ERIC E. REEVES, A. BERNARD GIBSON, J. WINSTON STEWART, SAMUEL E. PERRY, ADEMOLA ILLUYUMADO, H. WILLIAM TYES, and GIBSON & SON, Appellants, *v.* GERTRUDE KNOWLDEN, Appellee.

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

Argued March 11, 1952. Decided June 6, 1952.

All issues of law raised in the pleadings must be ruled upon before any issues of fact may properly be referred to the jury

Appellee instituted a libel action against appellants in the court below and, upon the verdict of a jury, obtained a judgment for damages. On appeal to this Court, *judgment reversed* and case remanded for disposition of issues of law raised by the pleadings.

Richard A. Henries for appellants. *T. Gyibli Collins* for appellee.

MR. JUSTICE DAVIS delivered the opinion of the Court.

In Monrovia during 1950 there was published a newspaper called the *Daily Times*. The appellants in this case were editors, manager, proprietor and printer, respectively of the said news organ.

An issue of this paper contained the following article:

"SHE IS CHARGED WITH STEALING TWO CHICKENS

"Monrovia—Monday, October 30. A woman by the name of Gertrude Knowlden was this morning arrested by the police. She was charged with theft for having stolen two chickens from Mrs. Fernandez.

"The former was detained at the police station pending investigation and trial."

Considering this publication injurious to her, appellee, Gertrude Knowlden, instituted an action against appellants sounding in defamation, in which she claimed three thousand dollars. The plaintiff alleged in the complaint:

1. That the allegation contained in the publication was false, malicious, and intended to injure her in her good name, fame and reputation; and that said publication imputed guile to her, for on its face, it showed that she had been guilty of an offence punishable by law, namely petty larceny.
2. That she had been injured by said publication, because she had been brought into public scandal, infamy, disrepute and disgrace, and therefore was damaged in the sum of three thousand dollars.

Defendants, now appellants, filed an answer containing four counts which reads as follows:

"1. There was no intent on defendants' part to injure plaintiff in her purported good name, since what was published was actually what happened; that is to say, plaintiff was actually arrested by the police, and was actually charged with stealing a neighbor's chicken, as more fully appears from certified copy of page 97 of the Police Criminal Record Book, and the Police Daily Occurrence Book for Monday 10/30/50 at 8:30 A.M.

"2. Said defendants deny that their aforesaid publication meant or implied that plaintiff has been guilty of the crime of larceny as is alleged in her said complaint; for nowhere in said publication have the defendants charged plaintiff with theft; but rather their publication aforesaid tells in a simple manner what steps were taken by the police following the disappearance of a neighbor's chicken.

"3. Defendants deny that plaintiff could have been

damaged by their publication since the said publication did not accuse the plaintiff of stealing the chicken but merely reported the action taken by the police. Damages would lie against them only if the publication can be proven to be false in its recital of the occurrence.

"4. Defendants deny that plaintiff could possibly be damaged in the sum of three thousand dollars when she is not known to be gainfully employed, nor does she stand to lose any financial returns which would have come to her."

Countering the defense set up in the foregoing answer, plaintiff filed a reply containing three counts which we also quote:

"1. Said answer is fatally defective and bad on the ground of its being evasive and contradictory in its meaning and effect, in that said answer denies the averments of the complaint as being grossly false and at the same time it justifies the truth of the libelous publication. Plaintiff maintains that an answer which both denies the allegations of the complaint and at the same time sets up justification and excuse is contradictory in its effect, and should therefore be stricken.

"2. Plaintiff demurs to the purported certificate, marked as Exhibit '1' of the answer, as the basis of the malicious publication in question, on the ground that the 'Police Daily Occurrence Book' which said defendants rely on as their authority for making said publication is not a proceeding of court, nor an account of any judicial proceeding, nor is the police officer whose signature is thereto attached shown to be a judicial officer or vested with judicial authority, nor did said officer act with any authority of law to make such record if he made it at all. Plaintiff maintains that the publication of such unauthorized and illegal data

on the part of the defendants, without even the least occasion therefor, was for the sole purpose of blackening the character and reputation of the plaintiff maliciously.

"3. Plaintiff categorically denies that she was ever arrested and detained in the police station as falsely alleged in said certificate, nor does she recall being charged by Laura Fernandez with the act of stealing as therein also alleged; and therefore she denies that the publication is a true statement of fact as to what actually took place."

The issues raised in the above-quoted pleadings came for hearing on December 29, 1950 before Circuit Judge George B. Caine of the Fifth Judicial Circuit, who had been assigned to preside over the Civil Law Court of the Sixth Judicial Circuit.

When the North Pole was discovered it was felt that this was one of the most outstanding wonders of the world, but this opinion was changed when, later on, Lindbergh made his record breaking flight; and so wonders continued to happen—even up to and including the discovery or invention of the atom bomb. During the October Term of this court, last year, we opened the record in the case of *Isaac Tweh* v. *Nathaniel Massaquoi;* and, as the arguments progressed, we were startled over what we considered one of the judicial wonders when Judge Caine referred to and cited in his ruling a decision of the Supreme Court which did not at all exist. In this case before us now, another wonder is performed by him, when, contrary to our statutes, Supreme Court decisions, and practice, he suspends ruling on the issues of law raised by the parties and rules the case to trial by jury. The ruling we quote, to wit:

"The Court in ruling says that this is a case of damages for libel in which Gertrude Knowlden is plaintiff and Eric E. Reeves, et al., defendants. The plaintiff in the complaint sets forth certain facts which were

answered by defendants in the first and second counts of the answer, which answer was attacked by plaintiff as confession and avoidance. Which under the principles of B.L.D. under Confession and Avoidance and N.A.S. Second Volume, page 169, case: *'Bryant* v. *Bryant,'* syl. 3, gives a bad color in pleading. This may be correct, but the pleadings filed in this case, from the complaint to surrejoinder entail principally questions of fact under the law which says that the trial of all mixed questions of law and facts shall be tried by the jury under the assistance of the court.

"In view of the foregoing circumstances, the court will reserve ruling at this stage of the question of law and submit the facts to the jury to decide upon its credibility and effect. And it is so ordered."

What an anomaly! What a travesty of justice! The issues of law raised in the case were never decided, yet a verdict was obtained by appellee, plaintiff below, and a judgment rendered on said verdict declaring that appellants, defendants below, should pay to appellee damages in the sum of three thousand dollars. From this judgment appellants have fled to the ramparts upon which the haunted and persecuted find safety—this forum of last resort.

Reenforcing the provisions of our statutes which, in mandatory tenor, declare that any and all issues of law raised in the pleadings should first be decided by the court before a case is referred to the jury to decide the facts, this Court held in *Porte* v. *Porte,* 9 L.L.R. 279, 283 (1947):

"The trial judge should have passed upon all of the legal issues raised in the pleadings filed, and a failure to do so is a breach which constitutes an error disfavored by this Court since it is in derogation of the law as interpreted by this Court of *dernier resort.*"

As interesting, therefore, as we may consider the issues in this case—some involving questions which take us back

to our Constitution and its pronouncement in respect to the liberty of the press as well the responsibility of those who write—issues which this Court would like very much to settle once and for all, we find ourselves, because of what we have stated above, and in view of the appellate character and nature of this Court's jurisdiction, compelled to reverse the judgment rendered in the case and to remand same with instructions to the court below to resume jurisdiction immediately and dispose of the issues of law raised in the pleadings of both parties, and thereafter proceed with the case as the law directs, and this without delay. Costs to abide final determination of the case. And it is hereby so ordered.

Reversed.