RUFUS A. PORTE, Appellant, *v.* FRANCES PORTE, Appellee.

ACTION OF DIVORCE.

Argued December 18, 19, 1946. Decided January 31, 1947.

1. All legal issues must be disposed of before a case is tried. Therefore, it was error for the trial judge to fail to rule upon the rejoinder of the defendant.
2. It is error for a judge to deliver an oral charge to the jury when he has been requested to reduce his charge to writing.
3. Where a judge merely cites the controlling law in writing and orally charges the jury on the issues involved, his charge to the jury is oral.
4. Where the evidence does not support the verdict, it is proper to except to the verdict.
5. Where circumstances indicate that the trial judge is suffering from some disability, he should disqualify himself.

On appeal to this Court from a verdict and judgment in favor of the plaintiff in an action of divorce on the ground of desertion, *judgment reversed and remanded.*

B. G. Freeman for appellant. No appearance for appellee.

MR. JUSTICE REEVES delivered the opinion of the Court.

On January 14, 1946 Frances Porte, appellee, then plaintiff, instituted an action of divorce for desertion against her husband Rufus A. Porte, appellant, then defendant. Pleadings were submitted by the parties up to and including the rejoinder. On March 26, 1946 the action was called for hearing and, the parties being present, the trial judge heard the arguments on the issues of law raised in the pleadings *pro et con* after which he made the following ruling: "The judge says the plaintiff's Reply in this case is sustained and the Answer of defendant is dismissed and the case goes to trial on the merits of the facts."

To this ruling, defendant, now appellant, took exception and in accordance therewith in submitting his bill of exceptions he assigned same as the first count in the manner following:

> "1. Because on the 26th day of March A.D. 1946, Your Honour overruled the law issues raised by the defendant, when Your Honour ruled: 'The judge says the plaintiff's Reply in this case is sustained and the Answer [of defendant] is dismissed and the case goes to trial on the merit[s] of the facts.'"

In considering said count one of appellant's bill of exceptions above quoted, this Court finds itself in a quandry in that it fails to understand why the judge in the court below elected to base his ruling on plaintiff's reply when said reply was not the last pleading filed, for the reply did not in any way traverse the issues of law raised in the rejoinder of defendant. Said rejoinder had traversed the issues of law in plaintiff's reply and had demurred to and attacked said reply, raising the plea of departure in pleading, to which attack plaintiff had not filed any pleading denying or making a traversal thereof. Count one of said rejoinder reads as follows:

> "1. Because defendant says that the entire Reply of the plaintiff should be overruled and with it the whole action as instituted for departure in pleading; in that, the plaintiff has departed from the original ground of her action, namely Desertion and shifted to that of Cruelty, when she alleges in count three (3) of her Reply, that she wrote the defendant on April 19, 1944, and June 20, 1945, urging him to get his divorce, 'because of the cruel treatment and mental distress defendant caused plaintiff at the time.' Defendant respectfully submits that under our statute on divorce, Desertion and Cruelty are two separate and distinct grounds for which divorce may be granted.

> Wherefore for this fatal legal blunder in pleading as above set forth, defendant prays the dismissal of this action with cost against plaintiff.
>
> "And this the defendant is ready to prove."

The issue of a departure in pleading as pleaded by defendant in his rejoinder was a forceful plea, and obviously the judge should have passed upon it in keeping with the law. Failing to do so, he committed an error. It would be illegal, unfair, and unjust for defendant's interests to suffer in such a manner, and in support thereof we cite a prior ruling of this Court on a similar position taken by a judge in the court below. In the case *Clarke* v. *Snyder*, 9 L.L.R. 111, decided November 8, 1945, His Honor Mr. Justice Shannon speaking for the Court, said:

> "[W]e pass on to count five of the bill of exceptions which reads as follows:
>
> 'And also because Your Honour erred in not passing upon the salient points of law raised by plaintiff in her Reply and sur-Rejoinder filed in this case, especially issues contained in counts 1, 2, 9, 12 & 14 of her Reply to which plaintiff excepted.'
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> "The approval of this count by the trial judge without any protest or any observation whatever leads us to conclude that there was an omission to pass fully upon all of the pleadings in the case as contended. And this conclusion would further be supported by the ruling of said trial judge wherein is shown no effort on his part to pass upon any of the pleadings in the case subsequent to the answer of the defendant (see trial judge's ruling).
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> "Whilst it is true that in the consideration of legal pleadings certain of the issues presented are more forceful, impressive, and well taken than the others, nevertheless, before there can be a favorable ruling on such issues it must be established that the pleader submitting such issues has so surrounded his pleadings with the safeguards of the law that a counterattack

will not succeed in breaking down the otherwise legal force and effect such pleadings would have; and it is because of this that there are series of pleadings to be gone through where the necessity occurs.

"An answer of a defendant, however well and ably it is framed and presented, must crumble before a reply that effectively attacks a legal defect therein found, and so also must a complaint fall before an answer that successfully attacks its legal sufficiency. With this in view, it is always necessary that a judge, in passing upon pleadings in a cause, make his ruling so comprehensive that it embraces every material issue involved.

"In this case the trial judge overlooked all other pleadings subsequent to the answer of defendant, which subsequent pleadings appear to have presented worthy and interesting issues necessary to be passed upon; and the failure of the judge to have done so was error. Therefore it is our opinion that the ruling therein entered dismissing the case and ruling plaintiff to all costs should be reversed and the case ordered remanded with instructions to the trial court to resume jurisdiction and cause the legal pleadings to be fully heard and passed upon towards a final determination of the issues involved. . . ." *Id. at* 114.

It is surprising that notwithstanding this excerpt of the opinion in the *Clarke* case, *supra,* the trial judge in this case permitted himself to fall into the same dilemma of his colleague. The negligence was analogous; the only difference is that his colleague in the *Clarke* case overlooked all other pleadings subsequent to the answer, whereas he overlooked all other pleadings subsequent to the reply. Judges of the courts below should keep abreast of the opinions of this Court with a view to safeguarding the interests of litigants, thereby preventing them from incurring expenses in unnecessary appeals.

It is needless to make further comment on the error

committed by the trial judge in overlooking all other pleadings subsequent to plaintiff's reply, for such error is obvious. 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 ressort*.

Count two of the bill of exceptions having been considered jointly with count one since it deals with the legal issues pleaded which were not passed upon by the trial judge also, we will consider count three of said bill of exceptions, which reads as follows:

> "3. And also because defendant says that on the 28th day of March 1946, after he had rested evidence he thru his counsel requested Your Honour to reduce your charge to the jury to writing and further requested you to instruct said jury on four (4) points of law namely, (1) what constitutes desertion under the statutes of Liberia, particularly the Matrimonial Causes Act of 1935–36; (2) what the law requires of the complaining spouse with reference to inducing the defaulting party to return to his or her marital duties; (3) the duty under the law of the husband to provide home for his family and the corresponding duty on part of the wife to follow her husband to his changed domicile; and (4) that under the law, non-support or insufficient support given the wife by the husband is not ground for divorce for desertion, which request Your Honour did not comply with; to which defendant excepts."

To this count of the bill of exceptions the judge made the following notation when approving said bill, to wit: "This count is not approved as contemptuous as the judge did reduce his Charge to writing." Let us inspect the judge's written charge to ascertain if his notation is correct. His written charge reads as follows:

"WRITTEN CHARGE REQUESTED BY DEFENDANT

"Gentlemen of the Jury, the controlling law in this case is found in the Statute of Liberia Acts of Legislature 1935–36 page 29 section 36 and page 365 [*sic*] and I shall proceed to charge you on those two points.

"[Sgd.] E. W. WILLIAMS."

It was inconsistent and unreasonable for the trial judge to contend that he had reduced his charge to writing when all he said in the instrument he entitled, "Written Charge Requested by Defendant," after citing the jury to the law that controls the case, was, "I shall proceed to charge you on those two points." We therefore have no hesitancy in saying that count three of the bill of exceptions is well founded, for the document found in the records of the case now under review cannot in any way be considered a written charge, and said judge grossly erred when he arbitrarily neglected to record what charge he delivered to the jury as requested.

Since this question is an elementary one upon which this Court has on several occasions passed, we do not deem it necessary to make any further comment thereon. In passing, however, we would say as a reminder that whenever a judge finds himself unable to judiciously preside over the trial of any case, he should avail himself of the benefits of the law by declaring his disqualification and refuse to try said cause. This to the mind of the Court is the best legal procedure.

Since count 4 of the bill of exceptions refers to the oral charge of the judge to the jury, we refrain from making any comment thereon because we are of the opinion that the judge should have reduced his charge to the jury to writing as requested by defendant, such a request having support in law. In this the judge erred.

The next count of the bill of exceptions reads as follows:

"Count 5. And because on the 28th day of March A.D. 1946, the petty jury to whom the case was submitted after an hour and thirty minutes' deliberation

returned a verdict to the effect that the plaintiff is entitled to her divorce; to which defendant then and there excepted."

The records of the trial evince the fact that justice had probably gone visiting and in consequence thereof said trial consisted of so many irregularities and miscarriages of justice that the jury evidently must have been misled in order to have brought in such a verdict. In support thereof we quote excerpts from two letters of the plaintiff who instituted this action of divorce for desertion, dated April 19, 1944 and June 20, 1945, respectively, to defendant, which he pleaded and offered as evidence in his behalf.

"B. W. I., KAKATA,
April 19th 1944.

"DEAR RUFUS,

. . . . .

"Since you are the offended party, do just what you think best. I will not leave my work. You may 'divorce me for desertion' if you please. I have given this matter a long and serious consideration, and I am absolutely through with it. I have made up my mind, and I will not change it. . . .

"Yours very truly,
[Sgd.] FRANCES."

"BOOKER WASHINGTON INSTITUTE
June 20th, 1945.

"DEAR RUFUS,

. . . . .

"I hate to do this, but I do not want to retard your happiness, when there are lots of chances for you to be happy. I am asking that you go ahead and get the divorce because I think I am the deserted [*sic*] and not you.

"Sincerely yours,
[Sgd.] FRANCES."

These excerpts are from two letters pleaded by the defendant in his answer showing that he did not desert his wife, the plaintiff, as she complained in her complaint, but that she deserted him and admitted it in said letters.

We are astounded by such a miscarriage of justice under the circumstances. After plaintiff had addressed the last letter of June 20, 1945 to defendant, in which she voluntarily admitted she was the deserter and asked defendant to go ahead and divorce her for said reason, she, probably believing thereafter that defendant would not acquiesce therein, surprisingly instituted this action of divorce for desertion against him on January 14, 1946, not quite seven months thereafter, contrary to the law of divorce as found in our statutes. L. 1935–36, ch. XVII, § 36. With such prima facie proof of her own admissions offered in evidence against her and unrebutted by her, she illegally obtained a verdict in her favor. Defendant properly excepted to the verdict of the jury, and count five of his bill of exceptions is well-founded. No party should allow his interest to suffer by disadvantages of such an illegal nature. An inspection of the records discloses that said verdict was unsupported by the evidence produced at the trial and consequently is unfounded.

Defendant's next count in his bill of exceptions is count six, which reads as follows:

> "And also because although when the verdict of the petty jury was read in open court the defendant excepted to it and gave notice that he will file a motion for a new trial which he promptly filed on the following day, Your Honour without passing upon the said motion for new trial rendered final judgment in accordance with said verdict; to which defendant then and there excepted."

To this exception, his honor the trial judge made the following notation: "Not approved as being untrue for there was no Notice of New Trial; it might have been slipped into the record."

A notation of this kind made by a judge of a circuit court of Liberia is disparaging and hence we find no alternative but to censure same. Nevertheless, let us inspect the records under review and see if we can find any justification for said trial judge making such a notation.

We observe that on the ninth day's sitting, March 26, 1946, the case was submitted and the jury was charged by the court and retired to its room for deliberation. The jury returned therefrom with its verdict, which, since it was written, was read. Defendant then and there excepted and gave this notice: "To which defendant excepts and give notice that he will file a motion for New Trial in keeping with law." In conformity therewith defendant filed his motion for a new trial on March 29, 1946, and on April 1, 1946 plaintiff filed her resistance to said motion, notwithstanding the judge had rendered final judgment on March 29 as shown by the record. It is puzzling to observe the judge making such a notation to said count 6 against proof contained in said records of the filing of the motion for new trial and of the resistance. This undoubtedly proves that the trial judge was suffering from some disability, wherefore in honor to himself he should have declared his disqualification and refused to try said cause.

In view of the multiplicity of illegalities, irregularities, confusions, and complications which existed during the trial of this case as partially shown *supra,* this Court has no alternative but to reverse the judgment of the court below and order the cause remanded with instructions to the trial judge to resume jurisdiction and dispose of the legal issues in the light of this and the opinions cited, in order to obtain a final determination of the issues involved. Costs are ruled against plaintiff; and it is hereby so ordered.

Reversed.