WILHELMINA A. BRYANT, **ELIZABETH H. BRYANT-DIGGS**, by and through her Husband, **J. WINFRED DIGGS**, and **JAMES J. BRYANT**, Heirs of WILLIAM A. BRYANT, Deceased, Appellants, v. **EMMET HARMON**, a Son and Heir of, and Substituting for H. LAFAYETTE HARMON, Deceased, and OOST AFRIKAANSCHE COMPAGNIE, a Dutch Firm doing Mercantile Business in Liberia, by and through its General Agent, J. D. KOPPELAAR, Appellees.

APPLICATION FOR REARGUMENT.

Argued November 7, 1956. Decided February 22, 1957.

1. The appellate jurisdiction of the Supreme Court is constitutionally restricted to causes decided by lower courts.

2. Reargument of a decision of the Supreme Court will be granted only when the Court has overlooked a material issue raised prior to the decision in question.

Petitioners applied for reargument of this Court's decision reported at 12 L.LR. 330 (1956) , and obtained the consent thereto of Mr. Justice Shannon. Upon consideration by the Court, *en banc,* the application for *reargument* was *denied.*

Emmet Harmon for petitioners. *Momolu S. Cooper* for respondents.

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

During the March, 1956, term of this Court, this cause was heard and decided in favor of the appellants therein ; that is to say, the judgment of the lower court was reversed. Predicated upon the authority of Rule IX of the Revised Rules of this Court, as recorded at 2 L.L.R. 666, the appellees have applied for a reargument of this cause, having obtained the consent thereto of Mr. Justice Shannon who had previously concurred in the judgment of this Court in this matter. The body of Mr. Justice Shannon's order reads as follows :

"Mr. Clerk George,
"In re the petition for reargument submitted by Emmet Harmon for the appellees in the equity case of Bryant Heirs v. H. Lafayette Harmon, *et al.,* recently decided by the Honorable Supreme Court of Liberia, be advised that I am indicating my desire to have said petition granted for reargument, especially on Count '1' of said petition, which presents a question of law mixed with fact which was not previously presented

either in the pleadings or in the argument before us.

"Because of the above, you are directed to file said petition as of July 2, 1956, the date on which it was submitted, and to notify the parties, as well as the Justices who participated in the decision of this Court, by furnishing each of them with copies of this order. And for so doing this shall constitute your authority in the premises."

It will now be necessary to examine the contents of the petition of the appellees praying for a reargument of this cause, to the end of ascertaining whether or not grounds exist to sustain said petition. Recourse thereto reveals the following:

"1. Because petitioner says that a palpable mistake was made and that some important points of law as well as fact were inadvertently overlooked in the opinion delivered by the Court in this case ; which in petitioner's opinion is good ground for a rehearing. That is to say, this case being in equity, petitioner submits and strongly contends that the righteousness of the case should control, and not the fine points of the common law rule, in that, since it is the Court's opinion that the property in question was a mortgage and not a sale as contended by petitioner's privy, and as such should be redeemed and taken possession of by appellees, petitioner contends that, in view of the many improvements, embellishments and other developments made in and upon the said property by his father, it was but equitable and fair for him to have been given some consideration and/or reimbursement for the enormous expense made by his father upon said premises. Petitioner respectfully submits that it is a fundamental rule of equity jurisprudence that, where property is mortgaged to another, and when, during the holding of said property, the mortgagee makes improvements and/or substantial developments of said property, and the mortgagor applies for the right of redemption of said property, the court, in decreeing said redemption, should take into consideration the expense involved by the improvement and development made by the mortgagee, and compensate him for same.

"2. And also because petitioner respectfully shows and contends that the amount of $750, which alone the Court has decreed should be paid him by the appellees, is indeed meager when compared with the present state of the property. Especially is this true when it can be proved that the property, at the time petitioner's father took over same, was merely an empty frame house in a very dilapidated condition. Petitioner contends that it was even equitable for the Court to have decreed that appellees pay him interest in redeeming said property.

"3. And also because petitioner says that there is an amount which has, by order of

court, been held in escrow pending the final determination of this cause, which amount petitioner respectfully prays and is of opinion could be reasonably and equitably used or ordered paid against the expenses incurred by the petitioner's father in improving and developing the said property to the extent that has been done. Petitioner respectfully and humbly submits that it would really work hardship for appellees to only pay unto him the sum of $7 .50 and take over the property without compensating him in any manner for the vast outlay made by his father in improving and developing the said property. Especially is this true because, in the entire proceedings, petitioner's privy contended that the transaction was an outright sale of the property to him by William A. Bryant, which was an issue of fact, and which was a denial of appellees' right to said property. But since the Court in deciding said issue concluded that the property was not an outright sale, but rather a mortgage, which ruling your humble petitioner is bound to accept and abide by, then, and in such a case, petitioner contends that the Court sitting in equity should, in harmony with the rule referred to, order compensation to him by appellees for the improvement made upon the property. Especially so because in the Court's final judgment there is no mention or disposition made of the amount held in escrow, nor any reference made to same or how it should be disposed of. Petitioner respectfully submits and contends that this Honorable Supreme Court, having reversed, annulled and set aside everything done in respect to the case in and by the court below, and having rendered such judgment as, in its opinion, the court below should have rendered, some reference to or disposition of the amount held in escrow should have of necessity been made in the final judgment of this Honorable Court, and that failure to have done so constitutes, to use the exact language of Rule '9' of this Court, a `. . . palpable mistake . . . made by inadvertently overlooking some fact or point of law,' and therefore constitutes ground for a rehearing."

Having quoted, word for word, the grounds upon which appellees would have this Court grant a rehearing of this matter we will now proceed to apply the law to the facts and circumstances narrated in appellees' petition for reargument ; for it matters not how meritorious a cause might appear to be, this Court is bound by fundamental principles and set rules which must be observed at all times. To do otherwise would destroy the vital tissues of this organism so indispensable to our society and government.

"For good cause shown to the court by petition, a re-argument of a cause may be allowed when some palpa-ble mistake is made by inadvertently overlooking some fact, or point of law." R. Sup. Ct., IX (1).

"It is the duty of litigants, for their own interest, to so surround their causes with the safeguards of the law as to secure them against any serious miscarriage and thereby pave the way to the securing of the great benefits which they seek to obtain under the law. Litigants must not expect courts to do for them that which it is their duty to do for themselves." *Blacklidge v. Blacklidge, 1* L.L.R. 371 (1901).

"Courts will only decide upon issues joined between the parties specially set forth in their pleadings." *Clark v. Barbour,* 2 L.L.R. 15 (1909), Syllabus 1.

"Matter of defense not set up in defendant's plea shall not be allowed." *Id.,* Syllabus 2.

"Notice should be given by one party to the other of all matters of fact or law relied upon in prosecuting an action." *Id.,* Syllabus 3.

The questions that now urge themselves upon us for resolution are : Whether this Court can consider and decide an issue of fact or law which was not raised and passed upon by the lower court, without violating the Constitution of Liberia which says thus :

"The Supreme Court shall have original jurisdiction in all cases affecting ambassadors, or other public ministers and consuls, and those to which a County shall be a party. In all other cases the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Legislature shall from time to time make." Const., Art. IV, sec. 2.

One can hardly read the above section of the Constitution of Liberia without concluding that the appellate jurisdiction of this Court is limited to issues of fact and law which have been previously presented to and decided by the lower courts.

Next, can a party asking for a rehearing be permitted to set up a new ground different from any raised in the original hearing?

Can a reargument be allowed by this Court as to issues that were not previously argued, taking the literal meaning of the word "reargument," itself?

Finally, what point of law or fact has been omitted, or what palpable mistake was inadvertently overlooked, during the hearing and disposition of this case before this Court, in its March, 1956, session?

The principle has been stated, *supra,* that courts only decide upon issues set forth in the pleadings and raised at the time of trial.

The issues set forth in the application of the petitioners herein are entirely new ones which were neither set forth in the pleadings nor urged before this Court during the argument of this cause.

Obviously, therefore, our answers to the questions mentioned above, necessary to arriving at an inescapable conclusion, are and must be in the negative, and cannot consistently and legally be changed to the affirmative.

This Court is of the opinion that, to grant a reargument, there must be supported by the records certified to us in a given cause an issue of law or fact material to the determination of a cause which was urged before it, but inadvertently overlooked in the conclusion of the said matter. The complete absence of such an issue of law or fact in the written and other pleadings of a cause not presented and urged before this Court during the hearing thereof cannot constitute good grounds for the rehearing of any cause. Since the application herein for a reargument of this cause is of such an import and character, and because of the facts and circumstances stated above, and the law controlling applicable thereto, the petition is hereby denied. And it is so ordered.

Reargument denied.