Clarence L. Simpson, III, APPELLANT Versus **A.l.D. Enterprise, H. H. B. Bus Center, MD & Brothers, M. Bah Enterprise and R.K. Enterprise**, by and thru their Chief Executive Officers or any Authorized Officers and All of the City of Monrovia, Liberia, APPELLEES

LRSC 38

APPEAL

Heard: April 14, A. D. 2015 Decided: August 13, A. D. 2015

MR. JUSTICE JA'NEH delivered the Opinion of the Court.

Title is unquestionably the core issue of the contest between parties in an ejectment cause. In every such suit, recovery is fundamentally dependent on the holding by of a superior title by the party, plaintiff in the "eyes of the law". No matter the weakness of the party defendant's title, the party plaintiff must establish title and how it lawfully came to Him; if not, the defendant is not ejected and ousted from the subject property in controversy. This settled principle of law regulates ejectment cause in this jurisdiction and strictly outlaws rendition of judgment in the plaintiff's favour based on imperfections, defects and deficiencies exposed in the defendant's title. Legally, the plaintiff recovers only on the strength of his own title. This Court continues to articulate this principle in the disposition of numerous ejectment suits. The principle was reaffirmed in Duncan v. Perry, in which this Court held:

"The primary objective in suits of ejectment is to test the strength of the titles 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. In all such cases the plaintiff's right of possession must not depend upon the insufficiency or inadequacy of his adversary's claim; he must be entitled to possession of the property upon legal foundations so firm as to admit of no doubt of his ownership of the particular tract of land in dispute." [Emphasis Supplied]. 13 LLR .510, 515 (1960).

The Supreme Court of Liberia in Birch v. Quinn, decided far back in the 1800's, recognized three basic means of acquisition of "title" to realty in Liberia. One of these is adverse possession. Id. 1 LLR 309, 312 (1879).Descent and purchase are the other two universally acknowledged methods of title acquisition. Reeves v. Hyder, 1 LLR 271, 273 (1895); White v. Steel, 2 LLR 22, (1909).

However, the ejectment suit now on appeal, is peculiar and different from the ordinary title contest. In the instant case, the controversy is not about the plaintiff's title in fee so much as the right to possession of tl1e disputed property.

To shed some light on the background of this case, it is appropriate to visit proceedings conducted at the lower court. Inspection of the certified records reveals that on November 16, A. D. 2013, Clarence L. Simpson, Jr., executed a transfer deed in favour of the herein appellant, Clarence Simpson, III. On the strength thereof, the appellant, on July 15, A. D. 2014, filed a three count ejectment cause at the Sixth Judicial Circuit for 1ontserrado County, sitting in its September Term, A. D. 2014. The complaint named the following as defendants: A.I.D. Enterprise, H. H. B. Business Center, M. D. & Brothers, M. Bah Enterprise and R. K. Enterprise, by and thru their Chief Executive Officers or any authorized Officers and all occupants under their Authority.

It is of utmost significance to note, and this fact is not in dispute, that a writ of summons, along with a copy of the complaint, was duly served on the defendants.

To provide a full picture of the attendant circumstances of this case, we have substantially reproduced the complaint as follows:

1. Plaintiff says he is the legitimate owner of a certain property, comprising one point three (1.3) lots of land, with the buildings thereon, lying situated and being on Mechlin Street, in the City of Monrovia, County of Montserrado, Liberia. Copy of Plaintiff's Warranty Deed, in verification of his ownership, is hereto attached and marked Plaintiff's EXHIBIT P/1.

2. Plaintiff says the above named Defendants have elected to occupy his property, without any color of authority and have refused to vacate same.

3. Plaintiff says he has suffered damages on account of the illegal occupancy of his property by the Defendants; and that, in addition to evicting and ejecting Defendants from the said property, Plaintiff is demanding damages in the amount of United States Dollars Five Hundred Thousand (USD500,000) for the illegal entry, occupancy and withholding of Plaintiff's property.

WHEREFORE, AND IN VIEW OF THE FOREGOING, Plaintiff prays Court to enter Judgment against Defendants and order as follows:

(i) To oust, eject and evict the Defendants from the subject property;
(ii) To award Plaintiff damages in the amount of United States Dollars Five Hundred Thousand (USD500,000) for the illegal entry, occupancy and detention of Plaintiff's property; and
(iii) To rule all costs against the Defendants; and grant unto Plaintiff any other and further relief as in such cases is made and provided by law."

We must here remark that Plaintiff Clarence Simpson, III, now appellant, instituted this ejectment action against five (5) certain defendants. The Defendants, now appellees, were named as: (1) H. H. B. Business Center, (2) M. D. & Brothers, (3) M. Bah Enterprise and (4) R. K. Enterprise. According to the records, the Sixth Judicial Circuit for Montserrado County thereupon ordered issued a writ of summons which was duly served on the therein named defendants.

The Sheriffs' Returns, dated July 15, A. D. 2014, reveals that the said Writ of Summons, along with the attached complaint, was duly served, received and signed for by (1) H. H. B. Business Center, (2) M. D. & Brothers, (3) M. Bah Enterprise and (4) R. K. Enterprise. The Sheriffs Returns al ;o disclosed that "...defendant A. I. D. Enterprise was served with the writ of summons but they refused to sign or receive the writ of summons with the attached complaint."

Strangely, and claiming to be Defendants, some Messrs. George Eli Hykal and James Eli Hykal, represented by Eli G. Hykal as natural Guardian, on July 25, A. D. 2014, filed a ten count answer to the complaint filed by the appellant, Clarence Simpson, III. In the said "Answer" both Messrs. George Eli Hykal and James Eli Hykal indicated that they filed the "Answer" as a way of submitting themselves to the jurisdiction of the trial court. Messrs. George Eli Hykal and James Eli Hykal claimed to be necessary party to the ejectment suit on account of an Agreement of Lease. This "Agreement of Lease" was said to have b en executed by the appellant/plaintiff's grantor. In the "Answer" Messrs. George Eli Hykal and James Eli Hykal prayed the trial court to ignore and

dismiss the appellant's complaint.

For the benefit of this Opinion, we here reproduce Messrs. George Eli Hykal and James Eli Hykal's said ten-count "Answer", as follows:

"1. Because as to the entire complaint, Messrs. George Eli Hykal and James Eli Hykal, represented by and thru their natural Guardian, Eli G. Hykal submit themselves to the jurisdiction of this Honorable Court as they as Sub-Lessors ought to be and are necessary parties in an action of ejectment and hence submit themselves as Party Defendants.

2. Also because as to count (1) above, Messrs. George Eli Hykal and James Eli Hykal, represented by and thru their natural Guardian, Eli G. Hykal entered into a lease agreement with Clarence Simpson, Jr., grantor of the Plaintiff, Clarence Simpson-III on the 24th day of October, 1997 of retroactive effect as of Apr.il, 1982 for the first twenty (20) years and then for operational period of twenty years each with consideration of 50% for the first twenty and then consideration of 100% for the second twenty thus ending A.D. 2042.

Your Honor is respectfully requested to take judicial notice of the copy of the lease agreement hereto attached and marked exhibit "D/1 in bulk."

3. And also because as to the entire complaint, George Eli Hykal and James Eli Hykal, represented by and thru their natural Guardian, Eli G. Hykal, co-defendants maintain that the purported sale will take its legal effect after the lease period as said co-defendants have rights of possession until the expiry of the said lease agreement:

4. And also because as to count one (1) of the Complaint, Defendants say that it is true that during the arrangement of the original purchase, Cllr. Clarence Simpson, Jr., with full knowledge knew that he did not expend the money but the property was granted in his name and in recognition of which he executed the lease agreement referred to above. Your Honor is respectfully requested to take judicial notice of the records, specifically Defendants "D/1 in bulk."

5. Further to count (4) above, defendants say that Cllr. Clarence Simpson, Jr. the author of the lease agreement and in whose name the deed was made, could have issued a deed in favor of his son, Clarence Simpson, III. However, the right of possession and occupancy will not be vested in the grantee until and unless the lease agreement expires.

6. And also because as to count two (2) of the complaint, Defendants say and submit that same is false and misleading as Defendants occupancy of the subject property grew out of sub-lease agreement which is still in full force and effect. Additionally, Defendants maintain counts (1-3) of this answer.

7. Further to count (6) above, Defendants say that the agreement of lease entered into between Clarence L. Simpson, and the Hykal was prior to the alleged conveyance of the subject property to Clarence L. Simpson, II and therefore ejectment will not lie in the instant case for the mere fact that the Defendants' sublease with the Hykals is still in full force and effect predicated upon the existence of the lease agreement between Clarence Simpson, Jr. and defendants George Eli Hykal and James Eli Hykal, represented by and thru their natural Guardian, Eli G. Hykal.

8. And also because as to count three (3) of the complaint, Defendants say and submit that damages will not lie;

giving that Defendants' occupancy of the subject property grew out of a legitimate transaction.

9. And also because as to the prayers of the Plaintiff, Defendants say that same is a mere waste of time and energy; giving that no court would want to derail its hard earned integrity to honor any of the prayers as itemized by Plaintiff; i.e. Defendants procedure to the sublease and its execution were all in accordance with the law, practice and procedure as regards real property.

10. Defendants deny all and singular the allegations as contained in Plaintiff's Complaint and those that were not made subject of special traverse herein."

Appellant, in an eleven count Reply, dated August 4, AD. 2014, essentially denied that his grantor entered any Agreement of Lease with Messrs. George Eli Hykal and James Eli Hykal on October 24, A. D. 1997. Appellant stated that it is settled law in this jurisdiction that where a pleading references a written instrument, copy thereof ought to be annexed and made a part of the pleading. Appellant/Plaintiff further argued that defendants' failure to annex the Agreement of Lease said to have been executed in 1997 by appellant/plaintiff's grantor, Clarence Simpson, Jr., means that the Defendants were clearly in violation of the Statute of Frauds. The Statute of Frauds requires that all transaction in relation to real estate be in writing. Appellant/plaintiff requested the trial court to dismiss appellees' defense, as nothing was proffered by party defendants to establish the existence of any privity of contract between Plaintiff's grantor and party defendants. We have deemed it appropriate also to quote the Reply substantially as follows:

1. That as to count one (1) of the answer, plaintiff says same should be denied and dismissed because the defendants have attached no sublease agreement in substantiation of the claim that they are sub-lesees of Messrs. George Eli Hykal and James Eli Hykal, allegedly represented by and through their natural Guardian Eli G. Hykal. They haven't failed to do so, the said count one (1) must be denied and dismissed.

2. Further to count (1) herein, plaintiff says that it the law hoary with age that "when a pleading refers to written instrument, a copy of the instrument may be annexed to, and made a part of the pleading". Walker vs Morris, 15LLR 424 (1963). Moreover under the statute of Frauds, all transaction , regarding real estate 1nust be in writing. Therefore, Messrs. George Eli Hykal and James Eli Hykal, allegedly represented by and through their natural Guardian, Eli G. Hykal and not parties before this honorable court as the defendants have annexed nothing to establish any privity of contract between the Defendants George Eli Hykal and James Eli Hykal, allegedly represented by and through their natural Guardian, Eli G. Hykal.

3. That as to count 2 of the answer plaintiff vehemently denies the averment therein contained and says further the Counsellor Clarence L. Simpson Jr., grantor of the plaintiff, did not enter any lease agreement with Messrs. George Eli Hykal and James Eli Hykal, allegedly represented through their natural Guardian Eli G. Hykal on the 24th day of October· 1997.Plaintiff says that Counsellor Clarence L. Simpson Jr. was out of Liberia in 1982 for a protracted period (1980-February 1991). Plaintiff gives notice that during the trial, he shall produce evidence in substantiation of the averment herein contained.

4. Further to count three (3) herein above, Plaintiff says the purported and contrived lease agreement made proffered by the Defendant has no probative value. The said documents are improperly before this honorable court because the Defendants are not named in the purported agreement of lease, Neither are they parties to the purported agreement of lease. They have not exhibit2a any lease agreement to establish privity of contract

between them and the said Messrs. George Eli Hykal and James Eli Hykal, allegedly represented by and thru their natural Guardian, Eli G. Hykal, they are estopped from relying on the said purported Agreement of Lease as their authority for illegally occupying Plaintiff's property.

5. Further to count four (4) herein above, Plaintiff says the Lease Agreement attached to Defendants; Answer if a product of fraud. Firstly, it defies reason that one would enter into an agreement in 1977 to be retroactive in 1982, a period of fifteen (15) years. Moreover, by 1982, the buildings on the premises were already constructed. Are the Defendants implying f hat- they constructed the buildings without any Agreement of Lease between the Defendants and Plaintiff's Grantor, Cllr. Clarence L. Simpson, Jr.? Photographs of the buildings constructed on the premises prior to 1982 are hereto attached and marked Plaintiff's Exhibit PR/1. Plaintiff gives notice that during the trial, he shall produce evidence in substantiation of the averment herein contained.

6. Further to count five (5) herein above, Plaintiff says assuming agreements arguendo that an Agreement of Lease was entered into in 1997, retroactive 1982 constructed on the premises. The Court is respectfully requested to take judicial notice of the purported Lease Agreement, attached to Defendant's answer as Exhibit "D/1" and the fact that the leased property is described as "certain parcel of land, situate, lying and being on the North West end of Mechlin Street". No mention is made of the buildings on the land.

7. Further to count six (6) herein above, Plaintiff says that purported Agreement of Lease exhibited by Messrs. George Eli Hykal and James Eli Hykal, allegedly represented by their natural Guardian Eli G. Hykal, is a contrived document. The document implies that between 1982 and 1997, a period of fifteen (15) years, Messrs. Eli G. Hykal, had a parole agreement with Cllr. Clarence L Simpson, Jr. Under the Statute of Frauds, all transaction regarding real estate must be in writing.

8. That as to counts three (3) thru ten (10) and the Prayer of the Answer, Plaintiff denies the averments therein contained and says further that Plaintiff's grantor, Cllr. Clarence L. Simpson, Jr. entered into a twenty (20) year Agreement of Lease expired in 1999.

9. Further to count eight (8) herein above, Plaintiff says that by 1982, pursuant to the Agreement of lease entered by and between Cllr. Clarence L. Simpson, Jr. and Eli G. Hykal, the buildings of Lease now existing on the premises were constructed. Plaintiff says at no time did his grantor, Cllr. Clarence L. Simpson, Jr. enter into an Agreement of Lease with Messrs. George Eli Hykal and James Eli Hykal, represented by their natural Guardian, Eli G. Hykal, as reflected in the purported and contrived Agreement of Lease attached to Defendants Answer.

10. Further to count nine (9) herein above, Plaintiff says Mr. Eli G. Hykal, with whom Cllr. Clarence L. Simpson signed the Agreement of Lease in 1979, never made any payment or compensation for his wrongful detention of the property since the Agreement if Lease expired in 1999, up to present.

11. Plaintiff denied all and singular the allegations of law and facts contained in Defendants Answer and not specifically traversed in this Reply. "

When pleadings rested, the trial judge presiding by assignment, His Honour Emery S. Paye, on September 2, A. D. 2014 assigned the case for disposition of law issues. Judge Paye thereupon determined that the action of ejectment before the court presented mixed issues of law and fact and ruled it to jury trial.

At the conclusion of the trial, the petit jury returned a unanimous verdict of Not Liable" in favour of the appellees/defendants. Following his denial of the appellant's motion seeking a new trial, and a final ruling dated November 20, A. D. 2014, Judge Paye adjudged:

"Wherefore, and in view of the foregoing, this court says that the unanirr1ous verdict of the trial jury of not liable in favour of the defendants, being in line with the facts of this case, the circumstances of the case, the laws in control and all other legal formalities, the verdict is hereby confirmed and affirmed. Having confirmed such verdict, the defendants in this case are not liable to plaintiff. Hence, plaintiff's complaint is hereby dismissed. And it is hereby so ordered. "

It is from this final judgment holding appellees not liable that the appellant, Clarence Simpson III, appealed. He is now before us proffering an approved bill of exceptions containing thirteen (13) counts. The bill of exceptions as quoted hereunder appears to shed a full light on the controversy:

"1. That Your Honor committed reversible error when Your Honor ignored Plaintiff's second witness, Cllr. Clarence L. Simpson, Jr.'s testimony when he testified before Your Honor and the Trial Jury on October 2, 2014, same being the 16th day Jury sitting, in which he was asked on the direct examination, "Mr. Witness, the Defendant herein filed an Answer stating among other things in Count two of the said Answer that one Eli G. Hykal entered into a Lease Agreement with you on October 24, 1997, to the effect in 1982, for the lease of the property which is subject of this litigation. What have you to say relative to the said allegation" and he said".

"I must here emphasize that in 1997, I signed no Agreement with Mr. Hykal, the document in evidence is totally false and fabrication, constituting fraud and those who performed the forgery need to be prosecuted for playing with my good name and reputation" as found on page 10 of the 16th day's Jury sitting. Yet in Your Honor's charge to the Jury you instructed, "you listened to the testimony of the Defendant's witness; if you peruse the records and find out that where there should have been a rebuttal witness to certain testimony but it was not produced then in that case bring a verdict in favor of the Defendant. To which charge of Your Honor, Counsel for Plaintiff excepted.

2. That Your Honor again committed reversible error when Your Honor ignored Plaintiff's second witness, Cllr. Clarence L. Simpson, Jr.'s testimony when he testified before Your Honor and the Trial Jury on October 4, 2014, when he was asked on the cross examination, "Mr. Witness is it proper for you to know that Mr. Hykal is occupying a property, in person of whom you have served as lawyer and a person whose company you have presided over to seek his eviction, or the eviction of persons he had privileges in the face of the Lease Agreement executed by you following the expiration of his Lease Agreement with Eloise in 1982". And he answered, "I have told you and the Jury that this is completely fraudulent I would never had signed an Agreement in 1997 to take effect in 1982, 15 years previous why,.... So how can I answer about an Agreement that I say was fraudulent." See sheet 21 of the minutes of October 2, 2014, same being the 16th day Jury's sitting.

3. That Your Honour committed reversible error when Your Honour ignored the contradictions or variances in Defendants' first witness testimony, Morris Myers claimed to have witnessed the purported Lease Agreement in 1997, when he was asked on the redirect by Cllr. Gould, "Mr. Witness, during the cross examination you were asked as to when you were employed with Mr. Hykal. You testified that you were employed with Mr. Hykal in 1998 and 1989 respectively. Please clarify to this Court which date you were actually employed?" in his answer, he said, "my employment year was in 1998". See sheets 20 & 21 of the Minutes of October 3, 2014.

4. That Your Honour committed reversible error when Your Honour in Your Final Judgment ignored the contradictions of variances in Defendants' first witness' testimony Mr. Morris Myers, in his testimony claimed to have witnessed the purported Lease Agreement was asked on the Direct Examination, "Mr. Witness, to the best of your knowledge, what year did you witness this agreement? 1He answered, in 1997". Witness Myers was then asked by the trial Jury, Mr. "Witness can you tell this Court whether you signed this Lease Agreement before your employment with Mr. Hykal"? He answered, "I was employed with him before I signed it". See sheets 15 and 21 of the minutes of October 3, 2014.

5. That Your Honour committed reversible error when Your Honour ignored the contradictions or variances in Defendants' first witness testimony. Mr. Morris Myers testimony, in answering two questions on the Direct Examination he first told this Court that original copy of the purported Lease Agreement was lost; later, he said again that the original copy should be in the hands of Mr. Hykal. See pages 14 and 16 of the Minutes of October 3, 2014.

6. That Your Honour committed reversible error when Your Honour ignored the contradictions or variances in Defendants second witness testimony Mr. Oliver Rohana testified in answer to a question on the Direct Examination thus: "Mr. Witness, do you know Mr. Clarence L. Simpson, III and the A.I.D. Representatives and Mr. Eli G. Hykal". He answered ,.,Yes, I do". He was then asked, "How did you come to know them". He again answered, "I got to know Mr. Hykal in the year 2009". See page 22, line 32, of the minutes of October 3, 2014 and he later informed this Court and Jury while on the Cross Examination that his first job when he came back to Liberia from Lebanon was with Mr. Hykal at the Standard Stationary Store in 1974, as found on sheet 26 lines 14-18.

7. That Your Honour committed reversible error when in Your Honour's Final Judgment you ruled, "Defendant 2nd witness was Oliver Rohana Sr. who took the stand testified that he knows Clarence Simpson III, Plaintiff and the Defendants. He told the Court that he got to know Mr. Eli Hykal with respect to this property in 2009..." Whereas when Witness OliVer Rohana, Sr. was asked, "how did you come· to know them". He answered, "I got to know Mr. Eli Hykal in the year 2009." Witness Oliver....Rohana never told Curt that he got to know Mr. Ellie Hykal with respect to the property, as found on sheet 11, lines 3 & 4 of Your Honour's Final Judgment. Plaintiff therefore says that Your Honour inadvertently added what was never said by the witness in open court.

8. That Your Honour committed reversible error when Your Honour ignored Defendant's second witness, Oliver Rohana's testimony, which testimony was solely based on hearsay while on the Cross Examination, "Mr. Witness, in your testimony you told Court that Mr. Hykal provided the money and a deed was issued to Clarence L. Simpson, Jr. My question to you is, were you present when the transaction took place or you were told by Mr. Hykal? "He answered, I was not present. I was told and was given a written statement by Mr. Hykal to that effect". See
sheet 27, minutes of October 3, 2014. Clearly, meaning that he did not testify from his certain knowledge but rather on hearsay from Mr. Hykal.

9. That Your Honour committed reversible error when Your Honour ignored mainly Plaintiff's Charge#3 to the Jury which states, "testimonies of witness based on written or past incidence to which he was not a party is hearsay and therefore inadmissible". That the Defendants' second witness entire testimony was based on hearsay or what he was told by Mr. Hykal as stated by him and therefore should not have been given any credence in

Your Honour's Final Judgment. We, therefore, say that Your Honour committed reversible error when Your Honour ignored this cardinal point of law.

10. That Your Honour committed reversible error when in Your Honour's Final Judgment, you ignored Clause 2 of the purported Lease Agreement exhibited by Defendant which states, "that the Lessee agrees and covenants that for and in consideration of the use and occupancy of the herein demised premises to pay or cause to be paid to the said Lessor an annual rental of two hundred and fifty ($250.00)dollars per annum, payable in advance;..." in which Plaintiff strongly argued that by 1997, all leases entered into between two parties indicated the currency in which the Lessee is to pay. That the purported Lease Agreement, which indicates no currency, clearly shows that the Lease Agreement between Cllr. Clarence L. Simpson, Jr. and Mr. Hykal, was entered into prior to the Liberian Civil Crisis.

11. Your Honour committed reversible error when in Your Honour's Final Judgment, you totally ignored Clause 1 of the purported Lease Agreement exhibited by Defendant which states, "that the Lessor, for and consideration of the rents hereinafter reserved and of the agreements, stipulation and on behalf of the Lessee to be paid, kept, performed and fulfilled, has granted, demised and lease and by these presents doth grant, demise and lease unto the Lessee herein, a certain parcel of land, situate, lying and being on the North West and of the Mechlin Street, within the City. Country and Republic aforementioned, and bearing in the authentic records of the said City, the Lot Number Four KA (4KA), probated and registered in the Probate Division of the Monthly Court, Page 604-606, Volume 80-A. this Clause clearly means that Mr. Hykal leased a parcel of land without any structure on it. Whereas, Oliver Rohana informed this Honorable Court and Jury while on the Direct Examination that Mr. Hykal told him, "l leased that property and built that building you are seeing there in the year 1962. I built that building after leasing the land from Eloise Duncan and built the property for my business". See sheet 23, lines 9 &10 of the Minutes of October 3, 2014. This clearly means that there were structures on the land prior to the execution of the so-called purported Lease Agreement in 1997. Then one wonders how would Parties entered into a Lease Agreement for a piece of land with structures on it, without mentioning the said structures in the said Lease Agreement. We therefore, say that Your Honour committed reversible error when Your Honour totally ignored this cardinal point in Your Honour's Final Judgment. To which Plaintiff excepted.

12. That Your Honour again committed reversible error when Your Honour ignored Plaintiff's second witness, Cllr. Clarence L. Simpson, Jr.'s testimony when he testified before Your Honour and the Trial Jury on October 4, 2014, while on the Cross Examination, he said, …"but I do know that the Deed that was given to me by Mrs. Duncan got lost or destroyed when my law offices were looted in 1980." See sheet 2 of the Minutes of October 2, 2014. That Cllr. Clarence L. Simpson, Jr. was issued a new Deed in 2013 by Mr. Duncan, son of Mrs. Eloise Duncan and the Deed described in the purported Lease Agreement that was entered into in 1997, was probated in the Probate Division of the Monthly Court, Page 604-606 Volume 80-A. How could this be possible when Cllr. Clarence L. Simpson, Jr. was not in possession of a deed in 1997. To which Plaintiff excepted.

13. That Your Honour committed reversible error when Your Final Judgment referred to the Mr. Hykal as Sub-Lessor of the Defendants when the Defendants failed, refused and neglected to exhibit/attach any Sub-Lease Agreement to their answer.

WHEREFORE AND IN VIEW OF HE FOREGOING, Plaintiff presents this Bill of Exceptions for Your Honour's approval in order to have same filed and complete the final stage of the Appeal process..."

We have carefully considered the contentions raised by the parties, examined the errors assigned to judge Emery Paye's final ruling adjudging the appellees not liable in this ejectment cause, reviewed the entire records of the proceedings and determined the following two pivotal issues as dispositive of this appeal:

(1) Does the filing of an "Answer" by a person who is neither named as a party nor summoned or served a precept confer on said person the status of a party defendant? Put differently, can tile mere filing of an ‚Answer" by a non-summoned person qualify him as a party litigant in a suit in which the person is not named as a party?

(2) Did the appellant/party plaintiff in this cause of ejectment present proof contemplated by law to justify reversal of the trial judge's ruling confirming the jury verdict of "Not Liable"?

We must remark here that the appellant/plaintiff in his pleadings also requested the court, on account of "wrongful withholding" of his property, for an award of general damages in the amount of Five Hundred Thousand United States dollars (USD500,000.00). We shall collaterally traverse this request as we determine the legal propriety thereof in the light of the facts of this case and the laws applicable thereto.

Prior to delving into the issues in these appeal proceedings, this Court desires to indicate that a cursory examination of the pleadings filed by the parties would seem to generate a grave question bordering or procedure and substance of this cause. The question relates to how one becomes a "party" to a suit filed before a court of law in this jurisdiction. The Supreme Court of Liberia has devoted a great deal of time to the definition of who is "party" to an action. The Court has held that:

"Although in its broader respects the term 'parties' includes all who directly interested in the subject matter of suit or some part thereof, and who have a right to make defense, control the proceedings, examine and cross-examine witnesses, and appeal from the judgment rendered, it is ordinarily used to designate only those who are narrated as such to the records and are properly served with process as such to the record and are properly served with process or enter their appearance. When a statute speaks of a party, it refers to a party to the record, a plaintiff or a defendant, and generally those who are not named as such to the record are not properly regarded as parties and may not avail themselves of rights given to parties. .One who is not a party in the records is not a party to the cause, although he may be interested, and in deciding who are parties to the record, the courts will not look beyond the records. Thus, it is stated that before a person may interpose a defense to an action, it is essential that he makes himself a party on the record."

The American Life Insurance Company (ALICO) v. Koroma et al.,30 LLR 61, 65 (1982).Emphasis supplied.

Further, the law imposes a duty· on a person wishing to assert a real and vested interest in a matter before a court of law to file a motion to intervene seeking protection thereof. Civil Procedure Law, Rev. Code 1 :5.63 provides:

"A person desiring to intervene shall serve a motion to intervene upon all parties affected thereby. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought."

The mandatory command of the statute provides no place for discretionary conduct. One way a person not named in an action as a party and not served with summons to become a party is to comply strictly with the procedural requirement by filing a motion to intervene. This explains why the statute employs the term "shall",

and not may. A further way for a person to become a party to a suit is for one of the existing parties to file a motion to join said person. See: Subchapter D. Joinder of Parties, Rev. Code 1:5.

These procedural safeguards seek to ensure that not only that real parties of interest participate in litigation before a court of law, but also assure judgment enforceability in favour or against parties squarely brought under court's jurisdiction. Lest we forget that in this jurisdiction, it is a cardinal principle of law that no one can be properly bound by a judgment in which he was not a party. Gbae, et al., v. Geeby 14 LLR 147, 150 (1960); Ramatrielle S. A. et al. v. Metzger, 38 LLR 336 (1997).

In the case before us, neither a motion to intervene nor a motion to join was filed, either of which was a necessary prerequisite to becoming a party to the suit. The mere filing of papers captioned as "Answer" by Messrs. George Eli Hykal and James Eli Hykal, acting through their natural Guardian, Eli G. Hykal, perfect strangers indeed, clearly did not met the requirement of and the standard set by statute. The said filing not having complied with statute therefore does not constitute an "Answer" in the eyes of the law.

It is further worth noting that under the mandate of the Civil Procedure Law, Rev. Code 1:9.2(3),a party defendant upon whom a complaint has been served shall file an answer thereto "within ten days of service of the pleading to which it [the party] responds."It is that party defendant brought under the jurisdiction of the court who shall file a proper answer setting forth therein its own narrative as well as legal contentions and defenses to the claims contained in the complaint. Strict adherence to this procedure is mandatory.

Therefore, this Court is deeply troubled to note that in the case at bar, the named party defendants on whom the writ of summons were singularly and collectively returned duly served, failed and neglected to file an Answer to the complaint as required under the law. In other words, the named defendants after they had been duly brought under the jurisdiction of the court through service of precepts, in flagrant violation of the laws controlling, elected not to file an answer. Instead, Messrs. George Eli Hykal and James Eli Hykal, who indeed were non-parties to the suit, filed .the purported "Answer" quoted herein above in this Opinion.

It is indeed bizarre that Messrs. George Eli Hykal and James Eli Hykal in their so-called "Answer" designated themselves as party defendants. This Court is dumbfounded by the fact that the trial judge did not speckle this fundamental breach of the laws regulating our trial practice. As warden of the law, the trial judge woefully failed to pass upon this important issue simply because it was not raised by either of the parties, though it was one of law. Here, we find it instructive to reference the case, Super Cold Service v. Liberian-American Insurance Corporation, 40 LLR 189 (2000).

In that case, one of counsels vigorously pleaded with the Supreme Court not to consider the statute of limitation provision regulating the commencement of an action involving a written contract. The undisputed facts of that case indicate that the issue whether the statute of limitation should apply was never raised during the entire proceedings conducted in the trial court. In disagreeing with that argument, this is what the Supreme Court of Liberia said:

"We are in agreement with and confirm the holding made in previous cases that this Court cannot consider issues on appeal which were not raised in the court below. However, section 25. 1 (1) of our Revised Civil Procedure Law provides that "every court of the Republic of Liberia shall, without request, take judicial notice of the constitution and of the public statutes and common law of Republic. "

Having so eloquently stated this principle, the Court then proceeded to hold as quoted:

"Pursuant to the above statutory provision, this Court- that is the Supreme Court of Liberia- shall, without request, take judicial notice of the statutory provisions governing limitations of actions in this jurisdiction."

This principle was also applied in Pratt v. Badio et al., 30 LLR 558, 566 (1983). This Court held in Pratt as quoted:

"According to Black's Law Dictionary, a plain and fundamental failure by the parties to raise it in their pleadings; and in the appellate practice the error which goes to the merits of the matter whether assigned as error or not must be reviewed. Therefore, in the Court's Opinion, it would be a sheer malignity and a mi!;·carriage of justice were we to refuse reviewing the entire records of these proceedings in the absence of a showing that substantial harm would result to either party by such review simply because they were not raised by the parties." Id. 566.

Also see: Civil Procedure Law, Rev. Code 1:51.15.

As to the first question whether the mere filing of an "Answer" by a person neither designated as party defendant nor summoned and brought under the jurisdiction qualifies said person as a party-litigant, our answer is in the negative. During trial, the party appellees, it should be emphasized, neither disputed nor controverted that the appellant is vested with fee to the disputed property. Title, ordinarily the core element of an ejectment contest, is not the prime issue of these appeal proceedings. Appellees have substantially contended, however, that the appellant's possessory rights, control and enjoyment of the subject property in dispute are reversionary, subject to the terms of a purported Agreement of Lease reportedly executed between the Hykals and appellant's grantor, Clarence L. Simpson Jr.

It is not in dispute that George Eli Hykal and James Eli Hykal were neither narr1ed as party defendants nor summoned through service of a writ of summons in the ejectment cause. Under these circumstances, assuming that George EliHykal and James Eli Hykal believed and considered themselves to be necessary parties in the ejectment suit and therefore desired to participate as party litigants to defend claims or interest they had in the suit, we wonder whether the proper course of action to be pursued to protect such "interest" was the filing of an "Answer". The law imposes a duty on persons of vested interest, as George Eli Hykal and James Eli Hykal purported to be, to file a motion to intervene in the matter as person of real interest or cause to be joined by a party to the action.

It is indeed regrettable that Messrs. George Eli Hykal and James Eli Hykal elected to disregard the mandatory procedure under the law elucidated in numerous decisional laws of this Court.

Under these circumstances, and in the face of this flagrant disregard of the laws extant, the instrument filed by George Eli Hykal and James Eli Hykal purporting to be an "answer" is therefore worthy of no judicial consideration. Consequently, this Court will proceed on the theory that the defendants named in the Writ of Summons, having not filed an "Answer" have thereupon placed themselves on bare denial as a matter of law. And we o hold.

This being the case, the question now is whether the appellant/plaintiff established the non-existence of an Agreement of Lease to warrant a judgment in his favour? This is an important issue since the

named party defendants have not questioned appellant/plaintiff's fee simple to the disputed property. They seem to contend, clearly and simply, that an Agreement of Lease was in force and effect to preclude recovery of the property by the appellant/plaintiff. In other words, the only real issue is whether appellant/plaintiffs title is subordinate to the purported Agreement of Lease alleged to have been concluded between appellant/plaintiff's grantor and the party defendants named in the suit.

During trial, the appellant/plaintiff introduced three witnesses. The appellant himself, Clarence L. Simpson III, as first witness, told the court and jury that he is the legitimate owner of the property, comprising one point three (1.3) lots of land, with buildings thereon, lying and situated on Mechlin Street. He testified to a transfer deed executed by Clarence L. Simpson Jr. to the appellant/plaintiff as a gift. This deed was marked, confirmed, reconfirmed and subsequently admitted into evidence.

Clarence Simpson Jr. testified as the appellant/plaintiff's second witness. The witness introduced himself as a self-employed and a lawyer of long-standing. He corroborated the first witness' account that he, Clarence L. Simpson, Jr., executed a deed in favour of the appellant/plaintiff out of love and affection for him (appellant) as issue of his body.
Witness Simpson Jr. vehemently denied ever executing an Agreement of Lease in 1997. The witness admitted that he executed an Agreement of Lease but that this was done prior to 1930. During cross examination, the witness admitted serving as lawyer for Mr. Hykal, then General Manger of METCO, (Middle East Trading Corporation) and also as his Attorney-in-fact. The witness further told the court and jury that he purchased the subject premises from one Mr. Duncan in 1979. At this time, Mr. Hykal was already on the property and that he (the witness) saw no need to disturb said possession**.**

During cross examination, the witness was asked and responded to the following questions in the manner following:
Q. "....you earlier testified that you executed a Lease Agreement with Mr. Eli Hykal prior to 1980. Your title if correct became effective October 21, 2013. By what authority then did you execute a Lease Agreement prior to 1980?

A. Your Honour since you ordered me to answer the last question, I therefore have to answer this question, although with all due respect, your honor, I feel that the question put and the document by counsel is extraneous to the current case. But I will answer the question. Ladies and Gentlemen of the jury, in 1979 the matter of transfer of property from Mr. Louis Duncan to me was finalized, the service of correspondence relating to this transfer is not a party of the current proceedings and therefore since they were never pleaded and exhibited with the pleadings they are not currently before this court. However, in deference to your honors order, I will proceed to give time to regular explanation. History reflects that in April of 1980, there was a Coup-D'etat in Liberia and I had to be a bit away for business. Mr. Hykal already had possession of this property from the 70's,,..and therefore there was no disturbance of his possessory right immediately following the Coup-D'etat. I was declared a persona non grata and therefore could not return to Liberia for the next eleven (11) years. I had to be out of my country. The deed that Mrs. Duncan executed for me was left in my law offices which were destroyed and completely looted. Therefore, I asked that the particular deed which had not probated and registered be withheld because the Doe Government was seizing every property of mine within the forty three thousand (43,000) square mile and seizing and taking my bank account that I owned in Liberia. I did not want to jeopardize Mr. Hykal possession of this property. More besides, that since I have previously been managing director of the Middle East Trading Corporation, many assumed that I have a share in the company and therefore

proceeded to try to take it over because of my assumed shareholding. This was all the reason why I decided not to offer for probate this deed. Simpson, Bright and Cooper (Firm) was shut down and the entity dissolved. Next I heard was the establishment of Cooper and Togba. In all of these, this particular deed got lost. I had to therefore wait for an opportunity to have the deed re-issued. The documents are all clear about the amount paid; they in the first record formed part of the Summary Proceeding which was dismissed. From that time1980until2013, Mr. Henry E. Duncan Jr. never returned to Liberia; but I had in my possession all documents relating to the transaction except for the deed signed by his mother since his father had preceded them both. Last year when Mr. Duncan came to Liberia and I presented him with all of the documents, he said to me: I remember the transaction; my mother told me and I have no problem in signing another deed for this property." He signed the deed and had his wife and brother- in-law to witness the signing. This is why the deed that was put forth in the case before the court is dated 2013. I hope this statement clarifies the point so that Counsel for Defendants no longer brings into question my character, good name, fame and reputation which he is trying to besmear in these proceedings."

Mr. Nicholas Fayad was the appellant/plaintiff's third witness. He narrated that he worked as Manager for Mr. Hykal's company from 1971 to 1982 and that he collected rentals from the property for Mr. Hykal between the period 1976 and 1982. He also testified to photographs of the buildings from which he collected rentals for Mr. Hykal. When his third witness rested, counsel for the appellant/plaintiff prayed court for the admission into evidence of plaintiff's deed as well as photographs of the house. This prayer was granted by the court.

Appellees/Defendants, on bare denial, also took the stand during trial. Their first witness was Pastor Myers Morris. He told the court and jury that he was one of the witnesses in 1997 to the execution of the Agreement of Lease between Counsellor Clarence C. Simpson, Jr. and the Hykals. The witness indicated that the other witness to the execution of the Agreement of Lease was a Madam Amanda Gibson, who had since died.

Asked during cross examination when he was employed with Mr. Hykal, Witness Pastor Morris first answered "in 1988" and with some clarification from the court, indicated "1989." On the redirect Pastor Morris again stated that he was employed "in 1998." Providing answer to a question whether he witnessed the Agreement of Lease before his employment with Mr. Hykal, the witness said that he was employed with Mr. Hykal before witnessing the Agreement of Lease.

The Defendants' second witness was Oliver Rouhana Sr., who testified and identified the purported Agreement of Lease, marked by the court as "D/1,·Answering to a question on cross-examination as to when he got to know Mr. Hykal, the witness said that he worked with Mr. Hykal in 1974 at the Standard Stationary Store. The witness however admitted to not being present when the Agreement of Lease was executed. He told the court that he was presented a copy of the Agreement of Lease being an attorney-in-fact of the Hykals.

We must appropriately remark here that it was this purported Agreement of Lease, clearly net before the court, that was erroneously admitted into evidence by the trial judge and used as the basis for his conclusion holding the party defendants as not liable in this ejectment suit.

Other witnesses testifying for the appellees/defendants were Moham Novani and Mamadou S. Diallo. They both testified that they are tenants of Mr. Hykal and that they have been on the premises since 1992 and 2003 respectively.

This was the sum total of the evidence deposed by the parties after which the trial July was char9ed. Following their deliberation, the trial jury returned a unanimous verdict holding the Defendants not liable. The verdict was subsequently confirmed by His Honour Emery S. Paye after the denial of the appellant/plaintiff's motion for a new trial. Hence, these appeal proceedings.

Having reviewed the evidence presented by the appellant, we are unable to agree with the ruling entered by the trial judge that the appellant failed to proffer preponderance of the evidence to warrant a flrrli:1g that he holds fee to the property, but also, that no Agreement of Lease existed to preclude him from immediate possession of the property. En passant, it might be of interest to mention that this Court s taken aback that the learned trial judge will refer to a plaintiff in purely civil matter as failing to "establish a prima facie". "Prima facie evidence" is correctly employed and applicable strictly in criminal proceedings.

Review of the evidence illustrates the following:

A. The appellant presented a deed executed in A. D. 2.013 in his name by his grantor. The said deed was probated and registered in strict compliance with the laws in vogue.

B. The appellant's grantor, Clarence C. Simpson, appeared in court and testified. He corroborated the appellant's account of the deed being executed by the witness as a gift to him who was issue of his body.

C. Witness Simpson's account as how he, Clarence C. Simpson, Jr. acquired title to the premises has neither being contested nor refuted.

D. A properly executed deed, as was admitted in the case at bar, is proof sufficient to establish perfect title as against a party who claims occupancy and possessory right without proper showing and admission of authorizing instrument into evidence during a regularly conducted proceedings.

We are puzzled that the trial judge failed in his duty, as custodian of the laws of the land, to disallow in court an Agreement of Lease filed by a non-party to the suit. The party defendants, having not formally appeared before the court by filing an Answer to the complaint consistent with law, all instruments, including pleadings along with the Agreement of Lease presented and allowed by the judge during trial, violated the laws applicable. The principle enunciated in the case America life Insurance Company versus Beatrice L. Holder, reported in 39 LLR page 143, that the jury is the exclusive Judge of the evidence and as to what constitutes the preponderance of the evidence, does not apply in the current case as the presiding judge, in the first place, ought not to have allowed the instruments relied upon by the jury to have been admitted into evidence. Accordingly, all such instruments are deemed expunged and same therefore could not form the basis for an affirmable judgment by the Supreme Court of Liberia.

Consequently, the ruling rendered by Judge Emery S. Paye, and the judgment therein entered holding the defendants/appellees not liable, being in conflict with law, is hereby ordered, and same is reversed for all intents and purposes.

Earlier in this Opinion, we proposed to deal with the appellant's demand for award of general damages for wrongful withholding of his property. Recovery of general damages in an ejectment action is rooted in our jurisprudence. Far back in 1861, the Supreme Court of Liberia, passing on such demand, held that damages and costs are recoverable by the party plaintiff for the wrongful withholding of property. This, according to the Supreme Court, is in addition to the possession of the lands. Brown v Payne, reported in 1 LLR 9, 10 (1861). Our statute also is not silent on this issue.

Civil Procedure Law, Rev. Code 1: 62.3 laconically states: "In a complaint in an action of ejectment, the

plaintiff may demand damages for wrongful detention of the real property as well as delivery of possession.,, This means that depriving a person of his or her property by wrongful withholding thereof warrants a judgment in favour of the deprived plaintiff to recover general damages as a matter of law.

Mr. Justice Henries, speaking for this Court in Cooper et al. v Davis et al., held as a restatement of general principle of law as follows:

"[G]eneral damages are those which are the natural and necessary result of the wrongful act or omission asserted as the foundation of liability..." 27 LLR 310, 318-9 (1978).

Reverting to the records, the appellant/plaintiff has complained that he suffered damages occasioned by defendants/appellees' illegal occupancy of his property. Appellant/plaintiff has consequently demanded damages to the tone of Five Hundred Thousand United States Dollars (USD500,000.00).

We find ourselves unable to ascertain the basis for the size of the demand. So we must here revert to the evidence to aid this Court measure the quantum of the general damages. In this respect, we see that the evidence deposed during trial clearly indicates that the deed upon which appellant's claims are founded, was executed in appellant's favour on November 16, A. D. 2013. The appellant, having therefore become vested with full ownership in fee as of November, 2013, it is clear that the property has only been withheld for about two (2) years now. Nevertheless, there is no doubt that the appellees/defendants have wrongfully withheld as well as deprived the appellant/plaintiff of his property in rentals and many other benefits for this period (November 2013 - 2015).

We have therefore determined that the amount of Seventy-Five Thousand United States dollars (US$75,000.00) is a fair and reasonable amount which this Court hereby orders to be paid by appellees/defendants to the appellant/plaintiff for wrongful withholding.

Wherefore, and in view of the foregoing, the ruling entered by the lower court holding appellees/defendants not liable, being unsupported by the facts and proceedings in this case as well as the laws applicable, is therefore reversed. By preponderance of the evidence, appellant/plaintiff established his title and the non-existence of a purported agreement of Lease to compel this Court's Judgment in his favour.

The Clerk of this Court is hereby directed to send a mandate to the judge presiding in the court below to resume jurisdiction over this case and give effect to this judgment. AND IT IS HEREBY SO ORDERED.
Judgment Reversed.