MOMOLU MASSAQUOI, Appellant, *v.* ALFRED LOWNDES, Agent for Messrs. PATERSON, ZOCHONDA AND COMPANY, LTD., Foreign Merchants Transacting Business in Montserrado County, Appellees.

APPEAL FROM JUDGMENT IN ACTION OF DEBT.

Argued January 15, 1935. Decided January 18, 1935.

1. In criminal cases the plea of not guilty puts in issue every fact the prosecution is bound to prove, and enables the defendant to cross-examine the witnesses for the prosecution on all matters touching the cause or likely to discredit them.
2. In civil cases however the parties are confined to the points specifically set up in the pleadings; hence a defendant who pleads in traverse, or *a fortiori* does not plead at all, cannot cross-examine the witnesses for plaintiff on any affirmative matter.
3. Where therefore a defendant has not appeared and/or pled, a trial judge does not err who forbids the putting of questions tending to elicit an affirmative defense.

On appeal from judgment for plaintiff in action of debt, *judgment affirmed.*

D. C. Caranda for appellant. *H. Lafayette Harmon* for appellee.

MR. JUSTICE GRIGSBY delivered the opinion of the Court.

This case comes up to this Court upon a bill of exceptions taken to the ruling and judgment of the trial judge sitting in the law division of the court. From a careful inspection of the records it appears that the only point upon which appellant brought the case here for review, is because Judge Monger, the trial judge, interrupted and forbade further cross-examination which appellant claims was error.

When it comes to the latitude to be allowed on cross-

examination, an important distinction must be made between criminal and civil cases. In the former a plea of "not guilty" puts in issue every fact which the prosecution is bound to prove, and enables the defendant to cross-examine the witness on all matters touching the cause or likely to discredit the witness. *Yancy and Delaney* v. *Republic,* 4 L.L.R. 3, 1 Lib. New Ann. Ser. 3 (1933); *Cummings* v. *Republic,* 4 L.L.R. 16, 1 Lib. New Ann. Ser. 17 (1934).

In civil cases, on the other hand, as the one now under consideration, the defendant is required by law to specifically plead in his answer every affirmative matter he desires to rely upon. Hence when an answer is regularly filed, defendant even then is not allowed to set up any defense not specifically raised in one of the pleas in said answer. Statutes of Liberia (Old Blue Book), 45, ch. V, § 8; 1 Rev. Stat. § 290; *Solomon* v. *Sherman,* 1 L.L.R. 317 (1897); *Williams* v. *Allen,* 1 L.L.R. 259 (1894).

Defendant in the present case filed neither appearance nor answer within the time prescribed by law; but when called at the trial appeared by attorneys and submitted to the jurisdiction of the court. Under the provision of the laws cited, he could rest upon a bare denial, equivalent to a *nil debet,* only. In spite of this, his counsel, during the cross-examination which the trial court allowed, embarked upon an affirmative defense, whereupon the judge quite correctly checked him. Whether he thereupon voluntarily abandoned further cross-examination as Mr. Harmon contended, or the judge forbade him to put further questions as was contended by Mr. Caranda, may, if decided in favor of the latter, be technically a ground upon which the case should be remanded for a new trial. But inasmuch as in the absence of an answer, since none was ever filed, no affirmative defense could be set up at such new trial, and inasmuch as the admissions contained in defendant's own letters and other evidence adduced are, in our minds, sufficient to support

the verdict and judgment, it appears to us that to remand the case for a new trial would only needlessly increase the amount of costs appellant would have to pay, and hence it is our opinion that the judgment should be affirmed; and it is so ordered.

Judgment affirmed.