RELDA DENNIS SCOTT, et al., Appellants, *v.* MILDRED SAWYERR, et al., Appellees.

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

Argued December 3, 1975. Decided January 2, 1976.

1. Actions of ejectment are required to be tried before a jury, which is to decide all issues of fact.
2. Admissions of a party constitute evidence against the party.
3. The best evidence that an issue admits of should be allowed at the trial.
4. All issues of law must be decided by the trial judge before sending the case to the jury.
5. After alleging fraud, the party alleging it must establish the allegation at the trial.
6. When the trial judge himself rules on the issues of fact duly joined in a proceeding in which a jury trial is mandatory, he commits reversible error.

An action in ejectment was initiated by appellants. At the hearing in the lower court the trial judge resolved issues of fact, including fraud, raised by the pleadings. He also overlooked some issues of law. The trial judge rendered judgment on his findings without a jury. An appeal was taken by the plaintiffs.

The Supreme Court held that the judge had patently committed reversible error by not empanelling a jury to decide issues of fact as required in actions of ejectment. The Court also pointed to the failure of the judge to resolve all issues of law. The judgment was *reversed* and the case *remanded* to the lower court to be properly handled.

Moses K. Yangbe for appellants. *Francis Gardiner* for appellees.

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

For military service rendered the Republic of Liberia in Maryland County, George Henry Shaw was granted 100 acres of bounty land in what is known today as Sinkor, Monrovia, in Montserrado County. This 100 acres was part of block No. 3 in the aforementioned area of Sinkor, and President Stephen Allen Benson signed the deed on July 23, 1857.

The property descended through a continuous chain to the late Wilmot Dennis, whose heirs have brought this suit of ejectment against the appellees.

Four title deeds which are listed below were made profert with the complaint filed in May 1953.

1. From the Republic of Liberia to George Henry Shaw.
2. From George Henry Shaw to Levi James.
3. From Levi and Lucretia James to Wilmot E. Dennis.
4. Quitclaim deed from Henry Dennis and Thelma Reeves (mother of the sons of Gabriel Dennis) to Louise D. Alston, all heirs of the late Wilmot Dennis.

Also made profert with the complaint was the last will and testament of Louise D. Alston, leaving her share of the 100 acres to her grandchildren, plaintiffs Relda Dennis Scott and Gabriel Dennis Scott, the appellants herein. Several defendants were sued and separate answers were filed, one by defendant Margret Watkins, and the answer of Mildred Sawyerr and the other defendants.

In the Margret Watkins answer two points were raised: (1) that she is not occupying any land owned by the plaintiffs, since the property she holds under warranty deed from Joshua King and J. B. Tisdell is different, both as to number and description, from the plaintiffs' land; (2) that whereas the plaintiffs' several deeds call for land in block No. 3 in Sinkor, her property is in block No. 6. This would seem to show separate pieces of property, not likely to have even contiguous boundaries.

However, this is one of the issues in this case, and because of the position we have taken herein, we shall refrain from making further comment on it. Plaintiffs' reply to this answer was a reaffirmation of their position taken in the complaint.

The answer of the other defendants raised several issues of law and facts, among them the following:

1. That the plaintiffs' deed from the Republic of Liberia to George Henry Shaw is a fraudulent document, because the said deed alleged to have been executed pursuant to an Act of the Legislature passed in 1887, cannot support a deed which had been executed in 1857, before the Act was passed.

2. That the bounty deed allegedly executed in favor of Shaw for 100 acres of land, pursuant to an Act of the Legislature authorizing the issuance of bounty land deeds to war veterans, is further illegal and patently fraudulent, because the said Act allotted 30 acres to war veterans for service rendered.

3. That the said bounty deed purported to have been signed by President Stephen Allen Benson in 1857, was never probated and registered as shown by the certificate of the Secretary of State, dated June 2, 1969.

4. That the deed from George Henry Shaw to Levi James was not probated and registered according to law; which further establishes the fraudulent character of plaintiffs' claim to the land in question.

5. That in plaintiffs' further effort to perpetrate fraud upon the defendants, they are claiming land which the defendants occupy in block No. 6, as will more fully appear from deeds annexed to their answer, and marked exhibits "D," "F," and "G."

Here again it would appear that two different blocks of land in Montserrado County were in issue, instead of contention over one; this should have necessitated some position on the part of the trial court to ascertain the facts. However, this is said in passing.

To this answer the plaintiffs filed a reply in which they traversed the several counts contained therein. As to count one, they denied the truthfulness of the allegations thereof, and said that the defendants had fraudulently misquoted the complaint with respect to the year in which the Act was passed, pursuant to which the President executed the bounty land deed to George Henry Shaw. For, whereas their complaint had asserted, and the deed made profert therewith shows, President Benson had signed the deed on July 23, 1857, pursuant to an Act providing for relief for the State of Maryland in Liberia, approved February 7, 1857. The defendants in their answer state that plaintiffs had claimed that President Benson had signed the deed "pursuant to an Act of the Legislature promulgated in 1887." An examination of the deed shows that the Act pursuant to which the deed was executed by the President was approved February 7, 1857.

Count two of the answer questioned the President's authority to execute a bounty land deed for more than 30 acres, in accord with the statute under which he executed the said deed. In the reply to this count of the answer, the plaintiffs quoted section one of an Act passed and approved December, 1856–January, 1857, which we have quoted below.

> "That the President be and he is hereby authorized and requested for the relief of the State of Maryland in Liberia, to adopt measures for the foundation of an allied military force effective and defective of volunteers in this Republic to assist the State of Maryland in Liberia to settle the difficulties subsisting between that State and those of the aboriginal inhabitants, who are hostile within its jurisdiction. The officers of said volunteer Army shall be approved of and commissioned by the President and shall be governed by the military laws and regulations of the Republic of Liberia. Each volunteer of said military

> Corps shall also be entitled to the month's payment in advance and a promise of one town lot and one hundred acres of land and shall be required to continue until the cessation of hostilities."

They concluded count two of their reply by denying, in view of this quoted section, the truthfulness of the contention that the President had no statutory authority to execute a bounty land deed for more than 30 acres.

Their count three, which replies to counts three, four, five, and six of the answer states that with reference to the failure of the plaintiffs to probate the deed dated July, 1857, from the Republic to Shaw, and the deed from Shaw to Levi James, dated October, 1857, were both executed before October 1, 1862, the date on which the Act with respect to the effect of failure to probate and register documents relating to real property was enacted. They say, therefore, that this contention of the defendants' answer is untenable.

Count four of the reply attacks count seven of the answer for inconsistency, and the plaintiffs say that although the defendants have denied in their answer that they are occupying plaintiffs' portion of block No. 3, and that their property is block No. 6, yet the answer has challenged two of the deeds in the plaintiffs' chain of title for failure to probate and register them. They say that defendants thereby seek to claim that block No. 3 and block No. 6 are identical.

In count five of the reply the plaintiffs have pleaded as follows: "With further reference to count 6 of the answer, in which defendants are contending that plaintiffs' chain of title is defective because the deed from George Henry Shaw and Levi James is not registered and probated; this contention is designed to mislead the court. Plaintiffs submit that there is no deed proferted by the plaintiffs which is signed jointly by and from George Henry Shaw and Levi James as falsely stated in count 6 of the answer."

Count nine of the reply attacks exhibits "F" and "G," annexed to the defendants' answer, being two warranty deeds from Joshua King, et al., as grantors to co-defendant Francis Gardiner, and a warranty deed from Joshua King alone to co-defendant May Weedor, which two warranty deeds were not witnessed by at least two or more persons as the law requires. They have relied upon the Property Law contained in the 1956 Code, section one thereof. They say that this defect in the grantor's deed affects all of the defendants except Margret Watkins, who filed a separate answer.

Count ten of the reply refers to defendants' exhibits "B" and "C," which are certificates from the Ministry of Foreign Affairs, certifying that the records in the archives do not show that the deeds of George Henry Shaw and Levi James were ever registered according to law. They have defended against this by saying that since these two deeds were executed prior to October, 1862, when the law relating to the effect of not probating and registering documents in respect to real property was passed, these deeds are exceptions to the law, having been executed before the law was passed.

Counts six, seven, and eight reaffirm the plaintiffs' position with respect to the defendants' illegally occupying their property in block No. 3, as contended in their complaint; they deny all and singular the entire answer of the defendants as well as those issues of both law and fact contained in the answer, and they deny any acts of fraud having been committed by them, as pleaded in the defendants' answer. Thus we have stated all of the issues raised in the pleadings on both sides in this case.

These were the issues which came for hearing and disposed of the points of law before Judge Emmanuel S. Koroma. The judge heard argument from counsel on both sides and ruled, dismissing plaintiffs' case. He did this after traversing all of the points in the pleadings; and because we think it very necessary to justify the posi-

tion we have taken in this opinion, we will quote the concluding paragraph of the judge's ruling dismissing the case.

> "Therefore and in view of the foregoing, the court feels that the plaintiffs could not claim the land by any weakness of their adversaries, when in deed and in fact the said plaintiffs' title is not genuine. Since the Act for the bounty deed does not conform with the deed of the plaintiffs now in question, which Act the plaintiffs have used as support in their argument, this court cannot entertain this action under such provision of the law. Therefore, the said action is hereby dismissed, costs against the plaintiffs."

To this ruling the plaintiffs took exceptions, and announced an appeal from it to the Supreme Court. Before going further we would like to here remark that not only do we disagree with this position of the judge, but declare it erroneous and, therefore, reversible.

The bill of exceptions composed of seven counts was approved by the judge with the notation "With exception on all counts not in conformity with the records."

What records could the judge have been referring to, since he had dismissed the case without trying it? All that was before him were the pleadings of the parties, to which he added his ruling dismissing the case.

We have decided to remand this case so that it might be properly handled by another judge in the trial court; therefore, we will not discuss the merits or demerits of the issues raised in the pleadings of the parties. But we will determine the issues raised in the bill of exceptions.

1. That the judge failed to pass upon fraud although it had been raised by the parties on both sides in their pleadings before him.

2. In ejectment the issues involve law and fact, and, therefore, the case should have been ruled to trial by jury.

3. The judge failed to pass upon all of the issues of law

raised in the pleadings, as the law required him to do in every case, before determining it.

4. The judge failed to pass upon the effect which the portion of the statute quoted had in determining whether or not President Stephen Allen Benson was justified in executing a bounty deed for 100 acres, instead of only 30 acres, as contended by the defendants.

5. The judge also failed to pass upon an admission made by one of the parties, and to explain what effect this should have had on the case.

Besides these five points, and others which we do not deem necessary to mention, the judge in his ruling dismissing the case declared that the document which began the plaintiffs' chain of title, the bounty land deed issued by President Benson in 1857, was not genuine. In other words, he decided without a jury that a title deed executed in compliance with a provision of a statute quoted in a pleading "was not genuine" and that no legal effect should be given to it. We wonder how the judge could have concluded that he had any such authority. In *Duncan* v. *Perry,* 13 LLR 510 (1960), the Court said that where a defendant in an ejectment action submitted a deed to the property in question, but the trial court instructed the jury that the defendant had no deed in court, the instruction was prejudicial and a judgment upon the jury's verdict in favor of the plaintiff will be reversed. That was where the matter was allowed to go to the jury; how much more erroneous for the judge himself to have declared that the plaintiffs' deed submitted with the complaint was "not genuine," following which he dismissed their complaint.

Other facts, such as several deeds on both sides and a will, constituting evidence which should have been allowed to go to the jury in a case involving real property, the judge alone passed upon. As we have said, this was an erroneous decision on his part. The Constitution says

that no one may be deprived of his property except by judgment of his peers or the law of the land. Article I, Section 8th. We construe judgment of his peers to be a verdict of the jury, and the law of the land in ejectment matters which involve issues of law and fact require a jury to decide the issues of fact. *Johns* v. *Witherspoon,* 9 LLR 376 (1947); *Pratt* v. *Phillips,* 10 LLR 147 (1949).

Admissions of a party have always been held to be evidence against him. *Bryant* v. *African Produce Company,* 7 LLR 93 (1940); *Bank of Monrovia* v. *Kobbah,* 10 LLR 281 (1950). The bill of exceptions claims that one of defendants admitted by letter that she was occupying a part of block No. 3, although she has denied it in the answer. In the circumstances, and in view of the Supreme Court's holding in such cases, the judge should have allowed the jury to pass upon this allegation of fact, at least for the purpose of affording this defendant an opportunity to deny that she had written such a letter. His failure to have done so was prejudicial to the interests of the parties on both sides.

It was erroneous for the judge to have ignored passing upon the recited text of a statute alleged to have been enacted and approved, authorizing the President to grant a town lot and one hundred acres of land as compensation to war veterans, especially since the existence of such statute had been questioned and made the basis of the defendants' defense in the case. Moreover, the judge's definition of a bounty land deed is wrong when measured by the section of the Act for relief of the State of Maryland in Liberia, quoted in count two of the plaintiffs' reply. That section is clear as to what the lawmakers intended the war veterans to be granted as compensation for military service. If, however, the judge felt that such a statute did not exist, he should have allowed the case to go to trial, and ask for production of the law giving the President the authority to issue a deed for one hun-

dred acres. The best evidence that the issue admits of should be allowed to be produced at the trial. The judge's contention that the bounty deed should have said how the property was to be acquired in fee simple, is an issue of law which he should have settled by his ruling, but he failed to do this and his failure to do so was error.

This Court has said so many times that we are sure there is no necessity to repeat it in this case, that all issues of law must be passed upon in every case before sending it to trial, or determining it finally. One of the most recent cases in which this principle was again stressed, is *Claratown Engineers* v. *Tucker,* 23 LLR 211 (1974). In ejectment as we have said earlier in this opinion, trial by jury is mandatory, irrespective of what was pleaded, so long as issue was joined by and between the parties. There is a long line of opinions to support this position, but for the benefit of this case, let us refer to *Pratt* v. *Phillips,* 10 LLR 325, 329 (1950). In that case Judge Edward J. Summerville, in another case of ejectment, rendered judgment on the award of the arbitrators without a jury, and there was no attack upon it by the defendant. The Court reversed the judgment and remanded the case for a new trial. We quote a salient portion of the opinion.

> "Ejectment . . . supports the idea of adverse possession, hence a trial of the legal titles of the contending parties. It being a mixed question of both law and fact the statute provides that such trial is to be by a jury, with the assistance and under the direction of the court."

We come now to consider the issue of fraud raised by the parties, and which the judge failed to have a jury pass upon. It is not sufficient to merely allege that fraud has been committed, but the party alleging the fraud must prove it at the trial. After alleging fraud, the party alleging it must produce the evidence tending to establish the allegation at the trial. In the absence of evidence in

support of allegation, the decree of the court in favor of the plaintiff will be reversed. *Henrichsen* v. *Moore,* 5 LLR 60 (1936). In *Beysolow* v. *Coleman,* 9 LLR 156 (1946), the Court held that when fraud is alleged, a jury must pass upon the evidence in support of the allegation.

In view of what we have said herein, we have no alternative but to reverse the judgment and remand this case, with instructions that the issues of law be properly passed upon, and the case then be tried before a jury on its merits. Costs are to abide final determination.

Reversed and remanded.