NAGBE KPARNEE, Agent for MONAH, alias Ida Phillips, Appellant, *v.* SARAH TANO-FREEMAN, Appellee.

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

Argued April 10, 1967. Decided June 16, 1967.

1. A party to an action permitted under the law to amend a pleading must before refiling, pay all costs thereby incurred by the opposing party to properly complete such amendment.
2. When both questions of law and questions of fact are raised by the pleadings, the questions of law are first to be decided by a trial court.
3. A trial court which determines a legal issue by dismissal of the complaint, is not required to submit to the jury questions of fact raised by the pleadings.
4. A plea which conclusively determines an action, supersedes all other issues of law and fact.
5. Inconsistent defenses are not permissible in an answer, but in the cause at issue the defenses were only cumulative.
6. Presentation of an official document is proof of its veracity, in the absence of sworn proof to the contrary.

The plaintiff brought an action in ejectment, seeking to recover land from the defendant claimed to be wrongfully withheld. The subject of the action concerned the same property involved in deed correction proceedings in 1949, which found the property claimed herein by plaintiff was legally held by the defendant. An action in ejectment relating to the same property was also brought by the plaintiff in 1963 and dismissed. The case at bar was brought by plaintiff in 1966, and withdrawn after objections were raised attacking it, with the right reserved to refile, which was herein attempted, without first paying the costs incurred by the defendant. The action was dismissed and the plaintiff appealed from the judgment. *Judgment affirmed.*

A. Garger Richardson and *D. Caesar Harris* for appellant. *Richard Diggs* and *A. Lorenzo Weeks* for appellee.

MR. JUSTICE MITCHELL delivered the opinion of the Court.

A thorough review of the records brought before us on appeal in this case shows that plaintiff filed her complaint in ejectment in the Circuit Court of the Sixth Judicial Circuit, in the March 1966 Term, against defendant.

After being attacked on several issues pleaded in defendant's answer, plaintiff, on February 15, 1966, withdrew his complaint with the reserved right to refile. The pleadings after refiling traveled as far as the surrebutter.

Hon. Robert G. W. Azango, presiding over the aforesaid March Term of the Circuit Court, heard the legal issues and dismissed the case, which ruling is set forth in the following:

> "Again, our Supreme Court has said, in *Thomas* v. *Dennis*, 5 L.L.R. 92, that hence, whenever a pleading is amended, whether it be that of plaintiff or defendant, or a case having been dismissed, plaintiff desires to refile, the cost must *first* be paid previous to the amendment or refiling, as the case may be. Also in *Davies* v. *Yancy, et al.*, 10 L.L.R. 89, the Court said that, under our statutes, a plaintiff may amend his complaint once, or withdraw it and file a new one; but if he withdraws his complaint he must pay the costs of the action up to the time of such withdrawal.
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> "Though there are many other interesting legal issues which we would like to pass upon, because of the violation of the statutes relating to amendment, withdrawal, and refiling of cases, which the plaintiff in this case did not conform to this case is, therefore, dismissed with costs against the plaintiff, who is forever barred from reinstituting the within case. And it is so ordered."

From this ruling made on the legal issues, plaintiff excepted and brought her appeal for consideration by this Court.

The bill of exceptions on which this appeal has come before this Court embraces three counts, which we shall hereunder quote:

> "1. Because plaintiff says the court erred in dismissing the action of ejectment on the ground that plaintiff did not pay the costs of court when she withdrew her action with the right reserved to refile, when indeed and in truth, nonpayment of costs prior to refiling is no ground for dismissal of an action under our Code of Laws, to which plaintiff excepted.
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> "2. And also because plaintiff says the court erred in sustaining counts seven and eight, which counts raised the doctrine of estoppel and at the same time denied that defendant ever withheld any permission belonging to the plaintiff, which pleas are inconsistent and, therefore, the answer of defendant should have been dismissed. To which plaintiff excepted.
>
> "3. And also because plaintiff says the court further erred when ruling that plaintiff has withdrawn her case of ejectment more than once, predicated upon the mere allegations of defendant which is not supported by the record and which plaintiff denied categorically in her pleadings. Plaintiff maintains that this was a factual averment which should have been ruled to trial. The court not having taken this into consideration, makes the ruling erroneous. To which plaintiff excepted."

This case was called for hearing on the 10th day of April of the current year, when counsel for appellant in the course of their arguments traversed the grounds of their bill of exceptions and strongly contended:

> "1. That the failure to pay costs after the withdrawal of their complaint and refiling, is no ground according to statute for a dismissal of their case.

"2. That it was inconsistent for defendant to have pleaded in counts seven and eight of her answer the doctrine of estoppel, and simultaneously denied withholding and detaining any land belonging to the plaintiff, and for that matter the said answer should have been dismissed; therefore, it was error for the court below to sustain said two counts.

"3. That the court below further erred when it ruled also that plaintiff had withdrawn her suit of ejectment more than once, since it was a factual issue averred by defendant and denied by the plaintiff in their pleadings, which was never proved at the trial."

Appellee, in countering the argument of the appellant, argued that plaintiff instituted the identical ejectment suit in the year 1964, when the same was dismissed by the then presiding Judge, Hon. John A. Dennis. That at the March 1966 Term of the Circuit Court, the action was refiled, withdrawn and filed for another time, which practice is not sanctioned by the law. They also contended that after the withdrawal of this suit in the lower court, and refiling, costs were not paid in keeping with the statute in vogue, which amounted to an incurable legal error and warranted the dismissal on the legal issue. Arguing further, they maintained that the place where plaintiff's affidavit was taken was omitted in the jurat, which omission was also an incurable error because it rendered the complaint insufficient. Closing, they rested their argument on the point that plaintiff failed to make profert of her chain of title, which is an essential requisite in ejectment suits. These were the main points argued for and against, and now that we have set forth all of the issues or at least the main issues relied upon in this appeal, we will proceed to direct our consideration thereto.

In complying with a statute which requires certain legal requisites to be met, any failure to comply with the whole, or any portion thereof amounts to a noncompliance therewith. And when such noncompliance is attacked

by the adversary, the Court is left with no choice than to direct its attention thereto. The statute which prescribes the mode by which pleadings may be withdrawn or amended is specific, and reads:

> "At any time before trial any party may, insofar as it does not unreasonably delay trial, once amend any particular pleading made by him by:
>
> "(a) Withdrawing it and all subsequent pleadings made by him;
>
> "(b) Paying all costs incurred by the opposing party in filing and serving pleadings subsequent to the withdrawn pleading; and
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> "(c) Substituting an amended pleading, to which the opposing party may make a responsive pleading in the same manner as he did to the withdrawn pleading. . . ." 1956 Code 6:320.

It maps the course to be undertaken in all amendments or withdrawals, and in doing so, any neglect to comply with all provisions subjects the violating party to the sanctions of the law. A withdrawal of a complaint, or any subsequent pleading, by either side, and a refiling of an amended complaint, or pleading, as the case may be, is incomplete until costs incurred by the opposing party are completely paid by the party acting under the statute, before the refiling. Moreover, this Court has over and again said that every statute must be construed with reference to the object intended to be accomplished by it.

The question of the nonpayment of costs after the withdrawal by plaintiff, is an issue at bar, although it is incumbent upon the trial judge to consider all of the issues of law raised in the pleadings. Yet, if it is found by the trial court that there are legal issues which warrant a dismissal, consideration of factual issues to be determined by a jury is not necessary. Count one of the bill of exceptions is, therefore, not sustained, for in *Harmon* v. *Woodin,* 2 L.L.R. 334 (1919), the Court held that the discharge of a defendant, or the dismissal of a suit,

quashes all process then existing against him in said action, hence, in either such case, the court loses jurisdiction both of the person and subject matter.

Count two of the bill of exceptions has led us to a further examination of the record, and for the benefit of this opinion we shall quote counts seven and eight of defendant's answer:

> "Count 7. And also because defendant submits that in 1963, the plaintiff instituted an action of ejectment against the defendant which action was heard and the law issues disposed of during the March Term, 1964, by Judge Dennis and on the law issues plaintiff's action was dismissed with cost against her to which she took exceptions, the dismissal of plaintiff's action being based on the violation of the provisions of the statutes, that is to say, plaintiff was not vested with legal title to the property which defendant is possessed of, plaintiff's deed applying to a piece of land situated on Carrey Street. See copy of said ruling annexed and marked exhibit 'B.'
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> "Count 8. And also because defendant says that the original deed of the plaintiff did not permit her to claim defendant's land; that plaintiff surreptitiously and by false representations to court had her said deed corrected in 1949, after defendant had acquired her title in 1943, simply to claim defendant's land. Defendant, therefore, respectfully requests this court to take judicial notice of the records in the deed correction proceedings, done in 1949, September 8; plaintiff's title, therefore, is not a perfect one."

Upon considering these two counts, we are in a quandary to understand in principle what appellant intends to show by count two of her bill of exceptions. Appellee has not been contradictory or inconsistent in her said counts seven and eight, which could have led to their dismissal. On a close examination, the aforesaid count seven does invoke a plain bar, which is not contradicted by her count eight because the said count eight merely refers to her original

title which possessed her of the said tract of land even prior to plaintiff's surreptitious attempt to gain ownership to said land now in question.

These two counts, therefore, in our opinion, are not inconsistent, nor contradictory to each other, and were not cause for a dismissal of the defendant's answer in the court below, as appellant argues they should have been.

Count two of the bill of exceptions, therefore, being without legal soundness, is not sustained.

Count three of the bill reads:

> "And also because plaintiff says that the court further erred, when in ruling it said that plaintiff had withdrawn her case of ejectment more than once, predicated upon the mere allegations of defendant which are not supported by the records of the court and which plaintiff denied categorically in her pleadings. Plaintiff maintains that this was a factual averment which should have been ruled to trial in the case, if need be, and which the court did not take into consideration, which makes the court's ruling erroneous."

Our Code of Civil Procedure, 1956 Code 6:313, as well as many opinions of this Court provide that trial courts are entrusted with the duty of determining all issues of law raised by the pleadings in a case before the facts therein involved are heard by a jury. *Johnson* v. *Dorsla,* 13 L.L.R. 378 (1959).

In the instant case the defendant made profert of a certificate under the seal of this Court, certified by the Clerk of this Court:

> "This is to certify that up to the issuance of this certificate, no appeal has been filed and/or docketed in this office by Monah, alias Ida Phillips, entitled: objection to the probate and registration of public land sale deed in the City of Monrovia, that is to say since the determination on the 22nd day of April, 1964, of the case: Monah, alias Ida Phillips, Objector-Appellant *versus* Martha Nelson *et al.,* Respon-

dents-Appellees. Tried and decided April 22, 1949, which judgment in said cause was reversed and case remanded.

"Issued under hand and seal of Court this 16th day of October, 1950.

"[Sgd.] S. BENONI DUNBAR, SR.,
Clerk, Supreme Court of Liberia."

This certificate on its face did not require any oral proof to substantiate its genuineness. It had been issued in proof of the fact that plaintiff had withdrawn her case. Yet, despite this document which defendant requested the Court to take judicial notice of, appellant claims it presents a question of fact and should have been proved at the trial. This count of the bill of exceptions is erroneous and without legal merit. For even if the case had not been dismissed on the law issues in the pleading, the question of the certificate tendered under seal of this Court could not have been a subject matter for proof at the trial. Moreover, a plea in bar when raised supersedes all other issues of law raised in the pleadings and must be given priority in all cases.

In *Thompson* v. *Republic of Liberia,* 14 L.L.R. 290 (1961), Mr. Justice Pierre, speaking for this Court, held, at p. 293:

> "That no oral testimony can be taken to explain a written document, is a maxim as old as the practice in this jurisdiction."

Our Civil Procedure Law, 1956 Code 6:725, provides:

> "A written statement signed by an officer having the custody of an official record or by his deputy that after diligent search no record of entry of a specified tenor is found to exist, attested as a copy of official record in accordance with the provisions of section 723(1) is admissible as evidence that the records of his office contain no such record or entry."

Besides the certificate from the clerk of this Court that no appeal had been filed in his office, all of the papers in

connection with the withdrawal were made profert by defendant in her pleadings, as certified copies of documents deposited in the office of the court below, in accordance with the law. *Thomas* v. *Republic of Liberia,* 2 L.L.R. 562 (1926).

With all of the copies of such documents authenticated under seal, appellant still maintained that oral testimony was preeminently necessary, which in our opinion is a fallacy, for a plea in bar is sufficient to dismiss a plaintiff's action. Hence, appellant's count three of her bill is also denied.

This is a case in which defendant acquired title to the land in question in the year 1943, when plaintiff's original deed gave her title to a tract of land separate and distinct from that of the defendant, and in 1949, when defendant had been in possession of the said tract of land for six years, plaintiff, against law and equity, claimed the said property to be hers. When the court below decided that she was barred against bringing any further suit against the defendant, she excepted and brought her appeal. Her bill has been closely examined. The records brought forward in the case have also been inspected and examined. The dismissal in the lower court on the law issues raised in the pleadings have been reviewed. It is our judgment that we must limit our opinion to the ruling of the court below from which the appeal was brought and we find that the decision of the court below was correct and in harmony with the law. Hence, its judgment is hereby affirmed, with costs against the appellant, a mandate to this effect to be sent by the clerk of this Court to the court of original jurisdiction. And it is hereby so ordered.

Affirmed.