H. A. WILLIAMS, Appellant, vs. **M. J. JOHN** and **LAURA ALLEN**, Appellees.

[January Term, A. D. 1894.]

Appeal from the Court of Quarter Sessions and Common Pleas, Grand Bassa County.

Ejectment.

1. An answer which is general in its character and which does not raise specially some question of law precludes the defendant from raising legal questions, and the court from deciding same at the trial. Courts of justice will only decide questions of law when properly raised in the answer and pleadings.

2. The phrase, "free and voluntary consent," in the Constitution involves facts which require proof of their existence before courts will take notice thereof; the term "otherwise" in the organic law relates also to facts which must be proven.

3. The private acts of a husband done in that capacity, are separate and distinct from his acts as a co-administrator of his wife's estate, and where in the latter capacity he makes a sale and transfer of a part of the estate of his wife, he is estopped from setting aside his own act for any cause whatever.

This is a case brought up on a bill of exceptions from the Court of Common Pleas and Quarter Sessions, Grand Bassa County, tried and determined at its June term, A. D. 1893, and brought to this court for review.

In reviewing this case the court finds that the case rests entirely upon the defendants' (now appellees) denial of the allegations of the plaintiff (now appellant) as laid in the complaint; for the answer of the defendant is a general one, which precludes him from raising any question of law not specially raised in said answer. The fundamental principles upon which all complaints, answers or replies shall be construed, shall be that of giving notice to the other party of all new facts which it is intended to prove, whether they are consistent with the facts already stated to the court; or being

consistent with the present existence of such facts, admit or imply their former existence, or show that existing, they can have no legal effect. It must be remembered that when a defendant denies both the law and the fact, the question of law shall first be disposed of. This does not appear to have been done in this case, and the reason why is very obvious; the defendant neglecting to state in his answer what issue of law he intended to raise, the court could not determine upon the same. For courts can only decide law issues when raised in the pleadings. Much credit, however, must be given to the counsellors on both sides in this case, for the argument adduced in support of the positions they took, particularly the counsellor for the appellees, who ingeniously and skillfully presented points in his arguments not raised in his answer, for the hearing of the court, notwithstanding the disadvantages under which he labored to make good the same. In traversing his brief he referred to the Constitution of Liberia, Article V, Sec. 10, a part of which reads, "otherwise than by her husband." The term "otherwise than by her husband" involves a fact which requires proof as to whether the property referred to was secured to her by her husband, or not, which proof does not appear to the court. The phrase "free and voluntary consent," also involves facts which require proof as to whether Marshall Allen has had the free and voluntary consent of his wife, previous to her decease, to sell said property after her death, which proof does not appear upon the record in this case.

The last clause for our consideration comprises these words: "And such alienation may be made by her, either by sale, devise or otherwise." Here the word "otherwise" involves a question of fact, which requires proof as to whether Ellenorah J. Allen, at any time before her death, had requested her husband to sell and convey away said lot of land in question, to him, her husband, in support of their children, as in very many cases a faithful wife would do. We are compelled also to say that no proof on the record does appear in support of the position taken by the appellee, even if the argument could be admitted as having any legal weight; but it cannot be so considered, it being predicated upon points of law and facts which are raised contrary to the statute, which declares that the fundamental principle upon which all complaints, answers and replies shall be made, etc., shall be that of giving notice to the other party of all new facts which it is intended to prove, etc. (See Lib. Stat., Bk. i, p. 45, sec. 8.)

As to the evidence given in the court below by witness Worrell, stating that he had informed Mr. Williams of something, and that he having some misgiving, at the first possible chance got his bond out of court,—this statement being founded upon hearsay, was inadmissible and ought not to have been allowed, on the objections of plaintiff.

The objections made to the questions asked witness Worrell, "Was Ellenorah in debt?" or "Was Marshall Allen in such a state of poverty that he could not support his children?"—the objections of plaintiff to these questions were well founded, and ought to have been allowed, because Marshall Allen did not act in the capacity of a husband of Ellenorah J. Allen, but was acting as co-administrator with J. W. Worrell, as administrator of Ellenorah J. Allen's estate, and therefore they represented her, they being the administrators of her estate; and their bond was responsible to her heirs and creditors for any mismanagement that might have occurred in the administration of the estate.

Notwithstanding that Marshall Allen was the husband of Ellenorah J. Allen, his private acts as her husband and father of their children could not legally be blended with his acts as co-administrator of the aforesaid estate. Such acts are separate and distinct, and this is very obvious from the fact that Marshall Allen's bond was only responsible for his acts as co-administrator, and not for his acts as father. Every purchaser is supposed to be innocent unless he has been legally warned. In this case it does not appear that the appellant was legally warned before he purchased the said piece of property.

Acts of courts against which no protest has been entered, or from which no appeal has been taken, are presumed to be founded in reason and therefore are legal, for reason is the soul of the law. The principle is applicable in this case to the act of the said Monthly and Probate Court, with respect to the sale of the said lot now in dispute, in that the deed executed is evidence against all parties to the same,—Marshall Allen and J. W. Worrell, co-administrators of the estate of Ellenorah J. Allen on the one part, and H. A. Williams, purchaser of said lot in the town of Edina, Grand Bassa County, on the other part, as contracting parties,—and by which the parties are estopped from alleging anything contrary to the terms therein expressed. The court simply passed upon these points, not because they could have any legal effect, they not having been raised in the defendant's answer.

Therefore the court adjudges that the judgment of the court below is hereby reversed, and that the appellant recover from the appellee the said lot of land as described in appellant's transfer deed, and all costs in this action.