MATTHEW D. WOLO, Appellant, *v.* MOMO SAMOBOLLAH, Appellee.

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

Argued March 23, 1972. Decided April 21, 1972.

1. The procedure for questioning the correctness of records transmitted to the Supreme Court is by a motion for diminution of record.
2. The falsification of court records is a serious offense and perpetrators will be dealt with severely by the Supreme Court.
3. It is the bill of exceptions, embodying only exceptions taken during the trial, which brings errors complained of to the attention of the Supreme Court, to which appellant is confined and which are deemed waived if not included in the bill, the only exception thereto arising in appeals from conviction of capital offenses.
4. When a defendant's answer is dismissed and he is deemed thereafter to only deny the facts alleged, he is barred from introducing affirmative matter at the trial.
5. The Supreme Court deems the practice of law to be more than a mere trade or business, and expects of practitioners devotion to study and dedication to the law's ideals.

The jury returned a verdict for the plaintiff in an action of ejectment, awarding possession and damages, after a trial in which the defendant was held to a bare denial because of the dismissal of his answer and pleadings subsequent to it. Defendant moved for a new trial, and it was discovered that two contradictory rulings were in the record, the one granting it not being genuine. No motion was made by either side for diminution of the record to question its correctness. Nor did the defendant except to the adverse ruling and include it in his bill of exceptions, as he had failed to do with the verdict and the final judgment. The Court pointed to all the errors committed by the defendant who appealed from the final judgment, nor was he sustained in any of his exceptions taken to the rulings of the trial judge, but because the verdict of the jury failed to establish the portion of plain-

tiff's property wrongly occupied, the Supreme Court to ensure justice *reversed* the judgment and *remanded* in order to have a survey taken and a report made by a board of arbitrators.

Appellant, *pro se*. *Richard A. Diggs* for appellee.

MR. JUSTICE HENRIES delivered the opinion of the Court.

Appellee instituted ejectment proceedings against the appellant in the Circuit Court for the Sixth Judicial Circuit, Montserrado County. Pleadings progressed as far as appellant's rejoinder. Hon. John A. Dennis, presiding by assignment over the June 1970 Term of the said court, heard and determined the issues of law raised in the pleadings, dismissed appellant's answer and subsequent pleading, and ordered him to trial on a bare denial of the facts stated in the complaint. The case came up for trial during the December 1970 Term of the court and the jury returned a verdict in favor of the plaintiff to the effect that he was entitled to possession of the property in dispute, and awarded him damages in the amount of $250.00. Defendant filed a motion for a new trial, which was denied and not excepted to, and final judgment was rendered on February 26, 1971. It is from this final judgment that appellant appealed to this Court.

The appellant in his opening argument called the Court's attention to what appeared to be two rulings on his motion for a new trial, one granting the motion, and the other denying it. Upon careful review of the record, it was discovered that there were two such rulings. According to a sheet dated February 18, 1971, which purports to be the 42nd day's session of the court, the appellant was represented by counsellor James Doe Gibson, and the court requested counsellor Brumskine to take the ruling on behalf of counsellor Richard A. Diggs, counsel

for appellee. The ruling states: "The ruling for a new trial is hereby granted." On the other sheet, dated February 26, 1971, the 6th day's chamber session, appellant was represented by himself and counsellor James Doe Gibson, and appellee was represented by counsellor Diggs. The ruling on that sheet denied the motion and extensively gave the reasons for the denial. It is the mind of this Court that the latter document is genuine, and that the former was inserted to create mischief and thwart justice.

Be that as it may, it appears that neither party made an effort to question the correctness of the record. This Court has consistently followed the principle that courts cannot do for parties that which they should do for themselves. Rule 31 of the Revised Rules of the Circuit Court requires that counsel on both sides tax the record in any case on appeal to the Supreme Court before they are sent up by the clerk of court. There is no indication that this was done, or, if done, that the insertion was discovered then and brought to the attention of the judge who, according to the rule, must settle the matter. Furthermore, the proper procedure for questioning the correctness of records transmitted to the Supreme Court on appeal is by a motion for diminution of record. *Cooper* v. *Brapoh,* 16 LLR 297 (1965). At this juncture it might be necessary to declare that this Court frowns upon the falsification of court records in any manner, and anyone discovered doing so will be punished severely, as was done in *Whea* v. *Bonwein,* 16 LLR 51 (1964).

It is also important to mention that on February 26, 1971, when the alleged second ruling denying the motion for a new trial was made, appellant, a counsellor-at-law, was in court representing himself and being assisted by counsellor James Doe Gibson, yet they both failed to except to the adverse ruling on the motion and, therefore, did not include it in the bill of exceptions. He also failed to include his exceptions to the verdict and the final judg-

ment. When asked why he did not include them in his bill of exceptions, he argued that this Court had declared in one of its opinions that it would consider exceptions taken at the trial, though not included in the bill of exceptions. Needless to say he failed to find such an opinion. In this jurisdiction the law is, and always has been, that in appeals the bill of exceptions must set forth the points upon which it is believed the court decided erroneously—*Anderson* v. *McLain,* 1 LLR 44 (1868); exceptions taken and noted during a trial, but not included in the bill of exceptions, are considered as having been waived—*Torkor* v. *Republic,* 6 LLR 88 (1937); appellant must confine himself only to complaints set out in his bill of exceptions—*Richards* v. *Coleman,* 6 LLR 285 (1938); only such matters as were interposed in the lower court and appear in the bill of exceptions as record can be taken cognizance of in the appellate tribunal—*Bryant* v. *The African Produce Company,* 7 LLR 93 (1940); and finally, points not raised in appellant's bill of exceptions will not be considered by the Supreme Court—*Jackson* v. *Trinity,* 17 LLR 631 (1966). The only exception to the rule on the inclusion of exceptions in the bill of exceptions is that omissions of errors in a bill of exception are not deemed waived in a criminal appeal on a capital offense. *Johnson* v. *Republic,* 15 LLR 66 (1962).

During the hearing of this case appellant's presentation was exceptionally poor. He displayed a complete lack of knowledge of the elementary principles of the law and practice. The practice of the law is more than a mere trade or business, and those who engage in it are the guardians of ideals and traditions which they should cherish and maintain by continuous study, and to which they should from time to time dedicate themselves anew.

The appellant's bill of exceptions contained nineteen counts, all concerning adverse rulings made as a result of questions asked by him. Appellant argued before this Court that since the case was ruled to trial on a bare de-

nial, the trial judge should have overruled all objections to his questions. For the benefit of the appellant, where an answer has been dismissed and the defendant is placed on a bare denial of facts alleged by the plaintiff, the defendant is barred from introducing affirmative matter. *Saleeby* v. *Haikal,* 14 LLR 537 (1961). Since the questions asked tended to violate this rule, or the best evidence rule, or involved attempts to explain a written instrument by parol evidence where this was no ambiguity, or the cross-examination of one's own witness, the judge was correct in sustaining the objections, and therefore this Court does not find any errors on the part of the judge as far as the counts in the bill of exceptions are concerned.

A careful reading of the certified record shows that three deeds were before the court below: one dated July 12, 1956, for a half-lot, another dated October 15, 1960, for a quarter lot of land, both in favor of appellee, and still another dated June 5, 1956, for a half-lot in favor of appellant. All of these parcels of land are situated in Block No. 11 on Lynch Street, in the City of Monrovia. Appellee's parcels of land adjoin that of appellant, who has the oldest deed. Appellant's deed and appellee's deed of July 12, 1956, show that both parties derive their title from a common grantor. Appellee complained that appellant had illegally entered upon the southern portion of his premises, and prayed that appellant be evicted and made to compensate him in damages, but appellee never established how much of the southern portion of his land was being occupied. A request for arbitration was made by the appellant on his rejoinder, but it appears that he either did not know or forgot that the Civil Procedure Law, L. 1963–64, ch. III, § 901(1), provides that: "there shall be a complaint and an answer; and there shall be a reply to an answer which contains affirmative matter or a counterclaim. No other pleading shall be allowed."

In order to be fair and to do justice it is the considered opinion of this Court that the judgment be reversed and

the case be remanded to the court from which the appeal was taken, with instructions that a board of arbitration consisting of competent and legally qualified surveyors be appointed to make an impartial survey of the area in dispute to determine whether appellant has encroached upon appellee's land and, if so, the extent of the encroachment; and thereafter to submit a report to the court below. This must be done in the presence of the interested parties on whom notice must be served. Costs to abide the final determination of this matter.

Reversed and remanded for survey and report.