JOSEPH Z. SNYDER, Appellant, *v.* DOROTHY E. CLARKE, Appellee.

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

Argued November 11–13, 18, 19, 1946. Decided January 24, 1947.

1. One may deny the truth of the alleged facts in the complaint or deny that they are sufficient in law or do both.
2. Where one denies the law and the facts, the legal issues will be disposed of first.

Plaintiff, now appellee, sued defendant, now appellant, for trespass. The case was dismissed before trial. On appeal the Supreme Court reversed and remanded with instructions to the lower court to resume jurisdiction and hear and pass upon the pleadings fully. *Clarke* v. *Snyder,* 9 L.L.R. 111 (1945). On remand to the lower court, the lower court gave an interlocutory ruling dismissing the answer as contradictory and ordering the case to trial on a bare denial of the facts. On appeal from this ruling, *judgment reversed and remanded.*

Nete Sie Brownell for appellant. *R. F. D. Smallwood* for appellee.

MR. CHIEF JUSTICE GRIMES delivered the opinion of the Court.

This is the second time that this case has been appealed to the Supreme Court and it would seem that in this second appeal, as in the first, *Clarke v. Snyder,* 9 L.L.R. 111 (1945), the case has not yet been properly tried. Before pointing out the errors apparent in these two trials, let me give a brief history of this case.

Joseph Z. Snyder, the defendant, now appellant, is the

owner in fee of a dwelling house and other out-houses situated on a lot in the city of Monrovia, the number and boundaries of which were omitted in the pleadings on record as well as in the purported deed of lease filed as a part of the complaint in this case.

At some time prior to the commencement of the suit, the appellant, an employee in the Revenue Service of the Republic, was given an assignment which necessitated his leaving Monrovia and taking up residence for a while in some other part of the Republic. Having no one to care for his premises he desired to lease them, and with that object in view, he made an arrangement with one Simeon B. Cole, for and on behalf of one Dorothy E. Clarke, appellee, to lease said premises to Cole as said agent. He, the said Simeon B. Cole, was to collect the rents and pay them over to "any bank or private firm for safe-keeping," subject to his orders.

In the month of July, 1944, at the end of his temporary assignment, the appellant suddenly returned to Monrovia late one night, went to his house, knocked at the door seeking entrance, and courteously pointed out that he was the owner of the premises and asked that he be given a room in which to sleep as he had just returned to Monrovia from the hinterland after an absence more or less protracted. Neither S. B. Cole nor Dorothy E. Clarke seemed to have been present on the premises at that time, but the evidence tends to show that appellant and the relatives of Dorothy E. Clarke, whom appellee had left in the house, thereafter lived together in the same house for about four weeks without any apparent misunderstanding or friction.

Later on, to wit: on August 29, 1944, Dorothy E. Clarke filed a complaint against the said Joseph Z. Snyder for trespass in two counts, namely, (1) Trespass *quare clausum fregit,* alleging under this count that he forcibly and violently broke into the home and entered upon the premises; and (2) Trespass *de bonis asportatis,*

in other words, that he carried away some personal property of hers. Defendant, now appellant, thereupon filed an appearance and an answer raising demurrers and pleas, both traverses and in confession and avoidance.

Said case came on for trial before His Honor Judge Phelps who, without carefully settling the points raised in the pleadings subsequent to the answer, seemed to have confined himself to those raised in the demurrer only, contrary to the provision of law which directs that whenever a pleading is filed containing points of law and fact the points of law shall first be disposed of, and said judge, without any reference whatever to the reply and to the subsequent pleadings on record, dismissed the case on the grounds that there was a non-joinder of parties defendant and that the plaintiff had not chosen the proper action, and for sundry other uncertainties in the complaint. Stat. of Liberia (Old Blue Book) ch. V, § 2, 2 Hub. 1540. It was from this ruling, having every element of finality, that the first appeal was taken and came before this Court at its October term, 1945, *supra.*

On November 8, 1945, within said term, Mr. Justice Shannon delivered the opinion of the Court, a part of which we feel it is necessary to herein reiterate as follows:

> "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.
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> "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. Appellee is ruled to pay the cost of appeal; lower court's costs are to abide final determination of the case; and it is hereby so ordered." 9 L.L.R. 111, 115.

In view of such a plain statement of the law which the judge should have known, we are surprised to find this case back here on a second appeal without the legal questions having been settled and in spite of the mandate which the previous opinion contained.

On Thursday, January 3, 1946 this case came before His Honor Judge Collins who on said date entered the following interlocutory ruling:

"In passing upon the issues of law raised by the pleadings in the above case this court observes that nearly all the salient points raised in the Answer of the defendant and contested in the subsequent pleadings on both sides, have been fully set at rest by the opinion of the Honourable Supreme Court, remanding this case for re-hearing of the law issues towards a final determination thereof. The form of action chosen

> . . . and the complaint upheld by said opinion, and this court contrasting the Rejoinder with the Reply and the latter with the Answer, says: That it is clearly apparent that said Answer is contradictory and evasive in that it both denies the truthfulness of the complaint in one count and sets up justification or excuse in another. Said Answer is therefore dismissed and the case is ordered to trial on bare denial of the facts of the case, AND IT IS SO ORDERED."

Unfortunately this prefatory comment of His Honor Judge Collins to his interlocutory ruling was factually untrue, as the rehearsals just above quoted show, and also legally incorrect as anyone acquainted with the rules of pleading and with practice cannot but discover on reading the record of how this matter was disposed of when taken up by His Honor Judge Collins.

It is a pity that the said judge, before recording said interlocutory ruling, had not carefully read and considered the previous opinion of this Court, as well as the opinion of this Court in the case *Cavalla River Co.* v. *Pepple,* 4 L.L.R. 39, 1 New Ann. Ser. 44 (1934). This was, moreover, a patent disobedience of, and a noncompliance with, the orders of the Court when remanding the case. The Court could well conclude here by reversing this ruling of His Honor Judge Collins, but before remanding the case for the second time we feel it important to make a few comments in amplification of the points settled in the former decision.

First of all,

> "[P]leadings are the written allegations, made in alternate series by the plaintiff and the defendant, of their respective grounds of action and defence, terminating in propositions distinctly affirmed on one side, and denied on the other, called the *issue.*
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> "The science of pleading . . . constitutes a distinct branch of the law. And although its strictness and

subtlety are a frequent subject of complaint, it has at least the merit of developing the point in controversy with the severest precision.

. . . . .

"The object of pleading is to ascertain by a process of elimination the matters really in controversy between the parties, thus avoiding all discussion and inquiry as to those facts and matters which are not disputed. The effect of this process is to simplify the subject-matter for the decision of the judge or jury (whose provinces are distinct), and to save the parties unnecessary trouble and expense, which might otherwise be incurred in collecting evidence in support of facts which at the trial were found to be uncontested, in rebutting claims which were not advanced, or in meeting allegations which had not been made." Heard, Civil Pleadings 1 (1880).

"The pleadings (as appears in the preceding chapter) are so conducted as always to evolve some question, either of fact or law, disputed between the parties, and mutually proposed and accepted by them as the subject for decision; and the question so produced is called *the issue*." *Id.* at 100.

Inasmuch as one of the objects of pleadings is to ascertain by the process of elimination the matters really in controversy between the parties, and inasmuch as there is an order in which all demurrable or traversable matter should be pleaded, it seems clear that the proper way in which to consider a set of pleadings is to do so in reverse order, beginning with the last pleading filed, not with the first and second as was done in this case. This has always been the rule in vogue and a departure therefrom as in the case now under review has brought about repeated ineffective appeals at a considerable financial loss to both parties in the controversy.

We are of the opinion, therefore, that the judgment of the court below has again to be reversed, the case a second

time remanded with orders that the pleadings must be taken up, heard, and disposed of, beginning with the points in the sur-rejoinder; and the cost of this appeal shall be disallowed inasmuch as it is against public policy to compel a judge to pay costs and the errors were all committed by the trial judge, the object being to place the parties exactly where they were when the case was first remanded; the other costs are to abide final decision; and it is hereby so ordered.

Reversed.