JOSIAH WARE, Appellant, *v.* JOSEPH JACKSON AND MARY JACKSON-LANGLAY, by and thru her husband, MR. LANGLAY, Administrator and Administratrix of the Intestate Estate of the late AARON JACKSON, Appellees.

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

Heard: April 1, 1981. Decided: July 29, 1981.

1. It is the duty of the lawyer to be punctual in his attendance at court, and to be prompt and faithful in answering assignments received by him, notifying the time for hearing of his client's case. It is also his duty to the public and to his profession to avoid tardiness in the performance of his professional duty.
2. It is contemptuous, unprofessional and unethical for a lawyer to disregard any court's assignment received by him, when he has been notified as to when the client's case will be heard, to absent himself from the trial of his client's case without prior excuse requested for and granted by the court.
3. Where a counsel of record fails and neglects to appear and represent the interest of his client at the call of the case upon a written notice of assignment, the court shall hold him in contempt.
4. In an ejectment action, defendants plea of adverse possession impliedly admits plaintiff's color of title. Consequently, it is not necessary to specifically plead and confess plaintiff's former title.
5. The lawyer–client relationship is a contract entered into between them and in order to dissolve the same, there must be a written mutual understanding between the attorney of record and the party that he represents, and this according to our statute must be done by a written statement of consent prepared and signed by the attorney of record and his client to the effect that the attorney of record has consented to such written notice of change of counsel from him to any other lawyer or law firm.
6. A party litigant may during the course of legal proceedings, at any stage employ another counsel to represent his interests, but he must designate such counsel by proper notice to the court and to the other parties.
7. Where the attorney of record is incapacitated by suspension from the practice of law, sickness, death or where the law firm has been dissolved, it is incumbent and obligatory upon the party whose attorney of record is incapacitated or whose law firm has been dissolved, to give a written notice of change of counsel addressed to the clerk of the court in which the case is pending and a copy thereof served on the opposing party.
8. Although the failure of a party to appear at the call of the case upon a notice of assignment constitutes abandonment, the trial judge commits error if he proceeds with the case, where the counsel of the opposing party , although present, is not the counsel of record, and where no formal notice of change of counsel has been filed and served on the absent opposing counsel

Appellees, represented by and through the Henries Law Firm, instituted an action of ejectment against appellant in the Civil Law Court for the Sixth Judicial Circuit. Appellant, in his amended answer to the complaint, pleaded the statute of limitations. On the disposition of the law issues, appellant's answer was dismissed and appellant ruled to bare denial of the complaint on the grounds that he had not properly pleaded the statute of limitations. Subsequently, the Henries Law Firm was dissolved upon the death of its sole proprietor, Counsellor Richard A. Henries. No notice of change of counsel was served by plaintiff/appellee on defendant/appellant. Notwithstanding, when the case was called for trial upon a regular notice of assignment, and appellant's counsel was absent, Counsellor Carlor, one of the lawyers of the dissolved Henries Law Firm, appeared on behalf of appellee and moved the court to proceed with the hearing of the case on grounds that appellant had abandoned the case by his failure to attend. The motion was granted and trial proceeded with. Upon a final judgment rendered in favor of appellee, appellant noted his exceptions and announced an appeal therefrom to the Supreme Court.

Appellant, in his bill of exceptions, contended that the ruling of the trial court dismissing his answer and ruling him to a bare denial on the grounds that he had not properly pleaded the statute of limitations was a reversible error. Appellant further contended that the attorney who appeared for appellee, Counsellor S. Edward Carlor, and moved the court to proceed with the trial, was in the employ of the Henries Law Firm, which had been dissolved, and that by reason of the said dissolution, the attorney could not legally represent appellee without a notice of change of counsel filed and served on appellant prior to the call of the case.

The Supreme Court held that the trial judge erred when he dismissed appellant's amended answer and ruled him to a bare denial on the grounds that the appellant should have firstly admitted or confessed ownership of title in the appellee prior to pleading the statute of limitations. The Supreme Court, relying on *Sherman and Sherman v. Clarke,* 17 LLR 419

(1966), held that the defendant's plead of adverse possession impliedly admitted plaintiff's color of title, in which case it is not a legal requirement that he must first admit and confess ownership in the plaintiff. The Supreme Court also held that where the law firm had been dissolved, it was incumbent and obligatory upon the party to give a written notice of change of counsel addressed to the clerk of the court and a copy thereof served on the opposing party, and that to the extent that appellee did not comply with this requirement, his representation of appellee was not legal.

Finally, the Supreme Court held that while it is true that a failure of a party to appear for trial upon a written notice of assignment is sufficient indication of the abandonment of his defense, such is not applicable where the representation of the opposing party is illegal due to the failure to file and serve a notice of change of counsel.

Philip A. Z. Banks, III, and *John B. Gibson* of the Morgan Grimes and Harmon Law Firm appeared for appellant. *S. Edward Carlor* appeared for appellees.

MR. JUSTICE BORTUE delivered the opinion of the Court.

This is an action of ejectment which was instituted by Joseph Jackson and Mary Jackson-Langlay, by and thru her husband, Mr. Langlay, appellees herein, in their capacity as administrator and administratrix of the Intestate Estate of the late Aaron Jackson, on the 2nd day of June, A .D. 1979, against Josiah Ware, the appellant, in the then Civil Law Court, now the People's Civil Law Court for the Sixth Judicial Circuit, Montserrado County, Republic of Liberia, sitting in its June, A. D. 1979, Term.

The pleadings in this case rested with an amended reply. The law issues were heard *on* the 7th day of March, A.D. 1980, by His Honour Emmanuel S. Koroma, assigned circuit judge, presiding over the March Term, A. D. 1980, of the People's Civil Law Court for the Sixth Judicial Circuit, Montserrado County, and after hearing arguments *pro et con*,

the amended answer was dismissed and appellant ruled to a bare denial of the allegations of fact as set forth and contained in the complaint. Appellant excepted to this ruling of the court.

On the 7th day of October, A. D. 1980, a written notice of assignment was issued and returned served by the sheriff on the 8th day of October, A. D. 1980, for the trial of the case on the 16th day of October, A. D. 1980, at the hour of 9:30 o'clock in the morning. Counsellor Philip A. Z. Banks, a member of the Morgan, Grimes and Harmon Law Firm, which Firm was counsel for the appellant, and Counsellor S. Edward Carlor for the appellees acknowledged the said notice of assignment; but at the call of the case for trial on the 16th day of October, A. D. 1980, no one from the Morgan Grimes and Harmon Law Firm appeared for the hearing of the case. Whereupon, Counsellor Carlor, for the appellees, moved the court to proceed with the hearing of the case on the ground that appellant had abandoned his defense. There being no evidence, either written or verbal, that an excuse was sent to the court by counsel for the appellant, the court granted the application of Counsellor Carlor and ordered the sheriff to call the appellant three times at the door, which was done, and a plea of not liable entered on the records in favour of the appellant by the court in keeping with the law, practice and procedure in this jurisdiction. Thereafter, the court proceeded with the hearing of the case. Appellees and their witness took the stand, testified in support of their complaint and were discharged.

Rule 17 of the Revised Rules Governing Procedure in the Courts and Regulating the Moral and Ethical Conduct of Lawyers in the Republic of Liberia, at pages 4 and 5, provides that:

> "It is the duty of the lawyer to be punctual in his attendance at court, and to be prompt and faithful in answering assignments received by him, notifying the time for hearing of his client's case. It is also his duty to the public and to his profession to avoid tardiness in the performance of his professional duty."

It is therefore contemptuous for a lawyer to disregard any

court's assignment received by him, when he has been notified as to when the client's case will be heard, or to absent himself from the trial of his client's case without a prior excuse requested by him and granted by the court.

This Court held in *Brooks v. Republic* that:

> " It is indeed regrettable to observe that lawyers, members of our much esteemed and exalted profession, will permit helpless clients to fall into such a dilemma as this, clients charged with the highest offense in the catalogue of crimes, forgetting to realize that, when a client is distressed or in trouble and seeks legal aid, he throws himself unreservedly upon the confidence, integrity, and ability of his lawyer, and undoubtedly esteems him as a superman, a god. A note of warning is therefore sounded to lawyers the country over, to see well to it that their clients' matters are attended and handled by them with that degree of precision and fidelity that will insure the protection of their interest, whether it be interest in respect of property, liberty or life. Only then can they hope to justify the 'silk' they took and which they wear, and the oath to which they subscribed." *Brooks v. Republic,* 11 LLR 3, 5 (1951).

In this case we are concerned with property, which is the third possession of man as enumerated in the Constitution of Liberia(1847), Art. I, § 6th.

Further, this Court held in *Thompson et al. v. Hassan et al.*, 25 LLR 168 (1976), that:

> "A lawyer must faithfully, honestly, and consistently represent the interest and protect the rights of his client.
>
> It is improper for a lawyer without a valid excuse to fail to appear on the date set forth in a notice of assignment for trial."

The trial judge should therefore have held counsel for appellant in contempt of court for the counsel's failure to appear and represent the interest of his client at the call of the case after having signed the said written notice of assignment for the trial of the case on the merits.

Final judgment in this case was rendered on the 22nd day of October, A. D. 1980, against the appellant. Appellant excep-

ted to the court's final judgment and announced an appeal therefrom to this Court. On October 31, A. D. 1980, appellant filed a seven-count bill of exceptions. In our opinion, only counts one, two, four and five of the bill of exceptions are worthy of consideration.

In count one of the bill of exceptions, the appellant contended that the trial judge committed a gross reversible error when on Friday, March 7, 1980, while disposing of the law issues, he concluded that appellant had not properly pleaded the statute of limitations and, hence, overruled appellant's two-count amended answer and ruled him to a bare denial. Appellant contended that he had in fact properly pleaded the statute of limitations, and not hypothetically as the judge held in his ruling on the law issues.

While it is true that the plea of statute of limitations constitutes an affirmative defense and, therefore, must be pleaded affirmatively and not hypothetically, Mr. Chief Justice Wilson, speaking for this Court in *Sherman and Sheman v. Clarke*, 17 LLR 419 (1966), opined that:

> "In an ejectment action, defendant's plea of adverse possession impliedly admits plaintiff's color of title."

Dilating further on this point, the learned Chief Justice held that:

> "The third point for our consideration in the judge's ruling on the law issues is that raised by the plaintiff in contending that the statute of limitations could not be pleaded in bar without confessing ownership in the plaintiff. This objection does not seem to be legally and logically supported, since the raising of such a plea impliedly confesses ownership in the plaintiff while alleging that title has been lost by reason of undisturbed, adverse and notorious possession of the property by the defendants for more than 20 years. Consequently it was not necessary to specifically plead and confess plaintiff's former title." *Sherman and Sherman v. Clarke,* 17 LLR 419, 422, 423 (1966).

The trial judge therefore erred when he ruled appellant's amended answer out of court. Count one of the bill of exceptions is therefore sustained.

With reference to counts two, three and four of the bill of exceptions, the appellant principally contended that the trial judge committed a reversible error when, in the absence of the filing of a notice of change of counsel by appellees and the service of a copy thereof on appellant or his counsel of record, he permitted Counsellor S. Edward Carlor, one of the lawyers of the Henries Law Firm, previous counsels for appellees/plaintiffs in this case, to conduct appellees' side of the case; and when he granted his application for an imperfect judgment, and thereafter empanelled a jury to hear and determine appellees' right in the ejectment proceedings. Appellant argued that under the law of this jurisdiction, a counsel of record who is in the employ of a law firm and who signed and filed the pleadings for a client in the name of that law firm, could not after the dissolution of the said law firm, legally represent said client without a written notice of change of counsel being filed in the court in which the case is pending, and a copy thereof served on the opposing party as is required by law. Counsel for appellant therefore contended that the trial judge committed a reversible error when he permitted Counsellor Carlor to appear in his own name and represent the interest of the appellees without a written notice of change of counsel, contrary to the statutory provisions.

In passing upon the issue of lack of notice of change of counsel and that of the verdict of the empanelled jury being void for the fact that Counsellor Carlor who conducted the trial of the case for the appellees had no legal authority to do so, we hold that the primary objective for a written notice of change of counsel is to give notice to the court in which the action is pending and a copy thereof served on the opposing party as it is mandatorily required by law. Civil Procedure Law, Rev. Code, 1:1.8(2). The lawyer/client relationship is a contract entered into between them, and in order to dissolve same, there must be a written mutual understanding between the attorney of record and the party he represents, and this according to our statute, must be done by a written statement of consent prepared and signed by the attorney of record and his client to the effect that the attorney of record has consented to such written notice of change of counsel from him to any

other lawyer or law firm by his client who desires such change, unless there is a dispute or misunderstanding between the lawyer and his client which makes it difficult for the client to obtain from his attorney of record such consent; and to prevent and avoid the unauthorized legal representation of parties by lawyers who are not counsel of record or retained from undermining their fellow lawyers.

In *Findley and Rasamny Brothers v. Weeks,* 18 LLR 245 (1968), this Court also held that:

> "A party litigant may during the course of legal proceedings, at any stage employ other counsel to represent his interest, but he must designate such counsel by proper notice to the court and parties. . ."

In the instant case, the Henries Law Firm which was the attorney of record for the appellees, was dissolved upon the death of its sole proprietor, the late Counsellor Richard A. Henries. Hence, if the appellees still needed the legal services of Counsellor Carlor who now works with the Carlor, Gordon, Hne & Teewia Law Offices, the appellees should have announced Counsellor Carlor in open court at the call of the case for trial. Consequently, where the attorney of record is incapacitated by suspension from the practice of law, sickness, death, or where the law firm has been dissolved, it is incumbent and obligatory upon the party whose attorney of record is incapacitated by suspension from the practice of law, sickness, death or where the law firm has been dissolved, to give a written notice of change of counsel addressed to the Clerk of the court in which the case is pending and a copy thereof served on the opposing party. Counts two, three and four of the bill of exceptions are, therefore, sustained.

Count five of the bill of exceptions wherein the appellant contended that the judge erred when he affirmed the verdict of the jury, whereby they awarded appellees the amount of $5,000.00, is sustained, the trial of this case having been irregularly conducted in the court below.

The judge, in disposing of the law issues, relied solely and wholly on the principle laid down in *Bryant et al. v. Harmon and OOST Afrikaansche Compagnie*, 12 LLR 330, 345 (1956), in which this Court held that:

> "The statute of limitations being an affirmative plea, which when specially pleaded and proved bars an action, must admit that the allegations sought to be avoided are true, and then state other facts, sufficient, if true, to defeat the action."

But ten (10) years later, this Court held in the Sherman-Clarke ejectment case that:

> "In an ejectment action, defendant's plea of adverse possession impliedly admits plaintiff's color of title." *Sherman and Sherman v. Clarke,* 17 LLR 419 (1966).

In view of this principle of law, the trial judge erred when he dismissed appellant's amended answer and ruled him to a bare denial of the allegations of fact stated in the complaint of the appellees, on the grounds that the appellant should have first admitted and/or confessed ownership of title in the appellees that the allegations sought to be avoided were true, then state other facts, sufficient, if true, to defeat the action. The principle held by this Court in the *Sherman-Clarke* ejectment case, as hereinabove referred to, should have been taken into consideration by the judge in disposing of appellant's plea of the statute of limitations and adverse possession by which appellant impliedly admitted appellees' color of title, but instead, the judge dismissed appellant's amended answer and ruled him to a bare denial.

In view of the above legal authorities, it is our holding that color of title may be either expressly or impliedly pleaded in an action of ejectment where the pleas of adverse possession and statute of limitations are relied upon.

While it is true that the failure of a party/defendant to appear for trial after returns by the sheriff to a written notice of assignment shall be sufficient indication of the party's abandonment of his defense in the case, in which instance the court may proceed to hear the plaintiff's side of the case and decide thereon; yet it is our view and holding that since Counsellor Carlor was not announced in open court on records as their new counsel, or in a letter from the appellees to the Clerk of the court in which the case was filed and a copy thereof duly served on the opposing party under the principle of notice, the trial judge erred when he heard and decided this

case against the appellant in the absence of such announcement of Counsellor Carlor by the appellees, or a letter to the clerk of court to this effect.

Therefore, it is our considered opinion that the judgment of the trial court should be and the same is hereby reversed and the case remanded to the court of origin with strict instructions that the resident or assigned judge presiding therein resumes jurisdiction over the case, beginning with the hearing and disposition of the issues of law raised in the pleadings anew and make a comprehensive and consistent ruling thereon so as to embrace every material issue involved in this case without prejudice to either party. Costs of these proceedings are to abide final determination of the case.

The Clerk of this Court is ordered to send a mandate to the trial court below to resume jurisdiction over the case and of the parties in keeping with the law.

Judgment reversed, case remanded.