THE ORIGINAL AFRICAN HEBREW ISRAELITE FOUNDATION OF LIBERIA, represented by its Director, LEONARD OWENS, Appellant, *v.* **FRANCIS H. LEWIS** & his wife, EVA LEWIS, Appellees.

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

Heard: June 4, 1984. Decided: June 28, 1984.

1. One cannot convey title to real property in fee simple and at the same time execute a conditional lease agreement for the same property.

2. In order for the court to allow the testimony of a witness, the evidence sought to be introduced by such testimony must have a tendency to establish the truth or falsity of the allegations or denials of the parties, or it must be related to the extent of the damages.

3. An answer which is general in its character and which does not raise especially some question of law precludes the defendant from raising legal questions and the court from deciding same at the trial. Courts of justice will only decide questions of law when properly raised in the answer and pleadings.

4. There are no pure issues of law that a court can properly decide in isolation of facts that are denied generally or specifically.

5. The reading of a mandate from the Supreme Court in the lower court during the absence of one of the parties is considered a harmless error as long as such action does not affect the substantial rights of the absent party.

6. There are sufficient grounds for cancellation of a lease or deed for real property when either instrument was obtained through misrepresentation, deceit, and fraud.

The appellant, by and through its representative, Mr. Leonard Owens, negotiated an agreement with the appellees for 153.9 acres of land containing seven unfinished concrete buildings, to be used to operate a school. The appellees requested that the appellant prepare the lease agreement and return same for their signatures, specifically requesting that the document indicates that the premises will only be used as a school, and that the enrollment at any time will not be less than 300 students. Shortly thereafter, the appellant returned and asked the appellees to give him a copy of the original deed as he needed it to draw up a map

of the premises and enclose only the portion of the premises containing the buildings. The appellees gave the appellant the deeds. This was in August 1981. Appellant did not return with the prepared documents until February 1982, whereupon he presented the documents to the appellees for signatures. It is noteworthy that during the interim the appellees contend that a member of the appellant's church gave them incense which they burned all night, only to find out later that the incense caused appellees to experience a feeling similar to a drug induced stupor, information which was not denied or challenged by the appellant. The appellees reluctantly signed the documents and learned later that they had signed both a land grant in fee simple, as well as a long term lease agreement for the same real property. The appellees subsequently filed a lawsuit to cancel both instruments.

In its bill of exceptions, the appellant contended that appellees, having signed both instruments, should be *estopped* from what amounts to repudiation of their own acts. The appellant further contended that (1) it was not present during the reading of the mandate pursuant to a prior hearing of this matter before the Supreme Court; (2) that it was denied a motion for continuance to allow the return of one of its witnesses, Henry Lavala, who would have testified that he introduced the appellant and appellees; and (3) that the court committed several "prejudicial and illegal acts" which the appellant did not specifically name.

The Supreme Court found, however, that both the warranty deed and lease agreement were obtained by misrepresentation, fraud and deceit practiced by the appellant against the appellees. Therefore, the lower court's decision to cancel the instruments was *affirmed*.

Octavious Obey appeared for the appellant. *Logan Broderick* and *S. Edward Carlor* appeared for the appellees.

MR. JUSTICE YANGBE delivered opinion of the Court.

This appeal emanates from a proceeding instituted in the Civil Law Court, Sixth Judicial Circuit, Montserrado County, by Francis and Eva Lewis against a group of Negroes from America called the Original African Hebrews Israelite Foundation of Liberia, by and through its director, Leonard Owens. This matter involves the cancellation of a warranty deed and a land grant agreement allegedly signed by the appellees, transferring in fee simple and a conditional lease 153.9 acres of land to the appellant on grounds of fraud.

The evidence adduced in this case and certified to this Court on appeal reveals that in May of 1981, or thereabouts, the appellees were approached by appellant, Leonard Owens, about the latter's intention to establish a Christian Missionary School in Liberia and a proposal to complete the seven (7) unfinished concrete buildings on the appellees' Kakata rubber farm,

provided appellees would execute an agreement granting the appellant Foundation the exclusive right to manage, control and operate a school on the premises. The records further show that Mr. Owens made certain representations to the effect (a) that his organization would operate the school as a Christian educational institution, as intended by appellees and, (b) that the enrollment of the institution will consist of no less than three hundred (300) students from all walks of life. In total reliance upon such representations made by Mr. Leonard Owens, and being anxious to see the completion of the project on which they had invested well over Three Hundred Thousand Dollars ($300,000.00) of hard-earned money, the appellees agreed to lease their property. It was then tentatively agreed that Mr. Owens would prepare a draft of the agreement and submit it to the appellees for review and signatures. Within a few days after the conversation, Mr. Owens allegedly returned to the appellees' residence and requested for their title deeds to the premises so as to enable him to draw a map of the premises, enclosing only the school buildings referred to above, and this the appellees did. From that day the appellees never laid eyes on Mr. Owens or their deeds for a considerable period of time. During this interim, a member of the Hebrew Israelite Foundation went to the residence of the appellees one evening and gave them a pack of incense which appellees were told to light and burn in their bedroom in order to drive away evil spirits. Co-appellee Francis Lewis testified that after inhaling the incense all night, as they had been told to do, he suddenly became dazed, confused, sick and was hospitalized for eight (8) consecutive days trying to recover from this state of stupor. Immediately upon his discharge from the hospital, and while still suffering from the lingering effects of the drugs allegedly administered to him by the appellant, and not quite of sound mind and memory to enter an agreement, the appellant, Leonard Owens, urged and allegedly influenced appellees to sign the land grant agreement, without giving them the opportunity to read and understand what they were signing, or contact a lawyer. It is important to mention here that the alleged effect of the incense on co-appellee, Francis Lewis, was not denied by the appellant, hence we assumed that same was admitted.

The appellees, believing that the document presented to them by Mr. Owens for signatures was a lease agreement with sufficient consideration (and not a deed of conveyance in fee simple), which had been drawn up in keeping with their strict instructions to him as mentioned above, reluctantly signed the document presented to them by Mr. Owens. Shortly thereafter, the appellees were invited to a grand party given by Mr. Owens where they were photographed by newspaper men, followed with great publicity. But no sooner did the excitement of this publicity subside the appellees heard news that the document they had signed was not a lease agreement but rather a conveyance in fee simple of One Hundred and Fifty Three point Nine (153.9) acres of prime real estate to appellant Owens. Alarmed by this surprising disclosure, and never having signed any transfer deed to their land, the appellees contacted a lawyer for immediate cancellation of the documents. Proceeding was

accordingly instituted by the appellees' counsel. While deciding the issues of law, the trial judge ruled the case to trial to prove the facts stated in their complaint and abated the entire answer of the appellant. After due hearing, the court decreed cancellation of the purported land grant agreement and reconveyance, from which appellant has appealed to us for a final review and decision. Having stated the brief history of the cause of these proceedings, we shall first concentrate on, and pass upon, the alleged errors committed by the court below as raised in the bill of exceptions.

The appellant has argued that the appellees had signed the agreement of lease and warranty deed in favor of appellant and that to cancel the two instruments at the instance of appellees would be tantamount to a repudiation of the appellees' own acts. Under this assertion, the appellant has invoked the doctrine of *estoppels*

Recourse to the answer of the appellant evinces that it is a general denial. This Court held in the case *Williams* v. *John and Allen,* 1 LLR 259 (1824), that:

"An answer which is general in its character and which does not raise specially some questions of law, precludes the defendant from raising legal questions, and the court from deciding same at the trial. Courts of justice will only decide questions of law when properly raised in the answer and pleadings"

In our view, there are no pure legal issues of law that a court can properly decide in isolation of facts that are denied generally or specifically. This is foremost in this case because the allegation of fraud, which is only alleged in the complaint, is predicated solely upon documentary evidence attached to the complaint. In this case, such evidence will consist of the warranty deed and the agreement of lease which can only properly and legally be pleaded before court of justice during production of evidence in order to ascertain and pass upon the probative value thereof. The doctrine of *estoppel,* in our opinion, is synonymous to the theory that no one should be allowed to disavow his own acts. Further-more, the appellant has contended that appellees, having signed the two documents referred to, should not be permitted to question the legal effect of the same. This issue is mixed law and facts, affirmative in nature, and therefore should have been pleaded specifically as such. Civil Procedure Law, Rev. Code 1:9.8 (1) and *Hill* v. *Tetteh*, 2 LLR 492 (1924).

The appellant has also charged that the trial court, placing the appellant on bare denial of the facts alleged in the complaint, prevented the appellant from introducing an affirmative defense.

As we have stated above in this opinion, the appellant, having generally pleaded to the

complaint, was barred from raising any affirmative defense. The court therefore had no choice but to restrict the appellant to the consequence of a general denial which has the same effect as ruling a party on a bare denial.

The complaint contains allegations of fraud allegedly committed by the appellant against the appellees during the procurement of the lease agreement and the warranty deed. The court below therefore correctly ruled same to trial for production of evidence, either oral or written, to be decided by the court alone. *Wilson* v. *Wilson,* 27 LLR 182 (1978). Counts 1 and 2 of the bill of exceptions, as well as count 1 of the brief are therefore not sustained.

In count 2 of the brief of the appellant, it is contended that the court read the mandate in the absence of a summons or notice of assignment served on the appellant and, as a result, appellant claimed it did not have its day in court.

The reading of a mandate from this Court in the lower court is a mere notice to the parties of the instructions of the Supreme Court to the lower tribunal regarding how the case should be conducted. Whilst we are in agreement with the appellant that it should have been previously notified for this purpose, the record in this case shows that only the mandate was read that day and nothing else, and thereafter appellant was served with, and acknowledged a notice of assignment to participate in the hearing of the case as per the mandate. Accordingly appellant was present and did take part during the trial of the case on its merits. Appellant has not indicated what harm it has suffered in consequence of its absence during the reading of the mandate, nor have we been able to gather from the records what substantial right of the appellant has been affected. Therefore, we hold that the error complained of is harmless in nature. Civil Procedure Law, Rev. Code 1:1.5. Count two of the brief is therefore not sustained.

In count three of the brief, as well as counts four and thirteen of the bill of exceptions, the appellant contended that the court below committed a reversible error when the court questioned one of the witnesses and officials of the appellant as follows:
"Tell us when did your organization arrive in Liberia, and what year was it legalized?

Q. Do you have a copy of the Act of Legislature which incorporated you? If so, would you let us have a copy of it?"

The records in this case which we are governed by reveal that these questions were asked on sheet two, the 9th day's jury session, August 29, 1983, June Term, 1983, but no objections were interposed by either party and the questions were answered. Consequently, count three of the brief, as well as count four of the bill of exceptions, have no legal basis as they are not

in accord with section 51.7 of the Civil Procedure Law, Rev. Code 1. These counts of the brief and the bill of exceptions are therefore overruled.

In count four of the bill of exceptions, it is alleged that Mr. Henry Lavala, former principal of Booker Washington Institute, introduced the director of the appellant's company, Mr. Leonard Owens, to Mr. and Mrs. Francis Lewis, the appellees in this case, and that Mr. Lavala was at the time of the trial without the bailiwick of the Republic of Liberia. Therefore, appellant moved the court below for continuance. It is also alleged, in the motion for continuance, that if the desired witness, Lavala, was present within the Republic of Liberia, he would have testified to that effect and, additionally, establish that appellees did sign the two instruments that are the subjects of this case.

Only relevant matters must be testified to in a given case; that is, the evidence must have a tendency to prove what is denied by the parties. Civil Procedure Law, Rev. Code 1:25.4. In this case, the introduction by Mr. Henry Lavala of Mr. Owens to appellees on one hand, and the signing of the agreement and the deed by the appellees on the other hand, were not denied in the complaint. Therefore since they were not controversial issues, they did not require production of evidence, oral or written. Hence, in our opinion, the denial of the motion for continuance is not erroneous. Count four of the brief and counts six and seven of the bills of exceptions are therefore overruled.

We have already passed upon count five of the brief in this opinion regarding the effect of the general denial. However, we reiterate that the questions asked one of the witnesses of the appellant on the direct regarding whether the witness could identify the warranty deed and the agreement, was adroitly intended to introduce the affirmative defense by the appellant, which appellant was precluded from doing by virtue of a general denial in the answer. Counts one and five of the bill of exceptions, together with count eight thereof, are therefore overruled.

The appellant contended in count six of the bill of exceptions that the court committed certain prejudicial and illegal acts during the trial of this case, but without alleging distinctly the points of contentions as intelligent notice to its opponent and for the court to decide. This Court has held in numerous opinions as well as in *Mourad v. O.A.C.,* 23 LLR 183 (1974), *Sampson and Johnson* v. *Republic*, 11 LLR 135 (1952), and *Boakai et al.* v. *Republic,* 13 LLR 400 (1959), that a bill of exceptions should contain distinct allegations setting forth clearly the errors committed by the trial court which are complained against, and this Court should not be left with the burden to search the record to discover the irregularities complained of. However, under the theory that equity looks at the substance and not the forms, having exhausted those counts of the bill of exceptions in this case that are clear to us, we shall now

concentrate on the evidence adduced on both sides, ascertaining whether the allegations of fraud stated in the complaint were proven in the trial court to justify reversion or affirmance of the decree in this case.

One of the prevailing contentions in the record before us is the co-existence of the lease agreement and the warranty deed for the same transaction. Both documents allegedly granted to the appellant the identical parcel of land by the appellees, but with different conditions of conveyance, that is to say, a fee simple conveyance by the warranty deed and a conditional lease agreement containing the following:

"This agreement shall have perpetua1 existence for as long as the foundation maintains a school on the aforementioned premises. In the event that the property shall cease to be used as school, it shall revert to the heirs of the owners. "

During the trial in the court below, a question was asked of one of the witnesses, an official and witness of the appellant, as to what was the significance of the lease agreement in view of the conveyance of the fee simple title to the 153.9 acres of land in favor of appellant. He answered that the grant made in either document was intended as a gift and that both parties agreed to, and believed in, the co-existence of the warranty deed together with the lease agreement containing the proviso quoted herein above. The appellees denied the testimony given by the appellant, asserting that the two documents were irreconcilably inconsistent.

In our view, title to realty cannot be a complete sale and at the same time be a conditional lease agreement.

Mr. Lewis and his wife testified that the parties originally agreed for a lease of the premises occupied by seven concrete buildings but it was never their intention for the fee simple sale of the property, or a portion thereof, to the appellant and never realized that they had signed a deed as well. They were only aware of signing a lease for a valuable consideration. Mr. Lewis also testified that he parted possession with the deed to the property to survey same and to draw up a map thereof. After signing of the lease agreement, Mr. Lewis said he requested a copy thereof but the appellant refused to hand him the copy and promised to give it at a later date. From August 6, 1981, the lease was not returned to him until February 1982.

The appellant testified that the grant of the 153.9 acres of land, for which the lease agreement was executed with the expressed conditions that we have quoted above, together with fee simple conveyance of the identical land by the appellees to the appellant in the same transaction, was intended by the parties as a gift. The questions which arise as a result of this

testimony are, assuming that the testimony is true, are: (a) why wasn't a deed of gift executed instead of a warranty deed, and why was the lease agreement necessary and executed for the same parcel of land by the same parties upon the contingency already specified earlier? (b) What about the testimony of co-appellee Francis Lewis, to the effect that only the area occupied by the seven (7) buildings was intended to be leased. This was the area for which the appellant's representatives, Leonard Owens, requested the deed in order to conduct a survey and draw up a map for said premises. Yet appellant requested and was given the deeds of appellees' entire 153.9 acres of land embracing the entire rubber farm and the residence of the appellees.

Our answer to these questions is only one, and that is, that the deed and lease agreement were procured by the appellant through misrepresentation, deceit and fraud practiced by the appellant against the appellees and which provide valid and sufficient grounds for cancellation of the instruments. *Banks* v. *Hayes*, 10 LLR 98 (1949).

Therefore, we hold that the judgment rendered by the trial court be affirmed.

The Clerk of this Court is ordered to send a mandate to the trial court to resume jurisdiction and enforce its decree with costs ruled against the appellant. And it is so ordered.
Judgment affirmed.