAS E. BEYSOLOW, Appellant, v. M. D. COLEMAN, Mother and Natural Guardian of JOANNA EVA COLEMAN, Jr., Appellee.
APPEAL FROM THE
CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued March 28, April 1, 1946. Decided May 10, 1946. 1. The trial of all questions of mere fact shall be by a jury. 2. The court determines the admissibility of the evidence, but when evidence is admitted the credibility thereof is to be decided by the jury. 3. When fraud is alleged, a jury must pass upon the evidence in support of the allegation.

In an ejectment action defendant, now appellant, alleged in his answer that a mortgage agreement had been detached fraudulently from a warranty deed. The lower court ruled against the submission of this issue for trial. At the trial defendant sought to introduce evidence to prove the alleged fraud by attempting to show that the agreement was attached to the deed. The judge sustained plaintiff's objection to admission of this evidence on the ground that this issue had not been ordered to trial. On appeal to this Court wherein defendant, now appellant, contended that proof of fraud must be determined by a jury since it involves a question of fact, judgment reversed and case remanded with instructions to replead. B. Ricks for appellant. appellee.

H. Lafayette Harmon for

MR. JUSTICE RUSSELL delivered the opinion of the Court. From the records sent hither in the above-entitled cause, it would appear that on May 24., 1927 one William H. Johnson executed a warranty deed to David S. Carter for lot Number 3 situated in the city of Monrovia, and

that subsequently David S. Carter transferred said property to Joanna Eva Coleman, Jr., a minor. The purchase seemed to have been made on behalf of the minor child by her grandmother, as alleged by defendant, now appellant, in his answer and not controverted in the reply of plaintiff, now appellee. But the defendant also claimed title to the said lot Number 3 in Monrovia, and hence after the death of Joanna Eva Coleman, Sr., M. D. Coleman, the mother and natural guardian of Joanna Eva Coleman, Jr., brought suit against defendant in order that the question of title thereto might be settled once and for all. In his answer to plaintiff's complaint, defendant rested his defense on the following salient points: "r) That the property was transferred to David S. Carter by W. H. Johnson with an agreement attached for the loan of a . . . certain conditions the re-transfer by Carter to. Johnson of said property upon the payment of the stipulated amount; that D. S. Carter detached said agreement and un-lawfully retained it, hence D. S. Carter had only a mortgage right in the property and which mortgage was never foreclosed. "2) That David S. Carter had sold his mortgage interest in said property to the defendant, and then without issuing any papers in favour of defendant, had sold same to Joanna E. Coleman, Sr., who bought same in the name of her grand daughter, Joanna Eva Coleman, Jr. "3) That Joanna Eva Coleman, Sr., seeing her error agreed that defendant should buy her interest out, which defendant promptly did, leaving a small balance due of payment when Joanna Eva Coleman, Sr., died. "4) That the said property was sold to him, the defendant, by W. H. Johnson, as evidenced by Warranty Deed dated January 5, 1939, a copy of which was made profert."

In her reply plaintiff flatly denied the first and second points as to the mortgage and the selling of the same to defendant, declaring said submissions to be false and misleading. With reference to the third and fourth point plaintiff contended that they were contradictory and inconsistent, for if the defendant holds title, as he claims, under W. H. Johnson, why should he have decided to buy out the interest in said property from Joanna Eva Coleman, Sr.? Secondly, plaintiff argued that the deed under which defendant claimed was dated January s, 1939, while the deed under which plaintiff claimed was derived from David S. Carter, who bought said premises from the said W. H. Johnson, and

which was executed by Johnson in Carter's favor, was dated May 24, 1927; and that under the law controlling title to realty where
two instruments have been executed by one party in respect of the same piece of property, the first executed or older deed takes
precedence. After hearing the arguments on the pleadings submitted, His Honor T. Gyibli Collins made the following ruling on February
12, 1943: "That the two first counts of the Answer demur to plaintiff's right of action for lack of legal title in fee, and at the
same time claimed ownership of **land** making profert of title deed dated January 5, 1939, from one William H. Johnson. "Plaintiff in
reply, also made profert of his title deed dated May 24, 1927, from the selfsame William H. Johnson, and cites the principle of law
with respect to the oldest title taking preference. "The question of plaintiff's said title being as a mortgage to secure payment
of debt not having been sufficiently alleged and clearly shown, the Answer is therefore defeated, and the case is ordered to trial
on the question of which of the titles is valid and genuine; AND IT IS HEREBY So ORDERED." The trial of the case was had at the September
term,

of the Civil Law Court for the Sixth Judicial Circuit, NIontserrado County, presided over
by His Honor Edward S. Summerville. At the trial the original deed upon which defendant rests his claim to title was never submitted
in evidence, the defendant claiming that same was lost and could not be found. In fact, at the call of the case defendant asked the
trial court to postpone the hearing for a few days until he could procure a certified copy of the deed from the bureau of archives
at the Department of State, whereupon the court gave defendant three days in which to produce said certified copy. When the three
days had elapsed and defendant had failed to produce the copy from the Department of State, plaintiff moved the court to proceed
with the trial. As it would seem that further delay of the trial would be of no practical benefit to the defendant, the court entered
upon the trial of the case. During the trial defendant sought to introduce evidence to prove the fraud alleged in his answer by attempting
to show that an agreement was attached to the deed, but, upon objection of the plaintiff, this effort was disallowed by His Honor
Judge Summerville, as Judge Collins in ruling on the law pleas had ordered the case to trial only "on the question of which of the
titles is valid and genuine. . . Appellant's counsel in his argument before this Court stressed the point that proof of fraud involved

questions of fact which, under the law, can only be determined by a jury, and that therefore His Honor Judge Collins erred when he
ruled out said plea in defendant's answer. To this submission of appellant we will apply the law controlling the issue. In the Revised
Statutes of Liberia we find the following: "The trial of all questions of mere facts shall be by a jury. . . .

"It is the right of the Court to decide on the admissibility of evidence; but when it is admitted, it is the right of the
jury to decide upon its credibility and effect. . . ." i Rev. Stat. § 374, 378. From the above citations of law it will be clearly
seen that whether or not an agreement was executed and attached to the warranty deed from William H. Johnson to David S. Carter is
a question of fact and not one of law, and hence ought rightly to be submitted to a jury for determination. The ruling of His Honor
Judge Collins having denied the defendant the right to have the jury pass upon the evidence in support of the allegation of fraud
in his answer, we are of the opinion that the judge erred. Because of the reasons given above, the case is remanded with instructions
that the parties replead ; costs of the Court to be borne by the appellee, all other costs to abide final determination of the matter; and it is hereby so ordered. Reversed.

Witherspoon v Grigsby [1939] LRSC 8; 7 LLR 6 (1939) (5 May 1939)

WILLIAM N. WITHERSPOON, Appellant, SAMUEL J. GRIGSBY, Appellee.
APPEAL FROM JUDGMENT IN ACTION OF DEBT.

v.

Argued April 18, 19,
1939. Decided May 5, 1939. Where a contract has been fully performed and executed on the plaintiff's part, an action of debt is the
proper form of action to enforce payment due from defendant on the contract.

Plaintiff, now appellant, sued defendant, now appellee,
in an action of debt for a sum allegedly due and owing to plaintiff under a contract for the sale of real property. The trial judge
held that an action of debt did not lie and that plaintiff should have sued for damages for breach of contract. On appeal to the

Supreme Court,
judgment reversed and remanded. William N. Witherspoon, assisted by S. David Coleman and Anthony Barclay, for himself.
C. Abayomi Cassell and A. D. Wilson for appellee.
MR. JUSTICE DOSSEN

delivered the opinion of the

Court. According to the records
filed here, William N. Witherspoon complained that he and Samuel J. Grigsby, the defendant, had entered into a contract by which
the former was to sell unto the latter certain real estate, numbers 395 and 396, situated in Greenville, Sinoe, for a sum of £378
:19 :2 sterling; that in pursuance of said agreement he, plaintiff, now appellant, signed and sealed a deed as evidence of the sale
of said property, his wife also signing away her dower interest therein; that said deed was duly delivered to said defendant, now
appellee; that against the sum of $1,824.00 appellee had paid a sum of

five dollars only; and that because
of his failure or neglect to pay the balance on the date due appellant sued out this action of debt. Of the eleven pleas set up in
defense to this action, there is only one of them specifically set out and ruled upon in the ruling of the trial judge upon which
the plaintiff, now appellant, based his bill of exceptions, which in our opinion, as well as in keeping with the previous opinions
of this Court, is worthy of our consideration and that is: "That the plaintiff had misconceived his form of action, in this that
the action should have been an action for breach of contract and not an action of Debt." We recognize that, inasmuch as several of
the issues raised were mixed questions of law and fact, the trial judge was considerably handicapped in coming to a correct conclusion,
having allowed himself to be precluded from taking evidence by disposing of them as pure issues of law. Accordingly, on December
z, 1938, after briefly reviewing the gist of the pleadings, he decided that the action of debt did not lie, but that the suit should
have been for damages for breach of contract. To this judgment, exceptions having been duly taken, this appeal has been duly prosecuted
to this Court. The complaint alleges that a contract was made between the appellant and appellee for the latter to purchase two town
lots with improvements thereon as aforesaid and that a deed was executed by appellant and his wife and handed to appellee, which

was all to be done on the part of appellant to complete his part of the contract. Up to this stage appellee's part of the contract
was to pay a sum certain, according to the pleadings, within a given time. The contract was then executed and not merely executory;
and appellee having failed to pay the said sum certain as contracted, an action of debt is the proper form of action to be chosen
to enforce payment. Our opinion is upheld by Cyclopedia of Law and Procedure:

"It is incontrovertibly
settled that indebitatus assumpsit will lie to recover the stipulated price due on a special contract which has been fully performed
on the plaintiff's part, and it is not necessary in such case to declare on the special contract, although the plaintiff may use
the written agreement as evidence of the compensation due; for where there is a special agreement and the plaintiff has performed
on his part, the law raises a duty on the part of the defendant to pay the price agreed upon, and the plaintiff may count either on the implied assumpsit or on the express agreement. A new cause of action, upon such performance, arises from this legal duty in like manner as if the act done had been done upon a general
request, without an express agreement, and the plaintiff is not bound to declare specially on the agreement. The same is true where
the contract has been fully performed in respect to any one distinct subject included in it. The only effect in such a case of proof
of an express contract fixing the price is that the stipulated price becomes the quantum meruit in the case. It is not a question
of variance, but only of the mode of proof of the allegations of the pleading. Where the consideration of a simple contract for the
payment of money has been executed it may be declared on in debt or assumpsit, according to the subject-matter. But where the consideration
has not been executed, the remedy is by special action on the case." 9 Cyc. of Law & Proc. Contracts 685-86 (1903). Our statutes
say: "Actions are divided into three general classes,-- where the injury for which redress is sought is a breach of contract, the
action is said to be an action growing out of contract; where it is an injury of any other description, the action is said to grow
out of a

wrong. The third class, consists of actions growing out of judgments in former actions. "Actions

growing out of contract, are subdivided into those in which a specific performance of the contract is sought,--and those which are
intended to recover damages for the non-performance of the contract. "There are three actions growing out of contract, in which the
specific performance of a contract is sought,--debt,--specific performance of contracts, other than for the payment of money,--and
injunction. "An action of debt is an action to enforce the payment of a sum of money, which the defendant has contracted to pay to
the plaintiff." Stat. of Liberia (Old Blue Book) ch. I, §§ 3-6, at 3o, 2 Hub. 1524-25. For the foregoing reasons, we are of the opinion
that the judgment should be reversed and the cause remanded to the court below to be tried on the issues of facts, as well as issues
of both law and facts raised in the pleadings in this case, with costs of this Court against the appellee; and it is hereby so ordered.
Judgment reversed and remanded.

dissenting. The clock has at last struck the hour when I can with propriety expose aqd make record
of the reasons urged in our private consultations why I am unable to agree with the way in which the conclusions reached by my colleagues
in this case have been expressed in the opinion just read. Anyone who may have carefully followed the reading of said opinion must
have imagined a case in which, after appellant had sold appellee a tract of **land**, the latter had accepted the benefit, of the sale
and then refused to meet his obligation of paying the balance of the purchase
MR. CHIEF JUSTICE GRIMES,

price agreed upon, while the record before us, when carefully read, presents an entirely different picture to the mind's eye. According
to the pleas in defendant's answer, at the time when the contract of sale was made appellee agreed to purchase from appellant the
property, which is the subject of this litigation, upon the assurances more or less expressly given that said appellant was the bona
fide owner of the said property and that it was in no way whatever encumbered ; but having subsequently discovered that others had
a lien thereon and that it would be risky to buy same from plaintiff, now appellant, appellee sent back the deed that had been duly
. executed and demanded the right to repudiate the contract he had made. See Answer, pleas 1, 7-9 ; Reply, counts 1-4, 10, 14-17;
Rejoinder, pleas 6, 8. Although his honor the trial judge ruled more specifically upon the second plea in the answer which attacked

the correctness of the form of action, yet he briefly reviewed the causes pleaded for the nonpayment of the debt pleaded in the several counts of the pleadings above enumerated, which in his opinion had surrounded the case with intricacies resulting from the complications presented in the said pleadings, and, continuing his premises, said inter alia: "For the court to maintain that an action of debt would lie in face of the above recited facts culled from the pleadings of both the plaintiff and the defendant would be setting a principle that a party can be forced to purchase and accept that which he does not accept or want, or that which, though he originally agreed or decided to purchase, he for considered good reasons on his part declines subsequently to purchase; a principle obviously immoral, illegal, wrong and inequitable, especially since the party, as in this case, will not have been given either actual or constructive possession of said property."

In my opinion the principal question at issue in this case is not whether defendant, now appellee, should be compelled to pay the debt, but rather whether his attempt to repudiate the contract is justified and whether any effort to hold that he is still bound by the contract of sale, which was admittedly executed and not merely executory, will leave him the unenviable inheritor of a succession of law suits over the, premises, culminating in the necessity of his suing appellant for a breach of the covenant contained in the deed "that said appellant was, until the signing and onsealing of the deed, lawfully seized in feesimple of the premises, and had good right and lawful authority to sell and convey them" to defendant, now appellee.

If the latter course is the probable sequel to the sale of the property, then, in my opinion, the trial judge correctly held that "a party cannot be forced and compelled to purchase and accept that which he does not want," although I would have preferred his saying that a party cannot be forced to purchase and accept that which will lead him into interminable law suits contrary to the covenants of the other contracting party"; and this position of the trial judge, and incidentally of myself, seems to have some support.

Faced by pleas of the unique character above indicated, I am not surprised that the trial judge found himself in such a quandary as to have characterized the issues as full of intricacies and complications. Some judges might have sought a way out by suspending the cause and allowing the parties to test the legality of the offer on the part of defendant, now appellee, to repudiate said contract

by, perhaps, an action of specific performance. By recourse to such action cognizable only in a court of equity, a greater opportunity
to purge the conscience of the parties in order to ascertain whether or not any fraud or deceit existed that would enable appellee
unilaterally to repudiate the contract would be available than in a court of law. But, in the case at bar, the ruling
"

of the trial judge indicates to me that he was of the opinion that such issue could as well be established in an action
for damages for breach of a contract. At all events one carefully reading the ruling of the trial judge would observe a diligent
effort on his part to solve this problem in a correct legal manner. The circuit judges from whom cases are appealed to this Court
for review have a right to expect that upon a judgment remanding a case for trial de novo the opinion filed will be to them an unerring
guide for their future conduct of the cause, and the absence of that adequate guidance in the opinion just filed by the majority
of my colleagues and the dilemma as to how to proceed in the further direction of the cause are among the reasons why I have not
been able to concur with them.

Liberia Association v Thompson [2002] LRSC 20; 41 LLR 174 (2002) (13 December 2002)

FRIENDS OF LIBERIA ASSOCIATION, represented by its Authorized Officer, COMFORT MYERS, and CHEA OF EPTRACO and their respective Agents, Appellants, *v.* **MARY THOMPSON et al**., Heirs of the late JOHN FRANCIS MARSHALL, SR., Appellees.

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

Heard: November 25, 2002. Decided: December 13, 2002.

1. An interlocutory ruling is reviewable by certiorari.

2. Certiorari is a special proceeding to review and correct decisions of officials, boards, or agencies acting in a judicial capacity or to review an intermediate order or interlocutory judgment of a court.
3. A ruling which is not final is not appealable; however, the Supreme Court will assume jurisdiction over such matter where the trial judge grants the appeal and the steps to perfect the appeal are taken and completed.
4. A motion to dismiss is a pretrial motion and takes precedence over all other pleadings pending before the court undetermined.
5. Any party may discontinue a cause of action without an order provided that the party asserting a claim may serve all parties to the action a notice of discontinuance before a responsive pleading is served.
6. Where a party voluntarily discontinues an action, the party must file a notice of service with the court.
7. A trial judge is clothed with the statutory authority to order a voluntary discontinuance, but the judge cannot grant the discontinuance without a stipulation signed by counsel for all parties to the suit and filed with the court.

The Intestate Estate of the late John Francis Marshall, appellee herein, represented by its administrator, Edmund Barron Coleman, entered into a lease agreement with the Friends of Liberia, appellant herein, for the lease of a certain parcel of **land** from the appellee. Thereafter, the Intestate Es-tate, represented by Mary Thompson and others, commenced cancellation proceedings against the appellant, asserting that the administrator had granted the leasehold rights without the consent of the heirs of the decedent. In addition to filing an answer, the appellant also filed a motion to join the admini-strator of the Intestate Estate. When the motion was called for hearing pursuant to an assignment duly issued and served, the appellee made a submission to voluntarily discontinue the proceedings. The submission was resisted by the appellant, which resistance was denied by the trial court and the submission granted without prejudice to the parties. The appellants excepted to the ruling and announced an appeal therefrom, which was granted by the judge and perfected by the appellant.
The appellees sought the dismissal of the appeal, asserting that the ruling, from which the appeal was taken, was inter-locutory and hence, not appealable. The Supreme Court acknowledged that the ruling was interlocutory and hence not appealable, the right remedy being a petition for a writ of cer-tiorari. However, the Court determined to assume jurisdiction over the case since the trial judge had granted the appeal and the same had been perfected by the appellants.
Addressing the issue of the voluntary discontinuance of the proceedings in the lower court, the Supreme Court held that the trial judge had erred in entertaining and granting the submission for discontinuance, noting that a motion to dismiss was a pretrial motion and, that as such, took precedence over all other pleadings pending undetermined before the court. The Court opined also that while a party had the right to voluntarily discontinue a case, this had to be done either before the opposing party filed a responsive pleading or, alternatively, upon stipulation executed by the parties and filed with the court. In the instant case, the Court observed hat this procedure had not been followed. It concluded therefore that the trial judge should not have granted the submission and that in so doing he had committed an error which warranted reversal of the ruling. The Court therefore reversed the lower court's ruling and ordered the said court to proceed with the disposition of the cancellation proceedings, commencing with the hearing and disposition of the motions and bills of information pending before the court.

Emmanuel S. Koroma of Sherman & Sherman, Inc. and *J. H. Constance* of the Law Offices of Green and Associates, Inc. appeared for appellees. *Elijah Y. Cheapoo, Sr.* of the Cheapoo Law Firm appeared for appellants.

MR. JUSTICE SACKOR delivered the opinion of the Court

This case is before us on appeal from the ruling of His Honour Timothy Z. Swope, wherein he granted a submission filed by the appellees for the voluntary discontinuance of their petition for the cancellation of a lease agreement. The genesis of the case is as follows:

On the 27th day of April, 1992, the Intestate Estate of the late John Francis Marshall, represented by its administrator, Edmund Barron Coleman, as lessor, entered into a lease agree-ment with the Friends of Liberia Association, Inc., a domestic not-for-profit corporation, represented by its authorized officer, Comfort Myers, as lessee, for one quarter (1/4) lot, lying and situated at the junction of 9th Street and Tubman Boulevard, Sinkor, Monrovia, Liberia.

On the 17th day of November, A. D. 1993, the Intestate Estate commenced cancellation proceedings in the court below to cancel the said lease for reason that the administrator of the Intestate Estate had granted leasehold rights to the appellant herein without the consent of the heirs of the late John Francis Marshall. Pleadings in this case were exchanged and rested. The records in this case show that there were several motions filed and resistance thereto, which are still pending before the trial court undetermined.

First, the appellants herein filed a motion for joinder of party to join the administrator of the Intestate Estate of the late John Francis Marshall. When the motion was assigned for hearing, counsel for the appellees made a submission before the trial court praying for the voluntary discontinuance of the proceedings and the striking of the cause of action from the trial docket on the ground that he had found it difficult to get in contact with the appellees to sign the stipulation. The submission was resisted, argued, and granted on October 10, 1997 by the trial court, thereby discontinuing the case and also striking the entire cause of action from the trial docket without prejudice to the appellees. The respondent in the cancellation proceedings, co-appellant herein, appealed to this court for appellate review and determination.

The appellants argued before us that the trial judge com-mitted a reversible error when he granted the appellees' submission for voluntary discontinuance of the proceedings without prejudice to the appellees, at the time the motion for joinder of party filed by the appellants was called for hearing. The appellants also contended that they had filed a motion to dismiss the petition for cancellation of the lease agreement because of the lack of capacity to sue, in that the Intestate Estate had instituted the cancellation proceedings without a personal representative of the said estate. That motion, the appellants asserted, was still pending before the trial court undetermined. They stated further that they had also filed a motion to strike the amended petition for cancellation of the lease on the ground that the appellees had failed to pay the accrued costs. That motion, they allege, was also still pending before the trial court when the judge granted the voluntary discontinuance without prejudice to the appellees. The appel-lants therefore prayed this Court to reverse the trial court's ruling of October 10, 1997 granting voluntary discontinuance, and asked that we remand this case to be heard on its merits.

In counter argument, the appellees' counsel, in persons of Counsellors Joseph H. Constance and Emmanuel S. Koroma, filed two separate briefs and argued for and against the ruling of the trial judge. Counsellor Constance in his brief argued that the appellees had the legal right to discontinue their action without prejudice since he did not get the cooperation of the respondents in the trial court proceedings to sign a stipulation for the voluntary discontinuance of the cancellation proceed-ings. He maintained that the trial judge was clothed with the authority to grant a voluntary discontinuance without prejudice to the appellees and therefore prayed this Honourable Court to dismiss and deny the appeal. However, Counsellor Koroma contended that an appeal from a ruling granting a submission to discontinue and strike an action from the docket of the trial court without prejudice is interlocutory and therefore not appealable since it does not determine the ultimate rights and liabilities of the parties. He maintained that such ruling was reviewable by a proceeding in certiorari. He concluded that the trial judge committed a reversible error when he disregarded the laws governing regular appeals and therefore prayed that this Court would reverse the ruling and remand this case with instruction to the trial judge to dispose of the several motions and bills of information and to hear and dispose of the cancellation proceedings.

There are two important issues for the determination of this case. They are:

1. Whether or not the judge erred when he granted a voluntary discontinuance after the pleadings had rested without a stipulation signed by counsels for both parties?
2. Whether or not the ruling of a trial judge granting a submission is appealable?

We shall discuss these two salient issues in the reverse order. As stated earlier, the trial judge granted a submission made by the appellees for the voluntary discontinuance of their cancellation proceedings at the call of the motion for joinder of party filed by the appellants to join the administrator of the intestate estate as a respondent party to the cancellation proceedings. This Court holds that this ruling was interlocu-tory and therefore reviewable by a writ of certiorari consistent with the law, practice, and procedure in this jurisdiction. Civil Procedure Law, Rev. Code 1:16.21(1). "Certiorari is a special proceeding to review and correct decisions of officials, boards or agencies acting in a judicial capacity or to review an inter-mediate order or interlocutory judgment of a court." *Liberia Insurance Agency, Inc. v. Monsour N. Ghosen & Brothers et al.[1976] LRSC 1; ,* 24 LLR 411(1976), Syl. 1, text at 412.

We are also in agreement with the contention of Counsellor Koroma that the ruling of the trial judge was not final and therefore not appealable. However, we have determined to assume jurisdiction over this appeal because it was granted by the trial judge and perfected by the appellants. This Court is an appellate court of all appeals from the final judgment of our subordinate courts, consistent with section 51.2 of the Civil Procedure Law. We will therefore review the ruling of the trial judge granting a voluntary discontinuance to decide whether or not he acted within the purview of the law.

The last and final issue for the determination of this case is whether or not the trial judge erred when he granted voluntary discontinuance after pleadings had rested without a stipulation signed by counsels for both parties? The records before us are replete with several motions and bills of information filed with and pending before the lower court undetermined after pleadings in the case had rested. There is a motion to dismiss the cancellation proceedings. That motion is a pre-trial motion and, under the laws of this jurisdiction, it takes precedence over all other pleadings pending before the trial court. The motion remains undetermined. We are also taken aback by the

trial judge's ruling granting of a voluntary discontinuance when no instrument was filed praying for such relief and assignment was issued for hearing of the same at the time the appellants' motion for joinder of party was called for hearing.

Section 11.6 of the Civil Procedure Law provides that any party may discontinue a cause of action without an order provided that the party asserting a claim shall serve all parties to the action a notice of discontinuance before a responsive pleading is served. Moreover, such party is required to file a notice of service with the court. While we agree that our statute provides that the trial judge is clothed with the statutory authority to order a voluntary discontinuance, we note that he cannot grant a discontinuance, as in the instant case, without a stipulation signed by counsel of all parties, which is filed with the trial court.

Considering the many irregularities committed by the trial judge, we are constrained to reverse his ruling, though not appealable, so as to ensure and enhance fair and transparent justice to all the parties in this litigation.

Wherefore and in view of the foregoing, it is the considered opinion of this Honourable Court that the ruling of the trial judge, granting voluntary discontinuance without prejudice, is reversed. The case is remanded to the trial court with the instruction to resume jurisdiction and dispose of the cancellation proceedings commencing with the hearing and disposition of the several motions and bills of information in keeping with law. 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 appellees. And it is hereby so ordered.

Ruling reversed.

Phelps v Williams [1927] LRSC 3; 2 LLR 621 (1927) (19 January 1927)

R. M. PHELPS, Petitioner, v. **E. W. WILLIAMS**, and **His Honor E. J. S. WORRELL**, Judge of the Circuit Court, second judicial circuit, Grand Bassa County, presiding by assignment over the Circuit Court of the first judicial circuit, Montserrado County, R. L., Respondents.

HEARD DECEMBER 8, 1926. DECIDED JANUARY 19, 1927.

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

1. It is illegal to arrest one for disobeying a writ of injunction which had been adjudged never legally served upon him.

2. When a party is in possession of certain premises to which he claims title, an action of injunction may not be properly issued to decide upon the validity of said title.

3. Nor should said writ issue to enjoin a defendant from the use of property which he is in possession of under a claim of title thereto adverse to that of plaintiff.

Petition for mandamus granted.

Mr. Chief Justice Johnson delivered the opinion of the court:

Petition for Mandamus-Action of Injunction. This case grew out of an action of injunction entered in the Circuit Court for the first judicial circuit, Montserrado County, by Mr. E. W. Williams, plaintiff in the court below against R. M. Phelps, defendant in said action. The facts in the case as far as can be gathered from the records and from the returns of Judge E. J. S. Worrell, who presided by assignment over said circuit at the time that the action was finally determined, are as follows:

In the month of October last past, the said E. W. Williams, entered an action of injunction against the said R. M. Phelps, who was in possession of the said premises and claimed title thereto, and a writ was issued, enjoining the said defendant to leave the said premises. On the hearing of the case before Judge N. H. Gibson, the action was dismissed, because the writ had not been legally served and returned.

Subsequently, to wit, on the 30th of November, A. D. 1926, the said defendant was arrested for disobeying the injunction, and was imprisoned in the common jail until the 3rd of December of the said year, when he was taken before Judge E. J. S. Worrell, presiding by assignment over said court. On the hearing of the matter, Judge Worrell, discovering that there was no legal service of, or return to, the writ of injunction ordered said defendant discharged from further custody. In the meanwhile an order had been issued to the sheriff ordering him to proceed to the settlement of Brewerville and to lock up the house in dispute and to turn over the keys to the said E. W. Williams.

On his release from prison the defendant appealed to this court for a mandamus to compel the judge of the court below to put him in possession of the premises from which he had been

illegally dispossessed, and to restore the status quo, as it existed before the issuance of the writ of injunction, and the alleged illegal action of the court below.

After reviewing the above proceedings, we have arrived at the conclusion that the action of the court below in arresting and imprisoning the said petitioner for disobeying a writ of injunction which had not been legally served and returned, was irregular, illegal and oppressive. Moreover the defendant being in possession of the premises in dispute to which he claimed title, the action of injunction was not the proper action to decide upon the validity of such title, and to enjoin defendant from the use of and from the premises to which plaintiff claimed title.

In the case Johnson v. Cassell (I Lib. L. R. 161) it was held 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 of common law, should a writ of injunction be granted for the purpose of deciding upon the validity of such title. See Green et al., v. Turner (I Lib. L. R. 276.) The remedy provided by law to try disputed titles, or to recover the possession of lands which plaintiff claims have been wrongfully withheld from him, is the action of ejectment. Hence the action of injunction cannot be used as a substitute for such purpose. The court therefore erred in granting the writ of injunction.

Again the case having been dismissed by Judge Gibson, we fail to see, by what legal process, defendant could be arrested and imprisoned for disobeying the injunction.

In view of the foregoing, we have no hesitancy in ordering the issuance of the mandamus commanding the judge of the court below to put the defendant in possession of the premises from which he was illegally ousted, the respondent paying all costs of the action; and it is so ordered.

FLA v Metzger et al [2004] LRSC 6; 42 LLR 64 (2004) (13 August 2004)

FRIENDS OF LIBERIA ASSOCIATION, INC., by and thru its Authorized Agent, COMFORT T. MYERS, CHEA CHEAPOO, GEORGE DWEH, et al., Appellants, *v*. **HIS HONOUR WILLIAM METZGER**, Presiding Judge, Sixth Judicial Circuit Court, Montserrado County, and **PETRO CHEMICAL INDUSTRIES, INC.**, by and thru its Authorized Agent, A. N. CHARIF, Appellees.

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE DENYING THE PETITION FOR ISSUANCE OF THE WRIT OF PROHIBITION AND BILL OF INFORMATION.

Heard: March 30, 2004. Decided: August 13, 2004.

1. It is improper for a judge to order eviction of a party to an ejectment suit based on a bill of information which had not been heard and in the absence of a hearing on the action of ejectment.

2. A party must be heard before judgment is rendered against him or her.

3. A party cannot be bound by a judgment without being allowed a day in court.

4. The issue of title is foreign to an action of injunction and the nature of injunction and ejectment actions are so distinct that the two forms of action cannot be combined or blended.

5. The sole object of preliminary injunction is to preserve the status quo until the merits of a case are heard.

6. Only ejectment can determine the merits to title of real property.

7. 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.

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

9. An injunction is not a possessory action and therefore cannot serve the purpose of an ejectment action which determines title and places the rightful owner in possession.

10. An injunction has only a restraining or prohibitive power.

11. As a general rule, a preliminary or interlocutory injunction will not be issued to take property out of the possession of one person and put it into the possession of another, especially where legal title is in dispute and the party in possession asserts ownership in himself or other.

12. No person shall be deprived of life, liberty, security of the person, property, privilege or any other right except as the result of a hearing and judgment consistent with the provisions laid down in the Constitution and in accordance with due process of law.

13. The right of no one shall be concluded by a judgment rendered in a suit to which he or she is not a party.

14. The office of ejectment cannot be usurped by injunction, prohibition or information.

Co-appellee Petro Chemical Industries, Inc., which in 1989 had leased from Mai Barclay Roberts a parcel of **land** on 9th Street, Sinkor, was forced in 1990 to abandon the property because of the Liberian Civil War. Thereafter, in April 1992 co-appellant Friends of Liberia Association, Inc. leased the subject property from the Estate of the late John Francis Marshall. When co-appellee returned to Liberia but was denied permission to enter the property by the co-appellant, it entered into a sixteen month least agreement with the co-appellant for lease of the property. When the check issued for the said lease could not be encashed by the co-appellant, it refused to turn the property over to the co-appellee and decided to deny the said co-appellee entry to the property.

As a result of the refusal and denial, the co-appellee com-menced an action of ejectment and filed a motion for preliminary injunction against the co-appellee. Thereafter, the co-appellee filed a bill of information with the court, alleging that the co-appellant had violated the injunction. The trial court then summoned the co-appellant for contempt. However, without first disposing of the ejectment suit or hearing the injunction action, the court proceeded, on the basis of the bill of information, to order the sheriff to evict the co-appellant from the premises, subject of the ejectment and injunction suits.

Whereupon, the co-appellant filed before the Supreme Court Justice in Chambers a petition for a writ of prohibition. However, the succeeding Justice in Chambers, Justice M. Wilkins Wright, on the basis of a bill of information filed before him by co-appellee Petro Chemical Industries, Inc., alleging that the co-appellant had disrespected the orders of the predecessor Justice, and solely on the strength of a conference held with the parties, without hearing either the bill of information or the petition for a writ of prohibition upon which the predecessor had already ordered the issuance of the alternative writ, ordered the Clerk of the Supreme Court to send a mandate to the lower court to evict co-appellant Friends of Liberia, Inc. from the premises and to put co-appellee Petro Chemical Industries, Inc. into possession of the premises. From this ruling an appeal was taken to the Court *en banc*.

The Supreme Court reversed the ruling of the Justice in Chambers and granted the petition for the writ of prohibition. It ordered the issuance of the peremptory writ, holding that neither a bill of information nor an injunctive action was the appropriate action to determine title or possession to real property; and that the province for determination of title was action of ejectment. The Court held that the trial court could therefore not, in contempt proceedings growing out of the filing of a bill of information, order the eviction of a party without adjudication of the ejectment suit. The injunction action, the Court opined, not being a possessory action, is strictly to maintain the status quo and not to determine title or right of possession in real property or to serve the purpose of an ejectment action.

The actions of the trial court and the Justice in Chambers, the Supreme Court, said were tantamount to a denial of due process of law and a violation of the appellants' constitutional rights. As such, any judgment rendered without affording the opportunity for a party's day in court was not binding on such party. The Court stated further that after the issuance of the alternative writ of prohibition and the bill of information, the Justice could not send a mandate to the trial court to evict the co-appellant from the disputed premises, especially when there had been no hearing by the Justice on the two actions. The prohibition was therefore ordered granted.

Chea Cheapoo and *Elijah Cheapoo* of Cheapoo Law Firm appeared for the respondents/appellants. *Cyril Jones* of Jones and Jones Law Firm appeared for the informant/appellee.

MR. JUSTICE CAMPBELL delivered the opinion of the Court.

The records in this case reveal that on December 15, 1989 co-appellee Petro Chemical Industries, Inc. executed an agreement of lease with Mai Barclay Roberts for a piece of property containing a gas station, lying and situated at the junction of Tubman Boulevard and 9th Street, Sinkor, Monrovia, Liberia, for a period of twenty (20) calendar years, commencing from December 15, 1993 and ending December 16, 2013. The property remained under the control of co-appellee as lessee until 1990 when co-appellee was forced to leave Liberia due to the civil war, and therefore said property was left un-attended to.

The records further reveal that Friends of Liberia Association, Inc., co-appellant leased the subject property from the Estate of the late John Francis Marshall, by and thru its administrator, Edmond B. Coleman, on April 27, 1992.

In the year 1996, co-appellee Petro Chemical Industries, Inc., wanting to do business on the property but realizing that appellants were occupying same, requested co-appellant Friends of Liberia Association, Inc. for permission to enter the premises and assess the extent of damage done to the property and with an understanding that a lease agreement would be executed between the parties. The request was granted on August 10, 1996. On August 12, 1996 co-appellant Friends of Liberia Association, Inc. revoked the permission on ground that co-appellee had gone contrary to the understanding by unlawfully locking doors and other entrances to said property in the absence of the execution of a lease agreement. As a result of this Notice of Revocation of Permission to enter the premises, the co-appellee entered into a lease agreement with co-appellant Friends of Liberia Association, Inc. on August 12, 1996, for the property for a period of Sixteen (16) calendar months for a consideration of LD400,000.00 for the entire lease period. The parties agreed that during the signing of the lease agreement, LD200,000.00 would be paid by the sub-lessee to the sub-lessor. Co-appellee Petro Chemical Indus-tries, Inc. issued two checks in the amounts of LD$200,000.00 each, representing the total lease payment, one of which was postdated while the other was to be presented to the bank for encashment the day following the signing of the lease agreement. Upon presentation of the check to the bank, the check could not be encashed for lack of funds. Consequently, co-appellee Petro Chemical Industries, Inc. was informed about the worthless check, but failed to make good the check. Co-appellant Friends of Liberia Association, Inc. then refused to turn the property over to co-appellee, for which co-appellee Petro Chemical Industries, Inc. filed ejectment action and a motion for preliminary injunction with the Sixth Judicial Circuit Court on grounds that co-appellee Petro Chemical Industries, Inc. is entitled to the right of occupancy and possession by virtue of the sub-lease agreement executed by and between co-appellee Petro Chemical Industries, Inc. and co-appellant Friends of Liberia Association, Inc. on August 12, 1996, and also by virtue of the lease agreement entered into by and between co-appellee Petro Chemical Industries, Inc. and Mai Barclay Roberts on December 15, 1989. Appellants filed an answer

denying co-appellee's right of occupancy and possession of the subject property and a resistance to the motion for preliminary injunction with an injunction bond; and a motion to vacate the preliminary injunction.

While the hearing on the motion to vacate the preliminary injunction was pending, co-appellee Petro Chemical Industries, Inc. filed a bill of information at the Civil Law Court alleging that appellants had violated the injunction order. The Civil Law Court Judge ordered the issuance of a writ of summons for contempt growing out of the bill of information and inserted in said writ an order for the sheriff to evict the appellants from the subject property. The order states thus: "You will also remove any and all such persons named herein whom you will find on the premises following receipt and notice of the writ of injunction from the said premises, subject of these proceedings".

Following the service of the writ of summons for contempt, the appellants filed a petition for a writ of prohibition before Chambers Justice, His Honour Karmo Soko Sackor, who issued the alternative writ with a stay order on September 14, 1996. While hearing into the prohibition proceedings was pending, co-appellee filed a bill of information on September 17, 1996 before Justice Sackor alleging that appellants had misinterpreted the meaning of the stay order and the *status quo* as at the day and time of the issuance of the writ by going on the same property to obstruct the operations of co-appellee, thereby disturbing the *status quo* of all the actions taken in the court below prior to the issuance of the alternative writ of prohibition.

Based on the bill of information, Justice Sackor ordered the issuance of a second writ on September 17, 1996, ordering the parties to maintain the *status quo ante* as at the date and time of the issuance and service of the alternative writ of prohibition and to stay all further proceedings. The prohibition and bill of information proceedings had not been passed upon when Justice Sackor left Chambers. When Justice Micah Wilkins Wright got in Chambers, co-appellee filed another bill of information before Chambers Justice Wright, alleging that co-appellants disrespect-ed the orders of the Honourable Supreme Court despite the orders of Justice Sackor to have the *status quo ante* maintained, which, according to co-appellee, means that co-appellee should have possession of the subject property.

Following a conference with the parties on January 10, 2003, Justice Wright ordered the Clerk of the Supreme Court to send a mandate to the judge below to resume jurisdiction and implement the orders of Justice Sackor as contained in the writ of prohibition of September 17, 1996 and place co-appellee in possession of the subject property. Consequently, appellants were evicted as a result of the mandate. Thereafter, appellants filed a bill of information before Justice Wright praying rescission of the Justice's mandate on ground that there is no record or order issued by Justice Sackor wherein he stated that the co-appellee should be placed in possession of the subject property. The prohibition and the three (3) bills of information were consolidated, argued and the Chambers Justice ruled denying the petition for a writ of prohibition, thereby quashing the alternative writ issued earlier and further denied the bill of information filed by appellants. From this ruling, appellants appealed.

This Court considers the following issues determinative of this matter:

1. Whether or not the judge in the court below erred when he ordered the eviction of appellants based upon contempt proceedings growing out of a bill of information in the absence of a hearing in the action of ejectment?

2. Whether or not after the issuance of an alternative writ of prohibition and bill of information a Chambers Justice can send a mandate to the court below to evict a party without hearing the prohibition and bill of information proceedings pending before him?

The first issue for our consideration is whether or not the judge in the court below erred when he ordered the eviction of the appellants based upon contempt proceedings growing out of a bill of information and in the absence of a hearing in the action of ejectment.

A recourse to the records certified to this Court reveals that while the motion to vacate the preliminary injunction and the initial action of ejectment were pending before the lower court, the Sixth Judicial Circuit Court, Co-appellee Petro Chemical Industries, Inc. filed a bill of information with said court below alleging that appellants had violated the injunction order by restraining and prohibiting appellee from entering the subject property. The presiding judge then issued a writ of summons for contempt and ordered the sheriff to oust appellants from the subject property.

In the absence of a hearing in the action of ejectment, it was improper for the presiding judge to have ordered the eviction of appellants based on a bill of information which was also not heard. Our laws provide that "a party must be heard before judgment is rendered against him or her". In the case *Tubman v. Murdoch*, [1934] LRSC 26; 4 LLR 179 (1934), this Court held that "a party cannot be bound by a judgment without being allowed a day in Court".

The issue of title is foreign to an action of injunction. The respective nature of an injunction action and an ejectment action are so distinct that the two forms of action cannot be combined or blended. See *Fiske et al. v. Artis et al.*[1953] LRSC 4; , 11 LLR 334 (1953). It goes without saying that the sole object of a preliminary injunction is to preserve the status quo until the merits of a case are heard and only ejectment can determine the merits to title of real property. Our statute provides also that "any person who is rightfully entitled to the possession of real property may bring an action of ejectment against any person who wrongfully withholds possession thereof. Such an action may be brought when the title to property as well as the right to possession thereof is disputed." See Civil Procedure Law, Rev. Code 1: 62.1. This Court held in the case *Tweh v. Koffa*, [1979] LRSC 7; 28 LLR 89, syl. 4 (1979), text at page 97, that "an injunction is not a possessory action and therefore cannot serve the purpose of an ejectment action which determines title and places the rightful owner in possession. An injunction has only a restraining or prohibitive power". It is clear therefore that the presiding judge erred in ordering the eviction of the appellants in the absence of a hearing in the ejectment action. This position is further buttressed by 42 AM JUR 2d, *Injunctions*, section 53, wherein it is precisely stated that "as a general rule, a preliminary or interlocutory injunction will not be issued to take property out of the possession of one person and put it into the possession of another, especially where the legal title is in dispute and the party in possession asserts ownership in himself or other".

The last issue for our determination presents the question whether or not after the issuance of writs of prohibition and bill of information, a Chambers Justice can send a mandate to the court below to evict a party without the hearing of the prohibition and bill of information proceedings pending before him.

The answer to this is NO. The records show that the appellants filed a petition for a writ of prohibition with Chambers Justice Sackor after the receipt of the writ of summons, ordered issued by the court below, to have co-appellants evicted from the premises based on a bill of information filed in the court below by the co-appellee. The alternative writ was issued along with a stay order on all proceedings. While the prohibition proceedings were pending, co-

appellee filed a bill of information alleging that co-appellants had misinterpreted the prohibition order to mean that co-appellants should be put in possession of the subject property. The Justice issued another writ ordering the parties to remain in *status quo ante* as at the date and time of the issuance of the writ of prohibition.

The prohibition and information proceedings were not heard until Justice Sackor left Chambers. When Justice Micah Wilkins Wright got in Chambers, co-appellee filed another bill of information alleging that co-appellants had violated the order of Justice Sackor by remaining on the premises contrary to said order. Following a conference of the parties with Justice Wright, the Justice ordered the Clerk of the Supreme Court to issue a writ growing out of the bill of information and insert therein that the appellants be evicted since they had violated the orders of Justice Sackor. Hence, appellants were evicted without a hearing in the prohibition and the two bills of information proceedings.

We are convinced that the eviction order against appellants was violative of their rights. The Constitution of the Republic of Liberia provides that "no person shall be deprived of life, liberty, security of the person, property, privilege or any other right except as the result of a hearing judgment consistent with the provisions laid down in this Constitution and in accor-dance with due process of law". See Article 20(a), Constitution of Liberia (1986).

This Court held in the case *Liberia Industrial Development Corporation (LIDC) v. Thorpe*, 31 LLR 714 (1984), syl. 2, that "the right of no one shall be concluded by a judgment rendered in a suit to which he is not a party, and a party cannot be bound by a judgment without being allowed his day in court".

One wonders the rationale for the eviction, especially so when the ejectment action out of which the ancillary action of injunction, motion to vacate, bill of information, and contempt grew had not and is yet to be determined by the trial court. We believe that only a determination of the action of ejectment can settle the rights of the parties to the subject property and we so hold. Moreover, the office of ejectment cannot be usurped by injunction, prohibition or information.

Wherefore and in view of the foregoing, the ruling of the Chambers Justice denying the writ of prohibition is hereby reversed, the petition is granted and the peremptory writ is ordered issued. The Clerk of this Court is hereby ordered to send a mandate to the court below ordering the judge presiding therein to resume jurisdiction, put the appellants in possession of the subject property, hear the bill of information, and the motion to vacate preliminary injunction in the ejectment action, Mrs. Mai Barclay Roberts and Edmond Coleman are to be joined as parties *sua sponte*, and thereafter the court is to proceed to hear the action of ejectment. Costs are ruled against appellee. And it is hereby so ordered.

Petition granted.

Wennah v Tay [1983] LRSC 53; 31 LLR 90 (1983) (6 July 1983)

JOSEPH D. WENNAH, Appellant/Respondent, v. **ISAAC T. TAY**, Appellee/Movant.

MOTION TO DISMISS APPEAL FROM THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT, GRAND BASSA COUNTY.

Heard: May 19, 1983. Decided: July 6, 1983.

1.The duty to have the trial records on appeal transcribed and transmitted to the Supreme Court within ninety days ailed judgment, is the statutory duty of the clerk of court, and a party litigant cannot suffer because of the failure of the clerk or any other officer of the court to perform his assigned duty.

2. The lessee's right to quiet enjoyment of physical possession of the demised premises does not in any way affect the lessor's inherent reversionary right to assign, or sell, or offer the property as a security to an appeal bond.

3. A property against which there is a lien can also be offered as security to secure a bond as long as the value of such property is enough to cover the total amount of the liens, unpaid taxes and other encumbrances against the property as long as the owner has not parted with the property.

Appellee/Movant filed a motion to dismiss an appeal emanating from the Second Judicial Circuit alleging as grounds that: (1) taxes had not been paid on the property offered as security on the appeal bond; (2) that there was no statement in the affidavit of sureties with respect to whether or not there are any liens or encumbrances on the property; (3) that the property was not sufficiently described by metes and bounds; (4) that the appeal records were not transmitted to the Supreme Court within the statutory period.

Appellant/respondent filed a resistance, contending that the bond as filed satisfied the relevant statutory requirements and that the transmission of the appeal records to the Supreme Court being a ministerial function of the clerk of court, the failure to perform that function could not be attributed to the appellant.

The Supreme Court upon inspection of the records found that appellee had complied with all the statutory requirements alleged by appellant to have been violated. With respect to the transmission of the appeal records, the Supreme Court held that whilst it is true that appellant had a duty to superintend his appeal, he cannot suffer because of the failure of the clerk of court to transcribe and transmit the records on appeal to the Supreme Court within statutory time, this being a statutory duty imposed on the clerk.

G. Bona Sagbe appeared for appellant/responderit. Richard K Flomo appeared for appellee/movant.

MR. JUSTICE SMITH delivered the opinion of the Court.

This case, now on appeal, emanated from the Second Judicial Circuit Court, Grand Bassa County. The appellant/respondent having excepted to the court's final judgment, has perfected his appeal for review by this Court. But while the appeal was pending, the appellee/movant filed a five-count motion to dismiss, substantially alleging as follows:

1. That the appeal bond of the appellant was defective, because taxes were not paid on the property offered as security.

2. That there is no statement in the affidavit of sureties that, the property offered as security has not been mortgaged and/or leased, and that there were no other encumbrances against any of the said properties.

3. That the affidavit of sureties did not sufficiently describe the real property by its metes and bounds, that is, by block and lots numbers.

4. That there was no application made by the appellant to the clerk of court for the issuance of the notice of the completion of the appeal; instead, the application was made to the appellee as shown on the face of the notice of the completion of the appeal, contrary to law and in violation of the appeal statute.

5. That the Appellant neglected to superintend his appeal by having the appeal records reached the Supreme Court within ninety (90) days after judgment.

Appellant filed a resistance to the appellee's motion, alleging in essence that the appeal bond was not defective to subject the appeal to dismissal, in that, it met all the requirements of the statute as evidenced by the documents accompanying the bond; that the fact that the notice of the completion of the appeal was issued and served, means that an application was made therefor to the clerk of court; that taxes had been paid on the property offered by the Government of Liberia which is leasing the said property having deducted from the lease rent taxes assessed on the property; and that the failure of the clerk of the trial court to have the appeal records transcribed and transmitted to the Supreme Court within ninety (90) days after judgment could not be attributed to the appellant and prejudice his interest, especially so when appellant completed the appeal within statutory time as evidenced by the notice of the completion of the appeal.

In order for us to fairly pass upon these issues, we must take recourse to the bond to see whether or not it meets the requirements of the statute.

An inspection of the appeal bond revealed that the bond was accompanied by affidavit of sureties in which the properties of the two sureties were described and also a certificate from the bureau of revenues stating the value of the property to be $60,000.00, over and above the amount of judgment which is $18,000.00. The certificate of property valuation also showed that taxes for 1981 had been paid on each of the properties. There was also a notice of the completion of the appeal in the records which counsel for appellee/movant agreed were served within the statutory time of sixty (60) days after judgment. For the benefit of this opinion, we hereunder quote, one after the other; the affidavit of sureties, the certificate of property valuation, and the notice of the completion of the appeal, as follows:

"SURETIES' AFFIDAVIT

"PERSONALLY APPEARED BEFORE ME, in my office in the City of Gbarnga, a duly qualified Justice of the Peace for Bong County and Republic aforesaid, James E, George, Sr. and

Mrs. Ellen L. Clarke, sureties to the attached appeal bond, signed in the above entitled cause, and made oath according to law that they are the owners of the real properties offered as securities, said properties for James E.

George, Sr. and Mrs. Ellen L. Clarke being houses and lots described as follows:

"LOT # LOCATION VALUE ACRES OWNER

N/N Gbarnga $30,000.00 2 lots & bldg. J E George N/N " $30,000.00 17 acres & bldg. E L Clarke "Commencing from the south-west junction of the New Highway and the Fish Pond Street and thence running as follows: north 46 East 264 ft. north 44 West 82.5 ft., south 46 west 264 ft., south 44 East 82.5 ft. and back to the place of commencement and containing (2) lots 21780 sq. feet or two lots and no more. Commencing at the south west corner of Mr. Philip Harris 10 acres property and thence running north 50 degrees west 2,244 ft south, 40 degrees west, 330 ft. South, 50 degrees East, 2,244 ft. north, 40 degrees east, 330 ft. back to the place of commencement and containing 17 acres of land and no more. Within the Republic of Liberia, and that the assessed value of the properties are over and above the value of the bond, in sum of ($60,000.00) sixty thousand dollars and liabilities, that the said properties offered are unencumbered all this they said to be true and correct to the best of their knowledge and information, and belief and as to those matters of information they verily believe them to be true and correct ...."

"STATEMENT OF PROPERTY

VALUATION PROPERTY OWNER(S) LOCATION VALUATION LOT NOS. James E. George, Sr. Gbarnga $30,000.00 N/N Ellen L. Clarke Gbamga $30,000.00 N/N (Sixty Thousand Dollars) "This is to certify that the real estate properties of Mr.

James E. George, Sr. and Ellen L. Clarke have (sic) valued and registered as shown above. "RECEIPT NOS. DATE OF PAYMENT AMOUNT PAID 2133892 August 26, 1981 $624.00 2133701 September 17, 1981 $154.00. . "

"NOTICE OF COMPLETION OF APPEAL "REPUBLIC OF LIBERIA TO: ISAAC T. TAY OF GRAND BASSA COUNTY, LIBERIA

"You will please take judicial notice that upon all of the papers herein, Joseph D. Wennah, defendant-appellant herein, hereby appeals to the Honourable the People's Supreme Court of Liberia, sitting in its October, A.D. 1982, Term, from the final judgment rendered on the 21' day of September, A.D. 1982, by His Honor Frederick K. Tulay, assigned circuit judge presiding over the August, A.D. 1982, Term of the People's Second Judicial Circuit, Grand Bassa County, Republic of Liberia, and filed in the office of the clerk of court on the 25t h day of September, A.D. 1982.

"And have you there this notice of completion of appeal."

From the above-quoted documents accompanying the appeal bond, it is our opinion that the said bond meets the requirements of the appeal statute, and appellee's contention is, therefore, unmeritorious and embodies microscopic legal technicality merely intended to defeat the ends of justice.

Whilst it is true that the appellant had the duty to superintend his appeal, yet, the duty to have the trial records on appeal transcribed and transmitted to the Supreme Court within ninety (90) days after judgment, is the statutory duty of the clerk of court, and a party litigant cannot suffer because of the failure of the clerk or any other officer of the court to perform his assigned duty. Moreover, there is a certificate issued by the clerk of the trial court in the records to the effect that because of pressure of work, that is to say, transcribing appeal records for the Supreme Court, the records in the instant case could not get to the Supreme Court on time. The delay under the circumstances, in our opinion, is an unavoidable delay and cannot prejudice any of the parties to constitute a ground for dismissal of the appeal.

Counsel for appellee argued that because the property of each of the sureties has been leased to Government, they are not unencumbered and therefore could not have been offered as security for the appeal bond; hence, the Government of Liberia has a lien on the property.

The question that has arisen from this argument is, whether by reason of the Government of Liberia being a lessee, it has a lien on the said property by virtue of which the owner or lessor is forbidden by law from offering said property as security to an appeal bond. In discussing this question, it is necessary to know what is a lien and how is it created against a property, and who has the right to recover therefrom in case of a breach. It is, however, apparent that one who has a lien against a piece of property may recover therefrom in case of a breach.

"Lien" is defined by Black's Law Dictionary 1072 (4th ed), as a charge, or security or encumbrances upon property. A claim or charge on property for payment of some debt, obligation or duty. A lien is a charge imposed upon specific property; it is not a property in, or right to, the thing itself, but constitutes a charge or security thereon. It is a tie that binds property to a debt or claim for its satisfaction.

Under this definition, it is difficult to understand by what parity of reasoning one could conclude that a lessee has a lien on the property leased by him by reason of which his lessor has no right to offer said property as a security to an appeal bond. Here is another legal definition of the word "lien":

"In its most general significance, a lien is a charge upon property for the payment or discharge of a debt or duty. It is a qualified right, a proprietary interest, which, in a given case, may be exercised over the property of another. It is a right which the law gives to have a debt satisfied out of a particular thing. However, it confers no general right of property or title upon the holder; on the contrary, it necessarily supposes the title to be in some other person" (emphasis ours).33 AM. JUR. "Lien", § 2--Definition and Nature.

The right of a lessee, in our opinion, is quiet enjoyment of possession of the demised premises, which imposes no monetary obligation on the lessor that would require payment to the lessee. A

"lease" is not a "mortgage". Mortgage is a transfer of property passing conditionally as security for debt; and so in the case of a mortgage, an estate is created by a conveyance of some act such as the payment of money, and the like, by grantor or some other person, and to become void if the act is performed agreeably to the terms prescribed at the time of making such conveyance. In such a case, the mortgagee, who is in possession of the real property, with the agreement or assent of the mortgagor, expressed or implied, and in recognition of his mortgage, and because of it, and under such circumstances as an equitable prerequisite to his being dispossessed, has a lien against such property created by reason of the mortgage.

But in the case of a lease, the contract is for the exclusive physical use of the real property leased, and does not bind the lessor to the lessee for any monetary obligation, for the satisfaction of which the property had been demised; therefore, one who is obligated to the lessor, that is, the lessee, cannot be said to have a lien against the demised premises to forbid the legal owner or lessor, who retains title, from offering his said property as a security to an appeal bond.

In the wake of all that we have narrated supra, and the law cited, it is clear that the lessee's right to quiet enjoyment of physical possession of the demised premises does not affect the lessor's inherent reversionary right to assign, or sell, or offer the property as a security to an appeal bond. It is therefore our opinion that a property against which there is a lien, as the property offered as security in this case, can also be offered as a security to secure a bond as long as the value of such property is enough to cover the total amount of the liens, unpaid taxes and other encumbrances against the property, and as long as the owner has not parted with title to such property.

In view of the foregoing, the contention of the appellee that the Government of Liberia has a lien against the demised premises by reason of the lease, and therefore it cannot be offered as security for a bond, is not sustained.

Having traversed the grounds on which the motion to dismiss is based, and in keeping with the law cited supra, it is our candid opinion and holding that the motion to dismiss appellant's appeal be, and the same is hereby denied with costs against the appellee.

The Clerk of this Court is hereby ordered to re-docket the appeal for hearing during the ensuing Term of Court. And it is hereby so ordered.

Motion denied.

Kasaykro Corp. v Stewart et al [1982] LRSC 47; 30 LLR 164 (1982) (8 July 1982)

KASAYKRO CORPORATION, represented by its General Manager, Petitioner, *v.* **HER HONOUR CASSELIA LILES STEWART**, Judge, People's Debt Court, Montserrado County, and **WINTER REISNER AND COMPANY**, represented by WEST COAST ENTERPRISES, by and thru its General Manager, Respondents.

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

Heard: March 31, 1982. Decided: July 8, 1982.

1. A defendant whose property has been levied upon under an order of attachment may move, upon notice to the plaintiff and the sheriff, for an order discharging the attachment as to all or a part of the property upon payment of the sheriff's fees and expenses.

2. On a motion for an order to discharge property held under an attachment, the defendant is required to give a bond in an amount equal to the value of the property sought to be discharged, that the defendant will pay to the plaintiff the amount of any judgment which may be rendered in the action against him, not exceeding the amount of the bond.

3. In executing a bond in the name of a corporation, in regard to attachment proceedings brought against the corporation and for the release of the attached property to him, an officer of the corporation obligates himself as principal, undertaking to perform an act by virtue of the bond.

4. A bond is a written obligation–a contract in which one binds himself and his heirs, executors, administrators to pay a certain sum of money to another at a day appointed.

5. The general manager of a corporation who binds himself as a principal to the Republic, by his execution of a bond in the name of the corporation, and who has received the property of the corporation which had been attached and held as security to satisfy the judgment, cannot escape liability under the terms and conditions of the bond.

6. The object of a bond in civil cases is either directly or indirectly to secure the payment of a debt or the performance of some other civil duty.

7. The Supreme Court can only construe a statute to find the legislative intent, and unless a statute is contrary to the Constitution and the constitutional question is squarely raised, the Court is without the power and authority to declare such a statute as inoperative.

8. The Supreme Court has no authority to extrapolate the intent of the Legislature beyond the specific wording of a statute. This limitation is all the more mandatory where the statute in question specifies the only manner in which an act is to be performed.

9. The laws of Liberia do not give the Supreme Court the authority to add or take from what the Legislature has commanded, unless the said command breaches provisions of the Constitution.

10. Judicial construction of Liberian statutes is constitutionally restricted to determination of legislative intent, as stated by the statutes themselves.

11. 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, give effect to the intention of the Legislature. The courts cannot read into a statute something that is not within the manifest intention of the Legislature, as gathered from the statute itself. Thus, to depart from the meaning expressed by the words of a statute is to alter the statute, to legislate and not to interpret.

12. The fact that a true construction of a statute may generate harsh consequences cannot be the basis for influencing 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, and not to make laws.

Co-respondent in these prohibition proceedings, Winter Reisner & Company, instituted an action of debt by attachment in the People's Debt Court for Montserrado County, against Petitioner Kasaykro Corporation. Upon service of the writ of attachment and the closure of the petitioner corporation store, it executed a bond, signed by its general manager in its name and on its behalf, and in which sureties put up their real properties, for the release of the property. The debt court

heard the case and entered judgment in favour of Co-respondent Winter Reisner & Company. No exceptions were noted to the judgment and no appeal was taken therefrom. Accordingly, a bill of costs was prepared, taxed by the parties to the law suit, approved by the trial judge, and served on the petitioner corporation. When the petitioner corporation failed to make payment or to show property to be seized to satisfy the judgment, its general manager who had signed the bond on its behalf was then arrested. However, before he could be committed to jail, the petitioner corporation filed a petition before the Justice in Chambers for a writ of prohibition.

The Chambers Justice agreed with the petitioner's contention that an officer of a corporation could not be arrested for payment of the debt of a corporation, and hence, ordered the writ issued. The Justice however instructed that the trial court proceed to enforce the obligation under the bond. From this ruling, both parties excepted and appealed to the Supreme Court.
The Supreme Court reversed the Chambers Justice's ruling and held that the officer could indeed be arrested as he had signed the bond for and in the name of the petitioner corporation, under which the attached property had been released. The Court opined that, while ordinarily an officer of a corporation could not be held liable for the debt of the corporation, if he elects to sign a bond for and on behalf of the corporation, he thereby becomes the principal and can be held liable for the debt of the corporation. The Court rejected the petitioner's contention that the statute required that the bond be executed by it and that the bond was indeed executed by it, with its general manager only being the instrument through which it could and did act in executing the bond, since under the law it had only a juridical personality and therefore had to act through a natural person, its general manager. The Court noted that in signing the bond, the general manager had obligated himself to pay the debt and exposed himself to liability therefor.

The Court also rejected the contention of the respondents that it should declare inoperative the statute which stated that a person could not be imprisoned for the payment of a debt, except in the limited cases stated by the statute, arguing that the statute left a party plaintiff without a remedy where there was a failure to pay a debt and no property could be shown to satisfy the debt obligation. The Court noted that its powers and authority extended only to interpreting the laws and not to making laws, that function being strictly for the Legislature. The Court observed that it is only when the laws violate the Constitution that it can declare the same to be unconstitutional or otherwise, even in cases where there are adverse consequences as a result of the legislation. The Court held, however, that the instant case presented a different situation, and that therefore it was obliged to *reverse* the ruling of the Chambers Justice and *deny* the petition and the peremptory writ of prohibition.

M. Fahnbulleh Jones appeared for petitioner. *J. Emmanuel R. Berry* appeared for respondent.

MR. JUSTICE SMITH delivered the opinion of the Court.

These prohibition proceedings grew out of an action of debt by attachment instituted in the People's Debt Court for Montserrado County, Republic of Liberia, by the co-respondent herein, Winter Reisner & Company of West Germany, represented in Liberia by West Coast Enterprises, represented by its general manager, against Kasaykro Corporation, the petitioner herein, defendant in the trial court. The writ of attachment was served and the petitioner's store was attached and closed down by the sheriff.

The general manager of the petitioner corporation thereupon tendered a defendant's bond for the release unto it of the attached property, which bond was approved by the lower court and the store subsequently ordered re-opened and released to the petitioner. For the benefit of this opinion, we quote hereunder the bond, which reads thus:

"DEFENDANT'S ATTACHMENT BOND
"KNOW ALL MEN BY THESE PRESENTS: Whereas a writ of attachment in the above entitled cause of action has been levied on the goods, monies, chattels and properties of the above named defendant, dated the 29th day of October, A. D. 1980, by the sheriff of the People's Debt Court, Montserrado County, and the defendant desires to secure the discharge of the same. NOW, THEREFORE, We, Kasaykro Corporation, represented by its general manager, the above named defendant, Lancelot L. Holder and Henrietta and Edwin Clinton, free-holders and householders within the Republic of Liberia, sureties, do hereby jointly and severally undertake pursuant to law to pay on demand of the above named plaintiff the amount of the judgment which he may recover against the above named defendant, not exceeding the sum named in the writ of attachment herein, namely, the sum of seventy-eight thousand eight hundred thirty-one dollars and twenty-seven cents ($78,831.2'7); and we further jointly and severally undertake that upon the failure so to do, the sheriff shall have the right to seize and sell our property to an amount sufficient to pay such judgment and expenses, without notice, demand, or any further legal proceedings whatsoever.
In witness whereof we have hereunto subscribed our names this 25th day of November, A. D. 1980.
The bond was signed by the general manager of the petitioner corporation, Mamade Cisee, and the sureties named in the bond, and the same was witnessed and approved by the trial judge.

The action of debt by attachment having been docketed, the trial court thereafter heard the case in keeping with the notice of assignment. As shown from the records before us, and con-firmed by counsel for both parties during the arguments, the petitioner corporation was adjudged liable. Judgment was accordingly entered but no appeal was announced therefrom. A bill of costs,

which included the amount of the judgment plus six (6%) percent interest, totalling $55,706.82, was prepared and presented to the parties, taxed by them, and approved by the trial judge. When the bill of costs was presented by the sheriff for payment, the petitioner corporation failed to satisfy the judgment. The sheriff accordingly made returns to that effect. A writ of execution was thereupon prayed for and the same ordered issued by the trial court. Upon service of the writ of execution, the petitioner corporation failed to show property to be seized in satisfaction of the writ of execution; consequently; the general manager of the petitioner corporation, who had filed the defendant's bond on behalf of the petitioner corporation, for the release of the attached property, was arrested by the sheriff and brought before the trial court. However, before the court could order the issuance of a commitment for his imprisonment, a petition for a writ of prohibition was filed in the Chambers of this Court before the Justice presiding.

The petitioner contended in its petition and argued before us that an officer of a corporation, under the statute controlling, cannot be held personally liable for the debts of the corporation; that under our statute, no person shall be imprisoned by a court for non-satisfaction of a money judgment, and that a bond having been executed by the defendant, it was a wrong procedure for the trial court to contemplate the imprisonment of the general manager of the corporation without an application for the foreclosure of the bond. Petitioner cited for reliance the Associations Law, Rev. Code 5: 2.6 and the Civil Procedure Law, Rev. Code 1: 44.1. These citations read as follows:

"Unless otherwise provided by law, the directors, officers and shareholders of a foreign or domestic corporation shall not be liable for the corporation's debts and obligations." Associations Law, Rev. Code 5: 2.6.

"A person shall not be arrested or imprisoned for disobedience of any money judgment or order requiring the payment of money except for money judgments enforceable by punishment for contempt under Sec. 44.71(3) or by imprisonment under Sec. 44.7(2) if execution is not satisfied." Civil Procedure Law, Rev. Code 1: 44.1.

Let us see what these exceptions are, under Section 44.71(2) and (3). Section 44.71(2) and (3) read as follows:

(2) JUDGMENTS ENFORCEABLE BY IMPRISON-MENT IF EXECUTION IS NOT SATISFIED. Judgments in any of the following actions shall be enforceable by execution, but if the judgment debtor cannot or will not pay the full amount of the judgment together with interest

and costs, the sheriff shall arrest him and the court shall order him imprisoned for a period sufficiently long to liquidate the full amount of the judgment, interest, and costs at the rate of twenty-five dollars per month.

(1) Adultery;

(2) Seduction of a wife or child;

(3) Illegal taking away or habouring a wife or child or ward under twenty-one years of age;

(4) Enticing an incompetent away from his legally appointed trustee or guardian, or

(5) Injury to the reputation when the words spoken or written are actionable *per se.*

"(3) MONEY JUDGMENTS ENFORCEABLE BY CONTEMPT. Any of the following money judgments may be enforced by contempt proceedings: (1) against a trustee or a person acting in a fiduciary relationship for the payment of a sum of money for default or dereliction of his duty, or (2) for the support of a wife, child, or other dependent.

The co-respondent corporation, in its returns to the petition, and as argued by its counsel before us, contended that the trial court did not proceed by a wrong rule in the enforcement of its judgment, and that prohibition would therefore not lie; that a writ of execution having been served on the petitioner corporation and no property having been shown to the sheriff to be seized under the writ of execution, the court acted legally when it ordered the arrest and imprisonment of the general manager of the petitioner corporation who had executed petitioner's bond for the release of the attached property to him, and which he later disposed of by sale, with a view of rendering the enforcement of the lower court's judgment ineffectual.
Our distinguished colleague, Mr. Justice Morris, heard and granted the petition and directed that the trial court proceed in keeping with the terms and conditions of the bond filed and in consideration of the laws he had cited. Both parties excepted to the ruling of the Chambers Justice and have appealed to the Bench *en banc*, on separate issues.

The petitioner excepted to the ruling of the Chambers Justice as stated in the last paragraph of said ruling, and appealed therefrom. That portion of the ruling reads, as follows:
"In the light of the facts aforementioned and the laws cited, we hold that the petition being sound and in keeping with law, same is hereby granted. But the lower court is ordered to proceed a in keeping with the terms and conditions of the attachment bond filed before it in consideration of the laws cited. The lower court is not precluded from disposing or determining any issues which the respondent may legally raise before it to bring this action to finality as provided by statute and the laws controlling."

Counsel for the petitioner argued that the Chambers Justice, having granted the petition, should not have concluded that the trial court enforce the judgment under the terms and conditions of the petitioner's bond. By this contention, this Court assumes that petitioner is saying that the general manager of the petitioner corporation, who executed the bond and to whom the attached property was released under the terms and conditions of said bond, should not be held responsible for the obligation of the petitioner corporation.

It should be noted that in this case the writ of attachment was served on the petitioner and its store was attached and closed down by the sheriff. The general manager of the petitioner corporation sought to have the trial court discharge the attachment, and, therefore, tendered a bond, which was approved by the trial judge and the attached property released to him. We have already quoted the bond in this opinion.

Under our statute on attachment, a defendant whose property has been levied upon under an order of attachment may move, upon notice to the plaintiff and the sheriff, for an order discharging the attachment as to all or a part of the property upon payment of the sheriff's fees and expenses. On such a motion, the defendant shall give a bond in an amount equal to the value of the property sought to be discharged, that the defendant will pay to the plaintiff the amount of any judgment which may be rendered in the action against him, not exceeding the amount of the bond. Civil Procedure Law, Rev. Code 1: 7.26. By executing the bond in the attachment proceedings and releasing the attached property to him, upon the terms and conditions of the bond, the general manager had obligated himself as principal, undertaking to perform an act by virtue of the bond. A bond is a written obligation--a contract in which one binds himself and his heirs, executors, administrators to pay a certain sum of money to another at a day appointed. BLACK'S LAW DICTIONARY 224 (4th ed). The general manager of the petitioner corporation having bound himself as a principal to the Republic of Liberia and having received the attached property of the petitioner corporation, which had been attached and held as security to satisfy the judgment should the co-respondent company be entitled to judgment, he cannot escape liability under the terms and conditions of his bond.

The object of a bond in civil cases is either directly or indirectly to secure the payment of a debt or the performance of some other civil duty. 8 AM. JUR. 2d., *Bail and Recognizance,* § 3. It is therefore the considered opinion of this Court that the Chambers Justice was quite in place when he directed the enforcement of the terms and conditions of the defendant's bond in keeping with the controlling law. We therefore confirm the conclusion and ruling of the Chambers Justice and overrule petitioner's contention in the premises.

The respondents, for their part, excepted to that part of the Chambers Justice's ruling which dealt with and related to the imprisonment of a person for money judgment only in contempt and other causes, but not including debt action. Civil Procedure Law, Rev. Code 1: 44.1. Counsel for the respondents argued that this statute referred to is repugnant to good government as it provides no protection and security for the business community. The learned counsel argued further that under the statute, where a judgment debtor fails to satisfy a money judgment and also fails to show property to be levied upon under a writ of execution, the court is rendered powerless to act in such a situation. He noted that in such a case, there exists no other remedy to satisfy the judgment and that the judgment creditor has no further means to resort to recover against the judgment debtor.

The argument of counsel for respondents is not that the statute is in conflict with any constitutional provision; rather, his contention is that the provision of the Civil Procedure Law, Rev. Code 1: 44.1, is repugnant to good government, and should therefore, by the opinion of this Court, be declared inoperative.

There seems to be some merits to the contention of counsel for respondents, in that, by this statutory provision, the court is rendered powerless while the judgment creditor is left on the stage of being the loser, in a case where the judgment debtor fails to satisfy the judgment and to show property to be levied upon under a writ of execution. But has this Court any authority and power to declare a statute inoperative simply because it is said to be bad? Our answer is, no. This Court can only construe a statute to find the legislative intent; and, unless a statute is contrary to the Constitution and the constitutional question is squarely raised, the Supreme Court is without power and authority to declare such a statute inoperative.

Mr. Justice Pierre, speaking for the Court in the case *George v. Republic*, 14 LLR 158 (1960), text at 159, said:

"This Court has no authority to extrapolate the intent of the Legislature beyond the specific wording of a statute. This limitation is all the more mandatory where the statute in question specifies the only manner in which an act is to be performed. Our law does not give us authority either to add to or take from what the Legislature has commanded, unless the said command breaches provisions of the Constitution (in this case any PRC Decree); and in such case the constitutional issue must be raised squarely."

Judicial construction of Liberian statutes is constitutionally restricted to determination of legislative intent as stated by the statutes themselves. *Koffa v. Republic*, 13 LLR 232 (1958). 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, 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. The fact that the true construction of a statute may generate harsh consequences cannot be the basis for influencing the courts in administering the law. The responsibility for the justice or wisdom of legislation rests with the Legislature. It is the province of the courts only to construe, and not to make laws. 25 RCL, *Statutes,* §§ 216-218, pp. 960-964.

In the present regime, the legislative and executive powers are vested in the People's Redemption Council, which has the authority, in the exercise of its legislative powers, to determine whether a statute is unjust and repugnant to good government and that such statute does not protect the business community, as advanced by counsel for the respondents.
The Rules and Regulations for the Governance of Debt Courts in the Republic of Liberia, published by authority on June 30, 1966, with respect to execution and enforcement of judgments, states that:

"Upon the rendition of final judgment against either party to the action and no appeal prayed for and granted, the judge of the court shall immediately order the clerk to issue a writ of execution for the enforcement of said judgment in the same manner before the circuit and other subordinate courts of record."

Because this rule of the debt courts says nothing as to the steps the court should take in case the execution ordered by the court is not satisfied, it leaves the judgment creditor unprotected and the court powerless to act any further. This Court not having any authority to declare the statute inoperative or to legislate laws, it is also our considered opinion that the contention of the respondents should not be, and the same is not sustained.

It is also the considered opinion of this Court that the ruling of the Chambers Justice, being in accord with the law extant, the same is hereby confirmed and affirmed with costs against the petitioner. And it is hereby so ordered.

Our distinguished colleague, Mr. Justice Mabande, will read his dissenting opinion.

MR. JUSTICE MABANDE *dissenting.*

According to the records certified to this Court, Kasaykro Corporation, represented by its general Manager, was sued by a fellow corporation, Winter Reisner and Company, for debt arising out of a business transaction. The debt action was by attachment. The defendant corporation, now petitioner, issued an attachment bond as required by statute, and the attached property was released to the defendant corporation. The defendant corporation lost the case and judgment was rendered against it. It was then ordered to satisfy the judgment, but there was not sufficient capital to do so. The manager of the defendant corporation, instead of the defendant corporation itself, was arrested and sought to be imprisoned for the payment of the defendant corporation's debt, for which reason these prohibition proceedings were instituted.

I have voted contrary to the majority holding for the reason that the fundamental problem presented by this controversy was brushed aside by the majority.

The principal issue genuinely decisive of the case is whether a person who accepts employment as a manager or officer of a company may *ipso facto* become personally responsible for the liabilities of his employer.

The artificiality of the corporate personality is cognizable by our law and general principles of law. Our law confers on any corporation the entitlement of a legal personality, and vests in it the authority to enter our courts and to sue or be sued as if it were an individual. This doctrine of corporate legal personality confers on a corporation the power and rights to function within our Republic and assume all liabilities as if it were a physical being. This is what our law says:

"Any corporation, domestic or foreign, has the capacity to sue or be sued in Liberian courts, subject, however, to the provisions of the Associations Law; and any registered cooperative society has the capacity to sue or be sued in Liberian courts, subject, however, to the provisions of the Associations Law, Rev. Code 5: 5.17.

A business entity functions only by and through the representative acts of human beings, but it remains and is in fact artificial and impersonal. Its officers can act or assume responsibilities on no more broader level than the legal functions of the company they represent. Its manager and other officials are, under the law, only special agents or officers in that they may not be compelled to act contrary to their employment agreement with their artificial employer. Such representatives cannot become personally liable for liabilities arising out of their legitimate operation of their employer's business transaction. Without protection of the representative functions of a person, society or government itself cannot survive.

In the interest of legitimate business transaction for the prosperity of society and its components, our law, in express words, relieves directors, officials and shareholders of any corporation from personal liability for the corporation’s debt. The law states:
"Unless otherwise provided by law, the directors, officers and shareholders of a foreign or domestic corporation shall not be liable for the corporation's debts and obligations." Associations Law, Rev. Code 5: 2.6.

The defence of a suit against a corporation which involves the engagement of counsel, obtaining witnesses, posting bail and all other judicial documents, are the legitimate duties of a manager of a corporation. These duties impose no personal liability on any officer of a corporation. He cannot therefore be held personally responsible for any liability of his employer for his legitimate transactions relating to the employer's business.

The manager now held liable for the debt of his employer company never assumed orally or in writing, even by the processing of the bond, any personal liability for his employer. The manager was never personally sued and served with summons. He had no day in court as an individual. The decision of the majority, holding him personally liable for the debt of his employer corporation, clearly deprives him of his right to due process of law.

A bond is a contract, as correctly held by the majority, and one who neglects his responsibility under a contract, no matter what its terms may be, is answerable for his breach before a court of law before he can be compelled to perform the obligations assumed or to pay damages in a sum certain. A party is liable for the breach of a contract to the extent and capacity of his pledge and representation. The binding concept of law that has held people, nations and organizations in the performance of their duties, has today been dethroned by the majority opinion.
I disagree with the principle of law advanced by the majority as it does not have the support of the facts of the case as presented by the records before us. Moreover, our law is clear on the issue. It states:

"A defendant whose property has been levied upon under an order of attachment may move, upon notice to the plaintiff and the sheriff, for an order discharging the attachment as to all or a part of the property upon payment of the sheriff's fees and expenses. On such a motion, the defendant shall give a bond, in an amount equal to the value of the property sought to be discharged, that the defendant will pay to the plaintiff the amount of any judgment which may be recovered in the action against him, not exceeding the amount of the bond. Civil Procedure Law, Rev. Code 1: 7.26.

Kasaykro Corporation was sued and its property was levied upon. The individual employee general manager was not sued and no property of his was levied upon. The statute further says that the defendant shall give a bond. The individual general manager was not the defendant. Therefore, legally, he could not have given the bond required by the statute. The bond itself specifically stated that Kasaykro Corporation was represented by its general manager. Hence, the law relied upon and the facts of the case are not applicable to the rule of law pronounced by the Court.

The Civil Procedure Law, Rev. Code 1: 44.71(2) and (3), relied upon by the majority opinion, read thus:

"(2) JUDGMENTS ENFORCEABLE BY IMPRISON-MENT IF EXECUTION NOT SATISFIED. Judgments in any of the following actions shall be enforced by execution, but if the judgment debtor cannot or will not pay the full amount of the judgment together with interest and costs, the sheriff shall arrest him and the court shall order him imprisoned for a period sufficiently long to liquidate the full amount of the judgment interest and costs, at the rate of twenty-five dollars per month:

(a) Adultery;

(b) Seduction of wife or child;

(c) Illegally taking away or harboring a wife, or child, or ward under twenty-one years of ago;

(d) Enticing an incompetent away from his legally appointed trustee or guardian; or

(e) Injury to the reputation when the words spoken or written are actionable *per se.*

"(3) MONEY JUDGMENTS ENFORCEABLE BY CONTEMPT. Any of the following money judgments may be enforced by contempt proceedings: (1) against a trustee or a person acting in a fiduciary relationship for the payment of a sum of money for a default or dereliction of his duty; or (2) for the support of a wife, child, or other dependent."

Section 44.71(2) is for the enforcement of a judgment obtained in cases involving adultery, seduction of wife and related cases for which the judgment debtor should be imprisoned if execution is not satisfied. But none of the acts enumerated in the law is in issue in the debt case. Furthermore, they are acts that cannot be committed by a company. Section 44.71(3) is for the enforcement of money judgment against an individual by contempt proceedings. In the instant case, Mamadee Saysay, the general manager of Kasaykro Corporation, was never a party to any suit; hence, no money judgment could lie against him. The section of the law in issue is clearly intended for money judgment arising out of suits for the support of a wife, child, or dependent, or for payment of a sum of money for the default of a person in supporting his dependents, if the contemnor holds a sum certain in trust for the party liable. The facts of the instant case have no relevance to the type of cases expressly outlined by the Civil Procedure Law.

In *Frank Rizzo, Inc. v. Alatsas*, 27 NJ 400, 142 A2d 861, it was held that the personal liability of corporate officers for the obligations incurred by the corporate entity in the usual course of its business transactions is outrageously inconsistent with the existence of the doctrine of body

corporate at common law, especially as such law emanates only from some positive law which does not exist in this **land**.

Also in the case *Nunnelly v. Southern Iron Company*, 94 Tenn 397, 29 SW 361, it was held that when a person fairly and in good faith enters into a contract with a corporation through its agent, representative or officer, no liability can under any circumstance attach to such officer or agent on account of that contract unless he intentionally and expressly so stipulated.
Because of these rules of law and the facts of the case, I have refused to endorse the majority opinion. I am still of the conviction, supported by the law, that acceptance of employment as a director or officer of corporation does not disrobe a person of his representative capacity and impose on him personal liability for the legitimate acts of his employer. To so hold is to destroy all concepts of representative or agency in the transaction of all businesses. I therefore dissent.

Bingham v Oliver [1870] LRSC 1; 1 LLR 47 (1870) (1 January 1870)

RICHARD BINGHAM, Plaintiff in Error, vs. **JOSE B. OLIVER**, Defendant in Error

[January Term, A. D. 1870.]

Appeal from the Court of Quarter Sessions and Common pleas, Sinoe County

General issue—Special plea—Lease to aliens—Ejectment.

1. Where a special plea is pleaded the defendant is not allowed to argue points of law raised in the general issue, but must confine himself to the defense set up in the special plea.

2. A contract made with an alien for the lease of land granted a settler under the Immigrant Allotment Act before title to same has been perfected, is void.

3. Plaintiffs in ejectment must recover upon the strength of their own title and not upon the weakness of the defendant's title.

4. A lease to an alien for ninety-nine years is an evasion of the prohibition of the Constitution and therefore unconstitutional. A lease of land to an alien for a term more than twenty years is against the Constitution and public policy, and is therefore void.

It is the opinion of this court that the court below erred in allowing the plaintiff in error to plead the law points that were raised in the general issue and not to rely on his special plea. When the general issue is waived, all the law advantages involved in it are also waived but the one relied on; and the party is therefore compelled to rely on his special plea to sustain his position. A contract made with an alien for the lease of lands apportioned to a settler is in violation of a prohibitory clause of the statute of this Republic which in positive language declares that no bargain, transfer, sale, deed or lease of lands by or with the grantee of lands for the same, before a legal and complete title in fee simple has been obtained, shall be valid or lawful.

The transaction which took place between plaintiff in error, and on which this law is brought to bear, is peculiar,no doubt if all reports of cases in the world were searched, you would not find a similar one. In this case the plaintiff in error has drawn a town lot in the city of Greenville, Sinoe County, and before he made the necessary improvements required by law to entitle him to a deed in fee simple, he contracted with the defendant in error to lease to him, the defendant in error, in consideration of forty-five dollars paid to the said plaintiff in error for the lease of the said lot of land No. 1202, for the term of ninety-nine years; and in order that the said plaintiff in error should be made competent to transfer the said lot of land to him, the said defendant in error, he, the said defendant in error, promised and did make the improvements required by the statute respecting the improvements of the land, by which the said plaintiff in error obtained a deed in fee simple from the government. This being done, the plaintiff in error (as alleged) having refused to comply with his part of the contract, the defendant in error brought this action of ejectment in the court below, to which the plaintiff in error pleaded in defense the statute prohibiting all bargains, transfers, deeds or leases, before a legal and complete deed in fee simple had been obtained. The defendant having obtained a judgment in the court below, the case on a writ of error is before this court to be decided.

The statute is plain, and needs but little said by this court by way of interpretation thereof. However, as duty makes it incumbent upon me, I proceed to do so. The bargain made between plaintiff in error and defendant in error is void, and the plaintiff in error is not bound by it. The bargain, however, being unlawful as it relates to both parties, the deed which is the offspring, or in other words the resultant of the said bargain, vitiates itself. Therefore, the plaintiff in error does not acquire a legal and complete "title" to the said lot No. 1202, by said deed thus obtained. The plaintiff in error being imperfectly in possession of the said lot, however, the improvement made thereon passes imperfectly with the said lot of land, because in an action of ejectment the plaintiff must recover upon the strength of his own title and not upon the weakness of the defendant's title.

The next point to which the plaintiff in error resorted for his defense, is that an alien cannot hold real estate either by lease or otherwise under the Constitution of the Republic of Liberia. To hold real estate under the authority of the Constitution of Liberia means to be absolutely possessed of lands in Liberia ; hence, to have the exclusive right to it, and to disposing of the same. A lease held under the Constitution with respect to aliens in treaty stipulations with Liberia extends to mere chattel right; that is, the lessee can only hold the right of the use of the land and tenement. But he cannot bring an action of ejectment for lands, although he may be ejected any time after a year's notice had been given him to move off any land rented or leased by him. Notwithstanding an alien cannot bring an action of ejectment for lands, yet he may recover damages for any injury sustained by reason of the violation of any contract for the use of the land.

A lease of land to an alien for ninety-nine years is an evasion of the prohibition of the Constitution, and it is therefore unconstitutional. To constitute a good lease the term should not exceed twenty years, and the rent should accrue to the lessor annually. The lease of land to an alien for more than twenty years is against the Constitution and public policy, and therefore is void. For the Constitution prohibits an alien from even an imaginary claim to land, and therefore the law will not give aid to it, however much it may be disguised. If a wife join with her husband in a deed, her separate estate, as well as her husband's, will become liable for the warranty, because deeds and other writings are evidence against all parties to them. Therefore a wife may not join in a deed with her husband, since the letter and spirit of the Constitution is to keep their property separate and distinct, so far as the rights of the wife are concerned. Therefore to recover lands wrongfully detained, unless the liability of the wife to the plaintiff is clearly defined, either by law or set out in the deed, it is not necessary that the action be brought against the husband and wife jointly.

Therefore, the court adjudges that the judgment of the lower court be reversed, and that the original deed for the land, lot No. 1202, as described in the complaint of said defendant in error, is hereby vitiated and made void and of no effect; and as the plaintiff in error is in the imperfect possession of the said lot No. 12oz in the city of Greenville, all and singular the buildings and improvements on said lot passes and follows the imperfect possession of the said plaintiff in error ; and that the defendant in error pay all costs incurred since the appeal had been taken.

Clark v Barbour [1909] LRSC 1; 2 LLR 15 (1909) (10 February 1909)

JOHN CLARK, Appellant, v. **A. J. BARBOUR**, Defendant.

1. Courts will only decide upon issues joined between the parties specially set forth in their pleadings.

2. Matter of defense not set up in defendant's plea shall not be allowed.

3. Notice should be given by one party to the other of all matters of fact or law relied upon in prosecuting an action.

4. In an action of trespass it is not error in a court to refuse to determine question of ownership by evidence of a deed which merely proves the title of a privy of one of the parties.

5.Partitioners appointed by the court to apportion certain premises between joint owners, not making return of their doings to court do not defeat individual rights of parties to partition voluntarily by mutual releases and conveyances.

Damages for Trespass. On appeal from the Court of Quarter Sessions and Common Pleas for Sinoe County.

This case comes up on a bill of exceptions to the rulings and final decision of the Court of Quarter Sessions and Common Pleas, Sinoe County.

The appellee or plaintiff below brings action (see complaint) for an alleged trespass upon and damages to her property by the defendant, now the appellant. At the trial below the plaintiff recovered from the defendant the sum of $10 and all costs. To which judgment the defendant excepted and perfected an appeal to this court of final decision.

During the trial of this case before us, we noticed that there were urged many points not founded in the appellant's plea, and to allow them would mislead the court into deciding upon issues not joined between the parties. The statute requires that a complaint contain a distinct and intelligible statement in writing of a sufficient cause of action within the scope of the form of the action

chosen. The statutes also require that an answer, or in other words the plea, of a defendant be a full and sufficient answer or plea to the complaint or to such part of it as it professes to answer. That a *defense* not set up in the defendant's plea, should not be allowed, because the fundamental principle upon which pleadings are conducted is that of giving notice to parties of all matters of fact or law relied upon in the defense: hence the defendant should plead in such a manner as would present a triable issue, since the dispute between the parties should be set forth in the pleadings.

Carefully examining the pleadings in this case, the defendant below defends the alleged trespass by alleging that he is the owner of lot No. 39 upon which the trespass is said to have been committed, and offered as evidence the deed of his father. The appellant excepted to the court's not giving final judgment in his favor upon the evidence of his ownership to lot No. 39 referred to in the complaint as well as in the deed. This deed has had the careful consideration of this court and we find it only the evidence by which the surviving heirs of the late John Clark, of Sinoe holds lot No. 39. The court did not err when it refused to settle the ownership of the appellant on that evidence.

Before this court, it was strongly urged that there being no evidence of a partition of this lot between the heirs of John Clark, no one of the heirs could recover against another for trespass. Examining the evidence in this case we find that the surviving heirs of the late John Clark, four in number, applied to the Court of Quarter Sessions and Common Pleas, Sinoe County, in the exercise of its equity jurisdiction to appoint partitioners to divide said lot No. 39 between them: this was granted and partitioners appointed. The records show that the partitioners reported to said court that the property was partitioned as per request of the parties. The evidence further shows that the appellee erected a fence separating that which was known as her part of the lot from that of the appellant. Referring to the evidence, witness Lymas states that he saw on the day named in the complaint the appellant Clark, standing on *his part* of the lot sawing on the line fence between himself and appellee. Witness Grisby states as follows : "there is a fence separating the dwellers on this lot." Witness Rose **Barbour** states as follows : "The fence on lot No. 39 was built by appellee, A. J. **Barbour**."

This brings us to consider whether or not the sawing of the fence was justifiable, because the record fails to show that the partition of the property was not confirmed by the court.

It is the opinion of this court that the returns of the partitioner not being made to the court below do not defeat the individual rights of parties. (See Bouv. L. D., vol. 1, p. 365.) "Voluntary partition—that made by owners by mutual consent—is effected by mutual conveyance or release to each person which he is to hold." (See U. S. Digest, New Series, vol. 1, p. 42—Partition by act

of parties) : "Where a partition of land is made between tenants in common and each accepts his part, goes into possession and makes improvements, it is a good partition even though it may never have been the judgment of a court." Carefully examining the trial of this case below, this court fails to see that substantial justice has not been done.

Wherefore, the judgment of the court below is confirmed, appellant paying all legal costs and charges. The clerk of this court is hereby ordered to issue a mandate to the court below as to the effect of this judgment.

Given under our hands this 10th day of February, A.D. 1909.
By the Court.

White et al v Steel et al [1909] LRSC 4; 2 LLR 22 (1909) (10 February 1909)

M. E. WHITE, **AARON PAGE**, **MOSES N. WILLIAMS**, Appellants, v. **WARREN STEEL and LUCINDA STEEL**, his wife, formerly Lucinda Sevier, **George Lewis** and **Pauline Lewis**, his wife, formerly Pauline Sevier, **Foster Smith** and **Mary Smith**, his wife, formerly Mary Sevier, **Francis Gould** and **Grace Smith**, formerly Francis and Grace Sevier, Appellees.

1. Oral evidence can in no case be received as equivalent to, or as substitute for written instrument.

2. Whatever character of defendant's title plaintiff in ejectment must show some title.

Ejectment. On appeal from the Court of Quarter Sessions for Montserrado County.

This action was traversed before the Court of Quarter Sessions and Common Pleas for Montserrado County at its March term, A.D. 1908, and is brought before this court on a bill of exceptions for review.

The action was brought by appellees to recover possession of lot No. 33, situated in the Town of Marshall, Montserrado County, the appellees claim title to the premises referred to on account of heirship, and introduced as written evidence a deed from the administrator of E. W. Wright's Estate to Hannah J. White, dated October 29th, 1875.

This court discovers from the records that on the 28thday of November, A.D. 1892, Hannah J. White, for the consideration of a sum of money conveyed the property of Julius C. White on the 10th day of December, A.D. 1892, as will appear by the copy of conveyance in the records.

The appellees in the examination of oral testimony at the trial, endeavored .to establish the existence of a will. It is the opinion of this court that oral evidence can in no case be received as equivalent to, or as a substitute for, a written instrument, for by so doing oral testimony would be admitted to usurp the place of evidence decidedly superior in degree.

This court is at a loss to know why it is that this action to recover the possession of realty was not backed up by strong proof as the title right. In ejectment parties claiming title to property whether by descent, purchase or otherwise, must show title, and that same has lawfully come to them, no matter how weak the defendant's title may appear. This has been remarked by this court in previous cases of ejectment. It is clear that appellees produced nothing in the court below to show title to the premises in question, but set up a plea in reference to the inability of Thomas J. White to contract, being a minor, (as they alleged) but according to the records that fact was not sustained. One witness saying he was under age and another that he was 22 years old. Upon the whole this court fails to see upon what grounds the court and jury below predicated their conclusion.

The court therefore reverses the judgment of the lower court and rules appellees to cost. The clerk of this court is commended to issue a mandate to the court below to the effect of this reversal judgment.

Given under our hands this 10thday of February, A.D. 1909.
By the Court.

ohns v Witherspoon et al [1946] LRSC 3; 9 LLR 152 (1946) (10 May 1946)

WILLIAM A. JOHNS, Heir of the Late Honorable J. J. W. JOHNS, Appellant, v. WILLIAM N. **WITHERSPOON**, Appellee, GEORGE JOHNS, Relator.
APPLICATION FOR LEAVE TO INTERVENE.

Argued April 18, 1946. Decided May 10, 1946. 1. 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. 2. The rights of no one shall be concluded by a judgment rendered in a suit to which he is not a party.

On application by relator for leave to intervene in an ejectment action, application denied.

William A. Johns for himself.
William N. **Witherspoon** for himself. B. G. Freeman for relator.
MR. JUSTICE BARCLAY delivered the opinion of the Court. George Blackstock A. Johns filed an application for leave to intervene in an ejectment suit. Said application was based on the following allegations contained therein : The late J. J. W. Johns of Greenville, Sinoe County, died some years ago leaving a last will and testament in which he devised to his son, the relator, lots Number 395 and 396 situated in the city of Greenville, Sinoe County. On November 25, 1932 relator mortgaged said premises to the Oost Afrikaansche Compagnie of Monrovia, Liberia through one Ahamadu Varfee Sirleaf for the sum of £1754.10. Relator shortly thereafter left Liberia and did not pay the loan and thereby redeem the mortgaged premises which should have been done in 1938, the due date for payment of the mortgage debt.

Subsequently, relator still being absent, the said Oost Afrikaansche Compagnie through the said Ahamadu Sirleaf sold said mortgaged premises without foreclosure of same to William N. **Witherspoon**, whereupon one William A. Johns, a half brother of George A. Johns, petitioner, believing the property to be a homestead and therefore claiming an interest therein, commenced an action of ejectment against **Witherspoon**. This case is now before us on the appeal of William A. Johns. It was after arguments had been submitted in that case that relator filed a petition entitled, "Petition for leave of Court to show Rightful Title to Property in Dispute," submitting to the Court therein that the property, the subject of the action of ejectment, belonged to neither of the contending parties, but to him. Attached to said application and made a part thereof were several exhibits, namely, a copy of the last will and testament of relator's father, the late J. J. W. Johns, a copy of the agreement of mortgage, and a copy of the deed. Copies of the petition with exhibits were served on the contending parties who both filed resistances thereto. Relator in his argument contended inter alia that the right to intervene in the case is a legal right granted him under the law to protect his interest in the subject matter of the case, especially so since at the commencement of the case in the court below he was not within the jurisdiction of the Republic and it was impossible for him to have known of the institution of said case. Having returned to the Republic and learned of the case still pending before this Court, relator felt that it was his duty in the protection of his rights to bring to the notice of the Court the information about his title and claim to the ownership of the property in dispute, rather than to sit dormant and be charged thereafter with laches. Hence he prayed for judgment in his favor. Although in law under certain circumstances a third party may be permitted to intervene in a case pending

in a court prior to a rendition of the judgment where his rights and interests will be materially affected and although this Court set the precedent for such permission in Childs v. States, [1934] LRSC 18; 4 L.L.R. 138, 1 New Ann. Ser. 139 (1934), nevertheless in this case 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, did not have his day in court, and is not represented in said case. In the case Tubman v. Murdoch, [1934] LRSC 26; 4 L.L.R. 179 (1934) which involved an application to vacate a writ of execution, Chief Justice Grimes, speaking for the Court, declared: "This principle, so settled by our own Supreme Court twenty-six years ago, is so much in harmony with the rule in vogue in all other jurisdictions the decision of which are available to us, that we could well refrain from citing other authority. But the language of the following makes the position, clear as it is, so much more plain that we have decided to add it. It is this: " '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. A judgment rendered against a party who is brought in by motion as a defendant after the trial is concluded is erroneous as to such party.

" 'A court cannot render a valid judgment in favor of a party who is not before the court and is not represented in any manner in the action.' Ency. of P1. and Prac., 842-843." Id. at 184. We are consequently of the opinion that it would be improper for us to grant the prayer of the said petition, and are leaving relator to pursue the proper legal or equitable remedy in the court below, if he so desires, for the protection and recovery of his rights, interests, and property. The petition is denied with costs against relator ; and it is hereby so ordered. Application denied.