# Republic of Liberia

# SUPREME COURT REPORTS

## VOLUME I

CASES ARGUED AND DETERMINED IN THE SUPREME JUDICIAL COURT OF THE REPUBLIC OF LIBERIA

JANUARY, 1861—JANUARY, 1907


ANNOTATED AND COMPILED BY

THE HONORABLE JAMES JENKINS DOSSEN, LL.D.

*Justice of the Supreme Court of Liberia*


BY SPECIAL APPOINTMENT OF THE PRESIDENT OF LIBERIA IN CONFORMITY WITH SPECIAL ACTS OF THE LEGISLATURE OF LIBERIA PASSED AT THE SESSIONS OF 1906 AND 1907


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MILTON R. KONVITZ, *Director*
Liberian Codification Project
Cornell University, Ithaca, N.Y.

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BOSTON JENKINS DRAYTON

Chief Justice, 1861-64

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# REPUBLIC OF LIBERIA.

## POLITICAL HISTORY.

The American Colonization Society, organized in the United States, in 1816, for the purpose of colonizing free negroes in Africa, sent out its first party of emigrants who, in 1822, established a settlement within the present limits of the Republic, and with the assistance of its various auxiliary societies, organized in the several States, purchased much of the territory now forming the Republic of Liberia. The American Government from time to time landed their recaptured slaves from vessels engaged in the slave trade and made provision for their temporary care. Besides the freedmen from America and the recaptured slaves landed by the American Government, a number of West Indian negroes found their way to the new country.

At first the various settlements in Liberia, planted by the American Colonization Society and the several auxiliary State Colonization Societies, were entirely independent of each other, having their affairs managed by agents sent out for that purpose by the home societies, the agents having the power to appoint all such subordinate officers for the government of the settlements as in their judgment might be necessary.

In time more and more power was granted to the colonists, including the election of subordinate officials, and the several settlements, excepting that of Maryland, were consolidated under the name of the Commonwealth of Liberia, with a legislative body having power to make all necessary laws and treaties, subject, however, to the veto of the American Colonization Society.

On July 26, 1847, the colony declared its independence, adopted a constitution and became known as the Republic of Liberia. Subsequently the colony, or, as it was then known, the State of Maryland in Liberia, was annexed to the Republic and became the County of Maryland. The Constitution is similar to that of the United States, the executive authority being vested in a President, Vice-President, and Cabinet consisting of six members (Secretary of State, Secretary of Treasury, Secretary of War and

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Navy, Secretary of Interior, Attorney General and Postmaster General), and the legislative branch of the Government is vested in a National Legislature composed of two houses, the Senate and House of Representatives.

## LAW IN FORCE.

The procedure, pleading and practice in the Courts are in accordance with the principles of the common law of England and the United States of America, when not inconsistent with the Constitution and Statute Laws of the Republic. In 1900 an Act was passed by the Legislature defining various crimes and misdemeanors and their punishments.

## COURTS.

Article 4 of the Constitution provides for the establishment of the Supreme Court and such subordinate Courts as the Legislature may from time to time create, and also provides that the tenure of all judges shall be during good behavior, and that they shall receive such salaries as are fixed by law (which may be increased but not diminished during their continuance in office), and shall not receive other perquisites or emoluments on account of any duty required of them. Besides the Supreme Court, there are Courts of Monthly Sessions, and Courts of Quarterly Sessions and Common Pleas, and Justices of the Peace in each of the Counties.

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# JUSTICES

OF THE

# SUPREME JUDICIAL COURT OF LIBERIA

*During the time of these Reports**

| | | | |
|---|---|---|---|
| Boston Jenkins Drayton, C. J. | | | 1861–1864 |
| E. J. Roye, C. J. | | | 1865–1868 |
| C. L. Parsons, C. J. | | | 1869–1894 |
| Zacharia B. Roberts, C. J. | | | 1895–1907 |
| James E. Moore, | Associate Justice† | | 1878–1881 |
| James M. Priest | " | " | 1878–1883 |
| Henry J. Neyle | " | " | 1882–1891 |
| Zacharia B. Roberts | " | " | 1884–1894 |
| James M. Thomson | " | " | 1892–1893 |
| E. J. Barkly | " | " | 1894–1894 |
| James H. Deputie | " | " | 1895–1896 |
| Robert B. Richardson | " | " | 1895–1907 |
| John W. Worrell | " | " | 1897–1897 |
| James Jenkins Dossen | " | " | 1898–1907 |

*These reports do not cover the decisions rendered before this date by Samuel Benedict, the first Chief Justice, and John Day, the second Chief Justice.

†The several Judges of the County Superior Courts officiated alternately as "Associate Judges" anterior to 1878.

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SUPREME COURT OF LIBERIA, 1907

ROBERT B. RICHARDSON
Associate Justice

ZACHARIA B. ROBERTS
Chief Justice

JAMES JENKINS DOSSEN
Associate Justice

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# LIBERIAN LAW REPORTS

## SAVENIA E. BROWN, Appellant, *vs.* MARY A. L. BROWN, Appellee.

[January Term, A. D. 1861.]

*Trepass—Proof—Magistrate.*

1. When the injury complained of in trespass is unaccompanied by force, or the damage sustained consequential, the suit is technically termed Trespass on the Case.

2. Proof required to show damage sustained consequent upon conduct of person against whom action is brought.

3. Magistrates not responsible for damages arising from writs issued by them while acting within the scope of their authority.

The law consists in reason, for reason is the life of the law. The entire statutes are made of reason and are held to be consistent in their bearings and cannot or ought not to be construed from their pure intent by mysterious movements to effect mysterious ends, not clearly demonstrated by the rules provided to establish facts and intentions. The case submitted by appeal from the court below is styled "trespass on the case." In practice the technical name of that species of action of trespass which was for injuries unaccompanied with force, or where the damages sustained are only consequential, sometimes termed case, and so called from the circumstances.

Proof is required in all cases to show the damages sustained to be consequent upon the conduct of persons against whom the complaint is filed. The right to sue out the warrant is unquestionable, *i. e.*, the search warrant. The judicial officer issuing the writ cannot be held responsible for his acts, except he goes beyond his jurisdiction. Magistrates acting within their limits in the law by administering it as such, cannot be sued by

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parties who may be grieved, but may appeal; and no court ought to entertain suits brought by parties against magistrates when acting within their jurisdiction. The principle is founded upon law and reason: the law found on the 10th page, sec. 49, of the statute, places the responsibility, if any, growing out of the action, upon the parties procuring the writ. But be assured if parties receive injuries by an action arising from the principles above cited, they must establish it upon evidence to be such as the law would not warrant upon such rights as are guaranteed.

The case, from its appearance on the records, does not establish by evidence the detriment, and establishes upon its face the acquittal of the party accused, which puts her in the very same position where she was at first. We dwell upon proof which must be given in evidence to show the injury. By this special mode alone can we arrive at just conclusions.

After due reflection, having searched carefully the proceedings, the court has arrived at the conclusion that the judgment of the court below must be sustained. Therefore it is the opinion and judgment of this court that the judgment of the Court of Common Pleas in this suit "trespass on the case," be confirmed, with cost of suit.

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## B. P. YATES, Agt. of Southern Bapt. Mission, Appellant, *vs.* McGILL BROTHER, Appellee.

[January Term, A. D. 1861.]

*Appeal from the Court of Quarter Sessions and Common Pleas. Montserrado County.*

*Appeal—Bill of exceptions.*

A bill of exceptions is a formal statement in writing of exceptions taken to opinions, rulings and decisions of a judge in the course of a trial, and constitutes the foundation of an appeal—where it does not appear in the records of an appeal the omission is fatal.

The Supreme Court of this country, as well as those of other countries, has but one great and important duty

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to perform, and in consideration of its legal bearings it is regarded as being the soul of the law. Rights, order and liberties are concentrated within its jurisdiction, and it is expected that it will keep immediately within the spirit of the law. It is not to be supposed that the conduct of this court will be against plain legal proceedings, and as far as supervision is concerned, it is of right its duty and function to explain the law in the manner best conducive to justice and equity. The present case coming up before this court fails to meet the simple requirement of the law, in one grand particular entirely the duty of those wishing the benefits of its decisions.

The statutes governing this country, and the manner by which cases are to come here, is plain, and those who fail to meet its requirements cannot expect to meet its benefits. The court cannot assume responsibilities and burdens of which any party may fail to avail themselves, in the incipient stage of a case, much as it might be anxious to give relief. The most important feature of an appeal, in such cases, is the bill of exceptions, which our law plainly says must be filed. The exceptions are the points upon which the whole consideration of the records are considered to know whether the finding of the jury and judgment have been in keeping with law and evidence. The appellant presumes to say his case was not wrongfully brought. Then why are not the points in law definitely pointed out, as upon that alone the Supreme Court can adjudge if the law has been rightfully applied or not.

The bill of exceptions in legal practice is a formal statement in writing of exceptions taken to the opinions, decisions, or directions of a judge, delivered during the trial of a cause, setting forth the proceedings in the trial, the opinion or decision given, and the exceptions taken thereto, and sealed by the judge in testimony of its correctness. This bill is in the

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nature of an appeal, its object being to put the points decided upon record, in order to bring them up before the court or a Superior Court for review after trial. (3 Bl. 372, 3 Step. Comm. 615; Chief Justice Marshall, 5 Peters Reports 190.) In strictness, the bill of exceptions ought to be engrossed and tendered to the judge during the course of the trial or other proceedings out of which the exceptions arise, and to be then sealed. The usual, and indeed the invariable practice, however, is to reduce to writing the substance of the exceptions at the time it is taken, and it is then signed by the counsel on both sides, and the bill itself is afterwards drawn up and tendered to the judge to affix his seal. (See "Raymond on Bill of Exceptions," 33, 34.) The court in this case has no bill of exceptions before it on record to which to direct its reflections, to ascertain whether the proceedings have been in accordance with law or not. The court has not wherewithal to proceed, no reference to points of law coupled with facts unraveled so as to be able to do what the Constitution guarantees.

All parties must have due and legal advantages in law, and those who fail to avail themselves of it must bear the results. It is therefore the opinion of this court that the appellant has failed to place his appeal before it in the manner provided by law, and there is no bill of exceptions embraced with the proceedings. It is decreed that the case be dismissed, with all costs in this court.

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## DENNIS, Appellant, *vs.* BOWSER, Appellee.

[January Term, A. D. 1861.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Slander—Special damages—Evidence.*

1. Words not actionable *per se*, cannot support action for slander without proof of damage, special or general.

2. Proof of special damages cannot be given in evidence under a general allegation in the declaration.

3. The right to freely speak, write and print on any subject is a constitutional right which all may fairly exercise, but if the motive for so doing should appear to be malicious, a responsibility attaches for the abuse of such right.

This case has come up before this court on appeal by the plaintiff, respecting the appellee, in appeal, for which he was held in damages by the court below, in the sum of two hundred and fifty dollars. From this decision the defendant appealed to this tribunal for a hearing on its final issue. The hearing and the consideration of the case, from the records, with the statement of the testimonies, which appear to be full and concise, leads the court to arrive at a decision, contrary to the finding of the court below. To regard the words expressed, they do not convey any specific charge which might be the ground of public prosecution, nor even malice attending; and as they are laid, they are not actionable. They were apparently but the expression of an opinion against an opinion, in mutual conversation, as one of the witnesses testified, from the record, and the Constitution, in support of this right to express an opinion as communicative and intelligent beings, gives ample liberty and support. It is equally certain and indubitably clear that in the expression of the words no malice was shown to have preceded them, or even that specific damages had ensued by such expression except on the ground of hearsay, which in law cannot be taken as evidence except in such instances as have been particularly provided for. The statute declares when special damages are relied

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upon it must be stated in the complaint and proven. (Page 8, sect. 37.) To note the special bearing of testimonies upon which the special damage in the complaint appears to rely, it is precedent that in slander "proof of special damage cannot be given in evidence under a general allegation, in the declaration; that by reason of speaking the slanderous words, divers persons who had employed the plaintiff had withdrawn themselves." (Dutt. Comm. Dig. page 332, in the case of Bostwick *vs.* Nicholson.)

Even without this feature in connection with the complaint, the effort to establish the action and to recover damage on the ground of hearsay exploded itself, and could not have been supported by any jury unbiased in their deliberation. Furthermore, all statements of facts made under the circumstances mentioned in this section shall be taken to be true, until the contrary appears, or malice is shown,—the statement made in section 27, page 6, of the statute, which embodies in very comprehensive words the inherent right of free communication in the expression of thoughts, views and opinions respecting all men who may be candidates for any public trust, whenever it is coupled with an honest intention to accomplish good. It would be dangerous in the extreme to allow the least intrusion upon so sacred a right and privilege, especially when the Constitution declares "that every citizen shall freely speak, write and print on any subject, being responsible for the abuse of that liberty." It is true that if malice is deceptively screened under, and these privileges and rights thus granted be used as a cloak, and other motives are the imprompter, the law fairly demands the proof, in the way and manner provided, and if true, will give speedy and wholesome remedy, but not until then. The mere effort to establish the fact that the words were spoken without proof that they were not true, did not establish anything at all, it only establishes its truthfulness without

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contradiction by the testimony. But with regard to words that do not thus apparently and upon the face of them import such defamation as will of course be injurious, it is necessary that the plaintiff should aver particular damage to have happened, which is called laying his action with a *per quod*. (Wend. Black. Bk. 3.) Hearsay, however, cannot grant it. Furthermore, "and where there is no injury the law gives no remedy." (*Ibid.*) This is agreeable to the reasoning of the civil law. The Constitution and statute laws regard with sacred jealousy the right of "free speech," the full expression of those words and opinions which are necessary to convey our ideas and feeling and meaning to each other.

It is a privilege that no jury in the land, nor court, has the right to suppress or circumscribe. Courts having the aid of jurors ought to be alive to those points of law which embrace individual and public constitutional rights, that they be not invaded by opinions of jurors in their verdicts. The duty of the courts is to guard with an eagle's eye the Constitution and laws, and only upon satisfactory proofs a citizen is to be held responsible for an abuse of his constitutional liberties. Upon the whole, therefore, it is the opinion and judgment of the court that it appears by the records before it that the appellant in appeal is not guilty of slander, and it is hereby decreed that the judgment of the court below for the plaintiff must consequently be reversed, and a mandate issue that the appellee recover nothing as damages, with the payment of all costs.

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## JOHNSON, TURPIN and DUNBAR, Appellants, *vs.* J. J. ROBERTS, Appellee.

[January Term, A. D. 1861.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Record—Evidence—Bond.*

1. Party appealing should superintend the appeal and see that all legal requisites are completed.
2. It is indispensable that the records in an appeal contain the evidence submitted in the lower court.
3. The court will not entertain a case legally deficient in its records. The omission of a copy of the bond in the records is diminution of records and is fatal to an appeal.

This court, having reviewed the records sent from said court, as well as the questions propounded by the attorneys for the respective parties, feels itself bound to answer the same, as well as to cause its acts to be in strict accordance with the law governing appeals sent to this court.

First—There are material defects in the records forwarded to this court, the most prominent of which is that the evidence in the case is wholly omitted, notwithstanding it is indispensable to the decision of every case pending before a court of judicature.

The court cannot entertain any case that is legally deficient in its records. A true copy of the bond is indispensably necessary to be forwarded, the original to be retained on the files below, as the security of the court on behalf of him against whom the appeal is taken. All cases sent forward on appeal must be taken out within sixty days, having the signature of the judge to the exceptions, as well as all other preliminaries contemplated by the law relating to appeals. These preliminaries are indispensably necessary to a legal appeal.

The clerk whose duty it is to forward the records of the court under seal cannot do so unless the parties suing file bond, according to law, and the party appeal-

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ing ought here themselves superintend the lawful prerequisites. It is for the safety of the parties that said requisitions be met, and it must therefore be a gross injustice to the appellee to compel him to answer to any appeal taken out contrary to law.

The law will not admit of invasions upon itself, and for the court to entertain any appeal which may be deficient in its most important and indispensable features, and which are most calculated to lead to a just decision in the case, would not be in keeping with the record and inviolable rights of the nation.

Therefore the court decides that said case be dismissed, with all costs in this court.

---

## SAVINIA E. BROWN, Appellant, *vs.* FRANCIS PAYNE, Appellee.

[January Term, A.D. 1861.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

*Ejectment— Husband and wife—Courtesy.*

1. The husband cannot inherit the property of his wife at her death; nor does he acquire a title therein by virtue of coverture; nor can he dispose of it without her express authority under the Constitution of Liberia.

2. Where during coverture an heir capable of inheriting has been born, the husband, on the death of the wife, may hold her estate as a tenant by the courtesy, but he cannot sell or otherwise dispose of said estate by virtue of the coverture.

The general view to be taken of the law governing titles and claims, and also possession, should be in all its parts alike, especially whenever the right of property is questioned.

The case reviewed before this court on a plea of ejectment brought up on appeal from the decision and judgment of the court below is interesting as may it appear to be complex, as it does most assuredly invalue the rights of parties purchasing from those supposed to have

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had the right to sell. Its antiquity and the circumstances connected thereto would at first view, aside from reflection and the law governing the case, cause apprehension that the innocent would be compelled to suffer pursuant to the acts of the wrongdoers.

Ejectment is an ancient remedy coming down to us, greatly modified and arranged suitably to the circumstances of the present age. It lies to recover the possession of lands, with damages and cost, for the wrongful withholding of them, being the principal method now in use for trying titles to lands. The particularities of this action are fully explained in the words of Blackstone on Real Property.

The commencement of this action presupposes the real title to the land from which the parties are to be ejected. The appellant denies the right of the plaintiff to recover the property consequent upon the purchase being made by the appellant from the son of the legal possessor of said property. The appellee equally claims special right to said lands, as being purchased from the husband of the woman who held possession in her own right after the death of her husband, Seiper, and her heir or son, who after the death of his mother held no claim to the land held in fee simple by his mother. Hence the pivot of the question appears to be resting upon the right of possession by inheritance.

Our constitutional law has established a permanent basis respecting the property of a woman, as to how it shall be disposed of and by whom; but as this is a question of some moment requiring deliberate action, involving, as it does, considerable interest, it would be well to treat a little upon the right of the husband in the property of his wife, which she was possessed of at the time of her marriage, as well as also to speak of the law governing descent in such actions, when occurring under the circumstances. There is a way by which the husband can come in pos-

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session of the property of his wife of which she was in possession at the time of her marriage. But that possession is only temporary in some cases by the principle of courtesy, a term used to explain this particular mode of proceeding. It is thus defined: "An estate to which a man is by law entitled on the death of his wife"—the lands of which she was possessed during marriage in fee simple, provided he had issue by her during marriage, and capable of inheriting her estate. (1st Stept. 246). It is a species of freehold estate, not of inheritance, equally known to English, Scotch and American law (4th Kent's Comm. 27–28),—courtesy as understood in its ordinary sense of favor.

The estate being enjoyed rather by favor of law, *e gratia legis,* than as a matter of right, this special favor accrues from the existence of the fact of his having issue by her, and holding his right and possession for the legal title to be given at the proper time, and the next heir of kin to the wife can claim a right, which would be the same if she had two or more relatives. It is given as authority that the husband acquires a right to the use of all the lands or real estate of the wife during her life, but not to sell, and also during his own life, if he has a child by her as a tenant of the courtesy. (1st Swift, Dig. 26.) Hence it is clear that the husband cannot dispose of real estate of which his wife was in possession at the time of marriage, and all land disposed of under such title is "null and void."

If Byrd obtained his title from Mrs. Seiper, and upon that right possessed by marriage, and affixes his seal as valid, it is clear, then, without a shadow of doubt, that Mrs. Seiper's right must be unquestionable, and if we supposed Mr. Payne to have had a perfect right devised from Mr. Byrd, this, also, is another reason which influences the court to preponderate in favor of the right, the *bona fide* right of Mrs. Seiper before marriage. As far as regulations of the Colonization Society are con-

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cerned, the whole arrangement appears to be clear and consistent to the court, and that a woman may draw lands on her arrival here for herself and children, and this being true it follows that at her death her children heir the property.

With respect to the doubts expressed in reference to Parsons being the son of Mrs. Seiper, alias Mrs. Byrd, the law will presume him to be her lawful heir until the contrary is shown. This point should have been contested and established in the court below. The evidence in the case is not material, especially that in parole, as it is held that a proposition made by a party to effect a settlement is not admissable in evidence against him. (Mitchell vs. Preston, 5 Day, 100.) This is both reasonable and just in every respect. In proving confession, the whole must be taken together. (1 Root, 434.) Parsons was the rightful inheritor after the death of his mother, Mrs. Seiper, to a clear and definite title by descent. (Refer to Dutton Comm. Digest, page 77.)

Therefore, with the foregoing conclusions it is the opinion and judgment of this court that the title of Joseph S. Brown and James E. Brown is valid, and that Parsons, as the only remaining heir of Mrs. Seiper, was the sole owner at her death, and have the right to sell said lands. It is decreed by the court that the judgment of the Court of Sinoe County in this case of ejectment be reversed, and that said property remain in the possession of James and Joseph S. Brown's estate undisturbed, with costs of court, and that a mandate be issued directing and commanding the same.

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## REPUBLIC OF LIBERIA, Appellant, *vs.* JOHN SMITH or J. HARRIS, Appellee.

[January Term, A. D. 1861.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Violation of Revenue Laws.*

It is presumed that the law is consistent and that the lawmakers understand what they created. The law fixes boundary, and establishes limits into which all parts of government are to revolve. To go beyond or even to derogate, would be discovering a want of obedience to the sovereign who are the people. The case before the court, Republic, appellant, *vs.* John Smith, appellee, is apparently clear, and as the particular law governing the discharge of vessel's cargo has been submitted to our consideration, to ascertain if a court can use discretion in the fine imposed, if a master is found guilty of violation of the particular requirements of said law, this court is of opinion that if the parties are found guilty, a fine shall be one thousand dollars. The law does not allow or give discretionary power here to the court; it is only to know parties are guilty, and the law applies fully, and must be in all similar cases. In all admiralty cases, the Court of Admiralty ought to be convened by the judge in admiralty at any time when the circumstances demand it, without waiting for the quarterly term.

It is the opinion and judgment of this court that the decision of the court in the case of Schr. "Phebe" be reversed, and instead of one hundred dollars, the same shall be one thousand dollars, payable by the appellee with costs in this suit.

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## SIVINIA BROWN, Appellant, *vs.* MARY ANN BROWN, Appellee.

[January Term, A. D. 1861.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

This case is before the court on an appeal from the judgment of the court below, excepting to the verdict of the jury and decision of the court respecting the will which was tried before it, purporting to be the last testament of Joseph Brown, late of Sinoe County.

With the record before the court, giving as it does the principle upon which the decision was founded, it is manifest that all legal principles governing, or that ought to govern the execution of wills, were overlooked, and thereby made an instrument a will that has no feature of a will. An elaborate comment would not be consistent with the present case, as from the document before the court and the records accompanying it, it is clear that no decision in the most remote sense can be entertained favorable to the instrument called the will of Joseph Brown, deceased. "No will shall be valid unless it shall be in writing, and executed in manner hereafter mentioned." That is to say, it shall be signed at the foot or end thereof by the testator or by some other person, in his presence, and by his direction, and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and such witnesses shall attest and shall subscribe to the will in the presence of the testator, but no form of attestation shall be necessary. (1 Vict. c. 26.) Wills must be subscribed by the witnesses themselves, and therefore when one of the witnesses, in the presence of the testator, subscribes to the will, first for himself, and then for the other witness, both being present at the same time, the will was registered.

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The last will and testament of individuals is important, and it ought, for the good of those who are to be interested, to be intelligent and clear, and without which the wills of dying persons must prove abortive against long contemptible designs and arrangements.

The contents of all wills ought to be duly explained by the testator to the witnesses, and they also ought to have a perfect knowledge of the feature of the will.

The court has arrived at the above conclusions in the premises of this contested will case now before it, without entering into detailed remarks to answer the many points presented in the arguments given before the court, as reflection and legal research must lead to satisfactory results and information respecting wills.

Therefore it is the judgment of this court that the instrument coming up from the court below on appeal as being a will, by judgment of said court confirming it to be such, is not a will. And it is hereby decreed that the judgment of the court below for the appellee must be reversed, and a mandate be issued directing such reversal, with all costs in this court.

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## DECISION IN REGARD TO THE JURISDICTION OF THE CHARTER OF THE CITY OF MONROVIA, ACCORDING TO THE THIRD SECTION OF THE SAME.

[January Term, A. D. 1862.]

*Constitutional Law—Municipal Ordinances.*

The Corporation of the City of Monrovia is an authorized body politic to which is delegated the right to enact such laws and municipal ordinances as are necessary for its government, provided such laws and municipal ordinances do not conflict with the laws of the Republic. The charter of the corporation is a constituted power, organized within a power, and therefore cannot make

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laws to supersede or nullify the power by which it was created. No right can be constitutionally delegated to any corporation to give it exclusive jurisdiction over any statute act, unless the Legislature or sovereignty of Liberia will relinquish its political jurisdiction by an express repealing statute, which, however, would be very impolitic in any sovereign; accordingly those statutes which punish breach of the peace and other petit offences or simple misdemeanors are liable to be executed by any magistrate and the offender prosecuted accordingly, within the limits of any corporation, whenever such magistrate may find it necessary; and the proceeds arising upon any penalty or fine imposed upon any offender should be paid into the public treasury. Should the corporation have ordinances punishing the same offences, it also has a right to execute its laws or ordinances whenever opportunity is offered; and the proceeds arising upon the prosecution of offenders should be placed in the corporation treasury. Each power has a right to do the same thing, both having the same ends in view.

Therefore it is the opinion of this court that the third section of the charter of the city of Monrovia does not exclude the political jurisdiction of the laws of the Republic or any part thereof, but said corporation simply has the right by virtue of said charter to exercise the same jurisdiction. And it is clearly evident that the amount of business done by the corporation or state will depend entirely upon the vigilance of the officers of the respective departments.

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## PETER DAVIS, Plaintiff in Error, *vs.* REPUBLIC of LIBERIA, Defendant in Error.

[January Term, A. D. 1862.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Treason—Native inhabitants.*

It is undoubtedly a fact that our native inhabitants, under treaty stipulations, which treaties are laws when confirmed by the Legislature, are *bona fide* subjects of this state, and the political authority of the same covers them in all of their relations.

The peculiar situation of the natives, in their mode of living, their depth of ignorance and their incapacity to understand the workings of civilized governments, made it necessary to draw their connection and acknowledgment of our political rule over them in form of treaties, but not to be misconstrued that the whole law of the land is not binding upon them, and that they are not to have the benefit of it when arraigned under it, for crime committed.

The native inhabitants of the country are capable of committing treasons against the State.

In reviewing the case of one Peter Davis, a native subject of this Republic, brought up to this court upon a writ of error, several features present themselves which are important to speak of, as the charge for which he was condemned in the Superior Court is one of high magnitude. The execution of the law of the land ought to be understood to be done according to its letter and intent, and not to be misconstrued to meet the circumstances surrounding it, but to affect the circumstances as brought in contact with said laws. It is well for the judiciary to understand, as well as the whole people, whether they be rightful franchised citizens, or such of its inhabitants as are held as subjects, over whom extends the sovereign and political jurisdiction of the authority of the government. It is undoubtedly a fact that our native inhabitants, under treaty stipulations, which treaties are laws when confirmed by the Legislature, are *bona fide* subjects of this state, and the political authority of the same covers them in all of their relations. The peculiar situation of the natives in their mode of living, their depth of igno-

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rance and their incapability to understand the workings of civilized governments, made it necessary to draw their connection and acknowledgment of our political rule over them by forms of treaties, but not to be misconstrued that the whole law of the land is not binding upon them, and that they are not to have the benefit of it when they are arraigned under it for crime committed.

To speak of the records as a whole might be done with propriety, but as the error is simply a question of law founded upon treason, it is well to say that our native inhabitants are capable of committing treason. The treaties and laws extending over their political, as well as sovereign jurisdiction, and they being answerable to this government alone, and this government answerable for their acts toward foreigners, constitute them a part and parcel of the people of this Republic, and they, being such, would make any act of theirs in concert with the enemies of this government with whom it may be contending, treason. If the people against whom this man was contending were not in treaty with this government, and they were waging a war against the government and he aided them, it would be treason. But, as we have been informed, both parties owe an allegiance to this government, and as such they entered into an uproar which resulted in a riot. A riot, being usually the act of a large number of persons, is otherwise described as a tumultuous disturbance of the peace by persons assembling together of their own authority (which this man and people have done) with an intent mutually to assist one another against any one who may oppose them in the execution of some enterprise of a private nature, and afterwards actually executing the same, in a violent and turbulent manner, to the terror of the people of the town, whether the act intended was of itself lawful or unlawful.

The act of the man now a prisoner apparently partook of this feature. It may be considered that they

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can rebel, as others might do living under the same Constitution and laws, to prevent its due execution, or put themselves up in defiance of the lawful authority preventing the course of government. All this may be repelled by force of arms by government, when milder proceedings cease to prove to be a virtue. But treason, that highest of all crimes, can only be committed by an attempt, by conspiracy or otherwise, to destroy the government, by giving aid and comfort to its enemies to accomplish it. "Treason, to betray: the attempting to overthrow the government of the state to which the offender owes an allegiance, or of betraying the state into the hands of a foreign power."

In England, treason is an offence particularly directed against the person of the sovereign, "in carrying war against the King in his realm, in adhering to the King's enemies." In the United States the definition of treason is fixed by the Constitution, it being declared to consist only in levying war against the United States or the adhering to their enemies giving them aid and comfort. (Burrill, part 2, page 996.) Such is the law of Liberia, as the laws of both countries in criminal cases have been adopted by this country. The fact attempted to be proved against the prisoner falls short of the law, and the crime he has committed, being only a misdemeanor of a high character, has been unfortunately magnified to be treason, and thereby supported by the court, which would, if allowed to stand upon such a construction, hazard the liberties of the people. In finding this conclusion, the court holds that our native subjects have of right the privilege of a trial by jury, and the law of the land; but in all cases they must be allowed the full benefit thereof, as the law guarantees, and not deprive them of right the privilege of a trial by jury, and the law of the under the panoply of the law. The court is of the opinion that the prisoner, from the records, has committed a crime against the peace of this Republic, and

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the indictment endeavored to show it, and the court to support it, to be treason. This court declares that he has not committed treason, but this crime is in the nature of high misdemeanor, for which he is responsible to the laws and government of the land.

As the laws of the Republic make it obligatory on this court to reverse or affirm all cases coming before it on appeal or otherwise, and award such decisions as in its opinion it may deem best, or to remand, as the case may be,—therefore, the court decrees that the finding of the jury and court below constituting the crime of Peter Davis treason, is erroneous, and the same is hereby reversed; and that he, Peter Davis, be considered as committing a misdemeanor, partaking of an armed riot against other subjects of this Republic. It is further decreed that all fines and forfeitures imposed on said Peter Davis, and under which he stands committed, are hereby annulled. Also that the said Peter Davis be and he hereby stands committed, to be disposed of by the executive of the country, according to the spirit of an act supplementary to an act entitled, "An act to maintain peace and enforce order on the highways to the interior," passed 1859, page 53, sec. 4.

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## C. B. DUNBAR, Appellant, *vs.* A. E. McGILL, Appellee.

[January Term, A. D. 1863.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Criminal Law. Crim. Con.*

Removing the hearsay evidence, the opinion given as evidence, the contradiction of witnesses in their statements, together with circumstances surrounding the whole case, the conviction of the court is that there is nothing to convict the parties of criminal conversation.

It is, then, the opinion of the court that Charles B. Dunbar and Angelina E. McGill in accordance with law

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and evidence are not guilty of criminal conversation. Therefore, it is hereby decreed that the verdict of the jury and the judgment of the Court of Montserrado County in this suit be and hereby is reversed, with its effects and liabilities; and that judgment is hereby given in favor of the appellant in this case; and that a mandate is hereby ordered to be issued to the court below, directing that its verdict and judgment are null and void, with costs in this court.

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## WHITE & WHITE, Appellants, *vs.* JOHN MOORE and others, Appellees.

[January Term, A. D. 1863.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Sheriff's Sale.*

The court, after a careful review of the documents in the above case, as well as the judgment of the court below, have concluded that the proceedings of the court in 1843 is genuine, and that the action of the sheriff by selling said property was in accordance with law, and hence the deed is valid, and the parties are in rightful possession of the property. Therefore, it is hereby decreed that the judgment of the Court of Common Pleas of Montserrado County be and the same is hereby confirmed, with costs in this suit.

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## DAILY *vs.* DOE.

[January Term, A. D. 1864.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Writ of Error—Practice.*

The court is of opinion that as the legality of the writ was not made a point in the declaration, it could not be made a question in the case. Therefore, if the search warrant was illegal in any of its features the plaintiff in error should not be made to suffer while pursuing a

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proper course, which was confined by his oath and legalized by the warrant of law. The law, by all means, authorized the magistrate to act within the precincts of the court in which he resides.

It does not appear that the magistrate committed any error by the issue of the warrant, and the constable in acting could only perform his duty by the authority embraced in the warrant, as an officer of search. The court is also of the opinion that the law guarantees the right to individuals to cover any and all places by a warrant in which he may have suspicion that his property is concealed, and the warrant under oath is the security. The law in the statute, page 10, section 49, declares if the writ shall have been improperly obtained, the law would give a remedy at law against the party procuring the writ, but if properly obtained, no action can lie; then if a writ is obtained in a proper form and by the requirement of law by the party seeking it, he is secured against all actions. The oath of the party, the designation of the place or places, as well as the property, is the form proper, and if the magistrate confines himself within his jurisdiction, that is, the county in which he and the party reside, he will also be considered to be in form.

In all these relations this court is of the opinion that the appellant and Justice of the Peace have confined themselves to law and form. Therefore the decision of this court is that this case be and is hereby reversed, and that the appellee in error be ruled to pay all costs.

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## DAILY *vs.* CAREY.

[January Term, A. D. 1864.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Injunction.*

A review of the case of Daily *vs.* Carey on injunction has presented to the court such features as would lead this court to place it in such a position as that both parties may have the benefit of the common law.

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It could not be considered just under the conflicting circumstances and the manner in which the case was tried, that a final adjudication be had in the premises. The question and matter itself in all its bearing appears to be mixed, hence it is highly proper that an opportunity be afforded for an unravelling of the several issues by the proper authority. The design of the law and its restrictions is to remedy evil, and allow every person full and adequate opportunity to prove and maintain whatever right he or they may regard as having been suppressed, or about to be, by any person or persons. The power and authority of the court to issue and perpetuate the injunction cannot be questioned. But that the court should bind or keep bound such parties, that have been arrested by its mandate when the matter could have been adjusted at common law, does not appear to be correct. The law is created to ensure peace and good will between all men whom it superintends, but to construe it so as to keep parties in an unsettled condition, is not what the law intends. The court should always follow the proper remedy, and allow each party, by law and opportunity, to prove or dispose his claim. There is no dispute as to the decision of the court below, as regards the incompetency of said court at Marshall to try and determine a case involving an amount more than thirty dollars, and it is duly confirmed by this court. It would have been proper, however, for the Court of Pleas to have had the case before it in such a form as to render both parties competent to defend themselves with such facilities as may have been convenient to them.

The court is of opinion that as the case was not tried by the court below, but only checked indefinitely, which if continued would prove injurious and unsatisfactory to those concerned, it is hereby ordered that the injunction shall be so dissolved as to allow the parties to enter their claims at common law, in such

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courts as may have jurisdiction to try and determine such cases; also that the relief from the pressure of the injunction shall not enable the party having the benefit in the Provisional Court to follow the decision of said court. The case is hereby remanded to the Court of Quarter Sessions to be disposed of as directed by this decision, and a mandate and a true copy of this decision is hereby directed to the Court of Pleas and Quarter Sessions of Montserrado County.

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## J. D. JOHNSON *vs.* H. R. W. JOHNSON.

[January Term, A. D. 1864.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Certiorari—Injunction to Stay Execution.*

The court has no need to enter into any elaborate argument respecting this case coming before it on a writ of certiorari. The writ, of course, is an important one, and founded upon the intent of the law to give full justice to all alike.

This writ is no stretch of jurisprudence, but one among its instruments to set forth its magnitude and majesty. The injunction issued by the Court of Common Pleas, Montserrado County, to stay the execution of its own order and final judgment, was and is, in the opinion of this tribunal, erroneous, though the motive might have been pure. The only remedy, if a remedy was needed, would have been an appeal from the decision of the court; and also if the law officers had gone beyond their limits, and done any act against the defendant which was unlawful and for which they had no warrant from the court, they would be responsible for all such unlawful proceedings if any injury ensued. The law carries with it great power where defiance is practised, but on the other hand it is reasonable where responsibilities make it expedient. It is admitted that the successful party has the right to demand an execution on the rendi-

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tion of final judgment, because it is his right in law, and to justify this course there are several reasons which the court deem unnecessary to allude to here. But it does seem that equity would suggest that the successful party, in an extreme case, allow his antagonist time to meet his obligations to him; but this would only be done by securing the plaintiff with proper safeguards. The court is a mighty organ and any person who is clothed with its prerogatives has in a very large degree the care and protection of all living under its influence.Therefore, the court may be said to have discretionary powers in particular cases to defend one and secure the other.

The law never contemplated violence, only when violently assailed, and no person has the right to violate the law, or in other words obstruct it in its legitimate pursuits. The appellee in this case apparently makes the same plea here as he would have done before the Court of Pleas on the injunction, that is, the requirement of time, to meet a demand which he admits to be just, and which the court below confirms by its judgment. Hence there seems to be no question as to the righteousness of the cause. Equity would suggest time, provided the appellee give such security as may satisfy the appellant in this cause. This court is fully of the opinion that the whole case should be divested of obstructions, since the rendition of judgment was final. The costs of the court below being one of the principal features of objection which led to the application for the injunction, the court will here note and here direct that so much of the case as relates to the costs be remanded to the Court of Pleas, Montserrado County, for its adjustment to the extent as it may appear lawful to the court.

Therefore it is hereby decreed that the full force and restraint of the injunction in the case of J. D. Johnson *vs.* H. R. W. Johnson is dissolved, and the case rest upon the final judgment and order of the court as delivered on record before this court, with all costs in this court.

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## J. S. BENEDICT, Appellant, *vs.* C. J. McGILL, Appellee.

[January Term, A. D. 1864.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Habeas Corpus.*

1. The father is the proper custodian of his children unless under some legal disability. By statute, the judge of the Court of Quarter Sessions and Common Pleas, in making a decree of divorce, may appoint guardians for the children where equity requires that he should.

There can be no doubt as to the proper custodian of children as defined and settled by law. It unquestionably makes the father the only legal representative of them, unless there is some disability on his part preventing him from taking proper care of them. Where this is the case, the law makes ample provision for the protection and care of the children, so that there is nothing wanting that is necessary to meet the exigency of any case. In cases of divorce the Liberia statute law provides for a departure from the general provisions of the common law, in regard to children, by giving the judge of the Court of Quarter Sessions and Common Pleas the privilege of exercising and employing equity principles instead of law, by authorizing him to place the children with guardians or other persons besides the father, provided he can show good reasons in equity for so doing. Therefore it is proper for any judge acting in equity to state clearly and fully the grounds in equity on which he founded his actions.

This precludes the necessity of making any reference to the rules of common law, because the said statute authorizes a departure from them. This is not the case in the decree of Judge Wilson in said case, for there is no extensive reference to common law when his action was in equity. There is no statement in his decree setting forth the facts in equity which actuated him.

Therefore, it is the decision of this court that the case be remanded, and that Judge B. R. Wilson be required

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to set forth clearly and fully the reasons in equity that moved him to his decree in said case, after the rendition of his reasons, the same to be forwarded to the Supreme Court or the Chief Justice for further disposition of the case. The cost follows the final judgment.

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## N. J. A. MARRSCHALK, Captain of the Brig "Hollandsch Acra," of the Netherlands, Plaintiff in Error, *vs.* REPUBLIC OF LIBERIA, Defendant in Error.

[January Term, A. D. 1865.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Appeal. Record.*

This court decides that the record of the court below is incomplete, one or more essential documents being absent. The Compiled Statutes, page 61, sec. 5, require that the entire record shall be forwarded to the Court of Appeal. In consequence of this omission this court rules that the case cannot be considered, and is therefore dismissed at the expense of the State.

The court, however, notices that the omission is on the part of the State, through the clerk of the court below, and not on the part of the said N. J. A. Marrschalk, plaintiff in error. The fact suggests to this court that the said N. J. A. Marrschalk, appellant, is deprived of an opportunity further to pursue the remedy sought for. This being the culminating point, in order, therefore, to render speedy and complete justice in this case, it appears necessary that this court notice the matter on equity principle, for we conceive it to be unjust to put the appellant to further inconvenience after having obtained a writ in error, as well as the employment of the measures in order to obtain a further hearing of his cause. The omission of the State through the court below ought not to operate to the detriment of the appellant.

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The equity which it is the opinion of this court should operate and apply in this case, notwithstanding it is dismissed, is that the said N. J. A. Marrschalk, appellant, ought in justice to be discharged from any further penalties or liabilities whatever. Therefore, this court decrees that the judgment of the court below be reversed.

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## R. R. JOHNSON, Plaintiff in Error, *vs.* J. G. GIVENS, Defendant in Error.

[January Term, A. D. 1865.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

Where a defendant in a civil suit has been arrested upon a writ of arrest, it is the duty of the sheriff to hold him in custody unless he gives bail for his appearance. But where the writ was issued but not served, the court to which it is made returnable cannot take jurisdiction over the defendant.

The case was duly called and examined on record, and after a careful investigation of the facts and law in the case, it appeared to be fully supported by several points of law as hereinafter referred to.

If the sheriff arrested R. R. Johnson by a writ of arrest issued out of the clerk's office of said court at Sinoe for him the said R. R. Johnson to appear before the Superior Court to answer Givens, as expressed in the writ or declaration, then the said R. R. Johnson was in the custody of the sheriff, and the said Johnson should not have been allowed to go at large unless by giving bail or bond for his appearance at the said term of court; and if the said R. R. Johnson did not appear neither by security nor bond produced by the proper officer, then and in that case the matter was not in a legal form for the said Superior Court to take action. (See 3 Blackstone, p. 290; Liberia Statutes, p. 14, sects. 1, 2 and 3; 3 Blackstone, p. 283.)

If the sheriff did not arrest R. R. Johnson to bring him before the said Court of Quarter Sessions and Common

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Pleas to answer J. G. Givens as set forth in the complaint, then and in that case the court had no claim upon R. R. Johnson until he had been arrested and duly returned, and the Court of Quarter Sessions should not have given judgment against the said R. R. Johnson.

Therefore, the Supreme Court now decrees that the case as decided against R. R. Johnson, plaintiff in error, in favor of J. G. Givens, defendant in error, is now by this decision dismissed, and the judgment of the Court of Quarter Sessions and Common Pleas in the County of Sinoe is by this decree reversed and dissolved and the defendant in error ruled to pay the costs of court.

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## J. D. JOHNSON, Appellant, *vs.* W. A. JOHNSON and C. M. WARING, Appellees.

[January Term, A. D. 1865.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Trial—Non-suit—Retraxit.*

1. Where the necessary writs and preliminaries to a valid trial have been duly executed, a jury affirmed and issue joined, a trial is presumed to have commenced.

2. At this stage of the proceedings there must be a verdict, unless a non-suit or retraxit be entered by plaintiff. A non-suit will not be allowed, unless in consequence of the non-appearance of plaintiff or some other laches on his part, or unless defendant against his own interest assents thereto. But where this is not done the plaintiff can only avoid a verdict by entering a retraxit, which puts a final end to the suit.

This is an appeal from the decision of the court below, in regard to a verdict which took effect in bar, to an action for slander brought by the said J. D. Johnson, plaintiff, against the said W. A. Johnson and C. M. Waring, defendants, which case was before said court at its June term, 1864. The question to be decided by this court is whether the act of the plaintiff in said case at the said court was a "retraxit" or not. As it is the business of this court to view matters in a legal light, and to apply law in its letter and spirit, except in cases of equity, it

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appears to this court that it has only to notice the stage of the case as it stood before the court below, when it was withdrawn by the plaintiff. The ascertainment of this paves the way to a legal decision of the case, because the law is so ample and full on every subject that can possibly be mentioned, that there can be no mistake in deciding any case, unless it be made in consequence of ignorance of the law or by a misapplication of the principles. To avoid the evil so destructive to liberty, it is always necessary to notice the *res gestæ* of the matter and scrutinize the law regulating the same.

The records of the court below show that the usual writs and preliminaries to the action were had in due form and order. Therefore, we conclude that the defendant was brought into court and put on trial before a jury. If the defendant was put on trial, then issue was joined by the parties. Here, then, the case was placed fairly in the hands of the court. At this stage of the action the case was entirely beyond the control of the defendants. They stood bound by law to hear a verdict, unless some relief is given by some act of the plaintiff. But it must be observed that while the defendants stood bound to hear a verdict, the plaintiff was not bound to proceed to conviction or to the *terminus* of the case, because the justice of the law will always allow parties in a civil action to compromise their dispute up to the very juncture of the time that the jury is ready to retire to consider their verdict. But while the law is just, it is also reasonable and therefore declares that such compromise must be made pursuant to certain rules.

When a case is at the stage of procedure alluded to above, there are only two ways for it to find a legal terminus before verdict; first, by retraxit, second, by non-suit. In defining and discriminating between these, and the way each takes effect, the law is most logical and particular, because a non-suit and a retraxit are followed by circumstances entirely different. Therefore when one

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is substituted for the other the equity of the law becomes inoperative, and one or both parties may be materially injured. The rule of law governing such terminus before verdict is as follows:—

First—There can be no non-suit after issue is joined, unless it be given in consequence of the absence or laches of the plaintiff, or unless the defendant, *diametrically against his own interest,* agrees with the plaintiff in open court that he may have a non-suit. The law leaves this point to be watched and guarded by the defendant, because it does not suppose that he could agree with the plaintiff to give him a second opportunity to prosecute him, which a non-suit under such circumstances would do. Hence the defendant either contends for a verdict or a retraxit, because by the former he may be cleared, and by the latter action is forever barred. For reasons just cited, the law will not tolerate any other mode of non-suit or terminus before verdict, because it would afterwards entail great evils upon parties to suits if there were no established rules on the subject. Non-suits by the plaintiff are always least expected, because the law supposes that he is always ready; and we add that it is reasonable to conclude that he never begins till he is ready.

The second method by which a case may find a terminus before verdict, is by retraxit. "Retraxit is a Latin word, and signifies to withdraw or to draw back. Therefore, a withdrawal at a certain stage of the action is a retraxit," because the terms are interchangeable. This act cannot be performed by any one except the plaintiff; not the defendant, because he can never withdraw that which is instituted against him. But he can demand a retraxit from the plaintiff when he is not disposed to proceed with the case, after issue is joined. All that the law requires to make an act at this stage constitute a "retraxit" is that a voluntary withdrawal be made by the plaintiff; it makes no difference what the plaintiff's motive may be

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as to the nature of his act. (See Blackstone Com., Vol. III, p. 296; II Bouv. Law Dict.) The law has assumed the right of naming acts as well as actions.

Having carefully noticed the history and features of this case, as well as the doctrine of the law governing non-suits and retraxits, it is the opinion and decision of this court that the act of the said J. D. Johnson, plaintiff, in the court below, by withdrawing his case, was *to all intents and purposes a retraxit*. Therefore, the judgment of the court below is affirmed,—appellant to pay costs. The court adds that the term of retraxit ought to have been placed on the records of the court below, and would now order it if this State had statutes of Jeofails; on that account the records of this court will show the amendment.

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## S. A. BENSON, Appellant, *vs.* J. J. ROBERTS, Appellee.

[January Term, A. D. 1865.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Libel against the reputation.*

1. The 15th section in the Bill of Rights relates to criminal prosecutions in actions for libel and slander.
2. Where the truth of a fact stated is denied, it is an issue of fact, but where the right in law is denied, it raises an issue of law.
3. Where a mixed question of law and fact is presented, it is tried by jury under direction of the court. The opinion of the court is evidence to the jury of the law of the land. The question whether certain written matter is libellous, is a question for the court to decide independently.

The court before proceeding to the points upon which the case is pending will state briefly the nature and rules for the management of a suit at law. A suit at law is simply a legal examination of matters in dispute between two parties, and in which case the plaintiff alleges that he has been injured by reason of the defendant's conduct and prays that his country by due course of law inquire into the same and the matter be deter-

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mined accordingly. Hence the importance of referring such matters of dispute to some competent tribunal for judicial examination and adjustment.

To this end, however, it is required by law that the facts alleged by either party be substantially proved by the testimony of competent witnesses, and the injury done determined by the law governing and controlling such cases particularly. It is true in the early stages of our society, when our reputation was only known at home, and our property but little valued, every case was decided on its own circumstances by the exercise of common sense. Notwithstanding, the court admits the fact that, by chance, justice may be well administered by impartial judges, without a knowledge of any of the established rules of law, yet the court must say that as our society advances in wealth and refinement, our relative rights become more complicated and difficult. Doubtful questions arise daily, which cannot be easily decided by the exercise of common sense without infringement upon the constitutional rights of one of the parties to the suit. And for this reason the court says that for the perpetuation of the government and the better order of society, it would be well for those who have never pretended to study law as a science, who know nothing of the spirit and reason of law, and who must consequently be ignorant of the natural foundation of justice, to learn always to respectfully bow to the decisions of courts of justice, reserving always their constitutional rights. These ideas will lead us to consider the points in question particularly.

And first, it is the opinion of the court that the latter part or clause of the fifteenth section of the Bill of Rights relates particularly to criminal prosecutions for libel, and that a mere law question was raised as to this point, which ought to have been settled by the court below. For it is very plain to the understanding of the court that every contradiction raises an issue. If the truth of the fact stated is denied, it is an issue of fact. But

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if, on the contrary, the right in law is denied, it is an issue of law. Or if one party in pleading denies the other party's right in law, the party claiming under the law is bound to assert his right in law, or he will be taken to admit the want of law to support his point, in which the question is involved. But if the party claiming under the law asserts his right in law, an issue of law is raised. And it is for this reason that the court must determine all questions of mere law. And it is the duty of the court in all mixed questions of law and fact, to expound the law to the jury, and direct them in the investigation of the matter under their consideration. The opinion of the court shall in all cases be the evidence to the jury of the law of the land, the jury being compelled to bring their verdict accordingly.

Thus it is clear, as will be seen emphatically expressed in the fifth section of the seventh chapter, Liberia Statutes, first book, page twenty-eight, that in all cases whatever (criminal or civil) the opinion of the court to the jury is the evidence of the law of the land. And this is quite reasonable from the fact that the trial of all mixed questions of law and fact shall be by a jury, with the assistance and under the direction of the court. The two laws harmonize in principle, and the reason for it is plain without commentation. But if the court mistake the law, that is, the meaning and spirit of the law, the party claiming the benefit thereof where his rights are thereby infringed upon, is consequently entitled to an appeal, because the evidence of the law emanated from an erroneous opinion of the court. Because no one will doubt the fact that if the evidence of the law to the jury is erroneous, the conclusions drawn therefrom are erroneous also. Therefore, if the jury received the impression from the court that they were the judges of the law and fact, they were misled; because the jury is to try all mixed questions of law and fact, and determine them, under the direction of the court. The word

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"under" is a preposition meaning "in subjection to," and the word "direction" is a substantive meaning "order, command, prescription." Thus it is clear, from the word used in the latter clause of the fifteenth section of the Bill of Rights (also from the words used in the third section of the seventh chapter, Liberia Statutes, first book), that the jury are not the judges of the law and fact, because the jury can only determine the law and fact according to the instruction of the court, or, in other words, according to the prescribed rules laid down by the court; otherwise an appeal lies from the verdict.

And secondly, the court ought to have decided the law questions (respecting libellous written words), since it was a question of mere law. If they were libellous in tendency, the Court ought to have instructed the jury to ascertain from the evidence whether the defendant could establish the truth of the allegations against the plaintiff, or that if the tendency of the words written were only by way of advice, or public information, to instruct the jury how far this right is guaranteed by the Constitution of the Republic of Liberia.

And thirdly, the court is of the opinion that two of the counts are bad from the fact that the defendant has sustained the allegations respecting lands.

The defendant is not responsible for the innuendoes written by the plaintiff. The law only holds him for his own acts. (See page 1, sections 1 and 2, Liberia Statutes, first book.)

And lastly, the verdict being general, that is, not leaving out the bad counts which appear upon the record, and the entire damage assessed having been given without specifying on which count the jury found their verdict, renders the verdict fatal. The entire damage in contract means the whole amount agreed upon by the parties to be forfeited, but it is not so in an action of damage for injury to the reputation. The whole or entire amount in this case means what you have con-

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tracted to pay on the assessment of a jury, by due course of law. This contract is the political or constitutional contract of every Liberian.

The entire damage, then, is the entire amount given by the jury, within the meaning of the law of the land. For it must be remembered that every party in a suit at law is under a constitutional contract to legally conduct his course, or, in other words, to seek his remedy by due course of law, otherwise he will deprive himself of his legal advantages. The court doubts not that if this case had been regularly conducted the plaintiff may have had judgment on some of the counts; but order and regularity do not appear upon the record. Therefore, since no good reason can be assigned for this irregularity, unless it be taken in a bad sense, as to the want of the right influence of the law, it is therefore the duty of this court to arrest the judgment in this case.

It is decreed by this court that the judgment of the Court of Quarter Sessions, Montserrado County, in the case of S. A. Benson, appellant, *vs.* J. J. Roberts, appellee, be reversed, with costs, and that the clerk of this court issue a mandate to the said court to this effect.

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## JAMES S. PAYNE, Appellant, *vs.* C. D. McKENZIE, Agent of John Brown Smith & Co., Appellee.

[January Term, A. D. 1866.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Imperfect judgment—Perfect judgment—Assessment of damages under an imperfect judgment—Defendant not entitled to raise question of law where no answer has been filed.*

1. Where a principal is absent from the country, he may be sued through his agent for the violation of a contract made by him.

2. Where no answer has been duly filed to the complaint, the defendant is barred from raising any questions of law as to any matter stated in the complaint.

In this case of appeal, taken from the Court of Quarter Sessions of Montserrado County, James S. Payne *vs.*

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C. D. McKenzie, Agent of John Brown Smith & Company, in an action of damages for the violation of a contract, it is the opinion of this court that after a default of the defendant for not appearing and answering to the call of his name in court, either himself or by attorney, and that after an imperfect judgment had been given against him in favor of the plaintiff, declaring that the plaintiff is entitled to recover, the court below could not legally admit any plea or suffer the jury to try any issue of fact as to the merits of the contract, but to estimate the damages only, because the default is an implied admission of the facts in the case, and of the law arising thereupon. Therefore it was only the duty of the court below to have had the matter settled by the jury as to the amount of the damages sustained, and to complete the judgment thereupon in the case. For the court could not by any rule of law or principle of justice refuse to allow the jury to be sworn after they had been empannelled by its orders to assess the damages in the case, for it is upon the ground of the defendant's default the plaintiff is entitled to recover, and the law declares that after an imperfect judgment by default, the jury shall assess the damages sustained. The court could not, merely because questions of law had suggested themselves to it, which it may have conceived would have been a good plea for the defendant, raise and decide them itself in behalf of the defendant without working the purest injustice to the plaintiff, for it is certainly contrary to the rules, proceedings and practice of law.

Nor is a defendant permitted to raise any questions of law as to any matter stated in the plaintiff's complaint, if he, the defendant, failed to have filed his answer to the plaintiff's complaint within the time prescribed by the law of the land. Whenever a defendant is absent from the state in any action for which the statute law does not otherwise direct, upon the same principle as that remedy may be sought for in a foreign country by a

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principal through his agent in Liberia from citizens of the Republic, for damages sustained by him, the principal, even growing out of a violation of a contract that might be directly and personally made with himself and others, remedy in like manner may be sought for against the principal, through his agent, for damages growing out of a violation of a contract, although the contract may have been made by the principal, directly and personally himself with another; provided, however, that the principal be out of the state or in a foreign country or cannot be found to be summoned.

It is very necessary here to state that an appeal is simply the granting, on motion of a party, of the right to remove his cause to some court of appeal, and as evidence of the granting of such appeals, and of the truth of the matter stated in the bill of exceptions, it is necessary that the judge of the court, against whose decision the exceptions are taken, should sign the bill of exceptions. The appeal, however, must be taken within the sixty days after final judgment as the law directs, otherwise the court below will not be bound to send up the records in the case, unless upon a special mandate from a superior court. But to support an appeal it is indispensable that a bond should be executed and approved by the court below, a copy of which must follow the appeal, otherwise the appeal shall be dismissed. The object of the bond is particularly to indemnify the appellee from all injury arising from the appeal, and to compel a compliance with the judgment of the court to which the appeal is taken, for it is evident that an appeal may be taken before a superior court without a bond, notwithstanding its liability to be dismissed therefrom.

Therefore, the court adjudges that in this case of James S. Payne *vs.* C. D. McKenzie, agent, in action of damage for the violation of the contract, upon an appeal from the decision and rulings of the Court of Quarter Sessions and Common Pleas of Montserrado County,

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respecting the liability of the agent to be argued and determined before a jury could be empanelled, this opinion adjudged in the said court below is hereby reversed, and the case is hereby remanded to said court to have the damages assessed by a jury at the March term, A. D. 1866; and that the appellee pay all costs. And the clerk of this court is hereby ordered to issue a mandate from this court to the said court below to the effect of this judgment.

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## JOHN M. HARRIS (an Englishman), Appellant, *vs.* THE REPUBLIC OF LIBERIA, Appellee.

[January Term, A. D. 1867.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Admiralty—Libel.*

1. Sovereignty is an essential constituent of an independent nation; where it exists, the provisions of international law become applicable.
2. The prominent principle in the laws of nations, which confers upon states the right of control over its domain, is that its laws are paramount within its territorial limits and must be obeyed alike by aliens as well as citizens within its territorial limits.
3. Where the laws of a state have been duly published in accordance to the provisions relating thereto, the plea of ignorance of them by a foreigner is unavailable.

The Supreme Court has reviewed this case in all its bearings with as much scrutiny and care as the nature of the case seems to require. The court will observe that this matter in dispute has been argued in the court below, as well as in this, with great warmth and ardour. We infer from this that great importance is attached to this case by the claimant's counsel, as well as by the republic. The court will say in regard to this fact, that the law is so just, regular and unequivocal, that in order to award common justice the court has only to act in

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this case as it would in any other in which the cause of dispute might be of comparatively minor importance. It should therefore be the practice of every court of law or of equity to bring to bear the law points and the equitable subjects of every case. This being done, justice will be meted out in every case, however great and extensive its proportions may be on the one hand, or however small and insignificant on the other. It is to be admitted, however, that courts very often find difficulty in freeing cases from those misty intricacies into which they are sometimes taken by the astute lawyer. He, by his sagacity and skill, throws them into a labyrinth of almost inextricable mystery, from which it is sometimes hard to relieve them. This, however, is our duty, and we must perform it. Were it not for the fact that there is one grand principle running all through the law, and serving as its own interpreter, courts of law might well conclude that cases might be decided according to the strength of the argument. Therefore, it is the duty of the depositories of the law to acquaint themselves with these grand leading principles. These leading principles have attained to as great perfection, so far as their cultivation has gone, in international law, or the law of nations, as in common law. The distinctive titles of laws have been made to point out those several departments in the great laboratory of laws, to show their office and special design, while at the same time, as stated above, they are based on principles as grand and sublime as perfection itself. It is therefore the office of the law of nations to set forth in a clear light the duties of one nation to another, as well as the respective rights of each. It therefore descends into every *minutia* that can possibly have any bearing upon nations. Sovereignty is the first grand constituent of a nation, and whenever this appears international law is enthroned and its provisions and influences are as fully in force with reference to nations as a statute is in a nation.

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Let it be remembered that there is one prominent principle in the law of nations which gives it efficacy and effect in every nation, and that is, that the subjects or citizens of one are bound to obey the laws of the other as soon as he enters its territory, and the nation into whose territory he enters is bound for his protection, unless the sovereign orders him to leave. Here the duties of nations and subjects or citizens are reciprocal. Here, then, is a principle. It is also a conceded right that a citizen or subject of one nation may be tried and punished for violating the laws of another nation, on condition that complete justice is awarded; no other condition is required. This being done, no dissatisfaction ought to or can be expressed by the nation whose subject or citizen has been punished.

This being a fact and a principle as pure as truth itself, it shows that the citizen or subject of any other nation should be very particular to acquaint himself with the local laws of the nation into which he goes, lest he might fall under the influences of these powerful principles,—an influence from which his own nation cannot extricate him, except by using might for right; in which case, that nation which seeks to avenge itself arrays all other nations against it. But when the plea of ignorance is urged, that is, that the subject or citizen did not know the law, the law cannot admit such plea, neither by its own citizens or subjects, nor by foreigners. For if such pleas are allowed by law, who would be tried?

Having made the above brief allusions, the court proceeds to accommodate the various features in this case to those ruling principles, before going to the merits. The court announces that it will use equitable provisions where it appears necessary, and affirm or reverse the decree of the court below where it is needed.

The navigation, commerce and revenue laws of the Republic of Liberia are plain and intelligible. They have long since been published to the world. Added to this, it

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may be said that the body politic is regularly organized; no department is without a representative. The territorial boundaries of the country have been clearly defined, published and acknowledged. Therefore, so far as respecting these points, all nations must be satisfied, and whoever violates said laws by mistake or ignorance is liable to its penalties.

The court decides that the British schooner "Phebe Harris," her cargo, sails, rigging and tackle are *de jure* and *de facto* forfeited and confiscated to the government, and it is hereby decreed that the judgment or decree of the Admiralty Court be affirmed, especially so much as refers to the said schooner "Phebe Harris." Nevertheless, should it be of any convenience or advantage to the said John M. Harris to have back the said schooner "Phebe Harris," he shall be allowed the privilege of paying a fine of one thousand dollars and all costs and charges in any wise pertaining to the suit. He may give bail for the same to be approved by the Secretary of the Treasury, in which case the said schooner "Phebe Harris," her cargo, sails, rigging and tackling shall be returned to him by the marshal. The court further decrees that the fine of one thousand dollars assessed against Henry Ireland, supercargo of the said schooner "Phebe Harris," be and the same is hereby reversed, and the fine of five hundred dollars against Capt. Joseph Smith be reduced to fifty dollars. He shall pay all costs and charges, and may give approvable bail for the payment of said fine, whereupon he shall be released from prison.

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## AFRICAN MERCHANTS, LIMITED, Appellants, *vs.* J. N. LEWIS, Appellee.

[January Term, A. D. 1867.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Action of Debt.*

The court has carefully examined the record in this case, and on account of the mixture of questions of law and fact is unable to decide the case finally. As it does not satisfactorily appear on the records of the court in what capacity the appellee was acting, therefore it does seem necessary that proof should be had on this point. And also, to the end that the court may be informed as to what disposition was made of the money drawn, and to whose account it was intended to have been put, the court therefore feels it a duty, and in keeping with justice, to remand the case back to be tried over, and it is hereby remanded with all costs following the same.

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## HILTON, Trustee, JOHNSON, TURPIN and DUNBAR, Appellants, *vs.* SHERMAN and JOHNSON, Administrators and Administratrix of J. D. Johnson's Estate, Appellees.

[January Term, A. D. 1867.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

The principle upon which cases are decided by the highest judicial tribunals of the world under the plea of Statute of Limitations is universally known and so well established in reason that it needs no comment of this court to give character to it.

Therefore, it seems only necessary for this court to give sanction by its decision to a principle so well calcu-

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lated to distribute justice to all mankind. The Statute of Limitations is not intended to debar any persons of their rights, that is, those who are legally disabled, for the statute only commences to run against a party when he has failed to use his legal advantages to the security of his interest. Hence, as soon as he is able to pursue his right, if he fail to do so during the term of limitations he bars himself of his right, and therefore the court will not sacrifice the right of others to the security of a neglectful plaintiff's interest.

The court, therefore, adjudges that the plaintiff recover all costs incurred in this case since the appeal has been taken.

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## W. S. ANDERSON, Appellant, *vs.* WILLIAM McLAIN, Appellee.

[January Term, A. D. 1868.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Specific performance.*

1. In appeals the bill of exceptions must set forth the points upon which it is believed the court decided erroneously and contrary to law.
2. Where the bill of exceptions and other parts of the record in an appeal fail to show that exceptions were taken in the lower court to some ruling of the lower judge, the appellate court will not take cognizance of such exception upon an appeal.

This is an appeal case brought from the Court of Montserrado County to this court upon a bill of exceptions. The first exception is thus stated: Because the said court in said case decided in said judgment that the said W. S. Anderson should specifically perform the said contract according to the prayer set forth in said plaintiff's complaint.

This exception brings up no question before this court that demands its interposition. However, appellant was at liberty to have filed his bill of exceptions to the plain-

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tiff's position in the law or in the equity of the case, then assumed by the plaintiff to support his action. This court discovers nothing from the record in which a question of law is involved; that is to say, nothing to which the attention of the court below had been called by any legal means whatever. The bill of exceptions filed in the case simply declares that the court below in the said case decided in said judgment that the said W. S. Anderson should specifically perform the contract according to the prayer set forth in the plaintiff's complaint. The bill of exceptions does not say whether the said contract or prayer is illegal, or whether the court below had violated any established rule of law by rendering such a judgment. Now whatever may have been the issue of law raised in the appellant's answer, since appellant does not show to this court by a bill of exceptions, or since it does not appear from other parts of the record, that the attention of the court below was called to the fact that such issues were decided contrary to law and equity, this court is not warranted to pass any decision on them. For it is very clear that if there should be a neglect to demand a decision on any law question raised in the pleadings by any party, such a neglect is in the eye of the law a waiver of such right. The same rule applies if a decision be given on any question so raised and no exception be taken to it by the party aggrieved thereby. For by such a neglect a party loses every legal advantage growing out of such questions on an appeal.

The last exception taken to the judgment of the court is because the said W. S. Anderson says that he does not believe that the said William McLain has proved the facts set forth in the complaint in such a manner as to entitle him to said judgment of specific performance.

Let us consider the nature of the last exception taken by the appellant. Does it not present for the considera-

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tion of this court a matter purely of fact and not of law? Surely it does. The bill of exceptions represents to this court no defect in the character of the evidence that makes it a question of law, and therefore renders it insufficient to substantially prove the allegation of the plaintiff. Now it must be remembered that when a general exception does not specify whether the exception is to a matter of law or fact, such exception cannot be sustained on an appeal to this court. The reason is because the particular cause for the exception ought to be stated to the court below, and the opinion of the court, involving the principle for which the question was decided, ought to be made known to the court of appeal in order that this court should be informed of the premises upon which the case is decided in the court below, and upon which the court of appeal will be able to establish a precedent for the court in all cases analogous.

And for this reason the court adjudges that the judgment of the court below be confirmed, and that the appellee recover all costs incurred in this case since the appeal was taken.

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## W. S. ANDERSON, Appellant, *vs.* S. F. McGILL, Administrator of the Estate of John Brown Smith & Co., Appellee.

[January Term, A. D. 1868.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

The opinion of the court is that the question raised by the appellant as to whether the appellee has a right to sue him in this action, as administrator of John Brown Smith & Co., is a mixed question of law and fact, and since the appellee alleges in his complaint that he is the administrator, the burden of proof rests on him.

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The second exception taken also involved a mixed question of law and fact, that is, the question whether the administration of John Brown Smith had a right to sue appellant for debts due John Brown Smith & Co.

The evidence necessary to the proof of the authority of an administrator is his letters testamentary. No satisfactory evidence appears to the court on these points, so as to enable the court to know for which party the judgment ought to be given.

In respect to the "award," the court must say that an award must be final, else the court will not render judgment on it. In consideration of these facts, and for an impartial administration of justice, this court hereby remands this case to the Court of Quarter Sessions, Montserrado County, in which court it was originally tried, to be tried over again in a manner that will best serve to meet the ends of justice, and that all costs incurred since the appeal has been taken shall follow the final issue of the case.

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## RICHARD BINGHAM, Plaintiff in Error, *vs.* JOSE B. OLIVER, Defendant in Error.

**[January Term, A. D. 1870.]**

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

*General issue—Special plea—Lease to aliens—Ejectment.*

1. Where a special plea is pleaded the defendant is not allowed to argue points of law raised in the general issue, but must confine himself to the defense set up in the special plea.

2. A contract made with an alien for the lease of land granted a settler under the Immigrant Allotment Act before title to same has been perfected, is void.

3. Plaintiffs in ejectment must recover upon the strength of their own title and not upon the weakness of the defendant's title.

4. A lease to an alien for ninety-nine years is an evasion of the prohibition of the Constitution and therefore unconstitutional. A lease of land to an alien for a term more than twenty years is against the Constitution and public policy, and is therefore void.

It is the opinion of this court that the court below erred in allowing the plaintiff in error to plead the law

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points that were raised in the general issue and not to rely on his special plea. When the general issue is waived, all the law advantages involved in it are also waived but the one relied on; and the party is therefore compelled to rely on his special plea to sustain his position. A contract made with an alien for the lease of lands apportioned to a settler is in violation of a prohibitory clause of the statute of this Republic which in positive language declares that no bargain, transfer, sale, deed or lease of lands by or with the grantee of lands for the same, before a legal and complete title in fee simple has been obtained, shall be valid or lawful.

The transaction which took place between plaintiff in error, and on which this law is brought to bear, is peculiar,—no doubt if all reports of cases in the world were searched, you would not find a similar one. In this case the plaintiff in error has drawn a town lot in the city of Greenville, Sinoe County, and before he made the necessary improvements required by law to entitle him to a deed in fee simple, he contracted with the defendant in error to lease to him, the defendant in error, in consideration of forty-five dollars paid to the said plaintiff in error for the lease of the said lot of land No. 1202, for the term of ninety-nine years; and in order that the said plaintiff in error should be made competent to transfer the said lot of land to him, the said defendant in error, he, the said defendant in error, promised and did make the improvements required by the statute respecting the improvements of the land, by which the said plaintiff in error obtained a deed in fee simple from the government. This being done, the plaintiff in error (as alleged) having refused to comply with his part of the contract, the defendant in error brought this action of ejectment in the court below, to which the plaintiff in error pleaded in defense the statute prohibiting all bargains, transfers, deeds or leases, before a legal and complete deed in fee simple had been obtained. The

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defendant having obtained a judgment in the court below, the case on a writ of error is before this court to be decided.

The statute is plain, and needs but little said by this court by way of interpretation thereof. However, as duty makes it incumbent upon me, I proceed to do so. The bargain made between plaintiff in error and defendant in error is void, and the plaintiff in error is not bound by it. The bargain, however, being unlawful as it relates to both parties, the deed which is the offspring, or in other words the resultant of the said bargain, vitiates itself. Therefore, the plaintiff in error does not acquire a legal and complete "title" to the said lot No. 1202, by said deed thus obtained. The plaintiff in error being imperfectly in possession of the said lot, however, the improvement made thereon passes imperfectly with the said lot of land, because in an action of ejectment the plaintiff must recover upon the strength of his own title and not upon the weakness of the defendant's title.

The next point to which the plaintiff in error resorted for his defense, is that an alien cannot hold real estate either by lease or otherwise under the Constitution of the Republic of Liberia. To hold real estate under the authority of the Constitution of Liberia means to be absolutely possessed of lands in Liberia; hence, to have the exclusive right to it, and to disposing of the same. A lease held under the Constitution with respect to aliens in treaty stipulations with Liberia extends to mere chattel right; that is, the lessee can only hold the right of the use of the land and tenement. But he cannot bring an action of ejectment for lands, although he may be ejected any time after a year's notice had been given him to move off any land rented or leased by him. Notwithstanding an alien cannot bring an action of ejectment for lands, yet he may recover damages for any injury sustained by reason of the violation of any contract for the use of the land.

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A lease of land to an alien for ninety-nine years is an evasion of the prohibition of the Constitution, and it is therefore unconstitutional. To constitute a good lease the term should not exceed twenty years, and the rent should accrue to the lessor annually. The lease of land to an alien for more than twenty years is against the Constitution and public policy, and therefore is void. For the Constitution prohibits an alien from even an imaginary claim to land, and therefore the law will not give aid to it, however much it may be disguised. If a wife join with her husband in a deed, her separate estate, as well as her husband's, will become liable for the warranty, because deeds and other writings are evidence against all parties to them. Therefore a wife may not join in a deed with her husband, since the letter and spirit of the Constitution is to keep their property separate and distinct, so far as the rights of the wife are concerned. Therefore to recover lands wrongfully detained, unless the liability of the wife to the plaintiff is clearly defined, either by law or set out in the deed, it is not necessary that the action be brought against the husband and wife jointly.

Therefore, the court adjudges that the judgment of the lower court be reversed, and that the original deed for the land, lot No. 1202, as described in the complaint of said defendant in error, is hereby vitiated and made void and of no effect; and as the plaintiff in error is in the imperfect possession of the said lot No. 1202 in the city of Greenville, all and singular the buildings and improvements on said lot passes and follows the imperfect possession of the said plaintiff in error; and that the defendant in error pay all costs incurred since the appeal had been taken.

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## R. R. SAVAGE, Appellant, *vs.* H. W. DENNIS, Administrator *de bonis non*, Appellee.

[January Term, A. D. 1871.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Ejectment.*

1. A plaintiff in ejectment must recover upon the strength of his own title and not upon the weakness of his adversary's title.
2. An administrator cannot lawfully convey to himself any portion of the estate over which he has been granted letters testamentary. An administrator is in the stead of the intestator, and as such cannot contract with himself; such contracts are void in law.

The court is of the opinion that for the Supreme Court of the Republic of Liberia to overthrow this well-founded principle of law, which declares that "in an action of ejectment the plaintiff shall recover upon the strength of his own title and not upon the weakness of the defendant's title," would not only bring reproach upon it, but it would be the source of endless litigations, it would disturb the quietude of communities and families, it would obstruct the progress of improvement and enterprise, and give encouragement to oppression, fraud and injustice.

It is very obvious that the title under which the appellee claims, is defective in point of law, because an administrator of an estate cannot transfer property of the estate to himself. And the reason is because an administrator, while acting under the authority with which he is vested by his letter testamentary, is legally the person represented under such letter testamentary and is therefore incapable of purchasing, transacting or transferring any property of the estate to himself. And the reason for this is, the moment the administrator attempts to purchase property of the estate for himself, he renders himself legally incapable (by the very same act) of acting for and in behalf of the intestator. Therefore there would be no one legally authorized to transfer the prop-

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erty of the estate to him, the administrator. It is very clear that to constitute a purchase of property claimed, there must be two contracting parties, one of which must be capable of alienating such property, otherwise the possession of such property is a proof of the unlawful taking of the same. A second party is indispensable to a contract. A deed is unquestionably a contract, and, I may add, one of the highest character, because by the warranty the grantor is put under a perpetual obligation to defend the grantee against any one disturbing the grantee's peaceful possession, or claiming any part of the premises so conveyed. And for the nonperformance of the contract, the grantee may recover at law damages from the grantor.

Now upon this principle, if this deed was valid, would not Johnston's heirs, executors, and administrators have a remedy against James Thomas' estate? Certainly they would. But I would ask by what method of reasoning could Daniel Johnston, as administrator, by this act bind the estate of James Thomas to him made by a contract made with himself, by himself, and for himself? No human being possesses the extraordinary ability to act in two distinct capacities which are adverse to each other at the same time. It shows very clearly that a contract of the kind is founded in absurdity and therefore it is void in law and equity so far as it relates to Daniel Johnston, his heirs, executors, administrators or assigns, but good for the whole of the lands expressed in the deed to James Thomas, and all who may claim under him.

With regard to the effect of estoppels, let it be remembered that a grantor cannot estop the effect of his own act against himself, but a grantee can estop the effect of the act of grantor against him, the grantee.

The court adjudges, therefore, that the judgment of the lower court is erroneous, and that the same is hereby reversed, and that the appellant recover all costs incurred in this action since the appeal has been taken to this court.

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## E. A. POTTER, Appellant, *vs.* WILLIAM STEVENSON, Administrator of the Estate of William D. Hill, Appellee.

[January Term, A. D. 1871.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Maryland County.*

This is a case brought up from the Court of Pleas and Quarter Sessions, Maryland County, on a writ of certiorari. The appellee not appearing, and having been returned as duly summoned, judgment by default was entered for the appellant.

The court now proceeds to render a perfect judgment in said case. In doing so it is to be remembered that several errors were complained of by the appellant against the proceedings of the court below, which errors this court is of the opinion ought to be determined and settled.

First, this court therefore decides that it was an error in the court below in sending the jury back, in the case Wm. Stevenson, administrator of the estate of W. H. Hill, *vs.* E. A. Potter, to reconsider their verdict to lessen the damages by them awarded. If the judge thought the damages too great or too little, he should have granted a new trial.

Secondly, the court below erred in countermanding the order granting Potter an appeal. It is not the right of the court granting an appeal to revoke its own order, but all irregularities committed by the party taking an appeal should be determined by the court appealed to.

Thirdly, the court below erred in issuing an execution against the defendant, while an attachment upon the property of said defendant was still in force and not dissolved. A writ of sale ought first to have been ordered. (Stat. Liberia, Bk. I, p. 57, sec. 17.)

It is the judgment of this court that the decision of the lower court be reversed, and the appellant be placed in respect to the property taken under said decision as if no such suit had ever been commenced, and further that the appellant recover all costs.

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## LONDON and MARGARET WILLIAMS, Administrator and Administratrix of the Estate of Samuel Williams, Appellants, *vs.* LYDIA J. BROWN and CHARLES WILLIAMS, Heirs of David Williams, Appellees.

[January Term, A. D. 1872.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

This is a case brought up from the Court of Pleas and Quarter Sessions of Montserrado County, sitting in equity, on appeal from the decree given in said case in the court below.

From a careful examination of the records, the court finds that on account of the mixture of questions of law and fact it does not appear for which party judgment ought to be given.

It appears that one J. C. Minor and one Samuel Williams were the administrators of one Abram Dickion's estate; that J. C. Minor, one of the said administrators, acknowledges that he, as administrator, executed a deed for the property in dispute to one Samuel Williams; yet oral testimony was admitted in the court below not to explain the transaction as regards the execution of said deed to Samuel Williams, but to wholly destroy the effect of the statement of the said J. C. Minor, without at all questioning the credibility of the said statement. The court below, in good conscience, was equally bound, by the knowledge had within its own bosom of the facts in the case, to do justice as it was by the evidence produced before it. It is evident from the record that the testimony showed the existence of better evidence than had been produced before the court, and this appears to have been known by the court.

In order, therefore, that equity be done to all parties, the court decides that the case be remanded for a new trial, costs to be paid by both parties equally.

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## W. S. ANDERSON, Appellant, *vs.* H. W. DENNIS, Appellee.

[January Term, A. D. 1872.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

Where the bill of exceptions in an appeal is unsigned by the lower judge, the Appellate Court will not hear the appeal unless it appears that the judge neglected or refused to sign the same.

Counsel W. M. Davis for the appellee filed a motion to dismiss the case on the ground that there is no legal bill of exceptions before the court, as the bill filed with the record is not signed by the judge of the lower court as the law directs.

This question has been already decided in the case of the Southern Baptist Mission *vs.* McGill Bro., January term, A. D. 1861, that this court cannot consider any case of appeal legally before it unless upon a bill of exceptions duly signed by the judge of the court from which the appeal is taken. The court finds that the bill of exceptions in this case is not signed. It is due to the judge who tried the case to say that there appears no evidence to show that he either neglected or refused to sign the bill of exceptions; it is therefore the fault of the appellant.

Therefore, the court decides that the case be dismissed, and the clerk is hereby commanded to issue a mandate to the Court of Pleas and Quarter Sessions, Montserrado County, informing it of this decision; appellant to pay all costs incurred in the court.

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## THOMAS G. FULLER, Administrator of the Estate of Frances Fuller, deceased, Appellant, *vs.* LYDIA ANN JOHNSON and HENRY W. JOHNSON, Appellees.

[January Term, A. D. 1872.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

1. An authentic copy of a will taken from public record is admissable as evidence.
2. The property of an illegitimate descends to the heirs of his body only.

The court has carefully reviewed the records in the case, and has come to this opinion, that the court below did not err in admitting a copy of the will signed by the clerk of the Probate Court as taken from the records of said court, notwithstanding it did not show that its original had been probated, because the action was not instituted for the purpose of setting aside the will, or the probate thereof, as would be presumed from the law quoted, which raised this question.

The court is also of the opinion that the authorities cited by appellant's counsel in this case exclude the necessity of further exposition of the law governing the same. However, for the satisfaction of all parties concerned, the court says the law will not lend its aid in support of a claim to an estate of a deceased person, under the right of title by heirship, to any one else but the true and lawful heir. It is clear and obvious from the testimony given in the case, that Rosaline Cannot was an illegitimate daughter of one Mrs. Smith; and therefore, all other persons but her own issue are estopped from inheriting her estate under the right of heirship.

By the last will and testament of the said Rosaline Cannot the premises stated and described in the complaint of Lydia Ann Johnson and Henry W. Johnson, Sr., was bequeathed to her, the said Rosaline Cannot, chil-

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dren. Therefore, Thomas G. Fuller, husband of the late Frances C. Fuller, now acting as administrator of the estate of the said Frances C. Fuller, his late wife, is rightfully in possession of the said described premises in dispute, against all other persons, except George Cyrus, the brother of the said Frances C. Fuller, who is the only lawful heir of the said estate; and who, though absent from his home, in some foreign country unknown, is in the eye of the law still alive, and he is to be so considered until the contrary be shown either by proof positive or presumptive. And on proof of his death, by either of the last mentioned means of ascertaining the same, the said described premises shall escheat to the Republic of Liberia, unless it has been, previous to his death, lawfully conveyed away by him.

It must be remembered that the law of descent is founded on good reason, that it encourages good order in society, and makes it certain to whom the estate of deceased persons shall come.

The court adjudges, therefore, that the court below erred in its judgment in granting a new trial, and therefore the said judgment is hereby reversed; and that the premises described in the complaint of the said Lydia Ann Johnson and Henry W. Johnson, Sr., are the property of one George Cyrus, son of Mrs. R. Cannot, and brother of the said Frances C. Fuller, deceased, and that a proof positive or presumptive of his death, before conveyance by him of the said premises, having been made, the said premises shall immediately escheat to the Republic of Liberia; and that to this end the proper authorities shall give lawful notice through some Liberian or foreign paper to the intent of this judgment; all costs to be paid by the appellee.

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## WILLIS BLUNT, Appellant, *vs.* J. W. BARBOUR, Appellee.

[January Term, A. D. 1872.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Bill in Equity.*

1. A conveyance made during minority, if confirmed after arriving at lawful age, is binding on the conveyor.
2. Where a party not under legal disability stands by and allows property which he claims, to be conveyed, titles perfected and adverse possession taken, without objecting at the proper time, he is afterward estopped from raising his claims or disturbing the peaceful possession of the occupant.

This is a case sent up from the Court of Quarter Sessions and Common Pleas, Montserrado County, sitting in equity, upon an appeal. The exception taken to the decree of the court below is based principally on the following points:—

Because the judge of the lower court decided that a certain deed said to have been executed by J. W. Barbour, the defendant below and now appellee, who, in his oral testimony, denied having signed any deed, and that when said deed was executed, he, the defendant, was an infant nineteen years old, and that he was not present during the transaction, although said deed was introduced as evidence by the plaintiff in the lower court and was not objected to by the defendant (now appellee), when he had the privilege and opportunity so to do.

From a careful examination of the record in this case, it is quite evident that the appellee, knowingly and with his full consent, allowed the aforesaid deed to be put in as evidence, and that he, the said appellee, did not object to said deed when it was both his privilege and duty so to do if any objections he had. The said appellee was therefore estopped from afterwards denying the said deed as his own act. (II Bouv. Law Dict. p. 416; Liberia Stat. Bk. I, p. 34, sec. 13; I Greenleaf on

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Evidence, sec. 197; Lib. Stat. Bk. I, p. 35, sec. 25.) The court admits that it was optional with the appellee to have avoided or confirmed his said act when he became of age; as it is shown that he was an infant when the deed was executed. But it is manifest from the record that his (the appellee's) subsequent acts confirmed and made good the deed after arriving at lawful age.

The said appellee, as is disclosed by the testimony, attempted to buy back said premises from J. H. Lynch, and also from J. M. Moore, to whom Lynch sold the property. Even if appellee had a legal right to said premises, he did not, as was his bounden duty, assert his claim promptly; but on the contrary he intentionally and quietly stood by and allowed Lynch to transfer said premises to Moore, then Moore to Witherspoon, then by the High Sheriff, Fuller to Payne, then Payne to Blunt, the appellant in this case. During this lapse of time the appellee made no attempt to assert his title. These facts decidedly operate against the appellee, and the more so as the statute of 1860 requiring all deeds, mortgages and other conveyances to be registered, afforded the appellee an ample and easy method of preventing any deed from being registered and thus prevent any transfer from being complete. The appellee knowingly and of his own will neglected to avail himself of the benefit of the law, either to assert or establish his claim. Equity will not, therefore, give the relief; he is estopped by his own acts.

It is contrary to equity and good conscience that a man should stand by and allow his neighbor to expend money for the purchase and improvement of property, and conceal the fact that he is the owner and thus entrap his neighbor, then come forward and take advantage of his laches. The rule of equity is that he must assert his claim promptly or lose his relief. (I Story, Equity, 192, 385, 388; II Story, Equity, 1537, 1541, 1546; Adams on Equity, 150, 151.)

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The statement that appellee was absent when said deed was executed does not appear to the mind of the court as an established fact; but if indeed he was absent, the records show to the satisfaction of the court that the whole transaction was fully understood and endorsed by the appellee. In fine, the testimony of the appellee impresses the court with the belief that he suppressed facts which he must have known and which he ought to have disclosed. The exception to the decree of the lower court is sustained.

This court decides that the decree of the lower court is reversed, and the appellee be and he is hereby enjoined perpetually from disturbing W. Blunt, the appellant, in the quiet possession of the western half of lot No. 72 in the city of Monrovia; appellee to pay all costs.

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## LYDIA and H. W. JOHNSON, Sr., prisoners, Appellants, *vs.* THE REPUBLIC OF LIBERIA, Appellee.

[January Term, A. D. 1872.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

A motion in arrest of judgment which does not set forth the grounds upon which it was founded, is bad.

1. The appellants in this case appear from the record to have been charged and convicted of high misdemeanor in the Court of Pleas and Quarter Sessions, Montserrado County, at the December term, 1871, extended by law. The appellants motioned the court to set aside the verdict of the jury; the record does not show upon what grounds the motion was made, or upon what points the ruling of the court below was based. It simply states that the objection was overruled.

2. Then the appellants motioned in arrest of judgment, and here also the grounds are not stated. The court overruled the motion because the exceptions should have

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been made before they, the prisoners, plead to the indictment, and based its ruling on Liberian Statutes, page 30, latter part of sec. 20.

3. The appellants excepted to the ruling of the court in refusing to allow one H. W. Johnson, Jr., to depose to a certain conversation which he, the witness, had with E. J. Roye. In regard to the first exception, the court is of the opinion that the verdict of the jury is in accordance with the evidence and the law in the case, and the ruling of the lower court is correct. The court is also of the opinion that the court below, as is manifest from the record, ruled correctly in refusing to arrest judgment; but the law references cited by the court in its ruling are certainly inapplicable, and the opinion that the exception should have been made before the prisoners plead to the indictment, is also erroneous. As to the third point, the court below was correct in not allowing the witness to depose to a declaration which Roye is said to have made in his (Roye's) favor; such a declaration could be admitted against him, but not in his favor. Here, also, the law references of the court below are inapplicable.

The court is further of the opinion that if on reviewing the record of the case it should find that the appellants had not been guilty in law of the offense charged against them, then the court would be warranted in arresting the judgment, even if no motion had been made in the lower court. But the facts stated in the case and upon which issue is joined, are supported by the law and the evidence. The court below, having refused to arrest judgment, should have proceeded to pronounce judgment. It only remains for this court to remand the case to the court below, that final judgment may be rendered on the verdict of the jury.

The court adjudges that this case is remanded, and the court below is hereby commanded to render judgment on the verdict of the jury.

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## H. D. BROWN and S. G. GOULSBY, Plaintiffs in Error, *vs.* WILLIAM TAYLOR, Defendant in Error.

[January Term, A. D. 1873.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

When a general answer has been filed it is not error in a court to refuse to decide points of law raised on the ground that same were not specially plead.

The law demands the best evidence which the case admits of.

This is a case ordered up from the Court of Quarter Sessions and Common Pleas, Montserrado County, on a writ of error. The defendant in error not appearing either in person or by counsel, and judgment by default having been entered against the said defendant in error, it remains for the court to pronounce perfect judgment in the cause. But before doing so the court is of opinion that some of the errors assigned by the counsel for Brown and Goulsby ought to be noticed by the court.

1st. The court below erred in ruling that the defendants should have named or stated the law points in their answer, and therefore refused to decide the law points raised by the defendants.

2d. The court below erred in permitting the witness King to state what the plaintiff in the court below told him, for the law demands the best evidence, and, as it was a case in equity, the plaintiff in the court below himself ought to have been called to testify.

3d. The court below erred in permitting the plaintiff below to introduce testimony after he had informed the court that he had gotten through with his testimony. The reasons for pronouncing the above rulings erroneous are so apparent that it needs no further comment.

The court therefore proceeds to final judgment. The court adjudges that the decree of the lower court in this case be reversed and the injunction dissolved, and the clerk of this court is hereby ordered to issue notice to the court below accordingly.

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## M. T. WORRELL and G. S. RUSSWURM, Appellants, *vs.* R. S. McGILL, Appellee.

[January Term, A. D. 1873.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

An error committed by a party in the execution of a deed, where it does not appear to have been done with a fraudulent design, will not amount to fraud, nor will it vitiate the instrument.

This is a case sent up to the Supreme Court on appeal from the Court of Pleas and Quarter Sessions, Montserrado County.

Upon careful review of the records in this case the court cannot discover the existence of fraud in either of the defendants in the court below (appellants). The defendant (now one of the appellants), G. S. Russwurm, appears to have acted in good faith when he executed the deed to M. T. Worrell, and the error in transferring his right to the property in dispute by metes and bounds, by his own showing, which was admitted as evidence in the court below, was an error of fact, with no intention of fraud, and in this sense it appears M. T. Worrell received the said transfer. The court, however, discovers from the record that the court below erred in founding its judgment or decree upon evidence which said court had ruled out as inadmissible. This is clearly contrary to both law and equity, and as a matter of course vitiates the decree of the court below. The court admits that a co-tenant cannot sell by metes and bounds his right and title in an estate, unless partition be made; and in this respect Russwurm erred. Nevertheless, taking his, Russwurm's, written explanation admitted by the court below, equity demands that all his interest and title in the property, lot 325 in Monrovia, ought to be vested in Moore T. Worrell, for although the deed from Russwurm to Worrell conveyed more than he had a legal right to convey, this does not invalidate the deed, but it is a good

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and valid conveyance of the amount of interest Russwurm really possessed in the said lot No. 325.

Therefore the court adjudges that the decree of the lower court be reversed, and the deed executed by G. S. Russwurm to Moore T. Worrell is hereby decreed to be a good and valid conveyance to the said Moore T. Worrell of all the right, title and interest the said G. S. Russwurm possessed in the said lot number three hundred and twenty-five in the city of Monrovia, Republic of Liberia; the appellee to pay all costs.

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## CHARLES BATAM, Appellant, *vs.* EDWARD LILES, Appellee.

[January Term, A. D. 1873.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Grand Bassa County.*

When a case has been removed upon a change of venue, the court from which the case is removed loses its jurisdiction over the same by the very act itself.

This is a ruling upon the returns of the judge, D. F. Smith, setting forth his reasons for not proceeding to the trial of the case of Charles Batam *vs.* Edward Liles.

The court is of the opinion that the plaintiff in the court below was rather precipitate in the entering of his case *de novo* before he had secured the judgment of the court of Maryland County, to which the case was removed. And he was in error when he assumed to have had the right to withdraw the original action, by giving such notice to the court of Grand Bassa County, after it had been removed upon a change of venue, and when really, or rather legally, there was no case of Charles Batam *vs.* Edward Liles then existing in said court of Grand Bassa County. For it is very obvious when a case has been removed upon a change of venue, the court from which the case is removed loses its jurisdiction over the same by the very act itself.

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However, the defendant, Edward Liles, having filed in court his answer to the plaintiff, Charles Batam's, complaint, the defendant is therefore bound by the same to the extent of the legal right of the plaintiff to recover against him.

Upon the examination of the returns of Judge D. F. Smith, it seems that his objection offered for not proceeding with the case was based upon several grounds, one of which this court regards as being well founded: that is, the judge had denied the defendant the privilege of a change of venue, believing it was his duty to do so; therefore he held that he could not, in justice to all parties, force him, the defendant, to trial after having thus denied him this privilege.

It was certainly the privilege of the defendant equally as legal as that of the plaintiff to renew his action after a non-suit, and it ought not to have been denied him.

However, the court says and commands that the said Judge D. F. Smith of the aforesaid court of Grand Bassa County proceed to exercise jurisdiction over said case, securing to both parties, however, all the privileges given them by law. The clerk of this court is hereby commanded to forward a copy of this mandate to Judge D. F. Smith of the Court of Quarter Sessions of Grand Bassa County.

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## JOS. B. OLIVER, Appellant, *vs.* J. C. DUNBAR, Appellee.

[January Term, A. D. 1874.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

The death of a sole plaintiff or defendant pending the trial of, or before final judgment given in any cause will not abate the action, but the legal representative of the deceased may be made a party in his stead. The exception to this general rule is where the action is brought for a personal injury, which by statute dies with the party.

The executors of Jos. B. Oliver, appellant, inform the court that Oliver has died since the last session of this court and motion the court to decree that the case being abated by the death of Oliver before the final hearing of the case in this court, the appellee shall refund to appellant's representatives the amount of money collected from said J. B. Oliver on account of the judgment and execution issued out of the lower court against said J. B. Oliver in favor of said appellee.

The court has had the motion under careful consideration, and would here remark that it has been greatly assisted by the very able arguments of the counsel on each side. The authorities cited by the gentlemen managing this matter have received the undivided attention of the court, and it finds that the foreign law authorities sustain the position that the death of a sole plaintiff or defendant pending the trial of, or before final judgment given in, any cause, will not abate the action, but the legal representatives of the deceased may be made a party in his stead. Upon examination of the Liberian Statutes bearing upon the motion now before the court, we find that the legal representatives of a deceased sole plaintiff or defendant cannot be made a party in his stead in actions for personal injuries. (See 1st Lib. Stat. page 47, sec. 5.)

On page 9, sec. 4, 1st Lib. Stat., the law reads thus: "Personal injuries die with persons and no action for

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them can be maintained by or against representatives or trustees." The meaning of the term "maintain" is, to wit, "Kept in any state, preserved, upheld, defended, vindicated." The Statute of Liberia being paramount, it is therefore conclusive that according to these statutes aforesaid, in any action for personal injuries the death of a sole plaintiff or defendant pending the trial, or before final judgment, in fact at any stage before final judgment, the action is thereby abated, and legal representatives of the deceased cannot be made a party in his stead.

As to the second point in the motion, which asks the court to decree that the appellee refund certain moneys said to have been collected from the appellant, the court for obvious reasons declines to make an expression, this being an act for personal injury committed by the appellant himself.

The court adjudges that by reason of the death of the appellant in this suit the action abates as if no such action or suit ever existed; each party or their legal representatives to pay their own costs.

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## ELLIS A. POTTER, Plaintiff in Error, *vs.* REPUBLIC OF LIBERIA, Defendant in Error.

[January Term, A. D. 1874.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Maryland County.*

1. It is error to compel a defendant in a criminal prosecution to plead to the general issue before his legal objections to the indictment have been disposed of.
2. It is essentially necessary to establish the fact that a fraud or cheat has been committed, that the instrument of writing which is charged to have been obtained under false pretences, and by which means the fraud or cheat is said to have been committed, be produced.

This case was ordered up from the Court of Pleas and Quarter Sessions, Maryland County, on a writ of error. The court having carefully considered this case, and

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having attentively examined the record, has arrived at the following conclusions:—

1st, That it was an error in the court below to compel the defendant to plead guilty or not guilty until it had been satisfied that there was no legal objection to the indictment, or other process against him.

2d, The court below also erred in admitting the testimony of D. R. Fletcher, to prove the charge of "false pretense and representation." It is the opinion of this court that it is essentially necessary to establish the fact that a fraud or cheat had been committed, that the instrument of writing which is charged to have been obtained under false pretense, and by which means the fraud or cheat had been committed, should have been given in evidence; for it is a settled rule of law that the best evidence the case admits of should be given in evidence.

It was also error in the court below in refusing to grant the defendant a new trial; because the record shows that the defendant had good cause to move for a new trial. No witness proved that the defendant had received any money or moneys under false pretense, or that there was any express or implied intent on the part of the defendant to do so. The record shows conclusively that the verdict of the jury is contrary to the evidence adduced.

The court therefore adjudges that the judgment of the lower court be and the same is hereby reversed, and the appellant recover from the appellee all costs incurred.

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## H. W. ERSKINE, Appellant, *vs.* THOMAS SMITH, Appellee.

[January Term, A. D. 1874.]

*Appeal from the Court of Quarter Sessions and Common Pleas. Montserrado County.*

*Equity jurisdiction—Injunction.*

The equity jurisdiction of the Court of Quarter Sessions and Common Pleas is separate and distinct from its jurisdiction in law. Under the Statute of 1870 the judge of the Court of Quarter Sessions and Common Pleas has authority to convene the equity jurisdiction of said court at any time, whether in or out of its regular term time, to hear injunctions and writs of *ne exeat*.

The court, having had under careful consideration this case, decides:—

1st, That the equity jurisdiction of the Court of Pleas and Quarter Sessions is separate and distinct from its jurisdiction in law. Courts, therefore, in the exercise of equity jurisdiction, have a right to issue injunction, to stay proceedings at law when it is made to appear that such proceedings are fraudulent.

2d, The court below had a right to appoint any legal day, in or out of the term, at which an action of injunction is entered; for it was the intention of the Legislature in the Act of 1870 to give the courts the power to dispose of injunctions and writs of *ne exeat* as speedily as the ends of justice may require. It was not error, therefore, in the court below, when it named a day to hear the injunction, although said day was out of the term at which the action was entered.

The record shows that on the 8th of January, 1873, the court met for the hearing of the injunction, at which time, upon the motion of the plaintiff to postpone the hearing of the same on account of the absence of a material witness in the case, Mr. Arthur Parker, the court, in consideration of the motion, entertained it, and postponed the hearing of the injunction until February 1st, 1873, at which time the court met to hear and

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determine the same, according to appointment. And it is strange to say that although this day was appointed for the purpose of allowing the plaintiff to introduce his witness to prove the fraud alleged, it does not appear anywhere upon the record that the plaintiff made any mention of him on that day, February 1st, 1873. It shows only this fact, that he had argued the question as to the right of the court to hear and determine the injunction out of the term for which it was entered. And even after this question had been determined against him, he brought no proof to establish the alleged fraud. The law, therefore, must have raised the presumption in the mind of the court that there was no fraud committed; upon which the court had a right to consider the case as it stood before it, upon the truthfulness of the pleadings as sworn to by the parties, and decide the same thereupon. We hold, therefore, that the decree of the lower court ought to be affirmed.

The decree of the court below is hereby affirmed, the appellant to pay all costs.

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## EDWARD LILES, Appellant, *vs.* CHARLES BATAM, Appellee.

[January Term, A. D. 1874.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Maryland County.*

*Returns to writs of summons—Change of venue.*

1. Where no returns have been made by the proper officer to a writ of summons, it will be good ground for the dismissal of the declaration. A neglect to serve any original process, by which means only an action at law could be commenced, is a default which cannot be cured. The filing of an answer to a complaint will not bar the defendant from attacking the process where in said answer a general denial of the law and facts are pleaded.

2. The change of venue does not operate as an estoppel to any legal right or privilege of the defendant.

This is an action of trespass *vi et armis,* instituted in the Court of Quarter Sessions, Grand Bassa County,

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June, 1873, by the appellee, Charles Batam (plaintiff in the court below), and was removed February, 1873, upon a change of venue, as provided for by the statutes, to the Court of Quarter Sessions of Maryland County for trial; and from which it is brought here upon a bill of exceptions for review.

This case presents many complications. This court, however, by the application of well-settled principles of law, has been enabled to unravel all of them and determine for whom judgment ought to be given. The statute declares that all actions except injunctions and replevins shall be commenced by a writ of summons directed to the sheriff, requiring him to summon the defendant to appear at a day appointed to answer the plaintiff's complaint. The writ, with the return of the sheriff endorsed thereon that he has summoned the defendant, is the evidence the law requires as proof that the defendant has been summoned; this not appearing upon the record in the case to have been done, the motion of the defendant in the court below to dismiss the action is well grounded, and therefore ought to have been sustained, and the court erred in ruling to the contrary. For it must be remembered that a neglect to serve any original process, by which means only an action of law could be commenced, is a default that cannot be cured by the application of any principles of law. And the court says it requires but very little exercise of mind to convince it of the fact that such a neglect as referred to differs vastly from a defect in the process itself, that may be cured by the appearance and answer of the defendant.

The court below ruled or decided that the defendant is estopped, by the oath he made for the change of venue, from his legal rights and privileges. Now if the construction placed upon the law providing for a change of venue by the court below was correct, the very object of its creation would be defeated, as must be plainly seen. For the intention of the Legislature in making the

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law is to put a defendant in a position that would secure to him all legal privileges guaranteed by the Constitution; and to free him from the terror of a prejudiced verdict. Therefore an oath made for a change of venue does not subject the defendant to the law of estoppel in the sense it was rendered and determined by the court below.

It was also ruled by the court below that because the defendant answered the plaintiff's complaint, he, the defendant, could not question the legality of the process against him, though the law speaks quite to the contrary; for when the answer of the defendant denies both the law and the facts, he may raise any law question thereupon.

The defendant was unlawfully carried to a trial by jury, because the action should have fallen upon the motion of the defendant to dismiss the case upon the ground that he was not summoned, as no proof appears upon the record to the contrary.

For reasons above stated this court is of the opinion that the rulings and decisions of the court below are erroneous, and that the judgment given in the case ought to be reversed.

The court therefore adjudges that the judgment given in this case in the Court of Quarter Sessions, Maryland County, at its May term, 1873, be and the same is hereby reversed, and made void and of no effect; and that the appellant, Edward Liles, recover from the appellee all costs incurred in this appeal.

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## STEVENS *vs.* McGILL.

[January Term, A. D. 1874.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Maryland County.*

This is a case sent up from the Court of Pleas and Quarter Sessions, Maryland County, on appeal. The court has attentively examined the records in said case and finds that it was originally an action of debt, entered according to law. But before any trial was had or judgment rendered, the hearing of said cause was removed by the prayer of defendant, to equity; and in said Court of Equity the action of debt was changed to an action for foreclosure of mortgage.

The court says that this practice of exercising both law and equity jurisdiction at one and the same time is bad, and tends to confusion. Again, the record shows such an admixture of law and fact that it cannot be ascertained for whom judgment ought to be given; and therefore the case is hereby remanded for trial, costs to follow.

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## RUSSEL MINUS, Sub-Treas. Sinoe County, Appellant, *vs.* S. J. CRAYTON, Supt. Sinoe County, Appellee.

[February Term, A. D. 1874.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Maryland County.*

*Appeals—Final judgment—Withdrawal of a suit.*

1. An appeal taken from an interlocutory judgment and before the rendition of final judgment cannot, under the statute, be entertained by the Appellate Court.

2. Where a plaintiff withdraws his suit without expressly reserving the right to renew same, by a formal entry upon the record to that effect, he is by statute barred from renewing same.

This case is an appeal from the ruling and opinion of the Court of Pleas and Quarter Sessions, Maryland County, at its November Term, A. D. 1873, brought up

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for review upon the record and a bill of exceptions. The same has had the careful consideration of this court, and after due examination of the important issues raised therein, this court has come to the following conclusions:—

1st, That no appeal lies from a court of inferior jurisdiction to the Supreme Court until after final judgment has been given. On examination of the record and proceedings in this case, which were excepted to by the appellant, it appears conclusively that the bill of exceptions, upon which this appeal was brought, was taken before the rendition of final judgment by the court below, which is contrary to the statute laws of the Republic governing appeals. In this, the appellant is guilty of miscontinuance.

2d, The court below did not err when it sustained the motion of the defendant to dismiss the suit upon the ground that the plaintiff, having brought and withdrawn his suit, could not renew the same, unless at the time of the aforesaid withdrawal he expressly reserved his right to renew his action. This ruling is strictly in accordance with the statute. The language of the statute is, "A plaintiff may, before the jury is affirmed, abandon his claim, reserving *expressly* his right to renew his action." This is the first case arising under the statute, and this statute is in perfect harmony with another, which reads as follows: "The plaintiff may once amend his complaint or withdraw it and file a new one, at any time before the case is ready for trial." The former points out, however, the method of securing said right, which for its obvious meaning can only be secured to the plaintiff by a formal entry on the record of the court in which the action is brought, declaring the same, and giving notice thereof to the defendant. Nowhere in the record does this appear to have been done.

The term "expressly," as made use of in the statute, means to make known and not left to implication. It

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is the opposite to "implied." A well founded maxim of law is, what is expressed renders what is implied silent. It does not, therefore, appear to this court why the judgment of the lower court should be reversed.

Therefore, the court adjudges that the judgment of the Court of Pleas and Quarter Sessions, Maryland County, rendered in this case be affirmed, and that S. J. Crayton, Superintendent of the County of Sinoe, appellee, recover from Russel Minus, as aforesaid, his costs in this action.

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## ROBERT R. JOHNSON, Appellant, *vs.* THE REPUBLIC OF LIBERIA, Appellee.

[January Term, A. D. 1874.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

A written document offered as evidence is not admissible until its identity is shown; its identity must be shown before and not after its admission.

In a prosecution against an officer of the treasury for default, a witness will not be allowed to give evidence of a collateral character before proof of a default has been established.

The proper remedy against a public officer, who by statute is required to give bond for the faithful discharge of his duties, is an action of contract for the breach of the conditions of the bond.

First. In reviewing this case we find a misstatement of the record in the first point set out in appellant's brief, for the record does not show that a motion was made to dismiss the case for irregularity and for being before the court contrary to law, as it is stated in appellant's brief. It shows that the appellant's counsel moved for a dismissal of the case upon the ground that the appellant had not a correct copy of the account current, and that the copy given him by the clerk, five thousand nine hundred and forty dollars and eighty-five cents, was the amount therein stated; and at the trial the clerk read from the original the amount of seventy-five thousand nine hundred and forty dollars and eighty-five cents. The merits

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of this motion having been argued by the counsel on both sides, the court below ruled that the motion to dismiss the case had not been sustained; and ordered the same to trial. And as a reason for its ruling, says the law does not make it the duty of appellee to give the appellant a copy of the account filed: and therefore the appellee cannot be made to suffer on account of the appellant obtaining an incorrect copy from the clerk. The ruling of the court below upon this motion is correct.

We shall now proceed to the second exception under consideration by this court. The question was asked witness John R. Freeman, comptroller, by the appellant's counsel: "Has at any time within the last two years the *correctness* of your bookkeeping been questioned in the treasury department?" This was objected to by the appellee's counsel, and the objection was sustained by the court below. This ruling was an error of the court, because the witness was comptroller, an officer connected with the treasury department, whose duty it was to examine and to see that correct accounts of all public officers were kept, and that proper and lawful entries were made of the same. For it does not alter the case, whether the comptroller came into that office after the transaction of Robert R. Johnson as treasurer had taken place, or before; because the law supposes that the records or entries, properly kept, are evidence of all public transactions.

The third exception we have noticed, is that taken to the ruling of the court below upon the objection made by appellee's counsel to the question put to witness H. W. Dennis, secretary of the treasury, by appellant's counsel: "Was this suit brought at your instance?" Upon the objection made to this question, the court ruled that it is sustained, which ruling is correct, because the question is irrelevant and involves an independent issue, which can be entertained only when tendered in a special plea, or upon a motion properly made before the court.

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Fourth. The exception taken by appellant's counsel to the admission of written document number one as evidence in the case, before it was identified, is well taken, and the court below erred in thus admitting it: because the identity of the document was essential to the proof of its character and authenticity, which ought to have been first established before it was admitted in evidence against the appellant. For if the position be taken that the document was identified after its admission, it would not alter the fact that the law question first raised as to its admissibility still remains undecided by the court below. And this must be the proper conclusion drawn from the fact,—that the court did after admitting the document see that it was a legal necessity to have it identified, and thus it was done.

The fifth exception under consideration is the objection made by the appellant's counsel to the account current as evidence to prove the appellant's indebtedness to the Republic, which exception is well grounded; notwithstanding, the court below erred in ruling out the account current upon an issue that was not raised before it. The issue raised is that *the account current has not been identified, and has not the date of its identity,* therefore the court ought not to have ruled it out upon the ground that it cannot be evidence to prove itself.

The sixth exception is to the ruling of court upon the objection made by appellant's counsel to the reading of the Acts of the Legislature of 1872–1873. Upon this point I say the court had a right to question it as to its legality, but the court's duty was to expound to the jury the character of the same, and the jury decide upon its credibility and its effect.

The seventh exception under consideration is the objection made by appellee's counsel to the question put by appellant's counsel to witness H. W. Dennis, secretary of the treasury, as to whether or not he found the books kept by the comptroller to be reliable. The

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objection made to this question ought not to have been sustained by the court below, because the appellant ought to have been allowed to prove, if he could, that the bookkeeping in the treasury department was not reliable, and the statement made by the secretary of the treasury as to the appellant's indebtedness might not have had the same effect upon the jury as it did.

The eighth exception is to the ruling of the court upon the objection made by appellant's counsel to the question put by appellee's counsel, as to whether William A. Johnson, registrar, had seen receipts given by appellant to the collector, Gordon, for more money than he, the appellant, has given the government credit for in his receipts. The court erred in overruling this objection, because it was well founded, the receipts themselves being the best evidence the case admits of, unless upon good proof and for reasonable cause it be shown that the receipts could not be had. Witness Johnson could only know whether he had seen receipts given by appellant for more money than he, the appellant, had given the government credit for in his receipts, from the receipts themselves; even taking the idea advanced by appellee's counsel, the receipts themselves are the best evidence the case admits of.

The ninth exception is to the ruling of the court upon the objection made by appellant's counsel to the question put by appellee to Wm. A. Johnson as to whether appellant did not tell him, when he was acting as treasurer, that he, the appellant, had an amount of several hundred dollars on hand that he could not account for. The objection made to this question is well founded, and the court erred in overruling the same, because the fact of the appellant having an amount of money on hand is no proof of his indebtedness to the government; for the debt must be first proved, and then the presumption would reasonably follow, that the amount appellant could not account for, was the amount he did not give the government credit for.

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This leads us to consider the last exception taken by appellant's counsel to the verdict of the jury, upon the ground that it is against the evidence and the law: and also appellant's motion for a new trial, which the court below refused to grant. And here we must say the verdict of the jury is against the law and ought to be set aside.

And just here, the court regards it a duty to state that upon direction of the statute, all public officers and all other persons who are bound under a penalty to the Republic of Liberia may be properly and legally held to answer in an action of contract for a breach of the condition of the bond, except in cases otherwise provided for by statute. Having thus expressed an opinion, we now proceed to render the judgment of the court.

The court adjudges that the judgment of the court of Quarter Sessions and Common Pleas of Montserrado County, rendered December term, A. D. 1873, is reversed and made null and void as against the said ex-treasurer, Robert R. Johnson; and the said Robert R. Johnson is hereby discharged from further obligation of said judgment; and that the appellant recover against the appellee all costs incurred in his appeal.

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## W. B. HARRIS, Appellant, *vs.* WILFRED LOCKET, Appellee.

[January Term, A. D. 1875.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Ejectment.*

1. Deeds for grants of lands by the government are valid only when issued and made during the incumbency of the president whose signature they bear; the authority of a president in this relation is that of an agent. It follows, therefore, that a deed, which is a contract, cannot be valid when issued after the expiration of the agency or presidential tenure.

2. In ejectment questions of a mixed character are involved and under statute must be tried by a jury under the direction of the court.

In this action appellant introduced in the court below the original deed from the government, which upon inspec-

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tion is found bearing the signature of President D. B. Warner, of which deed a question was raised in the court below, as to the legality; and upon examination of the same, the court below says: "Deeds deposited in the registrar's department under statute laws, bearing the signature of the president of the Republic, may be legally issued, but only during the time said president is actually in office."

This court says the opinion of the court below is correct as to the non-effect of a blank deed bearing the signature of a president and filled up by the registrar after that president's term of office had expired. For it would be a gross violation of the law of agency and a strong inducement for fraud for a court of justice to encourage a doctrine so annoying in its tendency, and absurd in its principles, as urged by appellant's counsel.

This court maintains that the official signature of a president to a blank deed deposited in the registrar's office, agreeable to the direction of the statute and filled up by the registrar with a description of a certain lot or parcel of land and the name of the grantee, as being the deed of land granted by virtue and authority of the office of the president whose signature is thereunto affixed, while at the same time the said president's term of office had expired, is void and of no effect. Because to give legal effect to a deed, both parties must be competent to contract at the time the contract was entered into, otherwise the contract is illegal.

The president is the agent of the government to sign deeds granted according to law. His signature to a deed executed and made perfect during the legal existence of his official term of office, is binding and of effect in law, and in all cases when there is not collusion, double conveyance or fraud. Emigrants of African descent under the Constitution of Liberia have a right to claim and hold lands in accordance with such regulations made by the Legislature of this Republic.

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Ejectment, being an action involving a mixture of questions of law and fact, must be tried by a jury. And as it does not appear to this court by the record for whom judgment ought to be given in this case, it is hereby remanded to the Court of Quarter Sessions in which it was originally tried, to be tried over again, all costs to follow the case.

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R. A. SHERMAN, B. P. YATES and SON, Appellants, *vs.* R. S. McGILL, Sr., and J. B. McGILL, of the Firm of McGill & Brother and Executors of the Estate of S. F. McGill, deceased, and S. G. Fuller, Sheriff, Appellees.

[January Term, A. D. 1875.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Injunction.*

The first exception taken by the appellant's counsel is to the decision of the court below, that an administrator, or administrators, (here in Liberia) are allowed to retain in their own hands so much of the assets of the estate as his or their debts amount to.

This unqualified decision of the court below is an error. An administrator may retain in his own hand the amount of his own debt, provided that the assets of the estate are sufficient to meet all legal demands against the estate, otherwise he is debarred the privilege of so doing, by the statute which declares and directs that a *pro rata* dividend shall be made to all the claimants against the said estate.

The second exception taken by the appellant's counsel is to the decision of the court below that Samuel F. McGill was the acknowledged administrator of the estate of the late John Brown Smith & Co. This decision can have no binding effect in law, because the Probate Court

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of the Republic of Liberia cannot exercise jurisdiction over the property of a company simply because one of its members dies, leaving his effects within the Republic of Liberia; for in all such cases the intervention of a foreign agency supersedes the necessity of the action of such a court. Therefore it is obvious that the statute only directs the interference of the court in cases over which the jurisdiction of said Probate Court extends; that is, in every case where a person dies intestate within the Republic of Liberia and leaves an estate of his own, or dies out of the Republic and leaves no one to represent him.

The third exception taken by the appellant's counsel is to the decision of the court below rendered thus: "The court does not regard the appellant (defendant below now) in this case entitled to the relief asked for, because the parties have failed to show to the court that they have done all that the law requires of them in this case." Upon this point it is equitable and just to say, that the defendant in the court below (now appellant before this court), in view of the nature of the case and taking all the circumstances surrounding the same, is entitled to relief.

The fourth exception taken by the appellant's counsel is to the decree of the court below that the decree rendered on the 13th day of April, A. D. 1874, in this case is contrary to the law and facts, equity and good conscience.

The difficulty into which the creditors of the firm of John Brown Smith & Co. are placed is not the result of their own acts, but the effect of the mysterious existence of that firm, and the non-residence of an English consul. And it is strange to say, in a land where exist courts of law and justice, that the claims of creditors should be baffled by an obscure existence of a firm, for the want of a proper representative, while the Court of Probate and Monthly Sessions would be fully and legally author-

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ized, upon petition made to it, to appoint administrators over the effects of John Brown Smith, and over his interest in the said firm of John Brown Smith & Co.; and the said administrators, as representatives of the said John Brown Smith, deceased, in the absence of an agent properly constituted and empowered by the said firm, or the existing members thereof, would be fully and legally authorized for and on behalf of the said firm to collect all debts due to the same, and to pay all debts due by them.

In this equity case the irregularity of the proceedings is so much opposed to equity and good conscience as to lead this court to the following determination:—

The court adjudges that the appellee, by himself, or the sheriff, S. C. Fuller, in his behalf, be forever enjoined and prohibited from carrying into effect the decree of the court below rendered in this case on the thirteenth day of April, A. D. eighteen hundred and seventy-four, and that the appellant recover all costs incurred in this appeal from the appellee.

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## AUGUSTUS WASHINGTON, Appellant, *vs.* MARIA A. LLOYD, Appellee.

[January Term, A. D. 1875.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Ejectment.*

1. A witness called to prove the signature of a written document may be questioned upon its whole contents; a variance between the handwriting of a document and its signature will not vitiate it in the absence of proof of fraud.

2. A court may order the correction of mere clerical mistakes in its proceedings at any time before the adjournment of the term at which they were made.

Having inspected the record in the case and carefully considered the exceptions taken by the appellant to the ruling of the court below, we have been led to such con-

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clusion as we believe best accords with the principles of law and equity. Before disposing of the case, however, it is proper to pass upon the points submitted as the grounds upon which the appeal is taken. We shall therefore consider the exceptions to the rulings of the court in their order.

First. Because, when appellant asked witness D. B. Warner, "Has Maria A. Lloyd ever entered a suit for this property?" appellee objected to the same, and the court ruled out the question. The court is right in its ruling upon this point, because it was irrelevant to the issue, and secondly it seems to have been put to draw out a negative answer to the question which could not have been made available only upon a plea of law, and which the appellant could not offer in his defence, he having deprived himself of the privilege of so doing.

Second. Because when appellant asked witness H. R. W. Johnson whether the words "Johnson, Turpin and Dunbar" in this deed offered in evidence by appellee are in the handwriting of Charles R. Johnson, the court ruled that the witness was called to prove the signature and should not be questioned as to the handwriting. Upon this point the court below erred in its ruling, because written evidence when it is introduced must be taken altogether. Therefore when testimony is required of a witness to prove the signature to a deed, the witness may be also required to testify to whatever else he may know about it. However, it is not to be understood that because the handwriting in a deed is different, its validity is thereby destroyed, unless fraud is proved to be the cause of the same. And just here it is proper to say in relation to the exception taken to the court ordering the clerk to alter the records of the previous day's doings, so as to make them show that the witness was called to prove the signature, that the court had a right to amend the record, if it was really true that

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an incorrect statement was made therein, at any time before the final adjournment of its term of sitting.

Third. Because when the appellant's attorney was about to read different passages of law to the jury, the court below, on objection made by appellee, ruled that appellant could not argue on the law of the case; because appellant had not put in any answer, therefore his attorney could argue on the facts only. And this law applies to and controls the pleadings in such cases. It is the right, however, of a defendant in an action, who has filed no answer, to have the facts in the case tried according to the rules of law, and he has a right to cite such passages of law to the court as would correct the violation of any rule of law that may happen during the trial of the case.

This brings under consideration the last exception taken by the appellant, the motion to set aside the verdict of the jury and to grant a new trial upon the ground that the verdict is against the law and the evidence; and because the court below ruled that the verdict is not contrary to the law and the evidence, and therefore refused to grant a new trial. Upon this point we say the ruling of the court below involves a mixture of questions of law and fact, on account of which it does not appear to this court for which party judgment ought to be given.

The case is therefore remanded by this court to be tried over again in the Court of Quarter Sessions, Montserrado County, where it was originally tried; and all costs incurred in this court from the appeal are continued.

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## ALEXANDER LEE, Plaintiff in Error, vs. REPUBLIC OF LIBERIA, Defendant in Error.

[January Term, A. D. 1876.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Bastardy.*

The writ of error brings to this court a question between the judgment in the case in the court below and the law. This court shall therefore proceed to consider the question involved in the same. The error complained of is that the court below erred in giving final judgment in the case upon a default of the defendant below. From the record in the case, this court discovers great irregularities in the proceedings had in the court below upon the case. The court below upon a default of the defendant below ordered that the plaintiff in error (defendant below) enter into recognizance with good securities for the maintenance of the child, and to pay into the Sub-Treasury of Sinoe County the sum of one dollar per week, payable monthly. And as soon as the said Alexander Lee can be had, the sheriff or his deputy shall cause him to appear before this court, or the judge thereof, to enter into the aforesaid recognizance.

In the making of this order the court below erred; because, if the plaintiff in error (defendant below) had failed to appear at the time of trial, the proper action of the court below would have been to give judgment against the bond of the defendant below, which bond the statute directs should be taken from the defendant as a security for his appearance to the Court of Quarter Sessions, that the said court may make such order in the case as may be proper and lawful to do. It is the bond that gives the Court of Quarter Sessions jurisdiction over such cases, and enables it to proceed thereupon.

Therefore, this court adjudges that the order made by the Court of Quarter Sessions, Sinoe County, in the

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said case of Alexander Lee, plaintiff in error, against the Republic of Liberia, defendant in error, be and is hereby set aside and made void and of no legal effect whatever; and that the said Republic of Liberia, defendant in error, pay all costs incurred in this action.

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## WALTER BROWN, Agent for A. Wœrmann, Plaintiff in Error, *vs.* F. J. GRANT, Defendant in Error.

[January Term, A. D. 1876.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

1. A jury may deliver its verdict *viva voce* in open court, but it is error in a court to order its clerk to write out the verdict of the jury. If a verdict be illegal, the judgment founded thereupon will be illegal also. After a verdict has been entered upon the record, an authentic copy thereof will be admissible as evidence of its existence.
2. It is error in a court to refuse to reduce to writing its ruling on any point made in a trial.
3. A party may waive his right to move for a new trial without losing his right to move in arrest of judgment.

This court, having examined the errors assigned, will now proceed to give its opinion on the several points submitted, as they come up in order. The first error assigned is thus stated: "Because there is no legal verdict of the jury in the case according to law and the custom of the court." Upon this point this court says the court below is correct in ruling that the jury could come into court and give its verdict *viva voce,* and this ruling was the evidence to the jury of the law of the land; but the court below erred in ordering, contrary to its own ruling, the clerk to write out the verdict of the jury, and to cause the foreman to cross-mark the same, the clerk attaching his name thereto as a witness, notwithstanding the clerk was not a member of that body.

The second error assigned is thus set forth: "Because judgment ought not to have been rendered without a

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legal verdict." In respect to this point this court says the verdict having been returned contrary to the ruling of the court below, judgment ought not to have been rendered thereupon; because the judgment of the court is the sentence of the law and therefore it could not be justly founded upon an illegal verdict. Hence it is an error in the court below rendering the said judgment.

The third error assigned is stated thus: "Because the clerk of the court could not be made a witness to the jury's verdict." Upon this point this court says the verdict must be the evidence of its own existence until it is entered on the records of the court; after which a copy may be used in proof of the existence of such a verdict, the copy having thereto attached the seal of the court and the official signature of the clerk. In no other way can a clerk be made a witness to the jury's verdict; but to ascertain whether the jury have unanimously agreed upon their verdict, the opinion of each juryman may be demanded by any party to the action. Thus it is obvious that the law contemplates no other evidence, in confirmation or contradiction of the verdict of a jury, but that expressed by the jury themselves. Therefore this court says the court below having allowed the clerk to sign the verdict of the jury, as a witness thereto, erred in so doing.

The fourth error assigned is set forth thus: "Because Your Honor refused to hear a motion in arrest of judgment presented by the defendant's attorney, and also refused to reduce your opinion to writing, according to law." To this point this court says the court below ought to have given the motion of the plaintiff in error (defendant below) a hearing, whether the motion was entertained or not; and this should have been done, upon the principle that we should hear before we condemn. And further the court below ought to have ordered the motion to be entered upon the records of the court

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together with the opinion or reason of the court for not entertaining the same.

The refusal of the court to reduce its opinion to writing is a denial of a legal right, and an obstruction against the regular mode of obtaining an appeal. And for these reasons this court says the court below erred in refusing to hear the motion in arrest of judgment, and also in refusing to reduce its opinion to writing. A party waiving his right to a new trial does not bar himself of a right to an arrest of judgment; because it is a well-settled principle that a waiver of one legal right does not debar one from resorting to another.

Therefore, this court adjudges that the judgment rendered in the case above mentioned, in the Court of Quarter Sessions, Sinoe County, against the said Walter Brown, agent for A. Wœrmann, of Hamburg, plaintiff in error, in said action of damages for the violation of a written contract is hereby reversed, set aside and made void and of no legal effect whatever; and that the said plaintiff in error recover from the said F. J. Grant, defendant in error, his costs in this action.

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## THOMAS CASSELL, Appellant, *vs.* MATILDA RICHARDSON, Appellee.

[January Term, A. D. 1876.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Statute of Limitation—Written evidence—New trial.*

A plea specially pleading the Statute of Limitation in bar to a suit is a question purely of law, and by statute must be determined by the court, independent of a jury.

Where a written instrument is offered in evidence, it should form a part of the record, even though it be not admitted as evidence, in order that the appellate court, upon an appeal, may ascertain whether it is proper evidence or not.

This case is sent up from the Court of Quarter Sessions, Montserrado County, upon a bill of exceptions.

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The case presents many questions, some of which are very important and proper for this court to determine. The desire of this court being to do justice between the parties, it will notice only those questions important to the decision of this case, a solution of which can but force the court to the conclusion it has come to.

It is the opinion of this court that a plea specially pleading the Statute of Limitation in bar to a suit is a question purely of law, and under the statutes of this Republic could only be tried and determined by the court. Hence the court below erred in deciding that this plea is a mixed question of law and fact, as well as in submitting the same on the trial for the determination of the jury. The court is further of the opinion that any written instrument or paper whatever that may be offered in evidence, notwithstanding the court does not receive it as evidence in the case, yet said paper, being part of the proceedings, ought to be sent up for review upon an appeal, with the ruling of the court thereon. Hence it was an error in the court below refusing to allow such paper to be annexed to the record as part of the proceedings.

It is further the opinion of this court that the right of the judge of the lower court to grant a new trial in any question of mere fact or mixed question of law and fact, tried at any regular term of court, grows out of the statutes regulating trials, notwithstanding the party aggrieved by such ruling or order has a right to appeal therefrom.

This court is also of opinion, after carefully examining the record of this case, that substantial justice has been done by the jury's verdict. Therefore the court adjudges from the issue joined by the parties below and the proof thereon, that the appellee, Matilda Richardson, by the Statute of Limitation is barred from all and any legal claims to lot No. 200 in the city of Monrovia, and that appellee pay all costs of trial.

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## H. W. JOHNSON, Sr., and L. A. JOHNSON, his wife, Plaintiffs in Error, *vs.* THE REPUBLIC OF LIBERIA, Defendant in Error.

[January Term, A. D. 1878.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

This is a case coming before this court by a writ of error from the Court of Quarter Sessions and Common Pleas, Montserrado County. Upon the reading of the record of the court below, and waiving of opening arguments by the counsel for plaintiffs in error, the Attorney General of the Republic made the following declaration: "I decline to defend this action before this court because I find the indictment, the proceedings and the judgment in this case cannot be sustained by law"; whereupon the plaintiffs in error, through their counsel, prayed for judgment.

Ordinarily on the abandonment of a case by either party, this court might simply dismiss it with costs; but the circumstances surrounding this case are so peculiar as to make it necessary for this court to give an expression of its views with regard to certain points connected with the case. By reference to the records of this court, we find that this case was brought before this court on an appeal at its January term, 1872, at which time the appellants, now plaintiffs in error, were ably represented and defended by the counsel now representing the defendant in error. The record of the court below having been reviewed and the several points of exceptions having been examined, this court affirmed the several rulings of the court below to which exceptions had been taken, and in so affirming, this court declared that the verdict was in accordance with law and evidence; that as manifested from the record, the court ruled correctly in refusing to arrest judgment. And at that time this further statement was made: "The court

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is further of opinion that if, on reviewing the record of the case, it should find that the appellants had not been guilty of the offence charged against them, then this court would be warranted in arresting judgment, even if no motion had been made in the lower court; but the facts stated in the case and upon which issue is joined are supported by law and evidence. That the court below, having refused to arrest judgment, should pronounce judgment. And this court adjudges that this case be remanded, and command the court below to render judgment of the verdict of the jury."

Judgment having been rendered in the court below, the case comes again before this court upon a writ of error. This case having been examined and reviewed up to the time of rendition of the judgment, and no new state of facts appearing for the reversal of the opinions expressed, in the first instance, this court does not recede from the position then taken as to the legality of the proceedings up to the stage at which it had then arrived. For the court maintains its right to find law for itself, notwithstanding the declaration heretofore set forth and made on the abandonment of this case, and it is at least to be presumed that when this court declared that the case was so far supported by law and evidence as to only require rendition of judgment, it had found the law to sustain its declaration.

The court could only consider the proceedings subsequent to its mandate; but this becomes necessary, by the defendant in error through his representative having refused, as aforestated, to defend the action, it being neither the duty nor the desire of the court to assume the position of prosecution, and therefore upon this abandonment of the case the following judgment is given.

The court adjudges that the judgment of the court below be so far reversed; the said prisoners, H. W. Johnson, Sr., and L. A. Johnson, his wife, be discharged and released from all pains and penalties thereof remaining at this time to be fulfilled.

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## J. N. LEWIS, Plaintiff in Error, *vs.* REPUBLIC OF LIBERIA, Defendant in Error.

[January Term, A. D. 1878.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

This case was brought up by writ of error from the Court of Quarter Sessions and Common Pleas, Montserrado County. The case having been called up, the Attorney General, for the defendant in error, offered a motion that this court "strike the said case from its docket because since entering said case, by John N. Lewis, Secretary of the State, plaintiff in error, he has died, by which death the action abates"; and in this motion the counsel for the plaintiff in error concurred.

This being one of the cases in which the right of an action dies with the person, therefore this court adjudges that by reason of the death of J. N. Lewis, plaintiff in error in this suit, the action abates as if no such action or suit ever existed; and orders that the clerk will strike said case from the docket of this court.

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## H. COOPER, Appellant, *vs.* McGILL & BROS., Appellees.

[January Term, A. D. 1878.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Interlocutory judgment—Appeal—Final judgment.*

An appeal cannot be taken from an interlocutory judgment. The appellate court will not review cases by piecemeal.

Appeals, where provided for by statutes, must be taken in strict accordance with the provisions of the statutes relating to same.

Final judgment is that which puts an end to the matter in controversy, so far as the same is within the purview of the court. Until final judgment no valid appeal can be taken.

This is an action of injunction brought up on appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County. From the record in this case it

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appears that no final decree was given in the court below, but that the appeal was taken after an interlocutory decree that did not put an end to the issues in the case.

In the case of Minus *vs.* Crayton before this court at its session of 1874, the following decision was given: *"That no appeal lies from a court of inferior jurisdiction* to the Supreme Court, until after final judgment has been given"; a principle with respect to appellate proceedings fully sustained by law, and not without reason.

"The appellate court," says Freeman on Judgments (sec. 33), "will not review cases by piecemeal. The interests of litigants require that causes should not be prematurely brought to the higher courts. The errors complained of might be corrected in the court in which they originated, or the party injured by them, notwithstanding the injury, have final judgment in his favor. If a judgment interlocutory in its nature were the subject of appeal, each of such judgments rendered in the case could be brought before the appellate court, and litigants harrassed by useless delay and expense and the courts burdened with unnecessary labor."

On motion offered during the present session of this court, we stated that an appeal is a privilege or relief authorized by statute, and must be regulated by the provisions of the act so granting it; and we still entertain the same view as to its nature in this respect. Our statute provides that "every person against whom any judgment is rendered shall be entitled to an appeal from any decision or opinion of any court, except such courts of appeals." (Lib. Stat. 1st Book, p. 77, ch. 20, sec. 1.) But the sixth section of the same chapter declares, "Every appeal must be taken within sixty days after final judgment." Thus, while the right to appeal from every decision, interlocutory or final, is granted, the appeal cannot be taken until after final judgment is rendered.

Again our statute provides "that in all cases which

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shall be decided by the Court of Common Pleas, the person or persons considering himself or themselves aggrieved by such decision, may appeal to the Supreme Court after such decision, *i.e.*, after the decision deciding the case." (Lib. Stat. 1st Book, p. 109, sec. 9.)

But it is needless to enlarge upon this point so fully established even by the learned counsels themselves (representing either side in this case) who during the present session ably submitted arguments and citations to authorities in this and other cases, to sustain this position, that a party should not appeal and remove his case from the court below before final judgment.

A final judgment or decree is one that puts an end to the suit, or, in other words, completely disposes of the cause, so far as the court had power to dispose of it. It is a judicial decision of this character, settling the right or interest in controversy between parties to a cause, that is essential to invoke appellate jurisdiction.

An adjudication, however, is not final so long as a question which it was one of the objects of the suit to determine, remains undetermined, and the rights of the party thereto remain preserved for further adjudication. Such appears to be the nature of this case; the rights of the parties have not yet been decided upon; no final judgment has been rendered in the case, and therefore the bringing it up to this court is premature.

We have observed the several exceptions taken to the matters ruled upon during the trial of this case in the lower court, but not regarding the case as being properly before us for review we do not propose to examine these exceptions.

It is decreed that the case be dismissed, and appellant ruled to pay costs. The clerk is hereby commanded to issue a mandate to the court from whence this case came, informing it of this decree.

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## JULIA ANN WILLIAMS, Appellant, *vs.* McGILL & BROTHERS, Appellees.

[January Term, A. D. 1878.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Action of Debt.*

This case is before the court on a bill of exceptions. It is a case in which the appeal was granted before final judgment had been given. The law declares that "every person against whom any judgment is rendered shall be entitled to appeal from any decision or opinion of any court, except courts of appeal." No judgment having been given in this case for this court to confirm or reverse, the court therefore adjudges that the case is hereby dismissed, and that the appellees recover from the appellant their costs in this appeal.

The clerk is hereby commanded to issue a mandate to the court below from whence this case came, informing it of the action of this court.

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## THOMAS H. CASSELL, Appellant, *vs.* MATILDA RICHARDSON, Appellee.

[January Term, A. D. 1878.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Action of Injunction.*

This is a case of injunction brought on appeal from the Court of Quarter Sessions, Montserrado County. Upon a motion by appellant that "in this case the appellee having been duly served with notice of appeal, and she having died, and no one appearing to defend the appellee, the appellant respectfully motions the Supreme Court for judgment by default," a judgment by default was

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entered against the said appellee. It now remains to pronounce perfect judgment.

The court adjudges that the decree of the court below in this case is reversed, and the injunction dissolved, and the clerk of the court is hereby commanded to issue notice to the court below accordingly.

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## REPUBLIC OF LIBERIA, Appellant, *vs.* THE ESTATE OF W. S. ANDERSON, Appellee.

[January Term, A. D. 1878.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

An action of debt is the proper form of action to be chosen when the action is one growing out of contract expressed or implied, other than for non-performance, damages or injunction.

Upon the examination of this case, an action of debt, brought up on appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County, we find that on motion of defendant, now appellee, of the following tenor,—"that the case be dismissed and the plaintiff ruled to costs, because the action of debt is not the proper action to be brought in this case, as the defendant, W. S. Anderson, was an officer of the government, and as such was under contract with the government," the court below decided that "plaintiff in this action should have brought an action of contract against the defendant, according to law; that not being done, the motion is sustained and the case dismissed with costs."

That this cause of action is one growing out of contract is very clear indeed; as much was implied in the defendant's motion to dismiss the case. It has become our duty to find to which of the several subdivisions of "actions growing out of contracts," as set forth in our statutes, the present case should properly be referred. Confining ourselves to the record, as is our duty, nothing was apparent to show that the plaintiff, having sustained

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an injury by reason of a non-performance of some contract, sought for damages; or that it was a proper case for the application of an injunction, or that a specific performance, other than for the payment of money, was sought to be enforced.

The action of debt lies for a sum of money certain due by the defendant to the plaintiff, whether it has been certain by contract between the parties, or by judgment, or by statute. (2 Bouv. Inst. sec. 3455.) It lies upon contract without specialty, either expressed or implied. It is a more extensive remedy for the recovery of money than assumpsit or covenant, for it lies to recover money due on legal liabilities, as for money lent, paid, had and received, or due on an account stated, or upon simple contracts, expressed or implied, whether oral or written, whenever the demand is for a sum certain or it is capable of being reduced to a certainty. (2 Bouv. Inst. sec. 3459.)

Our statutes define it to be "an action to enforce the payment of a sum of money which the defendant has contracted to pay to the plaintiff." The action, as appears from the records, is for a *sum certain,* which the plaintiff, now appellant, claims that the defendant, now appellee, had contracted to pay, and having failed to do so, an enforcement of the payment was sought, and in the view of this court is properly brought as an action of debt.

The court therefore adjudges that the judgment of the lower court is reversed, and the case is remanded to said court for trial, costs to follow.

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## JACKSON, BRIERLY and BRIGGS, Appellants, *vs.* JAMES MILTON HORACE, Appellee.

[January Term, A. D. 1878.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Grand Bassa County.*

*Statute of Limitation—Agency.*

The plea of limitation is a question of law only, which must be decided by the court.

Where a person or firm residing out of the country creates a local agent, who holds himself out as such to the defendant, the Statute of Limitation will begin to run simultaneously with said act, although the principal be absent from the country; and upon an action brought, the defendant may plead the Statute of Limitation as a bar to the action, unless it can be shown that the agency had ceased or the agent had been absent from the country for a period long enough to take the cause out of the statute.

This case is an action of debt brought before this court on an appeal from the Court of Quarter Sessions and Common Pleas, Grand Bassa County. The appellants' cause of appeal is the refusal of the judge of said court to set aside the verdict of the jury, to whom had been submitted the questions raised by the defendants' plea of limitation as a bar to the action, as said verdict was contrary to law, the evidence, and legal instructions of the court.

In the examination of this, as in other cases, we must be guided by our statutes, which declare that "as a court of appeal we shall examine the matter in dispute upon the record only"; and that "no judgment shall be reversed for any matter for which the attention of the court below shall not appear to have been called, either by some bill of exceptions or other part of the record."

Upon a thorough and careful review of the record, it is apparent that the judge regarded the plea of limitation as a mixed question of law and fact, which was an error, inasmuch as this court has decided on a previous occasion (Cassell *vs.* Richardson) that the "plea of limitation was a question purely of law" and "the trial of all

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questions of mere law shall be by the court." But as no exception was taken to the submission of the question to the jury, this court must consider that all objections thereto were waived by the litigants, as also to any other matter or question that might have arisen during the process of the trial to which exceptions were not taken, or called to the attention of the court below.

We find that appellants' counsel requested the judge to instruct the jury on the Act of Limitation, and that he did so by calling their attention to said act; "that no part of the time either party was absent out of Liberia should be counted; and they should decide whether J. L. Crusoe's acts made him agent in that single instance, or made him agent generally." This is all with respect to the instructions, as to what they were, that can be found either upon the record or in the bill of exceptions, and from this it does not appear to this court wherein the jury went contrary to the instructions of the court, nor does it appear that any part of said instructions were excepted to as being illegal.

According to the record, the evidence shows that Mr. J. L. Crusoe asked for and received amounts from Horace for Jackson, Brierly and Briggs in the year 1872, and that he represented himself as having "full power and authority to demand payment," but there is an absence of evidence to show that Mr. Crusoe was at any time thereafter out of the country, or for what period, or that his agencyship ceased before the appointment of H. J. Neyle by power of attorney dated October 4, 1873.

Were there any evidence to show that the agencyship of the one had ceased ere that of the other began, or that there had been an absence of either out of the country during his term of agency for a period long enough to take the cause out of the statute, there would be some reason for deciding that the verdict was contrary to evidence. Nor is the reference upon the record to an

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arbitration sufficient for such a decision, as there is nothing definite stated with respect thereto, except that there was an arbitration appointed by the court.

While from a moral standpoint it might be said that no man ought to make any plea that could prevent a fair investigation of any matter in which he might be interested, yet it is nevertheless the privilege of every one to avail himself of every advantage allowed by law, and this is a right of which the courts cannot deprive him. On the other hand, when the party fails to use the means placed at his disposal for his security, in the manner prescribed by law, it is not the office of the court, especially in the face of positive legislative enactments to the contrary, to make up said deficiency or neglect. Under all circumstances as presented by the record, this court must adjudge that the judgment of the court below is affirmed, appellants ruled to pay costs.

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## FRANCES J. PAYNE and HESTER HUFF, Appellants, *vs.* THE REPUBLIC OF LIBERIA, Appellee.

[January Term, A. D. 1878.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Infraction of the peace—Lewdness.*

The offence of lewdness is a misdemeanor punishable by indictment, and although falling under the head of infractions of the peace, the penalty attached by statute makes it cognizable before the Court of Quarter Sessions and Common Pleas upon indictment.

This case is brought up on an appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County. The defence of the appellee, the Republic of Liberia, was abandoned by the Attorney General in the words, "I decline to defend this case because that this charge of lewdness cannot now be sustained as an indictable offense by the laws of the Republic of Liberia."

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Imperfect judgment having thereupon been asked for and granted, it remains for this court to give perfect judgment on the case. Before doing so, however, we regard it as necessary to give some expression on the issue raised, that lewdness cannot be sustained as an indictable offence.

Our law places this offence with others under the general head of "infractions of the peace"; but it also makes distinctions with regard to infractions, giving in one place justices of the peace jurisdiction over all "petty infractions of the peace where the fine is not more than ten dollars," in another the Court of Common Pleas, in all infractions of the peace where the fine is more than twenty dollars.

Having adopted the common law among others as a part of the laws of this Republic, with certain restrictions, it becomes necessary, when our statutes are not clear enough, to have recourse thereto, and to apply the analogies thereof to the case. We find by the common law that lewdness was regarded as a misdemeanor, and as such was an indictable offence, and though our law has removed it to the head of "infractions of the peace," yet these, too, are indictable.

Bouvier defines a "breach of the peace" as a violation of the public order, the offence of disturbing the public peace; "an act of public indecorum is also a breach of the peace"; and says, "The remedy for this offence is indictment." And we also find from other authorities that there are certain infractions or breaches of the peace which are indictable offences.

Now while we would not infer that all of the offences classed under the head of "infractions of the peace" are indictable, yet since the statute itself does not state the punishment for each of them, it is left for the courts, by an application of the analogies of the common law to each case, to adjudge whether the common law penalties will reach such; and the statute gives authority to decide

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on the magnitude of the infraction when it gives the court jurisdiction in all cases where the fine is more than twenty dollars.

While, therefore, it is the opinion of the court that lewdness as an infraction of the peace is an indictable offence, yet as the case has been abandoned by the appellee it only remains for the court to render perfect judgment. The judgment of the lower court is reversed, appellee ruled to pay costs.

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## ROBERT R. JOHNSON, Appellant, *vs.* REPUBLIC OF LIBERIA, Appellee.

[January Term, A. D. 1878.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Damages.*

This is an action of damages brought up on appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County. The case depends entirely on the construction of the word "otherwise" in the 3d section, page 147, I. Lib. Stat., of the act showing in what cases suits may be brought against the government. To us the obvious meaning of that section is that whenever any person or persons shall receive any damage by the application of any part of his or their property by this Republic to its use, or by the application of this property otherwise, *i. e.*, "in a different manner," "or in another way," than to its own use, so as to occasion any damage or loss, he or they shall on proof, etc., receive such compensation as the jury shall under the circumstances award. And the rights which it seems to be the spirit and intent of this law to guard are those guaranteed by the Constitution, which provides that "private property shall not be taken for public use without just compensation" (Const. p. 233, art. 1, sec. 13); but being

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an extension thereof, as it makes the government liable though the property is taken for use otherwise than public.

The present case is not one of those authorized by law to be brought against the government. The court therefore adjudges that the judgment of the lower court is affirmed, and the appellant ruled to pay costs.

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## ADMINISTRATORS OF THE ESTATE OF A. WASHINGTON, Appellants, *vs.* MARIA A. LLOYD, Appellee.

[January Term, A. D. 1878.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Ejectment.*

A person who has been absent from the country for more than seven years, of whom nothing has been heard, is presumed in law to be dead.

Where in an estate of joint-tenancy one of the tenants has been absent from the country beyond a period of seven years and respecting whom nothing has been heard, the surviving tenant becomes the sole tenant by the doctrine of survivorship and may maintain an action in his sole right.

At the January term of this court in the year A. D. 1875, a mandate was directed by this court to the Court of Quarter Sessions, Montserrado County, ordering said Court of Quarter Sessions to try the said case over again; because on the appeal from the said court it did not appear on the record in said case, on account of the mixture of questions of law and fact, for which party judgment ought to have been given.

In obedience to the said mandate the said court below admitted the said case to its jurisdiction and submitted the same to a second trial by a jury empanelled for that purpose, upon which a verdict was returned for the appellee and judgment rendered thereon. An appeal, however, having been prayed for by the appellants, it was granted them, upon which this case is again before

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this court. Therefore the court proceeds to notice the points in the bill of exceptions, to which its attention has been carefully given, and will dispose of them as they stand, in their order.

The first point, then, to be considered and disposed of, is set forth thus: "The motion made by the defendants at the last September session of the court, to set aside the verdict and grant a new trial on the ground that said verdict is contrary to the law and the evidence of said case, Your Honor at this December session decided that said verdict is not contrary to the law and the evidence; and therefore a new trial shall not be granted."

The evidence in the case marked "number one" is proof conclusive that the title to said property vests in the appellee, notwithstanding it shows that Meta Ann Lloyd was a joint tenant with the appellee; because the fact having been fully established by the said evidence that all the right, title and interest whatever that the said John D. Johnson, Joseph H. Turpin and Charles B. Dunbar had to and in the said property hath been lawfully transferred by them to the appellee and one Meta Ann Lloyd; but the said Meta Ann Lloyd having been absent from this Republic beyond a period of seven years, she is presumed in law to be dead, and therefore Maria Ann Lloyd, being a joint tenant with the said Meta Ann Lloyd, takes the whole of the property by operation of law.

Therefore this court says that the judge of the court below was right in deciding that the said verdict is not contrary to the law and the evidence, and therefore a new trial shall not be granted.

The second point to which exception is taken is comprehended in the following statement: "Because the court decided that the verdict of the jury rendered at the last term of the court is hereby ordered to be recorded, thereby giving Maria Ann Lloyd exclusive right to the property; and the defendants are ruled to pay all costs."

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The second point involves the same questions which have been disposed of under the first head of appellants' bill of exceptions, therefore the court says the court below was right in ordering to be recorded the verdict of the jury.

And here it ought to be remembered that fraud is not to be presumed as the object of the contract from the *mere act* of the husband's interposition in effecting the contract for the purchase of property for his wife, unless such contract was made in violation of some statutory regulation. Nor does it appear from evidence on record in this case that at the time of the purchase of said property Leo L. Lloyd was largely in debt; because the purchase of said property was effected over three years before any suit was brought against him. But suppose he was in debt at the time, it was his duty to interpose and do whatever his wife desired, which was not in violation of law or tending to fraud; for in the eye of the law the husband is the proper custodian of the wife's property, and as such the law requires him to join with her in all actions, of whatever kind they may be, to recover her rights or to redress any injury she may have sustained.

In this action, however, the defendants, having failed to file their answer within the time prescribed by the statute, have waived their right to object to the non-joinder of the appellee's husband and her joint tenant, and were therefore compelled by the statute to rely upon the denial of the truth of the facts stated in the plaintiff's complaint, and to rest on that defence only.

Therefore the court, in confirmation of the judgment of the court below, adjudges that the appellee, Maria A. Lloyd, recover against the appellants, C. A. H. Washington, administratrix, S. J. Cambell and R. H. Jackson, administrators of the estate of A. Washington, appellants, the land mentioned in the complaint of the appellee (plaintiff in the court below), and the sum of sixty dollars for her costs in this action.

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# SARAH A. ROBERTS, Appellant, *vs.* JANE ROSE ROBERTS, Appellee.

[January Term, A. D. 1878.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Wills—Written evidence—Rules of practice of courts.*

The right to devise property by will was conferred upon the people of Liberia by the passage of an act in 1824, during colonial government, in the following words: "All persons are permitted to dispose of property by will." Upon the erection of the Republic this ordinance was incorporated into the laws of the Republic by Art. 5, sec. 1, of the Constitution.

The common law by Blackstone and Kent, and the statutes embraced in those commentaries, where not in conflict with Statutes of Liberia, form part of the laws of Liberia. The Statute of Wills embraced therein is one of such statutes and is in force in this country.

Interlineations in deeds will be presumed to have been made contemporaneous with the execution of the instrument unless there are reasons to suspect that fraud has been committed, which is a question for the jury.

This case comes before us on an appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County. This, an action in ejectment, was brought by the plaintiff to recover possession of certain lands, etc., belonging to J. J. Roberts, deceased, the title to which she claimed, as his heir-at-law, had come to her by descent, and alleged that the defendant wrongfully withheld the same from her. The defendant denied the right of the plaintiff to recover, because the said deceased left a will by which he disposed of his real and personal estate, disinheriting said plaintiff from all his real estate, except two lots, and that she, the defendant, was executrix of said will. The plaintiff in reply attacked the validity of the will, as being unlawful, made according to the wishes of the defendant, etc.

During the progress of the trial several exceptions were taken to the ruling of the judge presiding, and upon the termination of the suit in favor of the defendant, the case has been brought up on appeal by the

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plaintiff. The several issues raised in this case as presented to us by the bill of exceptions have been very carefully considered, and in giving the conclusions of our deliberations with respect to them we have not deemed it necessary in every instance to refer to the points separately, especially when they had no material bearing upon the result of the case.

1st. The first point of exceptions having been waived by appellant we come to the second, which is thus stated: "And also because upon the motion of the said defendant's counsel the sixth section was ruled out of the plaintiff's reply." By reference to the reply we find this section refers to that portion of the will creating a charity, etc.

Courts of equity have exclusive jurisdiction over the subject of charities, which are a species of trusts deriving their signification from the statute of 43 Eliz., c. 4, in the preamble of which are enumerated uses that are considered charitable, and among those are gifts, devises, and bequests for the relief of the aged, impotent and poor people, for the maintenance of sick and maimed soldiers and mariners, for schools of learning, free schools, and scholars of universties, etc. (2 Bouv. Inst. sects. 3980, 3981; Adams, Equity, page 66.)

The court was right in ruling out said section, and this we say without reference to the reasoning upon which that ruling was based.

2d. As to the exception taken to the question asked, objected to, and ruled upon, and comprising from the third to the thirteenth points, inclusive, of the bill of exceptions, we have found that the rulings of the court, upon the whole, on those questions which had any material bearing on the issues of the case, were correct.

3d. The fourteenth exception is: "Because when plaintiff objected to the defendant's written evidence, number one, being the will of J. J. Roberts, because the said will cannot be introduced as evidence in a case when the

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validity of the said will is to be contested, the said objection was overruled and the said will was admitted as evidence in the case."

On the trial of the validity of a will, it should be read to the jury; they must consider the evidence with reference to the paper, and it is highly proper they should see it in the first instance. It should have been admitted by the court, not as evidence, but to enable the jury to see what they were to try. (U. S. Digest, first series, Vol. XIV, page 352, sec. 2382; Redfield on Wills, vol. 1, p. 49 and n. 42.)

4th. The fifteenth exception is "because the said will was admitted as evidence notwithstanding the other three objections made to the said will," etc.

The second objection to the admission of the will, as appears from the record, was the probation thereof contrary to a rule of the Probate Court with respect to the probate of wills. *"Cursus curiæ est lex curiæ"* (the practice of the court is the law of the court) is a legal maxim. Every court is the guardian of its own records and master of its own practice. Should the Probate Court in the admission of the will to probate have done so in violation of some law of the land, it would have been a proper subject for review, but a court of error does not notice the practice of another court. (Broom's Legal Maxims, p. X, 134.)

"A court may change its practice without written rules, and when the question is whether it has done so, its own solemn adjudication is the best evidence." (Curtis, Supreme Court Decisions, 1, 137.) The question then being on the practice of the court, and not a law of the land, the court did not err in its ruling.

5th. The third objection to the admission of the will was that "in the absence of a statute of wills the testator, J. J. Roberts, deceased, could not make a legal devise of real estate."

This raises a most vital and important issue—the capability to devise real estate in this Republic.

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Mr. Redfield opens his work on Wills with this section: "The right of testamentary disposition of property is unquestionably one of the results of cultivated social life, and dependent upon municipal law. But it is nevertheless an instinctive sentiment intimately associated with that love of acquisition, and of dominion, which forms the basis and the stimulus of all social progress: and which, in its normal development, is the sure measure of advancing civilization, and in its morbid excesses equally marks the process of declension and the increase of crime."

We do not propose to enter into an historical review of the subject of wills generally, or of devises particularly, but in giving our opinions thereupon we shall, as we have endeavored to do on other points, use the language of the law as far as practicable, rather than our own.

In the year 1824 the Colonial Government of Liberia passed an act in these words: "All persons are permitted to dispose of property by will." When the statute (which is an act or resolution of the Legislature) allows certain actions without commanding them, it is a permissive one. Here, then, in the early days of the colony, we have a permissive act of the law-makers for the disposal of property by will, *i. e.*, by a legal declaration of a man's intention of what he wills to be done with his property after his death; and as property is the lawful right which a man has in lands or chattels, the permission extended equally to the devising of real estate as to the bequeathing of personal property.

This permission thus granted, exercised and enjoyed by the people during the colonial days was renewed on the formation of the Republic, in these words: "All laws now in force in the Commonwealth of Liberia, and not repugnant to the Constitution, shall be in force as the laws of the Republic of Liberia until they shall be repealed by the Legislature." (Constitution, art. 5,

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sec. 1, p. 240.) By virtue of this, the people of this country continued to make wills and to devise real property, the Legislature not repealing the act giving its tacit consent and authority for the continuation of the permission.

In later years we find the Legislature adopting a civil and criminal code for the Republic. And here we would remark that the plaintiff in her reply, as also in her motion now under consideration, advances the proposition that "the statute laws of Liberia enacted by the Legislature, and the general principles of the common law, are the laws by which the people of this nation have consented to be governed." Thus far it is true, but on an examination of the act of the Legislature adopting a civil and criminal code, we will discover whether or not the laws of this Republic do not embrace more than what is comprehended in the idea intended to be conveyed by that proposition. In an act to amend an act entitled "An act defining certain crimes, and relating to the punishment of crimes," we have the provisions for the codes referred to thus set forth at large:—

"It is enacted by the Senate and House of Representatives of the Republic of Liberia in Legislature assembled. Sec. 1. That so much of the seventh section of an act entitled, An act defining certain crimes and relating to the punishment of crimes, as reads 'Such parts of the common law set forth in Blackstone's Commentaries as may be applicable to the situation of the people, except as changed by the laws now in force, and such as may hereafter be enacted, shall be the civil code of laws for the Republic,' be so altered and amended as to read that 'Blackstone's Commentaries, as revised and modified by Chitty or Wendell, and the works referred to as the sources of municipal or common law in Kent's Commentaries on American Law, volume first, shall be the civil and criminal code of laws for the Republic of

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Liberia, except such parts as may be changed by the laws now in force, and such as may hereafter be enacted; and all laws and parts of laws conflicting with the provisions of this act be and the same are hereby repealed'." (Lib. Stat. Bk. 2, pages 72–3.)

Here is an adoption not only of the common law as set forth in Blackstone's Commentaries as in the previous act amended by this, but of the whole of those Commentaries as revised and modified by the writers named in the act. The statutes embraced in those Commentaries, where they remain unchanged by laws now in force, have thus been adopted as laws of this Republic, and among these are the Statute of Wills and the Statute of Uses, which Blackstone says made a great alteration as to property, the former by allowing the devise of real estate by will, etc. (Chitty's Blackstone, Vol. 12, p. 430.)

Kent in his Commentaries, Vol. 1, in giving an account of the sources of the common law to the American people, makes this statement: "It is also the established doctrine that English statutes passed before the emigration of our ancestors, and applicable to our situation, and in amendment of the law, constitute a part of the common law of this country." (See page 473.)

These statutes, being one of the sources of the common law referred to by him, have been incorporated by that act of the Legislature within our laws. As to the wisdom, policy or expediency of adopting these statutes as a whole, or of the works referred to in Kent, as sources both of the municipal and common law, and incorporating them as laws of the Republic, the court has nothing to do; these are matters of legislative deliberation and cognizance. The legal right to devise real estate, therefore, by the laws of the Republic, has been granted and secured to the people, and the court very properly refused to sustain the objection.

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6th. The fourth objection to the admission of the will was, "because the attesting witnesses had not been examined by the Probate Court," etc.

Nothing appearing to the contrary, it is to be presumed that the court followed its usual practice in the admission of the will to probate; and in this connection our views as to practice stated under head fourth will apply. The ruling was therefore not an error.

7th. The sixteenth exception was taken because of plaintiff's objection to defendant's written evidence, number two,—1st, on the ground of irrelevancy; 2nd, because the document was interlined.

The deed was relevant because it tended to prove one of the issues raised in the pleadings, that the plaintiff had taken possession of certain lots devised to her in the will. The rules with respect to interlineations as laid down by the several authorities are diverse. This court, however, adopts the view that an interlineation, without anything appearing against it to create a suspicion, will be presumed to have been made at least contemporaneous with the execution of the instrument; and even in the case of suspicion, the question is one for the jury to settle as to the time when the interlining was made, before, or after execution. The interlineations in this deed are not such as to create a suspicion in the eye of the court, as one seemed to have been for want of space between printed words, and the other of a word that had been omitted but did not affect the title of the rightful owner in any respect whatever. The deed, too, was over forty years old and for these reasons should have been admitted.

8th. The seventeenth exception was to the overruling of the plaintiff's objection to the defendant's written evidence, number three, "because it had no seal."

At the time of the execution of this deed, October 14, 1837, there was no law in the Colony requiring a seal to

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be attached to deeds; such parts of the common law as set forth in Blackstone's Commentaries as were applicable to the people having been adopted by the Constitution of the Commonwealth, January 5th, 1839. There was therefore no error in the admission of the deed.

9th. The next two points are objections to certain written evidence of defendant's, numbers four to seven, these being extracts from the records of the Probate Court. As these related to the practice of the court, we regard them as irrelevant for the reasons given under our fourth head.

10th. The twentieth and twenty-first exceptions are, "because the verdict of the jury was contrary to the law and evidence, that the court rendered final judgment against the plaintiff, and for all the rulings of the court during the progress of the trial, to which exceptions were taken at the time by the plaintiff."

Having already passed upon the several rulings of the court as they have presented themselves to us, it only remains for us to consider the verdict of the jury and the judgment of the court.

The right of the testator to devise real estate being sustained by law, his execution of a will, and his capability at the time to do so, as to his state of mind, having been established by evidence, no undue influence having been proven, and upon a consideration of all the issues raised, and evidences as brought before this court by records, it cannot be seen wherein the verdict of the jury was against the law and evidence, and it was the duty of the court to render final judgment thereupon.

Having thus reviewed the case, this court adjudges that the judgment of the court below is affirmed, and the appellant is ruled to pay costs.

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## ALEXANDER LEE, Appellant, *vs.* REPUBLIC OF LIBERIA, Appellee.

[January Term, A. D. 1878.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

*Bastardy.*

The appellant in his bill of exceptions says the court below erred in adjudging that the defendant's motion was not sufficient; and from this decision an appeal was taken, which brought the case before this court.

On reviewing the records in this case we find the examination of Mary Jane Morel, in respect to the father of the bastard child, was had by two justices of the peace, which was in violation of the jurisdictional power given to justices of the peace over such cases; therefore the action taken in the premises by the two justices of the peace, and the subsequent proceedings had thereupon by the said Court of Quarter Sessions, is void *ab initio.*

To compel any person, who may be charged upon the oath of any woman who shall be delivered of a bastard child, to enter into bond with sufficient security (not less than fifty dollars) for his appearance at the Court of Quarter Sessions, and to abide the order thereof, some citizen must state the condition of the woman, and the likelihood of the child becoming chargeable to the public; and upon the statement so made to the justice of the peace, a warrant shall issue to apprehend the person charged with being the father of the child.

The court below erred in its opinion and decision given on the defendant's motion in the court below, and in the giving of the final judgment in the case. Therefore this court adjudges that the judgment of the court below in this case is hereby reversed and made void and of no effect, and that the case be dismissed and the

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appellant discharged from the obligation of the said judgment, and that the appellant recover for his costs in this action the sum of twenty dollars.

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## ALEXANDER LEE, Appellant, *vs.* R. HIRSCH, Agent for A. Wœrmann of Hamburg, Appellee.

[January Term, A. D. 1878.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

This is a case coming up on an appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County. The defendant objected to the plaintiff's account book being admitted without having an affidavit attached to it; upon which the judge ruled that entries in books of accounts are admissible evidence in actions of debt, to which ruling exceptions were taken.

Entries in books of accounts are admissible evidence, the credibility and effect of which, with or without suppletory oath, being a matter for the determination of the jury, or in the present case, where trial by jury was waived, of the court. The court below therefore did not err in said ruling. The weight to be given to the account required by law to be filed with the complaint is not that of evidence, but of "notice of the facts the plaintiff intends to prove."

The court adjudges that the judgment of the lower court is affirmed; appellant ruled to pay costs.

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## N. J. A. MAARSCHALK, Agent for Hendrik Muller & Co., Appellant, *vs.* ISAAC ZAGURY and F. F. MORAES, Appellees.

[January Term, A. D. 1878.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Joinder of improper parties—Patentee—Jurisdiction of the Supreme Court.*

Assignment of patent or any part thereof where made must by statute be recorded in the State department.

A patentee who has not assigned his patent rights or any part thereof must alone bring suit for the infringement of his patent; a declaration setting forth that the whole or part of a patent right granted has accrued to persons not named in the letters patent must contain the assignment, to entitle the assignees to maintain a suit.

The Supreme Court of Liberia has original jurisdiction over offences mentioned in Article IV of the Constitution only; in all other cases its jurisdiction is appellate.

This case comes up on an appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County. The action was brought to recover damages for an alleged infringement of rights secured by letters patent from this Republic.

The bill of exceptions upon which the defendant, now appellant, has brought the case before this court, embraces objections raised to certain matters ruled upon during the progress of the suit in the court below, and also to the charge given to the jury by the judge who presided at the trial.

The first exception that claims our attention is, Because, upon the defendant's plea of joinder of improper parties, plaintiffs were overruled by the court. Here arises the question as to who are the proper parties as plaintiffs to an action of this kind. A patentee who has not assigned any part of his privilege must be the sole plaintiff, or if he has assigned a part only of his patent right, he and his assignee may be joined as plaintiffs in any action for infringing the patent. (Hindmarch on Patents, pp. 251–2.)

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Our law has granted the right of assignment of the whole interest or any individual part thereof by a patentee, but in such cases it requires that said assignment shall be recorded in the office of the Secretary of State within one year from execution. The declaration sets forth that one Isaac Zagury and Francisco F. de Moraes, doing business under the firm name and style of "The Liberia India Rubber Association," are the legal owners of letters patent granted by the Republic of Liberia on the third day of November, A. D. 1875, to one Francisco Ferreisa de Moraes & Co., but there is no statement of assignment or other title under which the said Zagury claimed to have any share or interest in the patent right. If "any one of several plaintiffs claim under an assignment of the patent declared upon, the assignment must be stated in the declaration, so as to show his title to the patent right." (Hindmarch p. 255.) Title "is the right of action which the plaintiff has"; "the declaration must show the plaintiff's title, and if such title be not shown in that instrument the defect cannot be cured by any of the future pleadings." (Bouv. Law Dict. Vol. 2.)

Isaac Zagury's right to join as a plaintiff in this suit not having been set forth in the declaration, the court erred in its ruling on the plea.

2nd. That in defendant's objection to the jurisdiction of the court, the court decided that it had jurisdiction. The Constitution has clearly determined in what cases the Supreme Court shall have original jurisdiction, and has also provided that "in all cases not arising under martial law or upon impeachment the parties shall have a right to a trial by jury." This right, thus granted, could not be enjoyed if the Supreme Court had original jurisdiction in the case; it is only, therefore, on appeals that suits arising under the patent act are cognizable by this court, and without that construction of the ninth section of the act it would be in opposition to the Constitution and consequently null and void. It

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was therefore no error in the court in ruling that "it had jurisdiction over the case."

3rd. That the question asked witness King, "Is the plaintiff the first and original discoverer of the process of congealing and preparing rubber and gutta percha?" was irrelevant. This question was relevant, because it tended to prove one of the issues.

4th. The question asked witness D. B. Warner, "Do you know that India rubber and gutta percha have ever been prepared in and exported from this country, that was prepared according to the specifications attached to the letters patent before these letters patent were obtained by Mr. Moraes from the Liberian Government?" was relevant for the same reason.

5th. The court erred in sustaining the objection to the admission of "Colling's Book on the Preparation of Caoutchouc." Firstly, because our law provides that in seeking a patent the subject for which such right is to be obtained must not have been described in any book or publication in this country; not that the book or publication must have been published in this country, but that the description is not to be in any book or publication that is in the country. And secondly, because the book was relevant, tending to prove an issue. "If it be shown that an invention comprised in a patent was described in any published work or paper, or in any public records, before the date of the patent, the invention was not then new as to the public knowledge of it, and therefore the patent is void." (Hindmarch on Patents, p. 107.) The book or publication presumes a knowledge of the invention by the public, or, what is the same thing, that it possessed the means of knowledge available to all. (Hindmarch, 457–8.)

6th. "That when defendant's attorney requested the court to charge the jury that the patent law of Liberia does not confer an exclusive right of export, the said court refused to so charge and said that it does grant an exclusive export right."

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The court manifestly erred in said charge, because the act authorizing the granting and issuing of letters patent, and entitled "An act to promote the progress of the arts, manufactures, agriculture and commerce," does not create an exclusive right of exportation, or provide that such shall be a part of letters patent. Under this act every patent grants "the full and exclusive right and liberty of using and vending to others to be used," the invention or discovery patented; every grant beyond this is without warrant of law.

7th. The last exception is, Because upon the defendant's motion to set aside the verdict of the jury and award a new trial because the same was contrary to law and evidence in said case, the said court decided that the verdict was not contrary to law and evidence, and ordered the same to be recorded.

In an action of infringement of a patent the *onus probandi* rests upon the plaintiffs, as to almost all of the issues raised, and in failing to prove an infringement the verdict should be for the defendant.

Upon a careful examination of the evidence as it appears by the record, we have failed to discover any proof of the allegations contained in the plaintiffs' declaration, as to an infringement of the patent right, under which the claim is made. While it was shown that the defendant had exported rubber, there was no evidence adduced, as by the record, to show that the rubber exported had been prepared after the manner described in the specification filed and forming part of the letters patent. And even in that case the legal right of a patentee to an exclusive exportation has not been sustained by law.

The plaintiff having failed to prove an infringement, the verdict should have been for the defendant. The verdict of the jury having been contrary to law and evidence, a new trial should have been granted. Therefore the court adjudges that the judgment of the court below is reversed, and appellees ruled to pay costs.

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## JOHN S. ANDERSON, Appellant, *vs.* SUSAN BARRET, Appellee.

[January Term, A. D. 1879.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Injunction.*

This case is an appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County, because on motion of the defendant in said court the judge ruled that "the case having been brought in injunction for the recovery of real or immovable property, ejectment would be the proper action," and therefore the case was dismissed and the injunction dissolved.

Upon a review of the record in this case this court fails to discover upon what the decree of the court below was founded; for this action was brought to restrain the selling of a house, and as it is an established principle of law that houses may acquire the character of personal property, this court, in the absence of all evidence, the necessary light, is rendered unable to decide for whom a decree ought to have been given, especially so when it is considered to what subjects an action of injunction may relate.

For these reasons it is our opinion that the judge of the lower court erred in dismissing the case, and it is therefore decreed that the case be remanded to the court below for a new trial, with costs to follow.

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## MARY J. ANDERSON, Appellant, *vs.* JESSE SHARP, Appellee.

[January Term, A. D. 1879.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

This is an action of injunction brought up by the plaintiff, now appellant, in the Court of Quarter Sessions

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and Common Pleas, Montserrado County, to restrain the sale of certain property, and which was dismissed on defendant's motion that said Court of Equity had no jurisdiction to try the question involved in the suit.

Upon an examination of the record we discover the case to be brought not to recover dower but to restrain the sale of certain property which she claimed to be then occupying; and we are therefore of the opinion that the court below erred in its ruling, firstly, because it ruled that the Court of Equity had no jurisdiction over the questions involved in the case; secondly, because the court decided upon the facts in the case without the introduction of evidence according to law to prove or disprove them.

Again, the Court of Quarter Sessions having been given by law jurisdiction over actions of injunction, the judge should have allowed a hearing of the plaintiff's complaint, and disposed of the same according to the law and equity of the case.

The case, not having had a hearing, comes before this court entirely bare of any evidence for or against it, by which the mind of this court could be led to a discrimination of the rights and wrongs involved in the case.

The court having no tenable ground upon which could be based a final judgment for either party, and being of the opinion that the lower court has jurisdiction in actions of injunction, therefore rules that the case be remanded, and that the court from which the appeal was taken shall, on the receipt of a mandate from this court, and a copy of this ruling, take jurisdiction over the said case, and according to law and equity proceed to the trial and termination of the same; and that costs shall follow.

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## J. C. LOWRIE, Appellant, *vs.* CRUSOE, BROTHER & COMPANY, Appellees.

[January Term, A. D. 1879.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

The admission of secondary evidence when the best cannot be produced, is established; and for obvious principles of reason and justice a stronger foundation could not have been laid for the introduction of this class of evidence.

Where a writ or other writing is alleged to be lost it is error to reject evidence to prove this fact; a party cannot be held responsible for the loss of a writ or other process over which he did not have custody.

This case of replevin from the Court of Quarter Sessions and Common Pleas, Sinoe County, brought by the now appellees to recover certain property from the appellant and one R. S. Jones, appears from the record to have had a hearing at the May term, 1878, of said court; and a verdict having been brought in for the latter, on motion of the plaintiffs, now appellees, a new trial was had at the August term of the court. A verdict and judgment having been obtained on this trial in their favor, the case comes up on an appeal by the appellant for reasons, as is to be legally supposed, contained in the bill of exceptions.

We find from the record that during the course of this new trial exceptions were then taken by the then defendant to certain rulings of the court, and notice given that in due time a bill of exceptions embracing these points would be tendered; but as these do not appear in any way or form in the bill of exceptions upon which the appeal was taken, it is to be presumed that said exceptions were waived or withdrawn.

We observed, however, that counsel attempted to introduce in his brief matters foreign to that contained in the bill of exceptions; and here we deem it proper to state that the party who brings an appeal to this court, and neglects to set out in his bill of exceptions every

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point upon which it is intended to rely, creates by every such failure complications the unraveling of which must unnecessarily tax and burden the court; and it is not to be expected that courts of justice can in every instance make amends for the unskilful management of a case. And further, we would call attention to the rule of this court making it the duty of the party appealing to it "to state in his bill of exceptions the questions of law to be especially relied on in support of the appeal."

Notwithstanding the entangled state in which this case was brought up to this court, after a careful review of the same we have been enabled to come to such conclusions upon the questions involved in the bill of exceptions as in our opinion law and equity demands; to the consideration of which we now proceed.

The first exception is thus stated: "The defendant is of opinion that under the statute laws authentic copies of an original document alone could be used to substitute or supply the place of a lost original writ in a pending suit."

Now it is shown by the records of the May term of the court, that the writ of replevin was duly returned to the court as prescribed by law; that at the following term said writ being called for, and upon search and investigation could not be found, secondary evidence was admitted.

Our law gives to the court the right "to decide on the competency and admissibility of oral testimony," (which is defined to be the detail given on oath by living witnesses of their knowledge of facts,) and to the jury the province to judge "of its credibility and effect." It allows the admission of all oral testimony "which is delivered by a competent witness, and from which the human mind can properly draw any inference having a bearing on the case." This document "had a bearing on the case," and it was competent for the court to allow evidence to prove its loss; our statute (1st Book,

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p. 36, sec. 4) providing how this may be done, "by oath of a party to the cause, or other interested witness."

The admission of secondary evidence when the best cannot be produced, is established, and for obvious principles of reason and justice; we do not think a stronger foundation could have been laid for the introduction of secondary proof.

The custody of the writ or preservation of it was clearly not the duty of plaintiff, for we see it had been duly returned to the court on the first trial, and there is nothing to show that they had or could have had any control over its loss; or rather, if this was brought about by any default of theirs, it would not have been just to deprive them of the effect of that document to avail for whatever it might be worth. Again, it should be considered that the court had already acquired jurisdiction over the parties on the first return of the writ, and the law gave it jurisdiction over the action. Upon the whole, under all the circumstances of the case, we are of the opinion that the court did not err in admitting said secondary evidence.

The second exception is to the ruling of the court in accordance with, as stated therein, a rule of said court. On this point the court will simply repeat its opinion given at the last term of court in the case of Roberts against Roberts, that "the practice of the court is the law of the court" is a legal maxim; and "every court is the guardian of its own records and master of its own practice."

As to the third exception, we are of the opinion that the court below did not err as to the law cited by the appellant in his bill of exceptions. Lib. Stat. Book 1, p. 47, sec. 5, says the provisions thereof "shall not extend to actions for personal injuries, nor to cases in which by the death of one of several co-partners his interest in the matter in dispute in the cause passes to his co-partners."

The court therefore orders the judgment of the court from which the appeal was taken to be affirmed, and rules the appellant to pay costs.

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## JAMES W. DRAPER and CHARLOTTE S. DRAPER, Appellants, *vs.* JAMES WILSON, CHARLOTTE HARRIS and BENJAMIN HARRIS, Appellees.

[January Term, A. D. 1880.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

*Ejectment.*

*Reply—Complaint—Mixed questions.*

1. Where a reply is adjudged insufficient, judgment shall be given for the defendant; where a reply is not filed within ten days after notice of the filing of the answer the plaintiff is presumed to rest upon the denial of the truth of the answer only, but where an indistinct or insufficient reply is filed judgment shall be given for defendant.

2. A complaint which is indistinct with respect to the parties to a suit is bad.

The ejectment in this case, which comes up on appeal from the Court of Quarter Sessions, Sinoe County, was brought by the present appellants to recover possession of a certain piece of land, the title to which they claim has come to them as an estate of inheritance, etc.

In reviewing the proceedings of this case, as presented by the record, we must remark that very few if any cases have come before us burdened with greater complications and legal mistakes than appear in this case.

The first exception taken by the defendants is because the court below ruled "that the plaintiffs' reply be abated, and they rely upon the grounds taken in their complaint."

The Supreme Court is of the opinion that the ruling of the court below on this first point, as set out in the bill of exceptions, is erroneous, and unwarranted by the statute and common law. Because if the court upon inspection had discovered the insufficiency of the reply, its duty was to have given judgment for the defendants. And no consideration whatever ought to have induced the court to apply any other principle to an insufficient

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reply, but that embraced in the fifth section of the law on the 27th page of Liberia Statute, Book 1.

When the plaintiff fails to reply to the defendant's answer within ten days after he has notice that it is filed, the law directs that he shall be obliged to rest his case on the denial of the truth of the answer only; but when the reply is not distinct, intelligible and sufficient, judgment shall be given for the other party.

The second exception is to the ruling of the court below, to the effect that the plaintiffs' complaint is sufficiently distinct and intelligible. On inspection of the complaint, this court finds a want of distinctness therein in respect to the names of the plaintiffs in this action. In the same complaint it is made to appear that one Charlotte Harris is the wife of Benjamin Harris, and also that one Charlotte Wilson is the wife of Benjamin Harris, and that both of these females, together with James Wilson and Benjamin Harris, are plaintiffs. Charlotte Harris is set out as one of the surviving heirs at the commencement of the complaint, but at the conclusion thereof Charlotte Wilson's name is substituted. Now the question as to whether Charlotte Harris is the same person called Charlotte Wilson, or whether they are two separate persons, ought to have been distinctly set out. The complaint must be distinct and intelligible so as to enable the court to know for or against whom it should give its decree or judgment. To guard, therefore, this principle of the law, the court says the court below erred in ruling that the complaint was sufficient.

The third exception is taken to the court proceeding to try a mixed question before the questions of law contained in defendants' answer were disposed of; but the question referred to not being stated or laid in said exception, the court will not give any expression with regard thereto.

As to the fourth exception, to the court ruling that the third point in defendants' answer was a question of law,

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we are of the opinion that the said count manifestly contained a mixed question of law and facts,—the jurisdiction of the court, and the acts of the guardian. And the mixed nature of the question is also presented in the judge's ruling on said count, in which he says: "The facts appearing that Henderson Wilson acting in the capacity of guardian did make a prayer to the Probate Court of this County, and did obtain an order and did sell said property or estate in question, which is in contradiction to the power and right granted by the statutes of Liberia, and that of the common law as set forth in the commentaries on American law by Kent," etc.

Now the acts performed by the guardian were questions of fact, while the right of the court to invest him with the authority to perform the acts was a question of law. The judge therefore erred in his ruling on this point.

The fifth exception is taken by the defendants, now appellants, because they are of the opinion that the final judgment is erroneous because it finally disposes of real property and settles the title of the same without the assistance or intervention of a jury.

To this we would say that in actions of ejectment the titles of parties to real property ought to be determined by a jury under the direction of the court, unless the law otherwise directs; and the ruling of this court in the case of Harris against Locket at its January term, 1875, was that "Ejectment being an action involving a mixture of questions of law and facts, must be tried by a jury."

For these errors the judgment of the court below is reversed and appellees ruled to pay costs.

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## R. S. McGILL & BROTHER, Appellants, *vs.* THE REPUBLIC OF LIBERIA, Appellee.

[January Term, A. D. 1880.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Maryland County.*

*Ad valorem duties—Value—Cost—Discount on invoice.*

1. Ad valorem duties imposed on goods and merchandise are the rate per centum on their value and sometimes on their cost.
2. By the terms of the Act of 1878, ad valorem duties on invoices must be assessed upon the *value* and not the *prime cost* of goods.
3. Where discount is allowed on goods invoiced in consideration of cash payment, assessment can only be made upon the value of the goods and not upon the gross sum or price of them.

This cause was appealed from the Court of Admiralty, Maryland County, and the only question in the case which presents itself is whether in the assessment of the duties on invoices the discount should be allowed. The judge of the court in giving his opinion remarked, in substance, that there appeared on the face of the invoice a discount of seventy-seven and one-half per centum, but what this discount was allowed for was not made to appear to the court, and, it says, "neither was it very important to a proper judgment that it should have done so, as the discount was allowed in part payment of the bill, and the government has nothing whatever to do with the way and manner of the payment of the bill, but only upon the prime original cost of the articles upon which ad valorem duties are paid."

The cause of complaint originated in 1878, and the statute enacted in 1877–1878 provides that "there should be assessed on all articles not exempted, or upon which specific duties had not been imposed, an ad valorem duty of twelve per cent."

This brings us to the consideration of the meaning of the law. Bouvier defines "ad valorem" as "according to valuation." Burrill in his Law Dictionary says, "Ad

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valorem duties are those which are imposed on goods, merchandise, and other articles at a certain rate per centum on their value, and sometimes on their cost. Bouvier further defines "value" to be "the utility of an object, the worth of an object in purchasing other goods. The first may be called value in use, the latter value in exchange."

Discount in commerce "is commonly applied to the sum allowed by the seller to the buyer for ready money payment, and is generally a deduction of a certain percentage on the principal for the usual term of credit." "An allowance sometimes made for prompt payment," is one of Bouvier's definitions of the term.

We discover, then, that while under former law duties were to be assessed on prime costs, yet under the act in force at the time of the transaction, the basis upon which the computation was to be made was the *value,* and this, we have seen, is defined to be the worth of one object in purchasing others.

We also find from the definition of "discount" that goods are worth less according to the usage of trade for ready money or prompt payment than when sold on other conditions, and the trade value of the importer, or real invoice price of merchandise, is represented not by its gross sum or price fixed for selling on credit, but by this sum reduced by the discounts allowed.

The court therefore erred in decreeing that the plaintiff, now appellee, should recover the amount as assessed on the gross sum of the invoice.

The decree of the Court of Admiralty is reversed.

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## SIMON ATTIA, General Agent in Liberia for J. Piza and Co., Appellant, *vs.* JAMES A. TUNING, Appellee.

[January Term, A. D. 1880.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

*Change of venue—Jurisdiction of courts in venue cases.*

1. The act requiring defendant to "make oath" ten days preceding the day set aside by law for the opening of the court from whose jurisdiction a change of venue is sought, is not to be construed as meaning that the venue may be changed at any subsequent time after the lapse of the said ten days.

2. Where a defendant has failed to make his change of venue within the statutory time, the court to which the case has been removed cannot take jurisdiction over it; if it does, the proceedings are a nullity.

This case comes up on appeal from the Court of Quarter Sessions, Sinoe County. The original complaint was filed June 18th, 1879, for the August term of the Court of Quarter Sessions, Maryland County. On the 13th August an amended answer was filed, and an amended complaint on August 28th; and on 2nd October a change of venue from that court to that in Sinoe County was applied for and granted. The case having been called up in the court to which it had been removed, the plaintiff motioned the court to refuse jurisdiction on account of the laches and default of defendant in neglecting to remove the cause within the lawful time. The judge ruled he had jurisdiction over the cause, and the objection to this ruling forms that part of the bill of exceptions to which we have deemed it necessary to give our attention.

The act authorizing a change of venue from one court to another has been carefully considered, and while we discover that the privilege is granted to any one to procure a change of venue, the manner and condition upon which this privilege may be enjoyed is prescribed. An oath must be taken, and that within a limited time. It has been urged that the statute is a remedial one, and

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as such should be construed so as to give the defendant in an action the benefits that the Legislature intended him to have, by allowing a change of venue. But it must be remarked that while the Legislature by said act places within reach of a defendant the power to acquire or receive certain benefits, it has made them attainable upon certain conditions, and the defendant to be entitled to the privilege must comply with the provisions of the statute.

The act requires that the "oath shall be taken ten days preceding the day set aside by law for the opening of said court from which a change of the venue is desired." We do not feel warranted in so liberally construing this as to mean ten days preceding any term of the court, but to us the more reasonable and definite construction is, ten days preceding the day set aside by law for the opening of the court for which the cause is docketed.

The case having been docketed for the August term of the court, the defendant was not entitled to the privilege of a change of venue in October, and the judge of the Court of Quarter Sessions, Maryland County, erred in granting him a change of venue.

The judge of the Court of Quarter Sessions, Sinoe County, had not and could acquire no jurisdiction over a cause docketed in the Court of Maryland County, except as given by law, and the change of venue not having been granted in conformity with the law as the record transmitted from the Maryland to the Sinoe Court would show, it was not the "imperative duty" of the judge of the latter court to assume jurisdiction over a case not brought before him in keeping with the statute, and he should have refused to do so.

The doings of the Court of Sinoe, which had no legal jurisdiction over the cause, are without a proper foundation and must therefore fall. "Any act of a tribunal beyond its jurisdiction is null and void, and of no effect

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whatever, whether without its territorial jurisdiction or beyond its power." (Bouvier Law Dict. p. 770, sec. 5.) "The judgment of a court in a case of which it has not jurisdiction is a nullity." (U. S. Digest, first series, Vol. VIII, p. 1, sec. 1.) "Where want of jurisdiction appears on the record of a court of general jurisdiction, the record is a nullity and no rights can be acquired under it." (*Idem*, p. 1, sec. 7.)

The court therefore adjudges that the acts and judgments in said case in the Court of Quarter Sessions, Sinoe County, are annulled and set aside, and the case is left in the state it was before the change of venue was taken. Appellee is ruled to pay costs.

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## RETURN TO A WRIT OF MANDAMUS ISSUED BY THE CHIEF JUSTICE IN CHAMBERS, AGAINST THOMAS G. FULLER, JUDGE OF THE PROBATE COURT, MONTSERRADO COUNTY.

[January Term, A. D. 1880.]

This writ was issued on application of Messrs. Belgrave & Grimes, commanding the said judge to admit to probation a certain deed of partnership, or show cause to the contrary, at the present term of this court. In compliance with this mandate the judge has made a return showing cause for his refusal to admit the deed to probate.

On a careful review of the cause of complaint as set forth in the application, and the reasons for refusal, as appear in the returns, we have failed to discover reason or legal support of the position assumed by the complainants in their application to set aside the return of the judge. Consequently, under such circumstances the court will not award a peremptory mandamus upon the judge of the said Probate Court to admit to probate the aforesaid deed of partnership.

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## G. MOORE & SON, Plaintiffs, *vs.* G. C. COOPER and MARINDA COOPER, Defendants.

[January Term, A. D. 1881.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Partition of Real Property.*

1. Where a will creates a charge upon the devisee personally, in respect to the estate devised, he will take a fee by implication, though there be no words of limitation, on the principle that he might otherwise suffer.

2. An application for the partition of such an estate to satisfy claims against one of the devisees is warrantable.

This case was tried in the Court of Quarter Sessions, Montserrado County, at its September term, A. D. 1880. The plaintiffs in their bill complain that Randolph C. Cooper, deceased, in his lifetime was indebted to them to the amount of three hundred and thirty-six dollars and fifty-nine and a half cents; for which amount the said plaintiffs sued the estate of the said Randolph C. Cooper in the June term of this court, A. D. 1877, and obtained judgment for the same; but sufficient assets could not be found to satisfy the judgment, because the said defendants, Garriet C. Cooper and Marinda Cooper, refused to disclose the property of the said Randolph C. Cooper, though he was, during his lifetime, entitled to one-half of all the real estate of his late father, Reid C. Cooper, by virtue of the last will and testament of his said father.

Therefore, the said plaintiffs pray that a decree of partition of the real property of the said Reid C. Cooper be rendered, and that suitable persons be appointed to partition the said real property of the said Reid C. Cooper between his two sons, etc.

The court below, after hearing the arguments by counsel for plaintiffs and defendants, rendered the following decree:—

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"By the terms of the will of the late Reid C. Cooper, his wife Marinda Cooper was given a life estate, and that after his death his two sons, Randolph C. Cooper and Garriet C. Cooper, shall have the remainder as tenants in tail. In view of the character of the case, this court decrees that a partition of the property named in the will cannot be ordered, as Randolph C. Cooper had not possession of any part of his father's estate at his death, nor could claim any part until the death of his mother, Marinda Cooper. Therefore this court decrees that the complaint of the plaintiffs is dismissed and plaintiffs ruled to costs."

The doctrine upon which the above-stated decree is founded is destitute of the necessary ingredients that would harmonize it with the great principles of justice and equity; therefore, for the want of legal vitality, it must crumble.

We proceed now to the points under consideration. In respect to the life estate of Marinda Cooper (decreed to her by the court below) this court feels warranted in saying that by the legal terms of said will Marinda Cooper was not given a life estate in the property of the said Reid C. Cooper, but a legacy in the charge given by her husband to the two sons, Randolph C. Cooper and Garriet C. Cooper, and no part of the said property could she claim by virtue of the will, though she is entitled to a part in it by her right of dower.

The next point which claims our attention is "that Randolph C. Cooper and Garriet C. Cooper after the death of their mother shall have the remainder of the said life estate given their mother, as tenants in tail." Now is it not an undoubted fact that the said Reid C. Cooper charged his two sons, Randolph C. Cooper and Garriet C. Cooper, personally with the burden of taking care of their mother whilst living, and that the said charge is in respect to the estate devised? And just here the court would remark that the phrase "take

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care," in this connection admits of a very liberal construction, for it seems to put the fact beyond a doubt that the said Reid C. Cooper by the use of the term intended to impose upon his two sons the duty of providing for their mother food, raiment and medicines, and to keep in good condition the estate devised. Therefore the said Randolph C. Cooper and Garriet C. Cooper did take in the lifetime of Reid C. Cooper a fee in the said estate. For the general rule is that if the testator creates a charge upon the devisee personally, in respect to the estate devised, as if he devises lands to B. on condition of his paying such a legacy, the devisee takes the estate on that condition, and he will take a fee by implication, though there be no words of limitation, on the principle that he might otherwise be a loser. (See Kent's Commentary, Vol. IV, p. 540.) We might cite numerous authorities, but it is unnecessary in this plain case.

Therefore, it is the decree of this court that the decree rendered in this case by the Court of Quarter Sessions, Montserrado County, at its September term, A. D. 1880, is hereby reversed and made void and of no effect whatever, either in law or in equity. And the clerk of this court is hereby ordered to send down to the Court of Quarter Sessions a mandate informing the court below of the reversal of the judgment rendered in this case by said court, commanding that the said court at its next term shall proceed to appoint suitable persons to appraise the property of the estate real and personal of the late Reid C. Cooper, and as soon as said appraisement shall have been completed, the said widow, Marinda Cooper, shall have the right to one-third of the estate, as her dower, which shall be given her; because it would be unjust to have her dependent upon her sons altogether when considering the uncertainty of this present life.

And the said Court of Quarter Sessions shall order a partition of the remaining two-thirds of the said prop-

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erty, one-third to go to Garriet C. Cooper and the other third to Randolph C. Cooper's heirs, after the said Randolph C. Cooper's debts shall have been paid. And to carry into effect the directions of this mandate, the said Court of Quarter Sessions may make such rules as would best effect the ends of justice. And the plaintiffs recover from the defendants all costs in this case.

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## JOHN HAMMOND, Appellant, *vs.* THE CORPORATION OF MONROVIA, Appellee.

[January Term, A. D. 1881.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Charter of the City of Monrovia—Jurisdiction of City Magistrate.*

1. The Corporation of Monrovia is an authorized body politic to which is delegated the right to enact such laws and ordinances as are necessary for its government, provided such laws and ordinances do not conflict with the laws of the Republic. It does not exclude the political jurisdiction of the laws of the Republic or any part thereof.

2. The City Magistrate's court has concurrent jurisdiction with a Justice of the Peace and an appeal from the former to the Court of Quarter Sessions and Common Pleas may be taken under the same circumstances as an appeal from the Justice of the Peace might be taken to said court.

This is an appeal case in an action of assault and battery brought up from the Court of Quarter Sessions and Common Pleas, Montserrado County. The case having come to the aforesaid court on an appeal from the City Magistrate, the judge below refused to take jurisdiction.

In the charter of the city of Monrovia we find that the Legislature of the Republic granted to that corporation the power to appoint one or more city magistrates and to specify and determine the duties of said officers. (See Charter, Sec. 9.)

The Common Council in "An ordinance relative to the justices of the peace," approved Oct. 24, 1860, ordained that the magistrates of the city should try and give

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judgment in all cases brought before them, according to the laws of the Republic of Liberia and ordinances of the city of Monrovia. "Any magistrate exercising the functions of a justice of the peace shall proceed according to the laws governing justices of the peace."

This court at its January term, 1862, in its decision in regard to the jurisdiction of the charter of the city of Monrovia, according to the third section of the same, gave as its opinion that the corporation "is an authorized body politic, to which is delegated the right to enact such laws and ordinances as are necessary for its government, provided such laws and ordinances do not conflict with the laws of the Republic"; and that the charter "does not exclude the political jurisdiction of the laws of the Republic or any part thereof, but simply gives the right to exercise the same jurisdiction."

The laws of the Republic give to every person the right to appeal from the decision of any court except such courts of appeal. They declare that an appeal shall lie from every decision of a justice of the peace, and later on, that in cases before a justice of the peace the party dissatisfied with the decision shall have a right to appeal forthwith to the Court of Quarter Sessions and Common Pleas.

Now it appears to us that in all cases in which the city magistrates have concurrent jurisdiction with the justices of the peace, the right to appeal exists, and is in accordance with the laws adopted. Therefore the judge below erred in refusing jurisdiction. His decision dismissing the case is annulled, the case remanded, and he is directed to assume jurisdiction.

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# THE REPUBLIC OF LIBERIA, Appellant, *vs.* REGINALD A. SHERMAN, Appellee.

[January Term, A. D. 1881.]

*Appeal from the Court of Admiralty, Montserrado County.*

*Attorneys—Libellants—Departure in pleadings—Bond not essential in suits commenced by writ of attachment brought by the government.*

1. To be entitled to the privilege of obtaining a license as an attorney the party must be a lawyer, and the court granting said license has power, either by standing rules or otherwise, to declare what qualifications shall be requisite to constitute one a lawyer. An attorney, although qualified, is not entitled to practise before any court before obtaining the license to do so required by statute. Where the term of an attorney's license has expired he is barred from practising until same is renewed.

2. The party really entitled to the relief is the libellant in admiralty. A suit brought by the Collector of Customs on behalf of the Republic of Liberia, under the Act of 1878 does not constitute him the party entitled to relief; and therefore, if in a subsequent pleading the name of the Collector of Customs is omitted, this will not amount to a departure nor will it vitiate the pleading. A departure in pleading is where a party departs from the case or defence which he has first made, and has recourse to another.

3. The Statute of 1880, requiring bond to be given where the plaintiff begins his suit by a writ of attachment, does not apply to suits brought by the government. Suits against the Republic of Liberia according to the Constitution can only be brought in such cases as the Legislature of the Republic may by law direct. The Legislature has made no provision for suits to be brought against the Republic for the violation of the conditions of a bond; such suits cannot therefore be maintained at law.

This case comes up on appeal from the Court of Admiralty, Montserrado County, having been instituted by the libellant, now appellant, for the recovery of an amount said to be due by the defendant, now appellee, for import and export duties.

On the hearing of the case, after arguments on some of the points raised in the pleadings, the judge of said court ruled that "this action has not been brought in the manner prescribed by law, in that no bond has been given by the libellant, as the law demands in this case; therefore this case is hereby dismissed and the libellant ruled to costs in this suit."

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The exceptions taken by the libellant to the rulings of the court are these:—

First, to that prohibiting A. F. Belgrave, Esq., attorney and counsellor at law, from taking part in the case before complying with the law governing attorney's license.

The law pertaining to attorneys, as found in Lib. Stat. 1856, p. 115, sec. 1, and the amendatory act, Lib. Stat. 1866, p. 61, are thus to be construed: That no person shall be allowed to plead, implead or prosecute as an attorney before any courts of this Republic but such as shall be regularly licensed by the courts; and such license may at any time be withdrawn, where any indecorous language is used by the person towards either the court or jury. That for the enjoyment of the privilege of an attorney there shall be paid annually twelve dollars and fifty cents into the public treasury, fifty cents to the clerk of the court for drawing said license, and such license shall be signed by the judge of the court and recorded by the register. That all attorneys having paid such amounts, and being regularly licensed, shall not by any rule of court be prohibited from pleading in any court of the Republic.

There are several points which present themselves to us in considering this law—First, that to be entitled to the privilege of obtaining a license the party must be an attorney, and this, impliedly at least, gives the court the right to determine, by rule or otherwise, who shall be regarded as attorneys; for it is not to be presumed that the law supposed all persons were attorneys, but, in requiring that attorneys shall be licensed by the court to enjoy the privilege, must have intended that the courts should judge as to who were to be considered as belonging to that class. Secondly, that a party having been acknowledged or received as an attorney is still debarred from the enjoyment of the privilege, cannot be allowed to plead, implead or prosecute as such, until regularly licensed, by the payment of the annual tax into the

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treasury, the drawing of the clerk, signing by the judge, and recording by the register, of the license. This being done, he cannot be prohibited from pleading unless for the offences named in his license; and this feature of the law suggests that the license is essential, otherwise he would suffer no disadvantage by its withdrawal, for if he could practise without it in one instance, surely he would have as much right to the privilege after it was withdrawn as before it was obtained.

The judge of the Admiralty Court did not err in prohibiting the attorney from exercising or enjoying the privileges of such, before he was regularly licensed.

The next exception is to the ruling of the judge that the libellant's reply be stricken out of the record of the case.

Upon reviewing the record it is found that the points raised in the rejoinder, upon which the libellant's reply was stricken out, are, 1, Because it "is not the reply of the party libellant in this case, nor does it claim to be the reply of such party libellant; 2, That by changing the name or omitting the name of the party libellant, a departure is made in said reply from the ground taken by the libellant in the libel filed in this suit."

The query arises, Who is the libellant? "The party really entitled to the relief should always be made libellant." (Benedict's Admiralty, sec. 380.)

Examining the libel, it appears to be a proceeding by and for the belief and benefit of the Republic of Liberia, which is clearly set forth as the libellant, and recognized as such in all of the subsequent pleadings. And it is proper that in all suits in which the Republic is the real plaintiff, that the proceedings should be in the name of the Republic, unless it is otherwise ordered by act of the Legislature. The Legislature has not, however, done so with respect to suits arising under the revenue act; for in the same article of the act making it the duty of the Collector of Customs to enforce the collection of

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duties, it is distinctly declared that "all penalties and forfeitures which may be incurred for offences against this act shall be sued for and recovered with costs of suit in the name of the Republic of Liberia." (1 Lib. Stat. 1856, p. 93, secs. 2 and 8.) Amendments made at subsequent times may have altered the method of procedure, etc.; but there has been no repeal of the provision requiring the suit to be in the name of the Republic.

True it is that in the libel the Republic complains "by and through William N. Williams, acting for and on behalf of Charles Anthony Snetter, Collector of Customs of the Port of Monrovia," and in the reply this is omitted; but in both of these pleadings the Republic is declared to be the libellant, and the ommission in the latter pleading to say by and through whom the case is brought is not of so material a character as to amount to a departure. A departure is defined to be "the statement of matter in a replication, rejoinder or subsequent pleading, as a cause of action or defence, which is not pursuant to the previous pleading of the same party, and which does not support and fortify it." (1 Bouv. Law Dict. p. 460—"Departure.") "A departure in pleading takes place when a party quits or departs from the case or defence which he has first made, and has recourse to another." (1 Chitty, p. 674; 2 Bouv. Ins. sec. 2992; 1 Tidd's Practice, p. 688.) "In all cases where the variance between the former and the latter pleading is on a point not material, there is no departure." (Stephen's Pleadings, p. 417.) "It is not a departure if a party vary in the replication from his count in an immaterial matter." (10 U. S. Digest, first series, p. 182, sec. 1481.)

The judge of the Court of Admiralty therefore erred in ruling that the libellant's reply should be stricken from the records.

The third exception is to the ruling of the court on the first and second pleas in defendant's answer, that the

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action was not brought in the manner prescribed by law and no bond had been given by libellant.

The laws specially relied on by the judge in support of this ruling are the Statutes of Liberia approved Feb. 8, 1878 (p. 4, sec. 3), providing that on failure of any person to pay his dues "it shall be the duty of the Collector of Customs to apply to the judge of the Court of Quarter Sessions and Common Pleas and obtain a writ of attachment according to the laws regulating attachments," etc., and statute approved Jan. 15, 1880 (p. 9), providing or prescribing the manner of beginning suits by attachment.

We will not discuss the propriety, impropriety or policy of a government being required to give bond. We think that it has been generally admitted in the arguments by counsel on either side that a bond could be required of the government only on special act of the Legislature, for, suppose the government gave bond and forfeited it, how would the forfeiture be enforced in the absence of legislative enactment, when the Constitution declares that "suits may be brought against the Republic in such manner and in such cases as the Legislature may by law direct"? (Lib. Stat. p. 234; Constitution, Art. 1, sec. 17.)

Now under the first statute it was not necessary for any bond to be given. But then it is contended that the Republic was required to do so by the subsequent statute of the Legislature. If this act affected the government in matters of attachment in common with other plaintiffs, we cannot regard it as doing so simply as to giving bond and not in its other features, and consequently if the Republic is, under this act, placed on the same platform with individual plaintiffs, it is to be presumed or inferred that its privileges under it are the same as those of other plaintiffs. "All plaintiffs," says the third section of that statute, "who shall commence their actions by writs of attachment shall be required

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to first give good and sufficient bond and security"; but the act does not force any of these "all plaintiffs" to commence their actions by writs of attachment, for observe in section 1 it is stated that the plaintiff *may* commence his action by this mode of procedure; and of course if he elects some other mode, he is not forced to a compliance with the requirements set forth for obtaining writs of attachment.

Either the Republic was or was not brought under this statute; if it was, then it was not competent to elect some other mode of commencing the suit than that of attachment; if it was not and remained under the former, then the writ should have been granted without requiring a bond. In the opinion of this court the Republic is not brought under this act, which is "An act to amend an act entitled An act to amend an act establishing the judiciary and fixing the powers common to the several courts."

Application was made under the law, Feb., 1878, for the writ and monition; the monition which follows the issuing of the writ was issued, and the writ, if it was not, should have been granted, and the judge failing to do so should not have dismissed the case for what was his and not libellant's error. The failure to issue the writ worked no wrong to defendant, but to libellant, and it is a legal maxim, *"Actus curiæ neminem gravatut"* (the act of the court shall prejudice no man).

This court cannot, therefore, affirm the ruling of the court below in this respect. The court recognizes its right to dispose of the case by giving such final judgment or decree as the Court of Admiralty should have given, but as the other points in the case were not gone into and argued in that or this court, we will reserve our opinion on the other questions of law appearing by the pleadings and record of the case.

Therefore, the decree of the court below is hereby reversed and annulled. It is further ordered, adjudged

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and decreed by this court that the judge below be instructed to proceed forthwith to open said cause for such proofs and evidence as may establish the merits of the case on either side, and to adjudge according to the law and right of the case the said libel, so that its proceedings thereon may be sent back to this court for final adjudication before the close of the present term.

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## REGINALD A. SHERMAN, Appellant, *vs.* REPUBLIC OF LIBERIA, Appellee.

[January Term, A. D. 1881.]

*Appeal from the Court of Admiralty, Montserrado County.*

*Specific performance in the payment of duties—Set-off against Government—Courts of Admiralty—Liberian paper currency—The engraved bills or paper currency of Liberia are in their nature a contract.*

1. Where a statute provides that certain revenue of Government must be paid in a certain class or kind of money, the obligation is imperative and cannot be avoided, even where a demand note for the same class of money is tendered in lieu.

2. In suits where the Government is plaintiff, a set-off will not be allowed unless specially provided for by statute. The engraved notes or paper currency of Liberia is not a proper tender for the one tenth of duties provided for in the Act of 1880.

3. Courts cannot enforce a contract in manner otherwise than that expressed therein. Where a suit for debt is brought against the Government, the court cannot exercise jurisdiction or take cognizance of same, nor can it exercise jurisdiction in such circumstances over a *cross action* under a plea of set-off. Courts of Admiralty do not take notice of set-offs where they do not grow out of a maritime contract.

4. The Act of 1880, requiring one tenth of duties to be paid in gold or silver coin, does not destroy nor impair the obligation expressed on the face of certain demand notes issued by the Government of Liberia. A currency may be lawful and yet not a tender for all dues.

5. The Legislature cannot make a law impairing the obligation of a contract; it has, however, the power to adopt measures for the benefit of the nation, and, from the necessity of the case, which may be subsequently varied or discontinued as the public may require.

This case is now before us for the second time this term, under the following circumstances: Having come for hearing before the Admiralty Court, Montserrado County, to which it has been remanded by this court,

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to be opened "for such proofs and evidence as may establish the merits of the case on either side," and for the libel to be adjudged "according to the law and right of the case," an agreement was entered into by the parties in the cause to this effect: To admit the facts set forth in the libel and in the fourth and fifth pleas in defendant's answer, and to submit the following points or questions of law to be decided by the court after hearing arguments: (1) Whether the currency mentioned in the fourth plea in the defendant's answer is or is not such a contract as can be made a set-off against the claim set forth in the libel; (2) Whether the tender of such currency in payment of the libellant's claim, and its refusal, does or does not bar the libellant's recovery in this action, or, (3) Whether the law requiring the one tenth of duties to be paid in gold or silver coin does or does not impair the obligation of a contract.

According to this agreement the admitted facts by the defendant, now appellant, are his indebtedness to the libellant, now appellee, to the amount of one hundred and sixteen dollars and seventy-six cents, on account of the one tenth of duties on his imports and exports, and his refusal to pay the same in gold or silver coin or good approved bills of exchange, such refusal being in violation of an act entitled "An act to amend an act entitled An act amendatory and supplementary to an act regulating the payment of duties, passed and approved January 5th, 1879." The libellant admits the facts of having issued a paper currency and contracted to redeem the same in gold and silver coin on demand; that the defendant having taken said currency so issued in exchange for goods imported, and demanded payment therefor, payment was refused by the said libellant; that the defendant did tender and offer to pay to the said libellant the sum of money claimed to be due for said duties in the lawful paper currency aforesaid, which the libellant refused to receive.

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Upon the trial of the points and questions of law submitted to the court, the defendant took exceptions to the rulings of the judge, and the appellee in the case when first before this court now comes as the appellant, and brings for the consideration of the court the questions as contained in his bill of exceptions.

After having very attentively listened to the arguments advanced by counsel on each side, and carefully investigated and weighed the law cited in support of their respective positions, this court is now enabled to declare the result of its deliberations and researches on the questions presented to it.

As to the rulings of the judge: (1) That the currency mentioned in the fourth plea of defendant's answer "is not sufficient in law to be a set-off against the claim of the one tenth part of the duties claimed," see Lib. Stat. 1880, p. 18, secs. 1 and 2. (2) That the tender of such currency in payment of the libellant's claim for the one tenth does not bar the libellant's recovery in this action. The collector accepting the tender of anything but gold or silver coin or bills of exchange would subject him to penal servitude or fine (see Lib. Stat. p. 18, secs. 1–2), and the refusal does not bar the libellant's recovery in this action.

We are inclined to follow the principle that, in general, when the Government is plaintiff, no set-off will be allowed, "except in cases where it is permitted by act of the Legislature." (2 Bouv. Law Dict. p. 516—"Set-off;" fig. 4.) And this inclination is confirmed by that section of our Constitution which declares that "suits may be brought against the Republic in manner and in such cases as the Legislature may by law direct." Under this provision it will be observed that no claim can be proceeded with or established against the Government in any other manner than that prescribed by law, and, to us at least, it seems a fair, logical and legal inference that where a special process has been thus prescribed

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for enforcing claims against the state, the defendant in an action brought by the Government cannot, because he has claims against the Government, evade the legal course laid down for him to pursue to secure those claims, by setting off such demands. A set-off is in the nature of and is governed by the same principles as a cross action, and to admit it would be virtually allowing suits to be brought against the Government other than in the manner prescribed. Under a plea of set-off and tender, it is questionable whether either a court of law or equity could enforce the payment of a contract in a manner otherwise than that expressed therein, and it seems reasonable to conclude that if the court can exercise no jurisdiction over actions of debt brought against the Republic, it cannot do so over a *cross action of debt* under a plea of set-off, unless by expressed direction of the Legislature. If the claim is in the nature of a contract, the party aggrieved by non-performance of the contract has had a remedy provided by the law, which also prescribes the manner in which he shall seek it.

Then there is another consideration. The counsels in their endeavors, during the course of their arguments, to impress the fact that the case is in a Court of Admiralty, have not failed. Now "Courts of Admiralty do not take notice of set-offs, except so far as they grow out of a maritime contract submitted to their cognizance, and then principally by way of diminishing compensation and not as an independant right." (12 U. S. Digest, first series, p. 229, sec. 998.) The judge therefore did not err in refusing to admit the claim of the defendant as a set-off.

Does the tender made to the collector bar the libellant's recovery in this action? We propose to answer this by refence to the authorities on the consequences and effect of a tender. A tender by one party, of paying a debt or performing a duty, and a refusal of the other to accept thereof, do in some cases amount to a payment of the debt or a

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performance of the duty. But it will appear that the discharge is in such cases an accidental and not a necessary consequence of the tender and refusal; the debt or duty being discharged, because the cases were so peculiarly circumstanced that there was not, after the tender and refusal, any remedy to enforce the payment of the debt, or the performance of the duties. (9 Bacon's Abrg. 328.) The effect of a tender when lawfully made is to discharge the debtor from subsequent interest and cost. (*Ibid.*)

A plea of tender admits the contract, and so much of the declaration as the plea is applied to. It does not bar the debt, as a payment would, but rather establishes the liability of the defendant; for, in general, he is liable to pay the sum which he tenders, whenever he is required to do so. But it puts a stop to accruing damages, or interest for delay in payment, and gives the defendant costs. (2 Parsons on Contracts, 629; see also Bouv. Law Dict. p. 582—"Tender," fig. 6.)

There is another point claiming our attention with respect to the tender made. The collector as agent for the Government to receive duties, was not at liberty to receive anything but the monies described in the act for his instruction. Any specific authority to an agent must be strictly pursued. (1 Parsons on Contract, p. 42.) An agent is not at liberty to exercise his discretion in the choice of a mode of performing the duty imposed upon him if some one mode, and that only, is fixed either by usage or by the orders of his principal, if he is a general agent; or, if he is a particular agent, by his principal's orders alone; for then he must adopt that very mode and no other. (*Id.* 58.) The collector was bound to observe the act, and was not competent to set it aside as illegal and void, unless it had been so pronounced by a proper authority.

We come now to the real essence of the case, the salient point of the bill of exceptions, which may be thus re-

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solved: "The act authorizing one tenth of duties to be paid in gold or silver coin in good approved bills of exchange is not violative of the constitutional inhibition — "Nor shall the Legislature make any law impairing the obligation of contracts."

There is, perhaps, no class of cases in which the sensibilities of a people can be more readily and completely excited or aroused, than that in which it is proposed to establish principles relative to the currency and money of a nation, and to pronounce upon the restrictions that may have been placed on the exercise of sovereign powers. Constitutional questions generally cannot fail to be of great interest to all, and of much difficulty to those who have specially to deal with them, and to decide whether the law to be void for its repugnancy to the Constitution, is at all times a question of the greatest delicacy, and one that demands the greatest and most deliberate consideration.

Chief Justice Marshall, in giving the opinion of the Supreme Court of the United States in the case of Fletcher against Peck (as found in 6 Cranch, 128), made this declaration: "A question with respect to the constitutionality of a law is one which ought seldom if ever to be decided in the affirmative in a doubtful case." "The court," said he, "when impelled by duty to render such a judgment, would be unworthy of its station could it be unmindful of the solemn obligation which that station imposes. But it is not on slight implication and vague conjecture that the Legislature is to be pronounced to have transcended its powers, and its acts to be considered as void. The opposition between the Constitution and the law should be such that the judge feels a clear and strong conviction of their incompatibility with each other." The force and justness of this observation of the Chief Justice, we opine, is apparent to all. Now, while it may be the duty of a judge to harmonize the acts of the Legislature as far as he can do so consistently,

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with the Constitution which he is sworn to support, yet it does not interfere with or annul his obligation "faithfully and impartially to discharge the duties of said office," nor require him to uphold a law simply because it has been enacted. While he should be extremely careful in pronouncing a law void for its unconstitutionality, a faithful discharge of his duty renders it imperative that he should do so without hesitation when there is apparent to him a repugnancy between the law and the Constitution.

It is in this spirit, and thus impressed with our obligation to dispassionately compare the law and the Constitution, so far as the case is concerned, that we have approached the subject, and sought for such legal light as would make clear the road leading to a just conclusion. We propose to analyse to a certain degree that clause of the Constitution embraced in the question as above stated.

And first—What is a contract? Various definitions have been given of the word, and perhaps the most generally received one is, that "A contract is an agreement in which a party undertakes to do or not to do a particular thing."

Broom, in his Commentary on the Common Law (p. 252) says, that "in its widest and most general sense, the word 'contract' signifies an agreement, obligation or compact, which may be either unilateral or *inter partes*;" and he further states it to be "of the essence of every contract or agreement, that the parties to be bound should consent, expressly or impliedly, to whatever is stipulated therein; for otherwise no obligation or reciprocal right can be created between them." (p. 255.) In our statutes (Legal Forms and Principles, page 4, sec. 11) it is defined to be "an agreement entered into by the assent of two or more minds by which one party undertakes to give some valuable thing, or to do or omit some act, in consideration that the other party shall give or

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has given some valuable thing, or shall do or omit, or has done or omitted, some act."

Second—What are the obligations of a contract?

"The obligatory force of contracts is in every civilized country derived tacitly from the law by reason of the manifest necessity which exists, with a view to the well being of the community, that every man should fairly and honestly perform what he has undertaken to do." (Broom's Com. Law, p. 259.)

A contract is an agreement in which a party undertakes to do or not to do a particular thing. The law binds him to perform his undertaking, and this is, of course, the obligation of his contract. The term "obligation" is used as equivalent to "binding force," or "*vinculum juris*," and as consisting in the efficacy of the law which attaches to the contract, and if it cannot enforce its performance, at all events gives pecuniary compensation in lieu of performance. The word obligation is also used as correlative to "right." Whatever I, by my contract, give another a right to require of me, I thereby lay myself under an *obligation* to give or to do. (Broom's Com. Law, 261; 3 Parsons on Contracts, 555.)

The United States Supreme Court in the case of McCrackon against Hayword (2 How, U. S. 612) gave this interpretation of the phrase: "The obligation of a contract consists in its binding force on the party who makes it. This depends on the laws in existence when it is made; these are necessarily referred to in all contracts, and forming a part of them as the measure of the obligation to perform them by the one party, and the right acquired by the other. There can be no other standard by which to ascertain the extent of either, than that which the terms of the contract indicate, according to their settled legal meaning; when it becomes consummated the law defines the duty and the right, compels one party to perform the thing contracted for, and gives the other a right to enforce the performance

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by the remedies then in force. If any subsequent law affect to diminish the duty, or to impair the right, it necessarily bears on the obligation of the contract, in favor of one party, to the injury of the other; hence, any law which in its operation amounts to a denial or obstruction of the rights occurring by a contract, though professing to act only on the remedy, is directly obnoxious to the prohibition of the Constitution." And again, in the case of Curran against State of Arkansas (15 How, 319): "The obligation of a contract, in the sense in which those words are used in the Constitution, is that duty of performing it, which is recognized and enforced by the laws. And if the law is so changed that the means of legally enforcing this duty are materially impaired, the obligation of the contract no longer remains the same."

This brings us to the next query—What impairs the obligation of a contract?

Any laws which enlarges, abridges, or in any manner changes the intention of the parties resulting from the stipulation in the contract, necessarily impairs it. The manner or degree in which this change is effected can in no respect influence the conclusion; for whether the law affects the validity, the construction, the duration, the discharge, or the evidence of the contract, it impairs its obligation, though it may not do so to the same extent in all the supposed cases.

Any deviation from its terms by postponing or accelerating the period of performance which it prescribes, imposing conditions not expressed in the contract, or dispensing with the performance of those which are a part of the contract, however minute or apparently immaterial in their effect upon it, impairs its obligation. (2 Story, Const. sec. 1385; Green *vs.* Biddle, 8 Wheat 84.) "All laws which can by any possibility impair the obligation of a contract must apply either directly to the terms thereof, or directly to the remedy by which it is to be enforced," etc. (Ledg. on Const. Law, p. 605, n. a.)

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Our system of jurisprudence being borrowed to a very considerable extent from the English and American laws, we have deemed it as the most prudential course to go to these sources, and to search the reports in the construction of these terms contained in the constitutional inhibition; and having laid down the principles as gathered and deducible from these, the next thing is to apply them to the case now under consideration. And in doing so we would observe that this question will not be considered in the form as presented to this court, as to whether the law in question does or does not impair the obligation of a contract, but will be confined to the special contract which it is alleged has been impaired. Our statutes declare that "The court to which the appeal may be taken shall examine the matter in dispute upon the record only; it shall receive no additional evidence and it shall reverse no judgment for any default of form, or for any matter to which the attention of the court below shall not appear to have been called, either by some bill of exception or other part of the record." (p. 62, sec. 10.) This law does not allow us to travel outside of the record in making up our decision, and if there be any contract other than the one forming a part of the record of this case we do not feel bound to pronounce upon it.

The contract as appearing by the pleadings in this cause and as admitted by libellant, is the engraved bills —bills of credit or paper currency running thus: "On Demand at the Treasury Department, the Treasurer of the Republic of Liberia will pay to Bearer in Gold or Silver coin —— Dollars."

The admission of this as a contract relieves us of the necessity of any elucidation on this point, and we proceed at once to consider its obligations. These are evident and unmistakable on the very face of the instrument. These are that the Republic will at its Treasury Department pay to the bearer of each note, on demand,

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the amount specified in gold or silver. It has been contended during the course of the argument that the receiving these notes for duties is a part of the contract so made by the law making these a tender for such.

Contracts between individuals and Government should be construed in the same manner as contracts between private parties. Let us suppose an individual to contract with another to pay him on demand a certain amount, and in a certain class of money; that he should afterwards, for the relief or convenience of either one or the other, say, "I will take up the note or contract so given, by work or merchandise." Would this affect the original condition or obligation of the contract to be paid in a certain class of money, and if it did not affect it, could it rightly be said to form a part of the contract? And if he should afterwards say, "I will no longer take up the note with work or merchandise," upon what would the other seek his remedy, the subsequent permission granted for cancelling the contract, or for the enforcement of the obligation as contained in the contract itself?

While the Legislature cannot legally impair the obligations of any contract, we think this prohibition must be distinguished from its right to adopt measures for the benefit of the nation, and from the necessity of the case, which may be subsequently varied or discontinued as the public good may require. It must be conceded that in every perfect and competent government there must exist a general power to enact and to repeal laws, subject of course to such restrictions and prohibitions as the higher organic law or Constitution of the State may prescribe.

The Government is competent to declare anything a legal tender, to say for what it shall be a legal tender, and from time to time restrict or enlarge the province of this tender, unless it be a contract in which it has bound itself to receive unqualifiedly. And the

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defendant in this action, while he claims that the Government has contracted to pay him in gold or silver coin, does not set forth any subsequent contract where the Government bound itself to receive this contract for duties. And we hold that the binding obligation of the Government is that expressed in the contract, and that this is unaffected by the subsequent tender laws.

Does the act requiring one tenth of the duties to be paid in gold, silver or bills of exchange impair the obligation of this contract?

We cannot see that this act in any way enlarges, abridges or in any manner changes the intention of the parties resulting from the stipulations in the contract; we do not see that the act affects in any way the terms of the contract, or the remedy by which it may be enforced. The act authorizing the making of the contract does declare that it shall be the lawful paper currency of the Republic. But a currency may be lawful and yet not a tender for all dues, and the Legislature is competent to declare for what it shall be a tender, except perhaps in certain cases.

We have thus traversed all of the points properly before us, and at a very tedious length have endeavored to show our views and the legal authorities in support thereof; and while we may all agree as to the authorities, there will doubtless be various and diverse opinions as to our application of them.

It would indeed be remarkable if such was not the case, and we have not, in the framing of our views, attempted or even entertained the hope of avoiding such differences of opinion. We would not if we could control the independent view of each individual member of a nation, and in the discharge of our judicial duties will not, if we know it, allow ours to be controlled by any other influence than what we regard as law, justice and right.

For the reasons thus set forth, we feel bound and

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therefore do hereby decree that the decree made by the judge of the Court of Admiralty, Montserrado County, on the 26th day of January, A. D. 1881, is hereby affirmed.

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## JAMES S. SMITH, Appellant, *vs.* FENTON ANN HILL, O. G. R. HILL and THOMAS L. HILL, Appellees.

[January Term, A. D. 1882.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Maryland County.*

*Ejectment.*

1. A conveyance of land made by a party who had and held an absolute title therein, bars all claim of heirs or persons claiming under the original title of the conveyor. A deed, lawfully executed, is evidence against all parties to it and it is evidence of all title or rights transferable by it.

2. In suits brought to recover real property unlawfully withheld it is a misjoinder for strangers to join in the action as plantiffs, where the grantee or person entitled to relief is living and under no legal disability.

This an appeal case that was originally tried in the Court of Quarter Sessions of Maryland County, Republic of Liberia, at its August term, A. D. 1880, and is brought up from said court upon a bill of exceptions, for review. Therefore the court proceeds to consider the character of the positions assumed by the said plaintiffs (now appellees) in their complaint.

1st, "The appellees say that Delia Hill, deceased, was possessed of the piece of land described in their complaint." 2nd, "That the title of the said Delia Hill hath lawfully come to them, the said appellees, and that the appellant James S. Smith unlawfully detains the land from the said appellees." 3d, "That the said James S. Smith obtained a certain deed of transfer from the said Delia Hill upon the terms expressed in said appellees' complaint." 4th, "That the two hundred

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and fifty dollars was not the true consideration agreed upon by the said Delia Hill and the said James S. Smith to be paid for the said lot number eighteen." 5th, "That although the said Delia Hill during her lifetime did transfer unto the said James S. Smith the piece of land, lot number eighteen, the said James S. Smith failed to do as he should have done, as was by mutual understanding the consideration agreed upon."

In our attempt to discriminate the right from the wrong involved in this case, we indulge the pleasant belief that it will require but a very little exercise of the mind to enable us to distribute to each party that exact justice that the reasonableness of the case allows.

The court says, the second plea in the answer of the defendant (now appellant) which alleges that the facts stated in the complaint of the plaintiffs (now appellees) in this case are not true, is supported by the law and evidence in this case, so far as it relates to that part of the allegation in the complaint which says that Delia Hill, deceased, was possessed of the lot of land, number eighteen, in the upper ward of the city of Buchanan, in the County of Grand Bassa, Republic of Liberia, and that the title of the said Delia Hill hath lawfully come to them, the said appellees; for by the admission of the appellees and the evidence in the case it is clearly shown that a consideration of two hundred and fifty dollars is declared upon the face of the said transfer deed, from the said Delia Hill to the said James S. Smith, to have been the amount paid for the said piece of land, lot number eighteen; and this transfer was made in the lifetime of the said Delia Hill, whereby all the rights that the said Delia Hill did have to the said lot of land, number eighteen, was transferred to the aforenamed appellant James S. Smith, in fee simple, forever. This being the case, certainly she was, in her lifetime, divested of every species of interest, as owner of the lot number eighteen, that could pass to her heirs, from the fact that

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the title of the said James S. Smith is complete and valid, in respect to said lot, as will be shown more clearly in the sequel.

We assert that the said transfer deed we so often refer to gives to the said James S. Smith a complete and *bona fide* title to the said piece of land in question. And we entertain the opinion that we are supported in this declaration by the universal doctrine of the law on written contracts and other instruments.

And notwithstanding the said appellees in their complaint allege that the amount of two hundred and fifty dollars, specified in the said deed, was not the true consideration agreed upon by the said parties, we say, if such was the case and the grantor, who had a right, at any stage of the arrangement that was being made for the transfer of the said land, to dispose of it in any way that would secure to the appellant the lawful right thereto, she did, by the terms of the said deed and the delivery thereof, establish in the said appellant a sufficient title to the said described premises. For the execution of a deed for real property is one of the most solemn acts that mankind can perform in the way of a business transaction; therefore, when it is properly and lawfully executed, it is evidence against all parties to it, and it is evidence of all title or rights transferable by it to all mankind. It is also the best evidence of its own terms and character, when fraud was not used as one of the ingredients to procure the same.

Our next consideration is to show that there was a misjoinder of plaintiffs (now appellees). Whatever may have been the character of the deed from the said Delia Hill to the said James S. Smith, other than was by its terms expressed therein, or unless it had been fraudulently obtained so as to entitle the appellees to bring this suit, they were bound by the warranty of the deed to defend the said appellant and his heirs in the peaceful enjoyment of the said described premises. The said Delia

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Hill's heirs, executors and administrators being her legal securities to the said appellant, for his quiet possession of the said lot of land, he is forever estopped from bringing any suit against the said appellant for the said land on the ground of heirship.

Then, again, the said appellees, Fenton Ann Hill and O. G. R. Hill, not being parties to the deed executed by the appellant in favor of Thomas Woodfall Hill, his heirs, executors, administrators and assigns, and the said Thomas Woodfall Hill not being dead, the said Fenton Ann Hill and O. G. R. Hill had no right to join in this action brought in consequence of an ouster of the possession of the said Thomas Woodfall Hill, from the said piece of land, lot number eighteen, since their names do not appear to the deed as parties to the same. Here the misjoinder is very obvious, to our minds.

In respect to the motion made by defendant (now appellant) in the court below to dismiss the case, the motion being founded on an affidavit, it was not confined to the general rules of pleadings, for the very *object of a motion is to obtain some rule or order of court,* which the party who tenders it thinks becomes necessary, in the progress of the cause; or to get relieved in a summary manner from some matter which would work injustice. The inconvenience of this misjoinder in this case is apparent from the conclusion of the court below, consequently the motion to dismiss the case ought to have been sustained upon the plea of misjoinder, since, in an action at law, a misjoinder vitiates the entire declaration. Therefore this court says that the court below erred in not dismissing the case upon the plea of misjoinder, after hearing the same, and also in the giving of final judgment in this case.

Therefore, it is the decision of this court that the misjoinder of plaintiffs in the court below (now appellees in this cause) vitiated the entire declaration in the case,

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and that the title of the appellant James S. Smith to the said piece of land, lot number eighteen, as described in the aforementioned deed from the aforenamed Delia Hill, deceased, to the said James S. Smith, is a good and *bona fide* title for the said lot of land number eighteen, and that the appellees in this case are forever estopped from disturbing the said James S. Smith, his heirs, executors, administrators and assigns, in the peaceful enjoyment of all the rights conferred upon him by the said deed. And that by the terms of the said deed, the appellees in this case are legally bound to defend the appellant, James S. Smith, his heirs, executors, administrators and assigns, against any person or persons claiming any part of the said described premises; and the said appellant shall continue in the lawful possession of said lot number eighteen, described in this decision.

The judgment of the Court of Quarter Sessions of Maryland County, Republic of Liberia, given in this case as above referred to, at its August term, A. D. 1880, is hereby reversed; and the appellees are ruled to pay all costs incurred in this action.

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## R. R. JOHNSON, Appellant, *vs.* THOS. H. CASSELL, Appellee.

[January Term, A. D. 1883.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

A writ of injunction does not lie in cases where the title to real estate is an issue involved. Courts of law, and not equity, have jurisdiction over cases involving title to real property, according to the Statutes of Liberia.

This case is an appeal from the decree of the judge of the Court of Common Pleas and Quarter Sessions, Montserrado County.

An action of injunction is one in which plaintiff seeks to compel the defendant to permit matters to remain

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in the present state, or requiring some specific act to be done. This action *must be commenced by a writ of injunction,* to obtain which, the plaintiff must show in his complaint, verified by his own oath, and by such other evidence as the court or judge may think proper to receive, that he has a good cause for applying for such a writ; whereupon, if the court or judge in the exercise of sound discretion, should discover that the right of the plaintiff is sufficient to warrant its interposition, the writ may be issued, but otherwise it ought not to be granted.

This court regards it an indispensable duty to state just here, in emphatic terms, that in no case where the issue involves questions respecting the validity of title to real estate, which ought to be settled in a court at common law, should a writ of injunction be granted for the purpose of deciding upon the validity of such title. In this case, this Supreme Court will only consider the rights of the parties under the circumstances surrounding the case, without interfering with the validity of the title right of either party. It is, however, evident from the oral testimony in this case and from the admissions of the contending parties, that the coffee trees, which defendant in the court below was sought to be enjoined to abstain from picking the coffee off, are on the same lot of land claimed by appellant and appellee.

We refrain from any expression as to the validity of the title rights of the parties in this case, to said lot of land. But it is our duty to say, whether the appellant has a good and *bona fide* right and title for said lot of land; or, on the other hand, whether Jordan Hardy's title under which the appellee (defendant below) sets up his defence, is a good and *bona fide* one or not, it is not a subject material to the issue in this case. Because the transfer from James Butler to R. R. Johnson, for lot number ninety-one in the settlement of Brewerville, so described in plaintiff's complaint, gives the appellant an

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*apparent* right to said lot; also does the Jordan Hardy's deed from the Republic of Liberia, give whomsoever claims under said deed a like apparent right to the said lot of land. This fact the oral testimony in the case plainly shows.

It is not injudicious for this court at this juncture to observe, that whatever may have been the right of the appellee, under Jordan Hardy's deed, to pick the coffee off the trees on said lot, that right obviously followed the foreclosure of Hardy's mortgage. It is therefore proof presumptive, that the appellee in picking the coffee acted on a right assumed, and not from any right *apparent,* derived from Jordan Hardy to the lot now in dispute.

Therefore, the judgment of the court below is hereby reversed, and this court adjudges that the appellee be and is hereby forever enjoined to abstain from picking coffee off the coffee trees upon said lot of land now in dispute, under any pretext of rights derived from Jordan Hardy's deed as administrator of said estate. The appellee is ruled to pay all costs incurred in this action.

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## URIAS A. and CHARLES S. McGILL, Appellants, *vs.* A. WOERMANN, Appellee.

[January Term, A. D. 1883.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Debt.*

1. The surviving partner of a firm cannot give a note for the payment of money that will be binding upon the representatives of his deceased co-partners. When a partner dies the partnership properly goes to the survivors for the purpose of settlement, and they have all the powers necessary for that purpose and no more.

2. Where in an action of debt upon a written instrument, the instrument or note offered in evidence differs in form from that set out in the pleadings, it is error to admit same as evidence. Endorsements upon notes, where not stated in the pleadings, are to be considered as new allegations and proved.

This case is an appeal from the verdict of the jury and judgment of the Court of Common Pleas and Quarter

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Sessions, Montserrado County, at its September term, A. D. 1880.

Having reviewed the record in this case, the court is brought to consider the issues upon which it rests, and also the evidence and effect of the same. The appellee (plaintiff below) alleges that the firm of McGill & Brother (late existing) is indebted to him, and that Urias A. and Charles S. McGill, the legal representatives of said firm, are now indebted to him, the said plaintiff, by virtue of the written instrument, a copy of which is filed with the said plaintiff's complaint, and that the defendants (now appellants) have neglected to pay said debt.

Permit us here to comment briefly upon the phrase "by virtue," when it is used in respect to written instruments, as "by virtue of a written instrument." In this connection those words are intended to show that the terms of the promise therein made to be performed, in their nature exist with force and power. But we shall have more to say about written instruments in another place.

The copy of the written instrument set out in the complaint of the plaintiff (now appellee) bears upon its face a promise to pay the sum of three thousand one hundred and seventy-three dollars and twenty-two cents, upon such conditions and stipulations as are therein expressed. The defendants below (now appellants) deny that the said firm, McGill & Bro., is indebted to the said appellee (plaintiff below), and they also allege that the said appellee has no legal right to recover against them in this action.

The said appellee, to prove his case, introduced witnesses, C. T. O. King and J. W. Howard.

Witness C. T. O. King states as follows: That he was acquainted with the late J. B. McGill, and that he was the surviving partner of the firm of McGill & Bro.; and he further states that after the death of his partners, he did carry on the business in the name of McGill & Bro.

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Witness also states that he recognized the signature on the document handed him as being J. B. McGill's for McGill & Bro., and the signature of the witness to the document as being Wm. Thompson's, and the body of the writing to be J. B. McGill's. He also states that the other partners of the firm were, Doctor McGill, R. S. McGill of Cape Palmas, and J. B. McGill, but was not certain as to the admission of Rockey McGill into the firm.

Witness Howard states that J. B. McGill was the surviving partner of the firm of McGill & Bro. He also states that all the parties referred to in connection with the firm except J. B. McGill were dead in January, 1880.

The written evidence of the plaintiff was then put in: 1st, the deed from James B. McGill and Martha his wife to McGill & Bro.; 2nd, the note of hand given by J. B. McGill in the name of said firm; after which, the said defendants presented a note published in the "Observer."

Having noticed the evidence introduced by the parties in the case, we shall now consider how they go to prove or disprove the alleged debt.

The first issue, then, is whether the written instrument upon which the action of debt is brought is sufficient in law to bind the legal representatives of the firm of McGill & Bro. We are of opinion it is not; because it is clearly proven by witness J. W. Howard, that in January, A. D. 1880, all the partners of the firm of McGill & Bro. were dead except James B. McGill, who was the surviving partner at the time the note of hand was given the appellee. And it does appear from the question put by the plaintiff in the court below to witnesses C. T. O. King and J. W. Howard, as to whether J. B. McGill was or was not the surviving partner of the firm of McGill & Bro., that the appellee was not ignorant of the fact that J. B. McGill could not at the time of the making of this note of hand legally bind the legal representatives of the deceased partners, whose death operated as a dissolution of the partnership.

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When a partner dies the partnership property goes to the survivors for the purpose of settlement, and they have all the power necessary for that purpose, and no more. No court of justice would, therefore, sanction the act of J. B. McGill as the surviving partner of the firm of McGill & Bro., giving a note of hand in the name of the firm, after the dissolution of the same by the operation of death, however great the emergency may have been that prompted him to do so. It would throw wide open a door for fraud and dishonesty.

The deed from J. B. McGill and his wife Martha was irrelevant, because it had no tendency whatever to prove the alleged debt; therefore the court below erred in admitting it. If the court admitted the deed in proof of what was alleged in the reply of the plaintiff, it was nevertheless an error, because the plaintiff is only allowed to supply such new facts as would set forth more clearly his action before the court.

The alleged cause of this action is, that the firm of McGill & Bro., lately existing, is indebted to appellee, and that appellants, Urias A. McGill and Charles McGill, legal representatives of said firm, are now indebted to the appellee by virtue of a written instrument (which bears the date of January 29th, 1880) the sum of three thousand one hundred and seventy-three dollars and twenty-two cents, and have neglected to pay the said debt.

The instrument offered in evidence having on it endorsements, it varied from that set out in the pleadings, which has none on it. Therefore the court, after inspection, having discovered the same, ought not to have admitted it in evidence, and it was error in the court below to do so. After admission of the instrument, it was nevertheless the duty of the court to regard the indorsements made thereon as new allegations to be proved, since they were denied; for it would be giving sanction to a dangerous doctrine to allow the plaintiff

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to bind the defendants to the payment of an illegal note by making indorsements thereon. If indorsements are used in evidence for the plaintiff, they must be proved like other facts. A copy of the notices referred to, as published in the "Observer," not appearing in the record, this court will give no expression on that point.

The verdict of the jury in the court below is founded on evidence that should not have been admitted. The court therefore ought to have given a new trial, and it erred in not doing so.

This court also says the judge below did not err in refusing to arrest judgment, because it appears on the record that the *law regulating the issuing of writs of attachments had not been complied with.* It was the duty of the defendants to have taken advantage of this defect in the pleadings of the plaintiff at the proper stage, and their not doing so amounted to a waiver of that right.

But the final judgment given by the court below in this case rests on an illegal verdict. Therefore the judgment of this court is, that the judgment given in this case by the court below be and is hereby reversed; and that the note of hand, proved to have been given by the said J. B. McGill in the name of the firm of McGill & Bro. after the dissolution of the said firm, without any warranted authority, be and the same is good for its payment against the legal representatives and heirs of the said J. B. McGill, to the amount claimed by the appellee in his complaint, which payment is to be made out of the property of the said J. B. McGill, or out of his interest in any property of the late firm of McGill & Bro., or, out of any interests of his, in property real or personal; but under no circumstance shall his legal representatives or heirs be bound to dispose of and make payment out of any property or interests but that which is solely and strictly the property or interest of the late J. B. McGill; and that the appellee pay all costs incurred in this action.

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## RUSSELL MINUS, Appellant, *vs.* J. J. ROSS, Appellee.

[January Term, A. D. 1883.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

*Injunction.*

This case is an appeal from the Court of Common Pleas and Quarter Sessions, Sinoe County. After this case was called and assigned for hearing the appellant withdrew it.

Without commenting elaborately on a subject so clear and well defined in law, we say this court is of opinion that any appellant before it may at any stage of the proceedings, before it is called up and assigned for hearing, withdraw his appeal; but if he attempts to do so after the court has taken the case within its embraces, the court will determine what such an act amounts to in law. The annunciation of the appellant that he has withdrawn his appeal after it had been called and assigned for hearing is a *retraxit* and by this the appellant forever loses his action.

The court therefore adjudges that the appellant is forever barred from bringing this action. The appellant is ruled to pay all costs incurred in this action.

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## GEO. R. McGILL, Appellant, *vs.* THE REPUBLIC OF LIBERIA, Appellee.

[January Term, A. D. 1883.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Grand Bassa County.*

*Libel of information* in personam.

1. A post-master is a revenue officer and is liable to prosecution in a Court of Admiralty for breach of official duty.
2. A letter posted for a foreign country and unlawfully taken out of the post-office, is a contravention of the revenue laws, and is cognizable in admiralty.

This case is an appeal from the Court of Quarter Sessions, Grand Bassa County, in the exercise of admiralty jurisdiction.

This case is no doubt one of great importance to the appellant and appellee. This court has carefully and impartially considered the same, and is of the opinion that the object of the Legislature in making the law establishing the post-office and a branch custom-house in the lower ward of the city of Buchanan, Grand Bassa County, was to increase the revenue and afford accommodation to the people. Therefore the court says appellant was acting in the capacity of a revenue officer under the said law, during his incumbency as Post-Master and Deputy Collector of Customs, and as such the Court of Admiralty had jurisdiction over his case.

A letter posted to be sent to a foreign country is presumed, in the idea of the law, to be in the *course* of its destiny, and therefore any person who unlawfully takes it out of the post-office thereby contravenes the revenue law.

The Court of Admiralty may exercise jurisdiction over any wrong done in violation of the law providing for the safe conveyance of letters and money across the sea. A letter posted to be conveyed to a foreign land relates to the sea, and has protection under those principles of

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the maritime law, because of the contract made for its conveyance.

We are of opinion that the several grounds upon which appellant's appeal was taken were not material in a case tried in accordance with the principles of *natural justice*. The court has considered the justice of the whole case, and adjudges that substantial justice has been done in the premises and that the judgment of the court below is affirmed; the appellant is ruled to pay all costs incurred in this action.

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## McGILL'S TRUSTEES, Appellants, *vs.* MODDERMANN, Agent for H. Muller & Co., Appellee.

[January Term, A. D. 1884.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Debt.*

*Trustees and trust estates—Partnership affairs—Jurisdiction of the Court of Quarter Sessions and Common Pleas over partnership estates.*

Intestate estates, whether of an individual or a firm or copartnership, are under the statute regarded alike. Where no provision is made in the articles of partnership for the winding up of the same in the event of the death of all the partners, the court will appoint administrators over the same upon the happening of such a contingency.

This case is an appeal from the Court of Common Pleas and Quarter Sessions of Montserrado County, heard and determined at its March term, A. D. 1883. The appellants (defendants in the court below) were sued for the recovery of debt due to the appellee (plaintiff in the court below) by the firm of McGill & Bro. of Monrovia, and R. S. McGill & Bro. of Cape Palmas, upon a note of hand or written contract.

The defendants in the court below denied the right of the plaintiff to recover, because the Court of Common Pleas and Quarter Sessions "as a court of law had no jurisdiction over this suit," etc., and denied both the law and the facts in this case.

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The plaintiffs maintained that though the defendants were styled "trustees," they were mere "receivers or managers" to settle up the affairs of said firm, and can be sued at law like administrators and executors. After argument on this question raised, the court below ruled that it had jurisdiction over the case and proceeded to hear it. After a deliberate hearing the case was handed to a jury, who returned a verdict in favor of the plaintiff for $1,314.49½. Defendants excepted to the verdict and final judgment of the court thereon, and brought the action here for review, upon these grounds: (1) That the court below had no jurisdiction over this case. (2) Because the court below admitted in evidence certain letters and receipts of J. B. McGill, Chas. Sumner McGill and U. A. McGill from the 10th of September, 1879, to 23rd December, 1881. (3) That the court below refused to charge the jury as requested by defendant, "that plaintiff must prove every allegation expressed or implied in his complaint." (4) Because the court refused to set aside the verdict of the jury and grant them a new trial.

Now in respect to the jurisdiction of the Court of Quarter Sessions as a court of law, over trustees or trust estates, it must be remembered that in the strict meaning of our statute "To prevent fraud in the management of intestate estates," all estates intestate are regarded alike, whether the estate be of one individual or of a firm or co-partnership. We take the general rule to be this: The concerns of the partnership must be wound up by some person. The parties may provide for this at their pleasure. If they do not provide for it, the law provides for it in the only possible way. And this power of a former partner or partnership has been held to pass to his or their administrators to close all business transactions of the late firm, to settle all business of the firm, to use the name of the firm in liquidation only of past business. And here the court emphatically states that the intestacy of a partnership estate is to be considered

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as being so, when it is not expressed in partnership articles of agreement who shall manage and settle up the business of the partnership should all the parties die before the concern is wound up.

We notice that the variance of opinion in this case is summed up in the title of the custodians of the estate of the late firms of McGill & Bro. of Monrovia, and R. S. McGill of Cape Palmas.

Generally speaking, in the management of estates an executor or administrator is a "trustee," and is the proper representative of the deceased parties, and until the final distribution and settlement of the estate, is answerable under our statutes, at law; for we are of opinion that the management of all estates in this Republic are confined to the *lex loci*. See 1 Liberian Statute (Judiciary Act), Article II, sec. 1. By this act, only the monthly and probate courts of this Republic have any authority over estates. See also the act above cited (Judiciary Act), Article III. The law therefore presumes the appellants in this cause to be administrators of the estates of the late firms of McGill & Bro. of Monrovia, and R. S. McGill of Cape Palmas, who are answerable as such to a court of law; therefore the court below did not err in overruling defendant's plea and adjudging that it had jurisdiction over the case, for it is rightly an action to recover a debt and not one to enforce the performance of a trust.

Though the defendants below only raised a plea to the jurisdiction of the court below to try this action, they concluded by denying the law and the facts, upon which denial they exercised the right to raise any law question that arose in their minds during the progress of the trial, all of which, upon careful inspection of the record in this case, we are of opinion have been justly disposed of.

We see no error in the admission of the written evidence, as it was within limitation and had direct reference to the matter at issue. We do not think the court

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erred in refusing to grant the defendants a new trial, because we fail to see the grounds upon which it was asked for. They allege that the court refused to instruct the jury as they requested in the fifth point of exceptions, but we find in the record of the case the court did instruct the jury in the very words suggested by the defendant's counsel, hence in this particular we are of opinion that no error has been committed.

Therefore this court adjudges that the judgment of the court below is affirmed; appellants are ruled to pay all costs incurred.

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## GOULSBY, Appellant, *vs.* DAVIS & MARSHALL, Appellees.

[January Term, A. D. 1884.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Damages.*

*Administrators—Bond.*

Where an administrator has complied with the law regulating the management of intestate estates, and has been discharged from his obligation as such, his responsibility ceases and no action can be maintained against him as such.

This is an appeal brought up from the Court of Pleas and Quarter Sessions of Montserrado County at its September term, A. D. 1883. This action was brought in the court below, by the plaintiff, appellant in this court, to recover damages from the appellees for an alleged injury committed in their capacity as administrators of the estate of T. E. Dillon of the County of Grand Bassa.

The defendants below in answer to plaintiff's complaint denied both the law and the facts, and when the case came up for hearing, they motioned the court below to dismiss the case because, 1st, "That defendants as administrators of T. E. Dillon's estate had settled up

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the same; and having made satisfactory returns to the Court of Monthly and Probate Sessions, Grand Bassa County, their bond had been returned and they discharged, therefore are not now responsible for any of their acts as administrators of said estate." 2nd, "Because if responsible this action should have been brought on their bond." 3rd, "Because the complaint does not contain an intelligible statement of the cause of the action," etc.

The court below, in noticing this motion, referred to the decree of this court in the cases Liles *vs.* Battham, and Smith *vs.* Hills, in which this court expressed the opinion that when the defendant denies both the law and the facts he has a perfect right to raise any law questions thereon. He may question the legality of the process against him; he may raise issues on matters usually pleadable in abatement or taken advantage of by motion in arrest of judgment, or by a motion to dismiss the case.

Upon these principles of law the court below sustained the motion and dismissed the case, to which judgment the appellant in this action excepted as follows: 1st, "Because after issue was joined the court allowed defendants to put in a motion to dismiss the case." 2nd, "Because the said motion contained questions of law which were raised in their answer and rejoinder, and by order of the court had been struck off the files because they were not framed according to law." 3d, "Because the court decided that the judgment of the Probate Court of Bassa County is conclusive, etc., and that defendants are no longer responsible as administrators." 4th, "Because the court below decided on the first point in the motion to dismiss without reference to the other points."

Upon a careful review of the record, and a critical inspection of the judgment of the lower court, we are bound to arrive at the same conclusions. The fact that defendants had been discharged from their adminis-

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tratorship is fully established in the plaintiff's pleadings. Then if, as the plaintiff admits, the defendant had complied with the law regulating the management of estates and had been legally discharged by the Probate Court, we regard that as conclusive and as divesting the said administrators of all further responsibilities in this particular.

Therefore this court adjudges that the judgment of the court below is affirmed, and the appellant ruled to pay all costs in this action.

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## McGILL'S TRUSTEES, Appellant, *vs.* WORRELL, Agent for Jackson, Brierly & Briggs, Appellee.

[January Term, A. D. 1884.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Debt.*

*Account current—Invoices—Eight per cent interest.*

1. An account current, enumerating and summing up the value of invoices for goods supplied and which, according to mercantile usage, have been duly forwarded the creditor, is notice sufficient of the items therein charged, within the meaning of the Statute.

2. The rate of interest allowable is generally determined by the law of the place of performance or the place where the money is invested, unless there exists some special agreement in this respect. Where a party in the course of mercantile transactions charges another in accounts with a certain rate of interest, and no objection is raised, but on the contrary it is acknowledged as correct, the debtor will not afterwards be allowed to show that the said interest is higher than what is allowed by the *lex loci*.

This case is an appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County, begun at its September term, A. D. 1882, when the accounts on motion of plaintiff's counsel were referred to arbitration, and which arbitration reported to the said court at its June term, A. D. 1883, awarding plaintiff £909.8.4 ($4,365.20), upon which the court below rendered final judgment.

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From this final judgment the defendants have appealed on the following exceptions: 1st, "Because the Court of Pleas and Quarter Sessions as a court of law has no jurisdiction over the suit." 2nd, "Because the court refused to dismiss the case on their motion that the account filed is not specific, distinct and intelligible according to law." 3rd, "Because the court refused to sustain their objections to the award of the arbitrators, based on the following grounds: (a) That the arbitrators allowed the plaintiffs eight per cent interest without proof that both parties had agreed thereto; (b) That the award did not state the account according to law."

In the review of this case we notice nothing so intricate as to hinder this court arriving at a just conclusion in a few words. In this, as in case No. 1, we perceive that the great variance of opinion is in the importance attached to the title of the custodians of the estate of the late firm of McGill & Bro. of Monrovia, and R. S. McGill of Cape Palmas. Without repeating our exposition that an executor or administrator is a trustee, and as such under the Statute of Liberia is answerable at law, we say that on the exceptions in this case to the jurisdiction of the court below, we entertain the same ideas, hence are of opinion that the court did not err in its ruling, taking jurisdiction over the case.

This court is of the opinion that an account current enumerating and summing up the value of invoices of goods, wares and merchandise which have in due course, according to mercantile usage, been forwarded to the parties charged and who are charged with them (and subsequently served with an account current) is a sufficient notice of what the plaintiff intends to charge the defendant with, in the meaning of the statute. Therefore the court below did not err in overruling the motion to dismiss the cause.

As to eight per cent interest. The arbitrators in this case report, and we find it so on the record, that the plain-

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tiffs have charged eight per cent interest on their money advanced the defendants and allowed them eight per cent interest on all payments they made on the account in business transactions together, which the firms of McGill & Bro. of Monrovia, and R. S. McGill of Cape Palmas, in their correspondence acknowledged to be correct up to December, 1878, when it appears their correspondence stopped until the bringing of this suit.

Ordinarily it is the law of the place of performance, or the place where money is invested, that determines the rate of interest, and ordinarily it is admitted that whoever advances money is entitled to interest by operation of law, but in the absence of special agreement no higher rate of interest than the law of the place of investment allows.

Here the question arises, What rate of interest were the plaintiffs below entitled to? Did the defendant agree to pay any specific rate of interest?

We look at the matter in this wise. If two parties are dealing together in accounts, and the one serve the other with statements of account regularly, showing the interest account at whatever rate it may be, and the other, capable of understanding the accounts, accept them, and write in unmistakable letters acknowledging them to be correct, what is to be understood? We understand the subject to be at once conventional, and that the debtor accepts the rate specified, and that he will pay his creditor the same.

The length of time the account remains unpaid, drawing interest, is not the question with the creditor, more than the anxiety for the settlement of the account, but increase of interest is the fault of him who neglects to pay up. Compound interest, interest on interest, this too is not allowed except in special cases; the decisions of courts have uniformly been against it, as being hard, oppressive, exactive and tending to usury. Interest should not be demanded beyond the principal sum. In

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casting interest on any note, bond, book account, etc., on which partial payments are made, such payments should first be applied to keep down the interest; but interest is never allowed to form part of the principal so as to carry interest. This principle prevails throughout the mercantile world. Still, in transactions between parties, if no exceptions are taken to such dealings and instead thereof intelligent letters of consent are placed in the hands of creditors, they are left at the mercy of such creditors. Therefore we think the court below did not err in its ruling on this point.

The judgment of the court below is affirmed, and appellants ruled to pay all costs in this action.

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## MARY E. DLYON, Appellant, *vs.* PRECILLA LAMBERT, and JOHN LAMBERT, her husband, Appellees.

[January Term, A. D. 1884.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Ejectment.*

Where a party entitled to draw lands under the Immigrant Allotment Act draws his allotment and fulfils all the conditions that entitle him to a deed, but with a fraudulent design fails to procure his deed, though he cannot convey his imperfect title therein, yet it will not be exempt from the writ of his creditors.

Under the Constitution, a *femme couverte* may convey property she is possessed of otherwise than through her husband, and this fact admits the inference that she may also bargain and buy property independent of her husband.

This case comes up from the Court of Quarter Sessions, Montserrado County, upon a bill of exceptions, under the statute regulating appeals. The appellant claims ownership to one half acre of land and appurtenances thereto belonging, situated in the settlement of Careysburg, Montserrado County, bearing the authentic records of said settlement, number eighty-four, by virtue

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of a sheriff's deed bearing date March 3d, 1883, based upon a writ of execution issued against the lands, goods, chattels and credits of one John Micky.

The appellees in defence of their possession set up the plea that John Micky never, up to the time of his death, acquired such title to said land as to subject it to an attachment and execution for the payment of any debt he may have contracted.

It appears from the record of the trial below, that on his arrival to this Republic John Micky did draw, under the act pertaining to the apportionment and improvements of lands, the property in dispute; and did make the necessary improvements thereon to entitle him to a fee simple deed from the Government under the provision of said statute.

It is the opinion of this court that whenever any settler is entitled to draw lands under the provisions of the act above referred to, and complies with the conditions of said act so as to entitle him or her to a deed in fee simple, and who for an unreasonable length of time thereafter wilfully neglects to procure a deed in fee simple for the same, his or her neglect in such a case in the eye of the law must be regarded as a fraudulent resort for its security against his or her creditors. Hence the law will not give aid to a plea under such circumstances, that the original drawer did not procure from the Government a deed for said drawn and improved lands, and thereby defeat the sheriff's sale of it under execution, as illegal for want of such fee simple deed.

This court says that as soon as the drawer under the aforementioned statute has made the lawful improvements required by said statute, his or her right to the land drawn is thereby made complete, but not transferable by him or her. But as we have before said, if a delay or neglect to procure a deed for such improved lands appears to be for the purpose of defrauding creditors out of their just claims, the law will allow such

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lands to be sold under execution. Hence a sheriff would be legally authorized to procure the deed for the land so taken under execution, all the rights of the original drawer having passed from him or her by the writ of execution to the sheriff, in trust for the creditors.

There are many points of minor consideration raised in this trial, yet the case presents some very important points the settling of which must settle the case. We will therefore review those questions which must unmistakably settle the rights of the parties. From the record we find that it is maintained by the appellees that the appellant in this case, being a *femme couverte*, could not legally contract or buy the land in dispute.

It is hardly necessary for this court to say, the Constitution of Liberia provides that a *femme couverte* may convey property she is possessed of otherwise than through her husband; which term includes both personal and real property, and that by sale, devise or otherwise. This court is of opinion that she being allowed to bargain and sell under such circumstances, is also allowed to bargain and buy more especially by her husband's assent. Hence the court below erred in instructing the jury that appellant being a *femme couverte*, could not buy the lands in question, especially when the testimony of A. H. McFarland proved that he bid in the land in question for appellant by request of her husband.

It further appears to this court that the court below erred in not granting the new trial prayed for in the appellant's motion, for the following reasons: The original deed from the Government being admitted as evidence without objection (see record) was *prima facie* evidence, an oral testimony could not legally be allowed to prove the terms and parties thereto contrary to those expressed in the recital of said deed.

Again, it further appears from the record that appellees by and through their attorney made, during the trial below, admission as follows: That John Lambert

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did call M. E. Dlyon, appellant, before the January term of the Monthly and Probate Court, Montserrado County, to prove that the property in dispute was bid in on the day of the sale by A. H. McFarland,—evidently referring to the sale of the sheriff under the execution above referred to. Now if this admission, which is evidence, be linked with the testimony of A. H. McFarland, as found in the record, it will be at once discovered that A. H. McFarland did bid in the property now in litigation, by request of Mr. J. W. Good, for the appellant. These facts united with the sheriff's deed, admitted also as evidence in this case, clearly show a lawful sale from the foregoing opinion of this court. Hence the verdict was contrary to the evidence and law governing the case, and a new trial should have been granted. This court is therefore of opinion that the appellant has *bona fide* title to the land mentioned in the complaint and proceeds to render the judgment the court below ought to have rendered.

This court adjudges that the judgment of the court below is reversed, and that the appellant recover from the appellees the land mentioned in the complaint, and the costs in this action.

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## GEORGE CYRUS, Appellant, *vs.* THOS. G. FULLER, Appellee.

[January Term, A. D. 1884.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Ejectment.*

A bastard has no inheritable blood and cannot be heir to any one unless by some express statutory provision.

This action is brought up from the Court of Quarter Sessions, Montserrado County, upon a bill of exceptions under the statute regulating appeals. The trial was

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had at the September term of said court, A. D. 1833, at which trial a verdict and judgment were rendered for the appellee.

The appellant claims ownership to the eastern half of lot number two hundred and ninety-one, situated in the city of Monrovia, as surviving heir of the late Rosaline Canot, the former owner of said premises, against which title the court ruled. Consequently the appellant excepts to the opinions, rulings and judgment of the court below, as will be seen in the record and bill of exceptions filed, and brings the same before this judicature for review.

This court takes occasion to say it has carefully examined the record and proceedings of the court below and finds them in keeping with law and the practice of courts of law.

In this action George T. Cyrus, the appellant, seeks to eject Thomas G. Fuller, appellee, from the eastern half of the lot number two hundred and ninety-one, appellant claiming ownership thereto by inheritance or descent, alleging that as grandson of Rosaline Canot he has a legal right to inherit the same.

From the evidence it is clear that Rosaline Canot died seized of the property in dispute, leaving a will or testament in which she gave to her daughter, Palmyra Harriott, the property in dispute. It further appears in the evidence that before the death of Palmyra Harriott she also made a testament in which she gave the premises in dispute to her sister Frances Cyrus. The court further observes, from the evidence, that Rosaline Canot had three legitimate children, namely, Frances, Palmyra, and George, living at the time of her death, as well as one bastard or illegitimate child, Mary by name. To this latter child, Mary, the testator left in her will certain personal property. In the will of Rosaline Canot she expressed a desire that her lands descend to her heirs. In process of time this daughter Mary, as above referred

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to, gave birth to a bastard child, who is the appellant in this suit. Frances Cyrus dying without issue and making no testament and being seized of the premises at the time of his death, the appellant claims ownership thereto.

From the evidence it further appears that L. A. and H. W. Johnson, Sr., did in the year 1872, institute a suit for the recovery of these premises still in dispute, as collateral heirs, which case was by appeal brought before this court for review, and after solemn arguments this court rendered a decree (not knowing at the time of the decree that George Cyrus, the son of the testator Rosaline Canot, was dead) that George was the only lawful heir of Frances Cyrus' estate, and that this property was his by descent; but should it be afterward discovered that he is dead and without issue, and has not conveyed the same to anyone, then his property shall escheat to the Republic of Liberia, and should be sold as public property. According to this decree (George Cyrus being dead, dying without issue, and not conveying to any one) this property was offered for sale at public auction and the appellee, Thomas G. Fuller, for valuable consideration bought the same, obtained a fee simple deed from the Republic and has made valuable improvements thereon.

The appellee assumes in defence of his title to these premises, 1st, that he is the *bona fide* owner by lawful purchase, and 2nd, that the appellant being a bastard has no inheritable blood according to the common law, and hence cannot be heir to any one. From the evidence it admits of no doubt that both the appellant and his mother were bastards, hence the legal right of the apellant to the property in dispute as lawful heir is now the question for the determination of this court.

We take occasion here to repeat the doctrine maintained by this court in its decree rendered in the case of L. A. and H. W. Johnson, Jr. (see the decree), to wit:

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A bastard has no inheritable blood, and cannot be heir to any one by the common law. The court is aware that the Legislature of many states in tenderness has so altered the common law as to allow bastards to inherit from their mother, as well as from each other. But even this modification in no case provides that they can inherit as collateral kinsman, and in the absence of a special statute made or adopted by this Republic, this court must be and is bound by the doctrine of the common law in deciding the question.

In the ruling, verdict and judgment, this court, seeing that substantial justice has been done by the court below, fails to see why the judgment should be disturbed. Therefore this court affirms the judgment of the court below, and adjudges that the appeal be dismissed, and that the appellee recover from the appellant the costs in this action.

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## ALEXANDER LEE, Appellant, *vs.* THE REPUBLIC OF LIBERIA, Appellee.

[January Term, A. D. 1884.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

*Violation of Revenue Laws.*

1. Cases of fraud or an attempt to commit fraud upon the revenue, are by statute solely cognizable before the Court of Admiralty.
2. Where it appears that the court had no jurisdiction either over the person or subject matter, the judgment becomes a nullity.
3. Revenue is the income arising to Government from taxation, duties and the like; the tax imposed on undecked boats is revenue.

This action in the court below (Court of Pleas and Quarter Sessions, Sinoe County, at its session held November term, A. D. 1883,) was founded upon an indictment of the grand jury of that County, against the appellant. When the case was called for trial the appellant (defendant below), upon a plea to the jurisdiction

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of the said court over this action, motioned the court to dismiss the case. The court ruled that it had jurisdiction and refused to dismiss it.

The cause was then heard and regularly submitted to a jury, who returned a verdict of "guilty" against the appellant, upon which the court delivered final judgment. The appellant excepted and appealed from the judgment and rulings of said court, on the following exceptions: 1, "Because the Court of Common Pleas and Quarter Sessions had no jurisdiction over this case unless sitting in admiralty." 2, "Because the court below erred in admitting R. Minus, sub-treasurer, as witness to explain his (Minus') receipt." 3, "Because the judgment of the court below is contrary to the terms of the statute governing the alleged offence." 4, "That the final judgment is unconstitutional."

We have devoted sufficient time and care in the examination of this case to notice enough of the points of exception set forth to claim the court's attention, and we will take pleasure in investigating and expressing our opinion on them all if practicable. Under the Statute Laws of Liberia, Bk. 1, Judiciary Act, Article IV, Secs. 1 to 5, the exclusive cognizance of all cases of fraud, or attempts at fraud, upon the revenue laws of Liberia are conferred solely upon our Courts of Admiralty.

We are of opinion that the exception to the judgment of the court below was well taken, and the said court erred in overruling it. "To render a judgment binding, the court must have jurisdiction over the person and subject matter, otherwise the judgment is void and of no effect."

Now the cause of this action took its origin in the alleged neglect of the appellant to pay a legally required tax for the privilege of working or coasting his undecked row-boat within the jurisdiction of Liberia. The income of Government arising from taxation, duties and the like, is the definition of the term "revenue," or to reverse

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the term we may say the legal definition of "revenue" is the income of Government arising from taxation, duties and the like; hence we naturally conclude, that if appellant neglected to pay the lawful annual tax for the working of his boat, he committed an offence against the revenue laws, which offence is only recognizable before the Court of Admiralty; hence the Court of Pleas and Quarter Sessions of Sinoe County, not sitting in admiralty, had no jurisdiction over this case.

As to the other points of exceptions raised, we do not see how they can be properly considered, because as the first destroys the entire action, there is no further relief to be desired. The judgment of the court below being erroneous, this court adjudges that the judgment of the court below in this case is reversed and made void.

The clerk of this court is hereby directed to transmit a mandate from this court to the Court of Quarter Sessions and Common Pleas, Sinoe County, to the effect of this judgment.

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## TOM WALKER, Appellant, *vs.* THE REPUBLIC OF LIBERIA, Appellee.

[January Term, A. D. 1885.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Mayhem.*

1. A common law definition of mayhem, in the absence of a statutory definition, prevails in this country.
2. Where the verdict is at variance with the allegations laid in the indictment, it is good ground for arrest of judgment.
3. Where an injurious act has been committed on the body of any person a bad design and intention on the part of the perpetrator will be presumed. It is for the accused to show that it was otherwise and excusable.

There are several exceptions to the rulings of the court below presented to this tribunal for its considera-

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tion. The points in the bill of exceptions have had the careful attention of the court, though there are several therein embraced of little importance to the decision of this case.

We have no statute of this Republic defining the punishment of the offence of mayhem, hence under the authority of an act of the Legislature of the Republic, passed and approved in 1859, we have the common law for our guide; by which mayhem is defined to be the act "whereby one person unlawfully and violently deprives another of the use of such of his members as to render him unable in fighting, such as cutting off his hand, his fingers, breaking his arm, cutting loose leading arteries of his body, or to commit upon him such acts of violence the commission of which lessens his spirit or courage." Such an effect castration produces.

The word "maim" is a technical one, necessary to be introduced in indictment for mayhem. This charge is a crime partaking of a felonious nature; therefore to constitute the same there must be proof positive or presumptive of a bad design on the part of the actor; or the act, in the absence of a felonious intention, is a misdemeanor and not a felony. It being an assault and battery with no intent to castrate (as expressed by the jury's verdict) the verdict, however, being at variance with the issue raised by the allegations in the indictment, the judgment ought to have been arrested and a new trial granted. And just here we deem it proper to say, we have not discovered the means by which the jury ascertained the fact that there was no felonious intention of the appellant to castrate the said Jack Smart. It does not appear from the evidence in the case, for, to enable the jury come to such a conclusion, the testimony of the witness as to the manner or character of the appellant's conduct in making the assault and battery or cutting the said Jack Smart, ought to have been given as evidence. In fact, where an injuri-

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ous and dangerous act has been committed on the body of any person, to render the actor excusable particular proof must be given in evidence to show that the design or intention of his was not bad, otherwise the law will raise the presumption that the act was the result of a bad intention. It may be well also to say that in justice to the Republic, when she is a party in a criminal case all exceptions to the sufficiency of an indictment should be decided before the general issue is pleaded, otherwise the Republic oftentimes may be deprived of her right of making new indictments, thereby the guilty may escape just punishment, and the Republic become immersed into costs. But the trial of the sufficiency of indictments is a matter purely of law, therefore it ought to be first disposed of by the court.

Having thus commented, the court says this case should be, and it is hereby, remanded to the Court of Quarter Sessions, Montserrado County, at its March term, 1885, for a new trial, costs to follow.

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## MULLER & CO., Plaintiff in Error, *vs.* F. A. OVERTON, Sheriff, Defendant in Error.

[January Term, A. D. 1885.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Grand Bassa County.*

The plaintiffs in error brought this action upon assignment made against the proceedings and judgment rendered in a case of indictment, in the Court of Pleas and Quarter Sessions, Grand Bassa County, at its June term, A. D. 1884. At the calling of this case the defendant failed to answer, whereupon the plaintiffs asked for judgment by default.

We say, whenever one party to a suit before a court of competent jurisdiction fails to appear in person or by counsel, on the day which the cause was assigned for

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hearing, such failure furnishes to the other party sufficient ground to base a prayer for judgment by default.

In this case the defendant in error has failed to answer to his name either in person or by counsel, therefore this court adjudges that the plaintiffs in error are entitled to judgment by default against the defendant.

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## H. MULLER & CO., Plaintiff in Error, *vs.* F. A. OVERTON, High Sheriff, Defendant in Error.

[January Term, A. D. 1885.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Grand Bassa County.*

*Injunction.*

This case of injunction was brought before this court, from the Court of Pleas and Quarter Sessions, Grand Bassa County, upon a writ of error. The defendant in error failing to answer, the plaintiffs by their attorney motioned this court for judgment by default, which judgment was entered according to law. It now remains to pronounce perfect judgment therefor.

The court adjudges that the decree of the lower court in this case is reversed, and the injunction perpetuated. The clerk of this court is hereby commanded to issue notice, with the mandate of this court to the court below from whence this case came, to this effect; defendant in error to pay all costs of this action.

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# PROCEEDINGS UPON A WRIT OF HABEAS CORPUS ISSUED BY THE CHIEF JUSTICE, REPUBLIC OF LIBERIA.

Monrovia, January 9th, A. D. 1885

*Writ of Habeas Corpus and proceedings thereupon—Justices of the Supreme Court have inherent powers to issue same—Duties of the Attorney General: his opinions will be held as contemptuous when given with the view to nullify the rulings or decisions of a justice of the Supreme Court.*

1. It is within the judicial powers of justices of the Supreme Court to issue the remedial writ of habeas corpus and the proceedings on the review of the return of such writs are in the nature of appellate and not original jurisdiction.

2. Proceedings upon such writs differ from ordinary suits and are not governed by the arbitrary rules of the common law; the judge who issues the writ may be deemed the representative of the State and his powers are largely discretionary. Where the prisoner named in the writ is not produced and no justifiable reasons are assigned therefor, the punishment attached by statute for such failure is in the nature of punishment for contempt.

3. The duty of the Attorney General is to advise the general government officers on all *legal questions* relating to their respective offices. *Legal questions* are where doubts or differences arise on a certain state of facts; and where the party demurs, the decision of a competent judge is to be sought for. Where the advice of the Attorney General is given with the view to nullify the rulings or proceedings of a justice of the Supreme Court the act becomes a contempt.

The facts in the case are as follows: The bodies of two girls, viz., Bio and May-queh, were unlawfully seized and detained by one Gaga; therefore a petition to the Chief Justice for a writ of habeas corpus was made in behalf of the prisoners. Inquiries respecting the condition of the prisoners were made and were satisfactorily answered, whereupon the writ issued, commanding the said Gaga to produce the bodies of the prisoners before Chief Justice C. L. Parsons, on the day and hour mentioned in the writ. The officer by whom the writ was to be served, pursuant to duty, proceeded to Gaga's place. Gaga, however, forbid his coming near to serve any writ whatever upon him. Upon this return a compulsory writ was issued, directed to the sheriff, in accordance with the

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statute regulating the practice on writs of habeas corpus. (Lib. Stat. Book 1, p. 68, sec. 12.)

The sheriff, in order to execute successfully and expeditiously the compulsory writ, summoned to his assistance a *posse comitatis,* and of this the said Gaga was informed by some means unknown; therefore he fled with his prisoners to some place where they could not be found. The sheriff having thus made his return, motioned for costs incurred; therefore the Chief Justice, in the exercise of his legal discretion, adjudged the same to be charged to the Republic of Liberia. The bill of costs was taxed and certified by the clerk of the Supreme Court according to the direction of the following judgment:—

The allegations made in the petition of the complainant show the act of Gaga to be a public offence, and in this light I consider the same. For the restraining of a free citizen's liberty without the authority of the law is not only a private injury but a gross public offence, against which the law frowns.

The return of the sheriff stating that the defendant cannot be found is to be regretted; nevertheless the writ is hereby renewed and made good to arrest the defendant, wherever he can be found, within the limits of the Republic, at any time before the second Monday in September next, A. D. 1885, on which day the Chief Justice will at 12 o'clock examine the case, if the defendant be found. I regret also that the sheriff has cause to complain that G. Titler, Z. T. Walker and A. D. Skinner have contempted this court, by refusing to obey the lawful summons of the sheriff. The clerk is therefore hereby authorized to summon the said G. Titler, Z. T. Walker and A. D. Skinner to show cause, on the second Monday in September next, A. D. 1885, at 12 o'clock, to Chief Justice C. L. Parsons, why they should not be held to answer the said contempt.

The case, as I have said, involves matters which in their nature must be considered as bearing the character of a public offence. Therefore I decide that the costs incurred so far be made up by the clerk, and charged to the Republic of Liberia.

C. L. PARSONS, C. J. R. L.

In considering the character of this case, it must be remembered that the Chief Justice was in the lawful exercise of his judicial powers and jurisdiction, when the foregoing judgment was rendered, and this fact is apparent upon the record and proceedings in the case. But the Attorney General, regardless of the Chief Justice's right to exercise legal discretion over a matter on habeas

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corpus, questioned the authority upon which the judgment was given, and assumed the power and authority to review the same. In fact little respect is paid by him to the authorities, who lay it down as a settled question that no court has a right to review a matter on habeas corpus. (Bouv. Law Dict. Vol. I, p. 352, sec. 6, under the head "Contempt.") Hence, I regard the written paper (called opinion) of the Attorney General a contemptuous paper, first, because it was written for the purpose of stopping the effect of the judgment, and that I should know it, a copy of the same was sent me in court, showing the reasons relied upon why the bill of costs should not be paid. This act, when constructively considered, is an open contempt to the court, in its presence, and it is also an outrage upon the judiciary, tending to deprive the people of the benefits which by the Constitution of Liberia ought to be enjoyed in the freest manner on habeas corpus.

I am compelled to say from the position taken by the Attorney General, that he has attached greater powers to his office than has been given by the Legislature. One of the many duties of his office (defined by statute) is to advise the general government officers on all legal questions touching the duties of their several offices. And it is in respect to a want of a proper understanding of this part of his duty, that the question arises as to what is a "legal question." *It is one when the doubt or differences arise as to what the law is, on a certain state of facts. This is said to be a legal question, and if the party demurs, this is to be decided by the judge.* (Bouv. Law Dict. Vol. II, p. 403, under head "Question;" also Lib. Stat. Book I, p. 16, under head "Trial.") It is here described that *the trial of all questions of mere law shall be by the court.* It must therefore be remembered that the phrase "legal question" is applicable only when it arises on a certain state of facts, and that such a question can only be decided by a court of law having jurisdiction over the

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same, and not, as the Attorney General maintains, that it includes questions without the walls and jurisdiction of the court.

Now I am sure that if the act passed by the Legislature of 1873, amendatory and supplementary to an act entitled "An act establishing the Treasury Department," be rightly understood, no conflict between the two branches of government can ever take place about the payment of costs. For it is obvious that the Legislature for the payment of judiciary bills has carefully and plainly marked out in the 10th section of the above entitled act, the course to be observed by both branches, in which it makes it the duty of the Secretary of the Treasury to authorize the payment of all bills authenticated, as directed in said 10th section and presented for payment.

This section of the statute last referred to, seems to exclude the necessity of the Auditor's approval of judiciary bills, as no good reason can be offered for having him examine and decide as to the legality of a bill which had been already adjudged and certified by a court of law to be lawful. I apprehend that the Auditor's duty is to pass upon all public accounts of disbursing officers and upon all matters originating and referring to public business; for the law is intended to govern the several heads of the department, so that they may be checks one upon the other, and to prevent fraud on the Government and the payment of money in excess of appropriations, and also to prevent other unwarranted expenditures. And yet, in the face of the plain language and meaning of the law, the Attorney General wrote the paper called an opinion in manner as follows:—

82-3/27 Monrovia, July 10th, 1883.

Sir,—I have the honor to acknowledge receipt of yours of this date enclosing the judgment of His Honor the Chief Justice in a, case of habeas corpus, and a bill of costs amounting to $188.35, which he orders that the Republic shall pay, and in accordance with your request for my opinion in the premises beg to say, that having solicited information on the subject from the

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Attorney for Montserrado County, I have learnt from him, and it so appears in the said judgment, that the writ was issued in the usual way on the petition of a certain native man. The Republic of Liberia was not a party and of course was not represented.

2. A court clearly has not any power to give judgment against any person but the parties who are legally within its jurisdiction either by having voluntarily submitted themselves thereto, or having been legally served with some process issuing therefrom, and this point has been so decided by the Honorable the Supreme Court in the case R. R. Johnson, plaintiff in error, *vs.* J. G. Grimes, defendant in error.

3. I find also that the person against whom the writ issued has not yet been brought within the jurisdiction of the court by the service of the process, and consequently the case is not yet in the condition to be heard and determined and there can, of course, be no valid judgment rendered.

4. Another question also presents itself, namely, the liability of the Government to pay costs, and I am of opinion that according to the general principles of law and the rules of the Supreme Court (see Rule 36, sec. 4) His Honor the Chief Justice could have had no power to rule costs against the Republic even if it had been a party.

5. Without, however, entering at length into this question, and considering only the stage of the case at which said judgment was given, and the fact that the law officers of the Republic were not notified to appear and defend its interests, I feel it my duty to say that in my opinion you ought not to pay said bill of costs.

I return the papers enclosed by you and have the honor to be, Sir,

Your Obedient Servant,

HY. W. GRIMES,
*Atty. Gen. R. L.*

The Attorney General in his review seems to regard the practice on habeas corpus as being bound down to the arbitrary rules of the common law. Again, he looks upon it as a civil suit. He is, however, mistaken. A writ of habeas corpus is not the foundation of a civil suit, but, on the contrary, its use is to enable the court or judge to ascertain whether the prisoner's personal liberty is illegally restrained, and to release him if this be found proper to do. For every illegal restraint of a person's liberty is a public offence against which the Constitution of the Republic of Liberia provides the writ of habeas corpus, and upon which a summary examination of the *cause* of detention may be had. But I shall proceed to show that the Attorney General's opinion is not supported by law. He says that because the writ was issued on a petition of a certain native man, the Republic

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was not a party and of course was not represented. I say the Republic was represented, for the Chief Justice represented her, as the power from which the writ emanated. The right to the writ, however, and all the benefits under the same, being a Constitutional one of the prisoner's, it is the duty of the court to regard the same tenderly.

The Attorney General says: "A court clearly has not any power to give judgment against any person but the parties who are legally within its jurisdiction, either by having voluntarily submitted themselves thereto, or having been legally served with some process issuing therefrom." I defy the Attorney General to show that the Chief Justice has given judgment against any party who has not been summoned, or against any person without the jurisdiction of the court. The Attorney General must not forget the fact that the writ of habeas corpus is unlike other writs; that it issues in the nature of a mandate and that it does not summon but commands; and that the practice on it disregards the ancient common law course of proceedings. For the common law course upon summons in civil cases is, if the party summoned does not appear, his case goes by default. But a writ of habeas corpus is directed to the custodian himself, commanding him to produce the body of the person named in the writ, and if he fails to do so he is punished for contempt, unless the court is satisfied that it was not in his power to produce the said body. Every person authorizing the issuing of a writ is responsible for the fees incurred thereon, whether the object of the writ has been effected or not. The Republic, having issued the writ, was responsible for the costs, because neither the person to whom it was directed nor the prisoners, can be found.

And the Attorney General goes on further to say: "I find also that the person against whom the writ issued has not yet been brought within the jurisdiction of the court by the service of the process, and consequently

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the case is not yet in a condition to be heard and determined and there can, of course, be no valid judgment rendered."

The statute directs the manner in which the court or judge shall proceed, when the person to whom the writ is directed appears and does not produce the body of the prisoner. (See Lib. Statute, Book I, page 67, sec. 8.) But nothing is said as to what course should be pursued if, upon the return of the duplicate writ, the court or judge should be informed that the person to whom the writ is directed cannot be found, nor the prisoner he has in his custody. I now ask, under such circumstances what should the court or judge do? Why, certainly the court or judge should *exercise discretion,* this being an *inherent right* of a court of law. This is just what I have done, and was fully warranted by the Constitution and law to do, because after the return of the writ of habeas corpus there must be some action on it by the court or judge. The Constitution gives wide jurisdiction to the court, as to how freely the prisoner may be allowed to enjoy the benefit of a writ of habeas corpus, as also does the law. Every judgment delivered on it is valid, because the law has exempted such judgment from the review of any court, as I have shown in the preceding comments.

We now consider the last position taken by the Attorney General, which reads as follows:—

"Without, however, entering at length into this question, and considering only the stage of the case at which said judgment was given, and the fact that the law officers of the Republic were not notified to appear and defend its interests, I feel it my duty to say that, in my opinion, you ought not to pay said bill of costs."

Here I hesitate not to say that there is no rule of court that exempts the Government from the payment of any costs incurred in a case brought for a public offence and crime. Nor is there any principle of law applicable to

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the position of the Attorney General. But in civil cases the Government does not pay costs; and here I have occasion to remark that the tendency of the Attorney General's advice to the Secretary of the Treasury not to pay the costs, was subversive to good Government, and it is well that the wisdom of the Secretary of the Treasury soon led him to discover the same. I therefore repeat, that the judgment is a valid one; and every man who loves liberty and regards the writ of habeas corpus as one of his dearest birth-rights, in consideration of the law and practice on the same, will so conclude in respect to said judgment.

Having thus reviewed the paper of the Attorney General, I proceed to pronounce the writing and sending of the same to the Chief Justice in court (constructively considered) an open contempt of the Attorney General in the presence of the court; for which he shall be held to make satisfactory apology forthwith to the Chief Justice in court, and to pay costs incurred in the case; otherwise to pay a fine of one hundred and fifty dollars forthwith; and on failure to do so he shall be imprisoned in the common jail of the County of Montserrado and Republic of Liberia during the time of the Chief Justice sitting in chambers.

C. L. PARSONS,
C. J. R. L.

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## J. W. GOOD, Appellant, *vs.* RANDOLPH SCHMIDT and WILSON SLIGHT, Appellees.

[January Term, A. D. 1886.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Damages.*

1. Where upon petition a writ of arrest is granted a party, it is error in the judge to afterwards revoke his order. He may be compelled to enforce the order granting the writ.
2. The revocation of an order is an act of the judge *dehors* the record.

The record in this case presents a great variety of facts, out of which several important questions have

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arisen; but as the merits of the cause may be completely disposed of by decision of a few points, the facts which illustrate them will alone be mentioned.

This is an appeal from the rulings and judgment of the Court of Quarter Sessions, Montserrado County, at its September term, A. D. 1885. The appellant, J. W. Good (plaintiff below), instituted an action of damages against the appellees (defendants below) for enticing and taking away his infant daughter from his services and society and carrying her to parts beyond the limits of the Republic.

The judge, upon the petition of the plaintiff in the court below (now appellant), for a writ of arrest, having in the exercise of his discretion granted the order for the same, ought not to have revoked it. But it was the right of the appellant to resort to the legal means, within the embraces of the law, to compel the judge to enforce the order for the writ of arrest, and the plaintiff neglecting to so avail himself of his right guaranteed by the law of the land amounts to a waiver.

Again, the revocation of an order is an act of the judge, which is *dehors* the record; therefore the defendants were not answerable for the said revocation. Nor were the defendants within the jurisdiction of the court at the time of the revocation of the order referred to, and were not so until they were summoned and so returned by the sheriff. For this reason we are of opinion that the court was right in striking out the first count of the plaintiff's complaint.

Again, the plaintiff having directed the issue of a writ of summons, after he had petitioned for the writ of arrest, he was thereby concluded, and therefore the law will not lend its aid to any exceptions taken by plaintiff (now appellant) to the revocation of the order for the writ of arrest. The charge against the appellees of inducing and enticing away appellant's daughter from him, does not appear from the evidence in the case to be well

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founded. The word "induce" comprehends the idea that there was some influence brought to bear upon the will or judgment of the mind,—which in this case, from the evidence, appears to the contrary.

Without, therefore, entering into a more minute consideration of the facts surrounding this case, the court being satisfied that the verdict is not contrary to the evidence, and the judgment thereon being well founded in law, the judgment of the court is affirmed, with costs.

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## J. J. ROSS, Appellant, *vs.* G. W. GUSSEFELD, Agent for A. Woermann, Appellee.

[January Term, A. D. 1886.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

*Debt.*

1. Protest on bills before a notary applies to foreign bills and is evidence of demand and non-payment; it does not apply to inland bills.
2. It is error for a court in expounding written evidence to extend its exposition beyond the contents of the instrument.

This is an appeal from the proceedings and judgment of the Court of Quarter Sessions, Sinoe County, at its August term, 1885. The action was brought by the appellee (plaintiff below) upon a promissory note drawn by the appellant, in favor of one A. Miller, for the sum of five hundred dollars, who afterwards endorsed and transferred the same to plaintiff below.

At the trial the plaintiff aforesaid obtained judgment for the sum specified in the note, from which judgment, and other proceedings, exceptions were taken, and upon the exceptions thus taken the cause is brought up for review.

The exceptions taken are:—1, To the court's ruling against a plea of abatement, in which it was urged that the action ought to abate, because the note upon which it is founded, being endorsed over to plaintiff, was subject to the rule respecting inland bills of exchange, and

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that demand, notice and protest, before a public notary, should have been made before bringing this action. 2, To the court's refusing a new trial asked for, upon the ground that the verdict was contrary to the evidence in the case, as the defendant below did submit as evidence at the trial two receipts from the said A. Miller for the sum of two hundred dollars, of prior date to the transfer of the note in question, which should have been allowed him as a set-off to the note.

These constitute the important exceptions taken at the trial below. It does not appear by the laws governing promissory notes and inland bills of exchange, that before legal demand on account of non-payment a protest made by a notary public is required.

By the general commercial law, it is perfectly clear that the intervention of a notary public is unnecessary in these cases. The protest belongs altogether to foreign bills, and is the evidence of demand, and an indispensable step toward the legal notice of non-payment. The note under consideration must be regarded as having reference exclusively to inland bills; to them the protest has no legal binding effect, as the drawer becomes immediately liable at law, on demand and failure of payment.

The court further says that it is the duty of the judge of the Court of Quarter Sessions, on the trial of a cause before him, where written evidence is admitted, to expound to the jury the same. This is only done to make clear to the minds of the jury the facts herein contained. But expounding does not extend beyond the limits above mentioned, nor can the court supply a material fact wanted in such written evidence. Hence the court could not have, in summing up, directed the minds of the jury to the receipts as evidence of payment on the note, they failing to express the same.

Upon the whole, after a careful review of the trial below, it is the judgment of this court that the judgment of the court below is affirmed, with costs.

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## REPUBLIC OF LIBERIA, Libellant, *vs.* MULLER & CO., Libellee.

[January Term, A. D. 1886.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

*Admiralty.*

*Trading of foreigners at non ports of entry in open crafts or vessels—Appeals in admiralty.*

A legally constituted and licensed attorney cannot be debarred from assisting state's attorney in a criminal prosecution, upon the ground that he is a member of some other branch of the Government; his relation with the judiciary in this connection does not create him an officer in the judiciary, within the meaning of the Constitutional inhibition that an officer of one branch of Government shall not be competent to hold office in another branch of Government at the same time.

This case has consumed most of the time of the present session of this court, which we felt bound to hear patiently, however tedious it became, because of its nature and importance. Matters in admiralty are not to be heard hurriedly nor confusedly. Such courts are spoken of as "being held under the law of nations," hence demand such attention as the terms of our international relations require. All the world are parties in admiralty causes, and all the world are bound by their decisions.

Viewing this case in the most equitable manner, we find it confused by an irrelevant batch of written evidence, which we will not notice in our summing up; and we are of opinion that the court below should not have admitted such evidence, because, as Mr. McCalla was not a party to this action he was the best evidence introduced. Now, having stripped the case of all irrelevant matters, we take it as presented by the pleadings filed.

Hendrik Muller & Co. of Rotterdam, in the Netherlands, are libelled for contravening the Statute, namely, "An act confining and restricting foreign vessels to ports of entry," by trading at Settra Kroo and other

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ports of the leeward coast of Sinoe County, "*in open crafts or vessels*," through their agents, W. Bakker and R. Velhurst; and by establishing factories on the said coast, known and distinguished as the Dutch Factory, in charge of one Hosea McCalla. The libellee denied the truth of all the allegations alleged in the libel of information, whereupon issue was joined.

We perceive, in the record of this case sent here, several minor propositions and motions which the court below decided upon, which in our opinion were without material harm to the appellant. "Appeals in admiralty carry up the whole fund, and mere technical errors below not injuriously affecting the rights of the parties are not sufficient grounds for reversal." On the exception taken to the ruling of the court admitting Attorney Lewis to assist County Attorney Roberts, we say that the court did not err. Practice at law as an attorney is a legitimate avocation permitted in this Republic under certain provisions of law, and any person complying with the statute "pertaining to attorneys," has the right to plead, implead and prosecute before any court of this Republic. The right of acquiring property and of pursuing and obtaining happiness are inherent and inalienable in all men, and it is for the enjoyment of these rights that men pursue certain vocations. Attorney Lewis was employed, without any reference to his being a Legislator, to assist in the prosecution of this case in the court below, but that did not create him an officer in the judiciary, as alleged by libellee; and the retaining of Attorney Lewis could not create an officer not provided for in our Constitution and laws. Attorney Lewis had a perfect right under his license to be admitted by the court. In thus deciding we only repeat what this court has expressed before. (See ruling in the case of Rep. of Liberia, libellant, *vs.* R. A. Sherman, libellee, (1881,) in regard to Attorney Belgrave.)

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Another important question raised in this cause, on the attorney's brief, is that as to the nationality of Mrs. J. E. Marrschalk. As this question was not raised in the court below we decline to consider it.

Now we come to the case as presented by the libel of information and libellee's answer, and the evidence. Viewing all of the evidence together, viz., Jackson, Smith, Ellis, Sherman and McCaully, we find it most embarrassing to harmonize them with the allegations. The libellant and libellee both seem to have had it in their power to produce evidence "having a tendency to establish the truth or falsehood of the allegations, and have neglected to do so." The witness Jackson saw Bakker at Settra Kroo, knew that he took away all the goods McCalla had there and at Little Kroo, alleging that McCalla owed Muller & Co. Yet while this act of W. Bakker was an unlawful assumption, and an infraction of the peace, we can see no relevancy to the cause at issue. If McCalla owed Muller & Co., they had their remedy at law, which should have been pursued instead of assuming to carry a raid on a peaceable citizen and take from him his property *vi et armis,* as was alleged by the witness. The act of W. Bakker, agent for Muller & Co., as represented, was so public and notoriously defiant, that the authorities of that locality could not neglect to bring the subject up for examination.

As we understand the points at issue we are of opinion that the right and the wrong are equal, in which instance the condition of the defendant is to be preferred. Therefore this court decrees that the decree of the Court of Quarter Sessions, Sinoe County, sitting in admiralty, is reversed and made of no effect whatever, and the libellee is released from all forfeitures, penalties and charges of whatever nature heretofore imposed on him in this behalf, as though it had never existed.

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## MODDERMANN, Agent for Muller & Co., Appellant, *vs.* PERRY A. GREEN, Appellee.

[January Term, A. D. 1886.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

*Debt.*

An account opening with the words, "To bal. of account," etc., is as good and valid as though every item in that balance had been set out at large. (Lee *vs.* Hirsch, 1878, and McGill's Trustees *vs.* Worrell, Agt., 1884.) The term "balance" is a technical one, and in mercantile parlance refers to recounts previously rendered, or exchanged and adjusted between the parties.

A careful examination of the record in this case, sent up from the Court of Pleas and Quarter Sessions, Sinoe County, very readily disclosed to this court that the exceptions of the plaintiff below (now appellant) were well taken. Besides the other numerous irregularities in the court below, we note particularly that of dismissing the case on the motion of defendant (now appellee), which alleged that "plaintiff neglected to specify all the articles in his account as is required by law, in that several charges are entered as amount paid bearer, without naming the bearer or the articles obtained." The statute on which this motion was based has been frequently examined and interpreted by this court; *vide* judgment in the cases Lee *vs.* Hirsch, 1878, and McGill Trustees *vs.* Worrell, Agt., 1884. Application and careful enquiring on this subject have only strengthened our opinion as heretofore expressed.

We now repeat, that an account opening with the words "To bal. of account," etc., is as good and valid as though every item included in that balance had been set out at large. The term is technical, and in mercantile parlance refers to accounts previously rendered, or exchanged and adjusted between the parties, and is a specific, distinct and intelligible article, properly charge-

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able in account, furnishing sufficient notice to the defendant, according to the statute regulating complaints and the requisites of accounts to be filed with complaints in actions of debt.

"Your order paid bearer" is another specific, distinct and intelligible charge, allowable in accounts on the authority granted by the drawer of the order, "pay to bearer."

We are unanimously of opinion that the court below erred in its judgment in dismissing the case. Therefore, in order that justice might be done to all, this court adjudges that the judgment of the court below is hereby reversed. The case is hereby remanded to the Court of Quarter Sessions, Sinoe County, where it originated, to be tried on its merits according to law; appellee to pay all costs.

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## S. ATTIA, Appellant, *vs.* E. A. PAYNE, Appellee.

[January Term, A. D. 1886.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Debt.*

1. The word "balance" is a technical term used in accounts, and refers to accounts previously rendered; it is a statement specific and distinct, within the meaning of the statute. An account charging "amount paid to bearer as per your order," is also a distinct charge.

2. Where a general answer is filed the defendant will not be allowed to raise questions of law upon any fact stated in the complaint, but he may do so in respect to facts not laid in the declaration, as where a bond is insufficient, or an appeal has been illegally taken, etc.

3. In venue cases the clerk is bound, by the order of the judge of the court in which the case was entered, to transmit the entire record to the venue court. The law will not allow records to be sent up in detached parts, unless for certain causes made apparent on motion.

4. Where in a change of venue the bond required by law is not filed until after the time allowed by statute for the removal of the cause, the omission amounts to an irregularity which is fatal, and it is error in the venue court, where such irregularity appears, to admit the cause to its jurisdiction.

On examination of the record of this case we find only one assignment of error or objection raised to the ruling

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of the court below. This we will briefly notice. When the case was called in the court below, defendant motioned that the case be dismissed on the ground of alleged defects in account filed with the declaration or complaint; which defects, the said defendant below (now appellee) was bound by the rules of pleadings, if he intended to take advantage of them, to point out in his answer. Appellee having failed to do so he has waived all legal objections to the said account. Here we deem it important to remark that the legal pleadings are mutual altercations between the parties to the suit, on the alleged cause of the action. The pleadings must be written and laid in the clerk's office. When the pleadings are ended the issues presented in them are to be submitted to the court for its determination.

In this, as in other cases, we have to repeat our opinion that the word "balance" is but a technical name or term, when set out in accounts due upon an account rendered, and it is regarded as a specific and distinct article in the account properly chargeable; hence it is a sufficient notice to the defendant of what the plaintiff intends to prove within the meaning of the statute. (Chap. IV, sec. 8.)

The court is of the same opinion in respect to an order drawn for a certain amount in favor of the bearer. We are of opinion that an order made payable to bearer is an article properly chargeable in an account, and that when it is set out in the account, the statement is specific and distinct, and is sufficient to show the defendant the article with which the plaintiff intends to charge him, as well as to give the defendant notice of the fact the plaintiff intends to prove. In this connection we say that a question repeatedly argued and decided must be considered as no longer open for discussion, whatever difference of opinion may have existed on the subject in this court. This court will follow as its obliga-

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tion its decision on questions respecting the construction of our statute laws.

A defendant who files a general answer denying the law and the facts, is not allowed to raise questions of law, upon any fact stated in the complaint of the plaintiff. In order to secure the right of raising question of law the defendant must follow the rules of pleadings. He must set up his objection in his answer, to the facts stated, or to the defects apparent. Defendant under a general answer may raise questions of law respecting any fact not stated in the plaintiff's complaint subsequent to the determination of the pleadings, as, for example, to the illegal securing of a bill of exceptions, to the insufficiency of a bond, to the unlawful securing of an appeal, etc., all of which are proper matters to be laid in a motion to dismiss a case. Having thus commented on the issues of importance, and in view of the justice which the case demands, this court will repeat its opinion expressed in the case of Attia, agent, against Tuning (1880): "The judgment of a court which has no jurisdiction over the case is a nullity."

Where want of jurisdiction appears on the record of the court of general jurisdiction, the record is a nullity, and no rights can be acquired under it. "Upon a change of venue in any case the order of the judge of the court in which said case is entered binds the clerk thereof to turn over the entire record—all and every kind of paper and document appertaining to said case." The law will not allow records to be turned over, or sent up in detached parts, unless for certain causes made apparent on motion.

It is apparent in the record of this case that after the oath required, the most essential requisite was neglected, namely, the bond. This instrument was received in the clerk's office exactly one month from the date of the receipt of the record of the case, and according to the date of the bond, it was not executed until

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twenty-two days after the 10th of September, 1885, when the venue was changed, which fact the court is bound to notice. The irregularity in the cause is too obvious not to be noticed by any intelligent mind; hence, after the inspection of the record of the judge of the Court of Quarter Sessions, Montserrado County, he erred in assuming jurisdiction over the case, and therefore all the doings of said court below, which had no jurisdiction of the cause, must fall.

Therefore, it is adjudged that the judgment in this case of the Court of Pleas and Quarter Sessions, Montserrado County, is reversed and the case is left in the same state it was in before a change of venue was taken. The Court of Quarter Sessions, Montserrado County, is hereby commanded to return the case to the court from whence the venue was changed; and the Court of Quarter Sessions, Grand Bassa County, is hereby commanded to resume jurisdiction over said case of hearing according to law; appellee to pay costs of his appeal.

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## J. J. ROSS, Appellant, *vs.* R. MINUS, Appellee.

[January Term, A. D. 1887.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Grand Bassa County.*

*Ejectment.*

It is the duty of the appellant in appeals, to see that all documents relating to same are duly transmitted to the appellate court. Where the records are incomplete the court, upon application, will dismiss the appeal.

Notwithstanding the long continuance of this case in the courts, and the use of a mandamus issued out of this court in the interest of justice, when this case was called for hearing appellee motioned this court to dismiss same because of the incompleteness of the record sent up from the Court of Pleas and Quarter Sessions, Grand Bassa County, in that three papers,—viz., the verdict

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of the petit jury in an action of damages, J. J. Ross *vs.* R. Minus, tried A. D. 1883; the publication of the Sheriff of Sinoe County, for the sale of lot 1357 in Greenville, Sinoe County, as the known property of R. Minus, and the notice of R. Minus which was offered in evidence at the trial of the case in the court below,—have not been sent up in the record filed in this court.

We take great pleasure in hearing the causes of litigants brought here upon sound principles and in keeping with the general rules of practice, while we regard it the duty of each party to watch carefully the safety of his cause. Under this sense of feeling the court has carefully considered the allegations in appellee's motion to dismiss, and upon inspection of the record of the lower court we do not find the papers, named in appellee's motion as missing in said record, notwithstanding both parties admit that those papers were offered to the court below as evidence in this case.

As the 18th rule of the revised rules of this court informs all parties that this court will hear no case before a complete record is filed, we think appellant should have been vigilant enough to see that the whole proceedings of the court below were sent up here. Justice now demands that this case, which has been on the docket so long, be set at rest. Therefore, this court rules that the motion is sustained and the case dismissed; the appellant to pay all costs of this action.

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## REVIEW OF A WRIT FOR CONTEMPT ISSUED AGAINST JUDGE J. J. CHEESEMAN.

[January Term, A. D. 1887.]

The motion of Judge J. J. Cheeseman of the Court of Quarter Sessions, Grand Bassa County, is addressed to this court to stay further proceedings in this matter of alleged contempt, and to discharge him from further

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attendance on this court, alleging as the ground of the motion that the citation issued upon him requiring his appearance before this court, is not authenticated by the signature of the clerk and seal of the court, and that it is not addressed to the marshal of the Supreme Court.

In respect to the motion this court says, it is a well approved maxim of law that there can be no plea against an action which entirely destroys the plea. Proceedings in matters of contempt may be properly classed with such peculiar actions as may be brought within the rule, but considering the circumstances surrounding this case we hesitate not to give expression on the merit of the motion.

First, the court says it is not necessary that any writ or process whatever, issued under the authority of law by either of the justices of the Supreme Court in the recess of the court, and bearing the official signature of the justice who issued it, should have the seal of the court on it to make it valid and of force in law, because it is reasonable to suppose that neither of the justices would or could carry with him the seal of the court out of the clerk's office where it properly belongs, so that the impress may be conveniently affixed upon writs and other processes issued by them. If our supposition is correct, it must be admitted that it harmonizes with this well settled maxim, which declares that "whatever appears within the reason of the law ought to be considered within the law itself."

Second, that the citation ought to have been directed to the marshal, is a good plea. This plea, however, only affects an abatement in the proceedings in the case instituted under the citation, leaving Judge J. J. Cheeseman still in alleged contempt to this court, and liable to be brought before it again to answer interrogatories, under penalty of a writ of attachment.

The court is of the opinion that the good order and harmony of the judiciary demands an investigation of

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the case and a final disposition of the same. But in considering the merits of the motion, this court rules that it is not necessary that the citation have the seal of the Supreme Court to make it valid and of force in law. Notwithstanding, the proceedings in this case under said citation is abated, because it was not directed to the marshal of the Supreme Court, and the said Judge J. J. Cheeseman is hereby discharged from the allegations of his recognizance.

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## E. MANHEINER, Agent for the Belgan Trading Company, Appellant, *vs.* J. L. FULLER, Appellee.

[January Term, A. D. 1887.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

*Debt.*

*Appeal bond—Parties competent to become bail.*

1. If the bailee be not liable to the ordinary process of the court, or if he be unable to pay the amount laid in the bond, he is disqualified to stand bail.
2. The signing of an instrument on behalf of another can only be binding on such person when there exists either expressed or implied authority so to do.
3. The approval of an appearance bond by an inferior court will not bar a motion with respect to its insufficiency, before a superior jurisdiction.

On the calling of this case the appellee offered and submitted for the consideration of the court a motion to dismiss, on the following grounds: 1, For want of proper parties to the bond filed. 2, Because said bond is not sealed by the parties thereto. 3, Because W. Bakker, who signs said bond for H. J. G. Moddermann, does not aver that he does so as the attorney for the said H. J. G. Moddermann.

The court has carefully considered the several objections raised in the motion and now proceeds to the determination of same. Among the essential qualifications

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to enable one to become bail for another is that the bailee be liable to the ordinary process of the court and be able to pay the amount for which he became responsible. Upon inspection of the bond in question it appears that one William Bakker has undertaken to affix thereto the name of H. J. G. Moddermann as bail for the appellant.

Here we remark, the signing of an instrument for another can only be binding when done by authority expressed or implied. The evidence of such authority does not appear to the satisfaction of the court; therefore this court could not regard such signing binding in the least, upon the person whose name was thus signed. It is clear to the mind of the court that the purported bond filed in this case should have been signed by H. J. G. Moddermann in person, or by some one professing to be authorized to act for him—either as his agent or attorney. The approval of an appearance bond by an inferior court does not constitute a bar to a plea or motion as to its insufficiency before a superior court.

For the reasons above expressed the court is of opinion that the objections set up in the motion are well founded. Upon the whole, we say that the irregularity of the bond renders it proper for us to entertain the appellee's motion to dismiss. It is accordingly adjudged that the appeal is dismissed and that the appellant pay the legal costs of the appeal.

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## H. J. BROOKS, Appellant, *vs.* GEORGE W. GUSSEFELD, Agt. for A. Woermann, Appellee.

[January Term, A. D. 1887.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

*Debt.*

This court, having listened attentively to the arguments in this case, has arrived at the following conclusions: That a note of hand is a specific statement of a

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debt, also are books of accounts, which must be admitted in courts and proved like other facts. In this case a note of hand is the ground of action, and a book account was produced in the court below, as a set-off against the note of hand, but was ruled out on the strength of plaintiff's assertion in his reply, that defendant paid the amount of $597.54¼ in a book account between them, instead of the note of hand in question; but we find no regular account filed with the reply.

We are of opinion that with this reply a regular account should have been filed and transaction proven. As books of account are often closed with notes of hand, it is always safe to follow the rule to enter, or credit on the back of the notes of hand, all payments made on it, and where or when circumstances prevent such endorsements being made, *receipts, specifically referring to the particular note of hand,* should be taken.

All actions of debt in any court of this Republic are required to be filed in a particular form, in accordance with the Statute Laws of Liberia.

As far as this case progressed in the court below, we do not find sufficient evidence adduced by either party to this suit to support their position, nor do we find anything to take hold of judicially; and we are at a loss to understand how the court below arrived at a judgment. Nor does it appear to this court for whom judgment should be rendered. Therefore this court adjudges that the judgment of the lower court is hereby reversed, and this case is hereby remanded to the Court of Pleas and Quarter Sessions, Sinoe County, for rehearing according to law; costs to follow termination of the case.

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## T. A. CRAWFORD, Appellant, *vs.* THE REPUBLIC OF LIBERIA, Appellee.

[January Term, A. D. 1887.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

*Fornication.*

In this case, trial was had at the August term of the Court of Quarter Sessions, Sinoe County, 1886. At the trial the appellee obtained a verdict and judgment against the appellant, but exceptions were taken thereto and the case brought before this court for review. During the proceedings and trial below, several questions of law were raised, the most important of which (as it appears to this court) was to the indictment, for alleged uncertainty in setting out the charge.

In considering this case the court feels bound to say that the charge upon which one is arraigned for trial in all cases should be set forth with such distinctness as to leave no doubt upon the mind of either the court or defendant as to its nature; and this is but reasonable, as thereby the defendant may be able to make his defence.

A complaint or charge should not be set out in such language as to leave it doubtful as to the special offence intended to be charged. In examining the records in this case we discover that fornication and bastardy are coupled, and charged against the appellant. Now, for which of these offences has the verdict been rendered (the verdict being a general verdict) is not clear to the mind of the court, both fornication and bastardy being offences for which distinct remedies are provided, in law. Upon the whole, after a careful review of the evidence, the court fails to see that it supports and fortifies the verdict and judgment rendered.

Therefore this court adjudges that the judgment of the court below in this case is hereby reversed and that the appellee pay all lawful costs of the appeal.

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## SIMON ATTIA, Appellant, *vs.* JOSEPH H. SUMMERVILLE, Appellee.

[January Term, A. D. 1888.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Grand Bassa County.*

*Trespass* vi et armis.

*Trespass* vi et armis—*Action of damages—Written directions in pleadings.*

1. Where the statute provides a remedy for a wrong or injury, its provisions take precedence over the common law rule and must be strictly followed. The statutory remedy for a trespass *vi et armis* upon the person or property is an action of damages.

2. The written directions of the plaintiff or his attorney to the clerk of court, is his authority for issuing process against the defendant, and it should contain every essential instruction to the clerk with reference thereto.

This action was brought and tried in the Court of Quarter Sessions, Grand Bassa County, at its March term, 1887, in which court a verdict was obtained awarding the plaintiff below the sum of five hundred dollars damages. The court rendered judgment confirming said verdict. From the ruling and proceedings of the court during the trial, as well as from the judgment rendered, the defendant took exceptions, upon which exceptions the case is brought up to this tribunal for review.

This case has claimed much of the attention of this court, as it presents several important issues not before raised and submitted to it for its decision. The sole question in the case is the appellee's right to maintain the action brought, the right to do which is disputed by the appellant; this point having been argued with great labor and talent by both parties. The court will address itself to such points in the bill of exceptions as may be required to enable it to arrive at a just conclusion.

The first objection set up in the bill of exceptions is, that the action of trespass *vi et armis* cannot be maintained for the injury complained of in the declaration, because the statute provides a distinct and sufficient

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remedy to be called an action of damages, and the remedy under the statute could not be set aside for that of the common law. The legal determination of this question by the court below would have ended the controversy. This objection, however, was not allowed by the court below. In this the court did err, because the statute constitutes the paramount law of the land, and could not be set aside by the common law, however analogous its meaning.

To the second plea raised in the appellant's bill of exceptions, we remark that in respect to the written direction we are of opinion that it should set forth every necessary instruction of the plaintiff to the clerk of the particular court in which the case is entered. The legal existence of the writ depends solely upon a proper written direction. Therefore the court did err in overruling the objection set up against the written direction of the defendant below.

The next point claiming this court's attention raised in the bill of exceptions is that the court below did err in submitting the case to a jury under the aforementioned circumstances. This objection is well founded, because the first plea set up in the answer of the defendant below should have been determined in his favor, hence the court did err in submitting the facts to the determination of the jury, the case becoming a nullity because of the legal defects mentioned in said plea.

After the most deliberate consideration, this court is unanimously of opinion that the judgment should have been given for the defendant below. Therefore, this court adjudges the judgment of the court below in this case is reversed, with costs.

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## H. J. G. MODDERMANN, Agent, Appellant, *vs.* WM. M. ROBERTS, Appellee.

[January Term, A. D. 1888.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

*Debt.*

A defendant who has not been summoned at least fifteen days prior to the first day of the term of court to which the writ is made returnable shall not be deemed as legally summoned and will not be compelled to answer the complaint. The meaning to be attached to the statute relating to this point is, that although a defendant may have had fifteen days' notice, still the court, in its discretion, may grant further time if it thinks proper so to do from the peculiar circumstances surrounding the case.

The appellant, H. J. G. Moddermann, agent for H. Muller & Co. of Rotterdam, by counsel, maintains that the judgment of the court below should be reversed, and a trial of the facts ordered, because the judge erred in abating the action upon the ground that the plaintiff's complaint had not been filed in the clerk's office fifteen days before the session of the court.

This court says that plaintiff's exception is not well taken, because the statute laws of this Republic emphatically declare that "the defendant who shall have been summoned fifteen days before the first day of the session (or court) to which a return is to be made, shall be deemed to have been lawfully summoned and be compelled to answer the plaintiff, provided the plaintiff shall have filed his complaint in the clerk's office at least fifteen days before the session of the court; nevertheless, when the peculiar circumstances of the case render it necessary, the court may in its discretion grant further time to the defendant." The legal construction of this law, as understood when considered together, that is to say, the first and last clause, is to be interpreted thus: that though a defendant is deemed to be legally summoned when he has had fifteen days' notice before the

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session, provided the plaintiff's complaint had been filed fifteen days before the session of said court, yet the court in its discretion, from the peculiar circumstances of the case, may even then grant the defendant further time.

It is obvious that the court could have no jurisdiction over a person not legally summoned under the statute above quoted, consequently it could exercise no power in such a case.

After a careful review of this case, and considering the statutes governing actions in the courts of Liberia, we are of opinion that the court below was right in abating the action. It is therefore adjudged by this court that the judgment of the court below in this cause is affirmed, and that appellant pay all costs.

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## H. J. G. MODDERMANN, Agent, Appellant, *vs.* WM. M. ROBERTS, Appellee.

[January Term, A. D. 1888.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

*Specific Performance.*

The term "Court of Quarter Sessions," etc., does not refer particularly to the powers of the court, but simply to its time of meeting. It is a Court of Common Pleas, with admiralty and equity jurisdictions, which are distinct and separate in themselves; in pleadings, it must be distinctly set forth to which of the several divisions of said court the pleadings are addressed.

Upon an appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County, the appellant (H. J. G. Moddermann, agent for H. Muller & Co. of Rotterdam) by counsel maintains that the judgment of the court below should be reversed, because the judge thereof erred in ruling that the plaintiff below had made a mistake in entering his action at law instead of in equity; that we have no Courts of Equity in the Republic of Liberia; that we have only Courts of Quarter Sessions, with admiralty and equity jurisdiction. Upon review

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of the transcript of the records from the Court of Quarter Sessions, Sinoe County, this court fails to perceive that appellant's exceptions are tenable.

Legally, the term "Court of Quarter Sessions," etc., does not refer particularly to the *powers* of the court, but simply to its time of meeting. And this is evident from the fact that the time of its meeting cannot be altered without affecting its jurisdiction.

The Court of Quarter Sessions is a court of common pleas, with admiralty and equity jurisdictions; these jurisdictions are distinct and absolutely separate in themselves and must be so understood and regarded. We have made the declaration before in the cases Erskine *vs.* Smith, in an action of injunction, and Lee *vs.* Republic of Liberia, in an action in admiralty (see judgments of this court); and now we further assert, that for the intelligence with which the law means that all actions must be set forth for the information of litigant parties, it is the opinion of this court that all the papers in every action should and must be addressed to the proper division of the court in which relief is sought.

In view of this fact this court adjudges that the judgment of the said Court of Quarter Sessions and Common Pleas of Sinoe County in this cause is hereby affirmed. Appellant is ruled to pay all costs; and the clerk of this court is now commanded to notify the court below to the effect of this judgment.

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## A. D. WILLIAMS (Surviving Partner), Appellant, *vs.* R. LEWIS & CO., Appellees.

[January Term, A. D. 1888.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Debt.*

1. Objections to written evidence should be made at the time it is offered; where a document has been admitted in evidence it is error in the judge not to allow it to be submitted to the jury.

2. A verdict in debt should show the amount due by the one to the other without reference; but where the jury cannot agree upon the debt the judge may by statute ascertain the same.

This case has come up from the Court of Quarter Sessions, Montserrado County, upon a bill of exceptions to the ruling and judgment of said court at its March term, 1887.

The first point raised in the bill of exceptions is, to the jury refusing to consider the items in defendant's schedule of additional credits. In this connection, on a careful inspection of the records of this case, we discover also that a book (of the defendant below) containing accounts the nature of which were to serve as a set-off to the plaintiff's demand, was admitted by the court as written evidence in this case. The same having been admitted, this court fails to see legal cause why it was not submitted to the jury. Just here we would remark that objections to written evidence should be made before it is admitted by the court, and at the time offered. It is clear to the mind of this court that the admitted evidence, if it had been considered, would have aided the jury in coming to a just conclusion with respect to the debt due (if any).

It further appears from the record, that the case thus submitted and considered by the jury resulted in the following verdict:—

Jury room, Monrovia,
March 3rd, 1887.

We the jurors to whom the case was submitted, R. Lewis & Co., *vs.* A. D. Williams and Brother, do agree that A. D. Williams is entitled to the credit

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of the coffee, palm kernels, and bedstead, according to evidence produced in the case, and after the amount of these articles is subtracted from the principal, A. D. Williams & Bro. are entitled to pay the balance.

A. B. HARRIS, Clerk. THOMAS CURD, Foreman.

We are of opinion that this verdict is vague and uncertain, in that it does not fix or ascertain the debt in question. A verdict in debt should show without reference, the amount due by the one to the other. The statute only authorizes the judge to ascertain the debt when the jury disagrees, and only in such cases the judge would be warranted to insert the amount.

But in this case he asserted or ascertained the debt, a power not given him in law. For the debt was a question of fact which the judge could not determine unless in the manner referred to above. A disagreement of the jury is nowhere to be found in the record of the proceedings in this case.

For these palpable violations of the principles of law surrounding this case, we are compelled to say, that on account of the mixed questions of law and fact not legally disposed of by the court below, it does not appear by the record for which party the judgment should have been given. This case is therefore remanded to the Court of Quarter Sessions, Montserrado County, to be tried *de novo,* costs to follow.

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## SIMON ATTIA, Appellant, *vs.* ROBERT T. SHERMAN, Appellee.

[January Term, A. D. 1889.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Damages.*

1. In an action for damages, evidence of debt or fraud arising from some business transaction or book accounts, is irrelevant; the proof must conform with the action chosen.
2. Where an agent is given power to sell goods at such prices as may become necessary, from the fluctuations of the market, he cannot afterwards be charged with violating the original contract with respect to prices, unless it appears that he acted fraudulently.
3. Where account books are intended to be used in evidence they must be identified as the books of the party or firm introducing them.

This is an appeal from the proceedings and judgment of the Court of Quarter Sessions, Montserrado County, at its September term, 1887. The action was brought by the appellant, plaintiff below, for the violation of a contract. At the trial, defendant below (now the appellee) obtained judgment, the same being based upon the verdict of a jury unto whom the facts were submitted; from which judgment and other proceedings, exceptions were taken by the plaintiff below, and upon the exceptions thus taken the case is brought up for review. The exceptions taken are: 1, Because the court refused to allow witness S. E. F. Cadogan to answer the question, "What did the defendant charge you for the plank?" upon the objection of the defendant below that the question was irrelevant to the issue. 2, Because the court allowed witness T. W. Haynes to answer the question, "Will you explain to the court what is this overplus?" (of which witness had spoken,) upon the ground that such an answer would be an opinion and not evidence in this case. 3, Because the court admitted as evidence a letter marked number 28, the same, in the opinion of the plaintiff below, had no tendency to estab-

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lish the allegations and denials of the parties. 4, Because the court overruled a motion for a new trial, when prayed for by the plaintiff below, upon the ground that the verdict was contrary to the evidence and the legal instructions of the court. 5, And because the jury were outside only fifteen minutes, and could not in that time well and truly try the issue joined in the case.

These points have had the careful consideration of the court, and in order to arrive at a just conclusion it is of the highest importance to strip the case of all irrelevant matters, which we have done. This being an action of damages, all evidence to prove debt or fraud by a surplus arising from business transactions or book accounts, is irrelevant, as in all trials the proof should be in conformity to the form of the action chosen.

We find R. T. Sherman, defendant below, is charged with violating a contract entered into between himself and the plaintiff below, in consequence of which the plaintiff instituted this action, claiming the sum of ten thousand dollars as the damages he sustained by reason of the defendant's misconduct.

We remark that allegations in pleadings are intended only to set forth in a clear and logical manner the points constituting the injury complained of, to support which, however, it is required that they be made clear to the mind of the court and jury by evidence. Allegations and averments in no case amount to proof, but evidence is the essential means which demonstrates, makes clear, or presents, the truth of the facts constituting the issue. This enables the court to pronounce with certainty concerning the matter in dispute, or enables the jury to decide upon the question submitted to them.

It is a general rule both in civil and criminal cases, that the evidence must prove the allegation of the plaintiff. Overlooking the contract upon which this action is brought, it is clear to the mind of the court that the defendant below did contract with the appellant to sell

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certain goods of his at invoice prices, but the evidence discloses the fact that this stipulation was altered by the appellant, in that he did, subsequent to the execution of said contract, in a letter marked number 10, instruct the defendant below to dispose of his goods, raising or lowering the prices as the market fluctuate; hence we fail to see a violation such as would render the defendant below liable, allowing that he did sell the goods above the invoice price. Referring to the first count in the bill of exceptions, we must say, if the books filed in this case were intended to be used as evidence they should have been identified and proved as the books of the business transaction, as kept by the defendant below; and the evidence should sustain the fact that they were not properly kept. In the absence of such proof a jury could not have legally returned a verdict for the plaintiff below.

And further, if the books in no way show that they are the books of the appellant, the jury could not have legally considered them as evidence upon which to found a verdict. Special damage is the actual loss or inconvenience sustained by a plaintiff which may be traced to the conduct of a defendant, the amount of which should be fixed by the plaintiff in his complaint, and proved.

It does not appear from the evidence that during the trial proof of any damage done to the plaintiff by the defendant below was presented; hence the court did not commit any error in not allowing a new trial. It is within the province of the jury, in a case under their consideration, to come to such verdict as the law and evidence supports, without reference to the length of time they had to deliberate, the verdict being only the agreement of the jury.

Considering the whole case, this court is of the opinion that the judgment of the court below is such a judgment as the law warrants. Therefore by this court it is adjudged that the judgment of the court below is affirmed, with legal costs.

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## E. A. L. McAULEY, Appellant, *vs.* THE REPUBLIC OF LIBERIA, Appellee.

[January Term, A. D. 1889.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

*Forgery.*

When this case was called for hearing, during the reading of the record sent up from the Court of Pleas and Quarter Sessions, Sinoe County, at its August term, A. D. 1888, Attorney General Davis, representing the Republic of Liberia, asked the court permission to speak, when he addressed the court as follows:—

"The Attorney General declines to defend this case because the indictment charges that the appellant committed forgery by altering the figures on a due bill for $6.75, given him by one Gussefield, and which is set out in the indictment; but all the evidence goes to prove that the figures altered were no part of the original due bill, but were a part of the credit endorsed on the due bill, and such item of credit is not mentioned in the indictment, and therefore, I think the evidence does not sustain the allegations in the indictment sufficiently for me to make a defence in the case."

The foregoing declaration of the Attorney General is an abandonment of the case, on the part of the Republic of Liberia (appellee). A similar declaration was made before this court in February, A. D. 1878, by Attorney General J. W. Hilton, in the case of Republic of Liberia against F. J. Payne and Hester Huff, and the premises upon which the abandonment was based, and a few of the important legal principles involved in that case the court briefly reviewed. We would do likewise if any peculiar feature of this case required it.

In the face of a formal abandonment of a cause, such as we have cited above, we have only to render judg-

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ment; therefore this court adjudges that the judgment of the Court of Common Pleas and Quarter Sessions in and for the County of Sinoe, rendered against E. A. L. McAuley at its August term, A. D. 1888, is reversed, under the 4th section of the 33d rule of the Revised Rules of this court, and the clerk of this court is hereby commanded to forthwith transmit a mandate to the aforenamed Court of Common Pleas and Quarter Sessions, Sinoe County, to the effect of this judgment.

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## WM. M. ROBERTS, Appellant, *vs.* THE REPUBLIC OF LIBERIA, Appellee.

[January Term, A. D. 1890.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

*Misdemeanor.*

*Postmaster—Revenue officer—Jurisdiction of the Court of Admiralty in suits against postmasters for fraud.*

1. Indictment brought against a postmaster for fraud is cognizable before a court of common law.

3. The selling of postal stamps by a postmaster for his own account is not in itself unlawful; there must be proof that they are the property of the Government to constitute fraud upon the revenue.

This cause came on for hearing upon an appeal from the Court of Common Pleas and Quarter Sessions of the County of Sinoe, and was argued by counsel. Upon inspection of the record it appears that appellant (prisoner below) motioned the court below to dismiss the cause for want of jurisdiction, alleging that he, being indicted as a revenue officer, should be held to answer in the Court of Admiralty and not at common law. The court below overruled the motion, giving as its opinion that under the Statute Laws of Liberia the postmaster is not a revenue officer. From this ruling and final judgment of the lower court the prisoner appealed.

We are of opinion that the court erred in saying that "under the Statute Laws of Liberia the postmaster is

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not a revenue officer;" for the postmaster and post-office establishments were created by the statute for the purpose of revenue and public convenience. But he is not such an officer in the sense of the general acceptation of the term "revenue," so as to take him out of the jurisdiction of a court of common law in which cases of this kind are cognizable.

It was alleged in the indictment in the court below, that "the prisoner sold Liberian postal stamps and unlawfully converted the proceeds to his own use," but it does not appear in the transcript of the record that those Liberian postal stamps were the property of the Government of Liberia, or any person or persons other than the prisoner who sold them.

The charge of misdemeanor in the indictment is a grave one and was preferred by the State as a fact, and under the Statute Laws of Liberia the State was bound to prove the existence of that fact; but we cannot find upon the record sent here a single testimony tending to prove the allegation. Selling postal stamps is not unlawful, unless it can be proved that such stamps are not the property of the vendor, and that he, she or they are unlawfully in possession of such property; for stamps are often sold from the post-office to individuals in large quantities. It was the duty of the State in the court below, to prove that the postal stamps sold by Wm. M. Roberts, ex-postmaster for Sinoe, the proceeds of which he converted to his own use, were the property of the Republic of Liberia, so as to establish the alleged misdemeanor. Considering the allegation and the evidence in the court below we are of the opinion that the charge was not sustained, and the prisoner should have been acquitted.

This court adjudges that the judgment of the court below is reversed. The clerk of this court is hereby commanded to send down to the Court of Common Pleas and Quarter Sessions for Sinoe County a mandate to this effect.

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## WM. M. ROBERTS of the firm of Lewis & Roberts, Z. B. ROBERTS and W. M. ROBERTS, Executors, and ELIZA F. LEWIS, Executrix of J. N. LEWIS, deceased, Appellants, *vs.* S. FLETCHER AND HUGH FRASER of Liverpool, Appellees.

[January Term, A. D. 1890.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

*Debt.*

When this case was called for hearing the appellees, Fletcher and Fraser, not answering, it was adjudged that appellants were entitled to recover. Since the rendering of said imperfect judgment the appellants have motioned this court to perfect its judgment.

Therefore this court adjudges that the judgment in this action in the court below is reversed; appellants to recover their costs in this court and the court below. The clerk of this court is commanded to send a mandate to the lower court informing it of this decision.

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## A. D. WILLIAMS, surviving partner of the firm of A. D. Williams & Bro., Appellant, *vs.* R. LEWIS & CO., Appellees.

[January Term, A. D. 1890.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Bond—Subsequent pleadings of a defendant after answer—Counter-claims or set-offs—Account.*

1. Where a bond varies from the general principles of law relating thereto, it will produce an irregularity in the proceedings although filed by an attorney on behalf of his client.

2. The subsequent pleadings by a defendant after the answer, are governed by the same rules as those which, by statute, the answer is subject to.

3. An account presented as a set-off in debt is evidence of a counter-claim, though not conclusive.

4. Where a jury allows one outside of its panel to assist in making up its verdict, it is an irregularity which is good ground for a new trial, and where a new trial is refused, and judgment is rendered on such verdict, it will be ground for reversal of said judgment.

This case upon the transcript of record as sent up from the Court of Common Pleas and Quarter Sessions for Montserrado County, presents many complications and irregularities in the court below which have had our most careful consideration, and now we have arrived at a conclusion founded upon the principles of law and justice.

First. As to appellant's first exception we are of opinion that when an attorney for his client executes a bond under the rule of court, and the bond so executed varies from the general principles of law, the court will not give it support, but rather regard it as an irregularity in the proceedings.

Second. In respect to the second exception, we are of opinion that every pleading to the plaintiff (after the first) is in the nature of an answer within the meaning of the statute, and is subject to the rules governing the same. The court below did not err in striking defendants' rejoinder off the file. (See Liberia Statutes, Book 1, Chap. 5 and 6.)

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Third. We are of opinion that in actions of this nature, where litigants disagree as to counter claims or set-offs, the matter ought to be referred to arbitration, agreeable to the 12th section of the 15th chapter of the First Book of Liberia Statutes; and as the admissibility of the evidence belongs to the court and the credibility to the jury, the court below should have either rejected defendants' account entirely or admitted it altogether. (See Liberia Statute, Book 1, Chap. 10, sec. 18.) An account presented in a court of justice as a set-off is evidence of a claim against the alleged debt, but is not conclusive until a verdict and judgment have been rendered thereon; therefore the account of the defendants in this case below should have been taken altogether and submitted to the jury, and not in part.

Fourth. As to the fourth, fifth and sixth exceptions, we are of opinion that the account filed by the plaintiffs is not such an one as the statute requires; but as it is the only one defendants gave plaintiffs, we must regard it as being the best evidence the case admits. In respect to the witness McGill we are of opinion that the court below did not err in not admitting him, for a Custom House receipt or a copy from the Custom House books under seal would have been better evidence.

Fifth. Appellant in his eighth exception below says he motioned the court for a new trial on the following grounds: 1, Because the verdict of the jury is contrary to law in this, that after the petit jury had retired for deliberation they admitted to their room one D. E. Howard, who assisted them to make their calculations, which resulted against the defendant below. 2, Because the lower court was informed of the fact of the conduct of the jury, and the court for its better information placed D. E. Howard on oath, who testified in open court that he went into the jury's room; whether he was called or went himself he could not say, but that on coming to court in the morning the jury handed in their

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verdict, he found that some of the jurors were not satisfied, that the calculations in the verdict already made up by their clerk were correct, and that he took a separate piece of paper and added up the figures of their clerk, and said to their clerk, "It is right."

This fact is a most fatal feature to the verdict, and yet we do not dwell here to establish so great a wrong. See Liberia Statute, first book, 9th chapter, 10th section, and see how positive the rule of law is on this point. The law abhors any interference with a jury after they have retired for deliberation. The act of D. E. Howard entering the petit jury's room, and calculating for them, does not at first glance present a favorable phase. Both Howard and the jury violated the law most flagrantly. Howard entering the jury room and not knowing whether he was called there or went there himself, and conversed with one of the jury on the subject which they had under their deliberation, and concerning which some of them were dissatisfied, is a grave matter. How much was said or done during the interview Howard had with the jury is still a mystery, for neither Howard nor the jury could legally give evidence to excuse or justify themselves. The violation of such a positive law of the land, which so strictly enjoined them to keep themselves together and converse with no one before they have rendered a verdict, should have had the careful and strictest attention of the court below; such violations left unnoticed may lead to the most direful infringements on the rights and liberties of litigants.

Sixth. Lastly, we say the refusal of a new trial in the court below was an error; for it is an admitted fact that a verdict of a questionable character will cause irregularities in the proceedings, but a suspicious one needs legal help itself. Therefore, considering the cause set forth in the defendants' motion below for a new trial, we are of opinion that the court ought to have granted it.

Therefore it is adjudged by this court that the judgment of the lower court is reversed, and this case is

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hereby remanded to the Court of Pleas and Quarter Sessions, Montserrado County, for a new trial. The clerk of this court is commanded to send a mandate to the said lower court to the effect of this judgment.

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## A. VELDKAMP, Appellant, *vs.* BEN COFFEE, Appellee.

[January Term, A. D. 1890.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

1. Motions, except to the jurisdiction, which may be made any time before final judgment, should be made before the pleadings are read, failure to do which amounts to laches.
2. Where a suit is commenced by a writ of attachment the order of the judge allowing the same to be issued should appear in the record; in this respect he is subject to no special form.

This is an appeal case from the ruling of the Court of Quarter Sessions, Montserrado County, at its September term, A. D. 1889. The exception is taken to the ruling of the court dismissing the case, and for the following reasons: Because the court entertained and sustained a motion of the defendant after the pleadings were read, and on said motion dismissed the case; the defendant maintaining in said motion that the order of the judge authorizing and directing the issue of the writ was defective in form.

The exceptions have had the careful consideration of this court, and we remark that all motions, except one to the jurisdiction, which may be entertained at any time before final judgment, should be made before the pleadings are read, and a defendant would be guilty of laches to allow the pleadings in a case to be read before offering for the consideration of the court any matter which would work injustice to his cause. Such neglect amounts to a waiver of the right.

We remark further, that actions are ordinarily commenced by a writ of summons, which can only be issued upon the written direction of the party or his agent;

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such direction must be in conformity to the requirements of the statute or standing rules of the court. But where a plaintiff wishes to proceed by a writ of attachment or arrest, the statute provides that upon application made to the judge, he, the judge, shall order the issue of the required writ. By statute this order is not restricted to any form, but should appear in the record of the proceedings in the case, which in this case it does.

Therefore the court below did err in sustaining at that stage the motion to abate the action for a defect in form of its own orders. For if the objection was legally founded the same should have been placed in the defendant's formal answer, because the fundamental principles upon which all pleadings are allowed is that of giving notice to the opposite party of all new facts intended to be proved. Therefore it was error in the court below to dismiss the case on said motion.

For the reasons herein stated this court adjudges that this case is remanded to the Court of Quarter Sessions, Montserrado County, to be tried *de novo;* costs to follow the suit.

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## W. BAKKER, Appellant, *vs.* H. A. WILLIAMS, Appellee.

[January Term, A. D. 1890.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Damages.*

The vendor is no longer responsible for goods sold, after delivery of same to vendee or his representative; the title to same then becomes vested in the vendee and if destroyed the vendee bears the loss.

This is an appeal from the ruling and judgment of the Court of Quarter Sessions, Montserrado County, at its September term, 1889. From the transcript of record it appears that a man, Tobey by name, called at the

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store in charge of the appellant, and expressed a desire to buy a ham; they were shown to him, he selected one, paid for it, and received the balance change coming to him, and left. Shortly after this transaction he, Tobey, returned with the ham, saying Mr. H. W. Williams did not wish it, and urged that the ham be taken back and money delivered. This the appellant refused to do. The said Tobey returned, carrying with him the ham. Shortly after, the ham, with the change given, was sent to the said store by the appellee, with instructions that it be left on the counter in the event the appellant refused to take it back. The appellant still refusing, the ham and change were left on the counter. The appellant then ordered the same to be thrown out of the store. This is a brief history of the case as it appears on the record.

Without following the very circuitous course of this action up to this court, we address ourselves to the exceptions taken to the ruling and judgment of the Court of Quarter Sessions, Montserrado County, at its September term, 1889, before which court the case was carried upon an appeal. The exception taken is, that the court after hearing the arguments on the appeal decided and rendered final judgment in confirmation of the judgment of the Justice Court, to the effect that the plaintiff below recover damages and costs.

Viewing this case and its surroundings, it is clear that the litigant parties acted under the influence of passion, and without due regard to the rights and feelings of each other, more especially in the order to throw the ham and the change out of the store. This act is not only improper and discourteous, but vexatious. But the question for decision is the legal right involved in the pleadings. This brings us to the question, What constitutes a sufficient technical delivery of goods, so as to vest the right of property in the vendee?

It is a universal rule that full payment and delivery, without an express contingency, completes a contract

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of sale, and vests the title of the property sold in the vendee, so that if they be destroyed afterwards by any casualty, he must bear the loss. Against this well-settled rule of law the judgment in this case is rendered, which this court must pronounce erroneous.

Therefore this court adjudges that the judgment of the court below is hereby reversed and rendered void, and that the appellee pay all legal costs of the appeal.

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## J. A. TUNING, Appellant, *vs.* M. A. S. MOREL, Appellee.

[January Term, A. D. 1891.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Defamation. Damages.*

The motion of the appellee to dismiss the case has had the earnest attention of the court. We feel bound to say, as we have before, that it is always the pleasure of the court to entertain and hear the causes of the litigants coming up for relief, and in doing so we feel bound down to the laws of the land and the rules and practice of the court, with which we think the motion under consideration is in perfect harmony.

Without repeating ourselves too frequently, we say, this court has fully declared in former judgments rendered in the cases Minis *vs.* Crayton, H. Cooper *vs.* McGill Bros., and Julia Williams *vs.* McGill & Bro., that there can be no appeal from an interlocutory judgment before final judgment has been rendered; hence there can be no legal appeal from the court below, for refusing to grant a new trial when there was no final judgment rendered in the case.

In this case, if the final judgment has been delivered, the appellant has failed to show such in his bill of exceptions, or in any manner to refer to any objection to the

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final judgment of the court below. For such irregularities the court adjudges that the motion is sustained and the case dismissed, appellant to pay all costs incurred according to law.

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## J. B. C. ROYE, Appellant, *vs.* THE REPUBLIC OF LIBERIA, Appellee.

[January Term, A. D. 1892.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Murder.*

The law will not allow greater force to be used than is actually necessary to eject a trespasser. Where on a trial for murder the prisoner proves that the deceased was a trespasser, this fact of itself will not justify the killing, where it does not appear that the person or property of the prisoner was in imminent peril and danger, and that the killing was necessary to save prisoner's own life or to preserve limb or protect property.

The case presents some very peculiar features, to determine the nature of which the court has been compelled to resort to researches to find one of the like cases reported. When the deceased entered the house of the prisoner, regardless of his request not to do so, and took from therein the clothes of the prisoner's wife, it was an act unwarranted by law, for a man is commanded to leave father and mother and cleave unto his wife.

The inference of the Divine command is that there is none so dear to us as father and mother, and since we must leave them, we must look upon all others as strangers in regard to our obligation to our wives and family affairs. The deceased's conduct in this respect is looked upon by the court as a trespass upon the premises of the prisoner, and an utter disregard for his manhood and pride, although the acts referred to do not warrant the prisoner's acts in resorting to such violence.

To impartially consider this case as presented to us in the bill of exceptions has been our great aim and we

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have arrived at such a conclusion as is supported by the law of the land. In this case the appellant, J. B. C. Roye, is charged with having committed the crime of murder, the highest and most heinous offence of which one can be charged, the very mention of which causes human nature to revolt.

The record from the court below shows that at the December term of the Court of Common Pleas and Quarter Sessions, Montserrado County, 1890, the appellant J. B. C. Roye was indicted by the grand jury of said County for the murder of Lionel E. A. Roye, a citizen of this Republic, to which indictment he was held to answer; and the facts were submitted to the determination of a jury, consisting of twelve of his peers, which jury, having heard the testimony presented at the trial, concluded and returned a verdict of "guilty" against the said J. B. C. Roye, the appellant. Upon this verdict the court pronounced the sentence of the law in such cases made and provided.

During the trial several exceptions were taken by the appellant to the rulings of the court, as well as also to the final judgment rendered, and upon which exceptions this case is brought to this court for review. With great care we considered the several exceptions taken in this case, and do not see such grounds in the exceptions as would have led the jury to come to any other conclusion than that which is expressed in their verdict. Doubtless the court below did err in ruling that what was stated by the appellant, at or about the time when the killing took place, in relation to the deceased breaking open his door, was hearsay. Yet this fact, if allowed, does not destroy the law which condemns the use of greater force than is required to eject a trespasser. We take occasion to repeat this doctrine of law. Testimony is intended to demonstrate and present in clear light the truth or falsehood of an accusation, hence all evidence should be confined to the

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points at issue, and testimony irrelevant ought not to be submitted to the jury, as such might tend to lead them from the truth and justice of the case under their consideration.

This court says further: In trials for murder a plea of justification upon the doctrine of one's right to defend himself may be plead, but such a plea, when set up, must be supported by testimony, to warrant a reasonable conclusion that the act of violence employed, or the act of killing, was done to save the person's own life or to preserve limb, or protect property from the spoliation of an assailant whose act of violence put the slayer in peril of his life or of great bodily harm. Under such circumstances, the slayer may be justified in slaying his assailant or trespasser; but in the absence of such proof, the court would have erred in directing or instructing the jury in favor of said plea on the laws bearing on this point, since the instruction of the court furnishes an important species of evidence to the jury.

As to the verdict and new trial. This court says where the verdict of a jury is manifestly against the weight of the testimony, the law, or the legal instructions of the court, such verdict ought to be set aside and a new trial granted; but where, by the verdict, substantial justice is done, such verdict should not be disturbed. The verdict in this case to us is in harmony with the truth and justice of the case, and is supported by the evidence, and hence the court below did not err in refusing a new trial.

Viewing from every standpoint the proceedings of this trial, from the commencement to the end, this court finds it to be its painful duty to affirm the judgment of the court below. Therefore this court adjudges that the judgment of the court below rendered in this case is affirmed, and the clerk of this court shall issue a mandate informing the court below of the affirming of the judgment.

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## THOMAS GEORGE, Appellant, *vs.* THE REPUBLIC OF LIBERIA, Appellee.

[January Term, A. D. 1892.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Murder.*

Where a party unlawfully carries about a loaded gun and from carelessness and neglectfulness a human being is killed or injured, the act is not regarded in law as an accident and therefore excusable, but is punishable according to the magnitude of the offence.

The law forbids all persons from carrying about their bodies or persons any dangerous weapon whatever, to the terror of the good people of any community, and will not lend any aid to such a one. In this case the appellant pleads that the act of killing Bak-oo was an accident, and that he took him for a monkey. But it must be remembered that accident is something over which a person has no control, as, for example, if the gun he had in his hand was loaded, but not cocked at all, and by some influence or power unknown to him, upon the gun, it fired off and killed the said Bak-oo, it might more reasonably be regarded as an accident, and therefore excusable; but the act of having about us a loaded gun is a public offence in itself, and it is rendered more criminal when it is cocked, aimed and fired upon the body of a "reasonable being" who, from the force, contents and effect of such loaded gun, dies. Looking at the appellant's act from this standpoint, you will readily see that the deceased died from the appellant's voluntary and deliberate act, for it was he who cocked the gun, took the aim and fired the gun; it was therefore not an accident, hence the result of his act presents evidence of malice which the law implies. Now the jury, being the judges of the credibility of the evidence, they having the opportunity of noticing the manner in which the statements were given by the witness, were prepared to decide the facts in the case.

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Notwithstanding some irregularities had been pointed out by appellant's attorney, yet the court below, in pursuing the course to justice, has been able to so instruct the jury as to enable them to come to a proper conclusion. Therefore this court adjudges that the judgment of the court below is affirmed, and that the clerk of this court inform the court below of the doings of this court.

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## T. A. JOHNS, Plaintiff in Error, *vs.* THE REPUBLIC OF LIBERIA, Defendant in Error.

[January Term, A. D. 1892.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Assault with Intent to Kill.*

Until verdict is rendered in open court the jury should be kept together and should not converse with any person except their fellows upon the case submitted to them. It is necessary to a valid verdict that the finding be unanimous and the conclusions voluntary; where threats or other influence have been employed by one juryman to induce another to agree with him, it is good ground for awarding a new trial, and where a new trial under such circumstances has been refused, the appellate jurisdiction will correct the error of the lower judge by reversing judgment.

This case presents two points into which all others presented in the assignment of errors must fall. Before coming to the points submitted for this court to determine, we deem it proper to say that in the trial of criminal cases the jury empanelled to try the facts should be kept together from the time they are empanelled until they have rendered in open court their verdict. And it would be a reprehensible offence in them to converse with any one except their fellow jurors, touching the case handed to them, and it is also official misconduct in any constable or other officer attending them to so act and speak as to influence their verdict.

The statute laws of this Republic provide that a jury must be composed of twelve men (this refers to the petit

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jury), and that the consent of the whole number is necessary to a verdict. So tender are the laws of Liberia as to the life, limb, liberty and property of citizens, that they forbid the taking away of any of the inalienable rights except by verdict of a jury or the laws of the land. It is obvious to the most prejudiced mind that within the meaning of the statute laws of this Republic the conclusion of less than the entire twelve jurors cannot be taken for a verdict.

This case comes up upon a writ of error against the rulings and judgment of the Court of Common Pleas and Quarter Sessions, Montserrado County, at its December term, 1891. We find assigned as one of the errors, that said court during the trial of the plaintiff in error, who was held upon the indictment of the grand jury to answer the offence of an assault to commit murder, received and rendered judgment against plaintiff in error, upon what was handed into the court as the verdict of the jury, sworn to try the facts, notwithstanding one or more jurors (the jury being polled) disavowed said verdict as his conviction of the truth of the case; stating to the judge, as the record shows, that from fear of beating or other ill treatment threatened him by the other jurymen with him on the case, he only *consented*. Upon this the plaintiff in error moved that the verdict be set aside and a new trial awarded. This motion the court overruled and proceeded to render sentence of fine and imprisonment.

This court says that the verdict upon which the judgment is founded being unlawful, the judgment rendered thereon must likewise partake of its unlawful nature. The court did err in not granting the new trial prayed for by the plaintiff in error and such new trial would have been warranted in law.

It appears further that the plaintiff in error then and there motioned the said court for an appeal, which motion the court also overruled, assuming the idea that

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under the Statute Laws of this Republic, in criminal cases there can be no appeal taken to the Supreme Court. This idea is without foundation in the laws of the Republic of Liberia and in this ruling the court below did also err. This case terminating on the law, we now proceed to the rendition of the judgment of this court as the law dictates.

This court adjudges that the judgment in this case in the court below be and is hereby reversed and made void and shall have no legal effect whatever; and the clerk of this court is now commanded to issue a mandate informing the lower court of this court's action in the premises.

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## VARNE, VOMBO, GINDA and MOMORA SINGBY, Appellants, *vs.* REPUBLIC OF LIBERIA, Appellee.

[January Term, A. D. 1893.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Misdemeanor.*

The appellate court will not take cognizance of any matter of law to which the attention of the lower court does not appear to have been called. Where an irregularity in the process and returns was not brought to the notice of the court of inferior jurisdiction, the appellate court will not entertain a motion bearing thereon.

This case comes up before us upon a bill of exceptions taken to the rulings and judgment of the Court of Quarter Sessions of Montserrado County at its June session, A. D. 1891. At the call of this case the appellants, through counsel, submitted for the consideration of this court a motion in arrest of judgment. The said motion embraces the following points: That the bonds of the appellants and the writ of arrest do not appear upon the record of this case.

The court on inspection of the entire record in this case, takes occasion to say that not only the rule of

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practice, but the law, requires that in all appeals taken to this court by bills of exceptions the questions of law relied upon must be raised in the court having original jurisdiction over the case. The record in this case nowhere shows wherein the attention of the court below has been called to any irregularity in either the service of the writ or the return thereon as raised in the appellants' motion. The statute of the Republic regulating appeals is emphatic in language: "The court to which the appeal may be taken shall examine the matter in dispute upon the record only; it shall receive no additional evidence, and shall reverse no judgment, for any defect of form, or for any matter to which the attention of the court below shall not appear to have been called, either by some bill of exceptions or other parts of the record." In observation of this positive statute the court adjudges that the appeal is dismissed.

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## JOE FARROW, Appellant, *vs.* M. T. DECORSEY, Appellee.

[January Term, A. D. 1893.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Certiorari.*

*Writ of habeas corpus—Constitutional law.*

Legislative enactments cannot repeal or annul constitutional provisions. Justices of the Supreme Court and other courts of law of this State, have an inherent right to issue writs of habeas corpus; the constitutional power of the Supreme Court or any of its justices in matters of habeas corpus, cannot be annulled by Legislative enactment. The hearing of the cause of imprisonment or other restraint of one's personal liberty upon a habeas corpus by a justice of the Supreme Court, is in the exercise of appellate jurisdiction and in consonance with the judicial powers conferred by the Constitution; a statute denying this right can have no binding effect, because of its conflict with the provisions of the Constitution on this point.

This is a case in which, upon the application of Joe Farrow, in a matter of habeas corpus before the Court of

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Monthly and Probate Sessions, Montserrado County, a writ of certiorari was issued and served upon Hon. John F. Dennis, Judge of the Monthly and Probate Sessions for the County of Montserrado, removing said case to this court. The writ of habeas corpus issued by Judge Dennis, answering its office, sought to remove from imprisonment two boys, in order that the judge might inquire into the lawfulness of their confinement.

The writ of habeas corpus is a high privilege writ, and was so understood by the framers of the Constitution, the denial of which must soon endanger personal liberty, so sacred to the people of this Republic; the refusal of this high writ would soon become the parent of despotism and leave the people's liberty to the caprice of those vested with authority; and too soon the deformed head of Anarchy would rise up, and with great political upheavals, shake our beloved Republic to its very foundation. We premise that one of the great timbers employed by the venerable fathers in constructing the framework of our political fabric, is supported by a buttress of liberty to be found in the 20th section of the Constitution of Liberia, which speaks the following language: "All persons shall be bailable by sufficient security unless for capital offences where the proof is evident or presumption great, and the privilege and the benefit of the writ of habeas corpus shall be enjoyed in this Republic in the most free, easy, cheap, expeditious and ample manner, and shall not be suspended by the Legislature except upon the most urgent and pressing occasion, and for a limited time not exceeding twelve months." (*Vide* Const. Liberia, p. 10, sec. 20.)

The Legislature of the State has the undoubted right to repeal or suspend its laws, but not Constitutional provisions except in manner provided in the Constitution, because all laws should be in harmonious keeping with the spirit and intention of the Constitution. Neither have they the right to restrain judges in the exercise of

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Constitutional rights. The issue of a writ of habeas corpus is an inherent right of the judges of the Supreme Court and other courts of law of this State, agreeable to the genius of the Constitution of the Republic of Liberia, and its issue and hearing is in the exercise of appellate as well as original jurisdiction.

The question whether the individual shall be imprisoned is always distinct from the question whether he shall be convicted or acquitted of the charge on which he is to be tried, and these questions may be decided in different courts. The decision that the individual shall be imprisoned must always precede the application for the writ of habeas corpus. The statute recognizes three distinct courts of this Republic: first, the Monthly and Probate Court; second, the Courts of Quarter Sessions and Common Pleas; and third, the Supreme Court; all of which courts consist of a judge or judges, a clerk and a seal; the clerk to record their doings and the seal to render the same authentic. This court need not therefore say that all of these courts are in their organization constituted Courts of Record, and clothed with distinct and concurrent jurisdiction. The inferior courts of this Republic are vested with both appellate and original jurisdiction, to destroy which is to destroy the very purpose for which said courts were constituted. The Supreme Court, says the Constitution, shall exercise original jurisdiction in cases affecting Ambassadors or other public ministers and counsels and those cases in which a County is a part. In all other cases it shall exercise appellate jurisdiction.

From the foregoing, it is clear to the mind of this court that judges, in hearing the cause of imprisonment of an individual committed to jail or otherwise restrained of his liberty, act solely in the exercise of the appellate jurisdiction conferred by the Constitution; and those of the Supreme Court especially. Therefore any act of the Legislature which tends to withhold from any of the

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courts of this Republic or any judge thereof the exercise of his inherent right, is in conflict with the fundamental and paramount law of the State and is therefore of no binding effect. This court further says a writ of certiorari is a writ of relief, authorized by law, and is controlled in its application by the same. This writ removes the proceedings of a court of inferior jurisdiction to one of superior, and is employed when their proceedings are not in harmony with laws and justice; but it should not be prayed for until the final judgment or determination of the court in which a case is tried. It is clear to the mind of the court, and it must be to the minds of all parties concerned, that to remove a case for review before the final judgment of the court in which it had been entered, is premature. It is needless to enlarge upon a point so fully established by settled principles of law and known by the learned counsels engaged in this suit. It is the final judgment of a court that puts an end to the dispute between litigant parties, and so long as the main question which it was one of the objects of a suit to determine remains undetermined, a certiorari would not lie. In this case the removal was during the examination of witnesses, hence against law and the practice of courts.

The case is therefore remanded to be tried over in the Court of Monthly and Probate Sessions, Montserrado County, where it was pending, and the clerk of this court is hereby commanded, under the rules, to issue the proper mandate to the said court to the effect of this ruling.

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## H. A. WILLIAMS, Appellant, *vs.* M. J. JOHNSON and LAURA ALLEN, Appellees.

[January Term, A. D. 1893.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Grand Bassa County.*

*Ejectment.*

1. The withdrawal of a suit after a jury has been empanelled and sworn, amounts in law to a retraxit, and where the suit is renewed it should be plead in the answer as a bar to the second action, but where the answer fails to raise the plea it will be taken as a waiver.
2. A bond which is sufficiently descriptive in its construction to make its conditions clear and intelligible, and possible of enforcement, though wanting in other formalities, is nevertheless legal.

This case was tried in the Court of Quarter Sessions and Common Pleas, Grand Bassa County, at its June term, A. D. 1892, and it was brought up to this court on appeal. The court feels it its duty to remark that the use and object of motions in legal practice is to prevent what would work injustice to either one of the contending parties in a suit; therefore courts of justice ought to observe great caution in receiving them, and when this does not appear to be the object sought after, then the necessity ceases to have any claim to the consideration of the court.

The motion in consideration does not in its first point show where a material injury would result to the appellees if the proceedings in the case should be allowed to continue; while there has been a slight irregularity discovered in the record sent up, this court must say that the injustice such irregularities could work against the appellees, if the merits of the case should be brought under review, is not obvious.

In regard to the appellant (plaintiff below) withdrawing his case after the jury had been empanelled and sworn to try the issue, this act amounted to a retraxit and ought to have been raised in the defendant's answer in bar to any other action brought by the plaintiff, for

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the same cause, against the appellees (defendants below); this not having been done, the neglect to do so amounts to a waiver, and therefore the plea of retraxit cannot be urged.

And secondly, with respect to the bond, the court is of the opinion that the object of the same is to indemnify the appellee from any injury that may arise from the appeal should he, the appellant, fail to prosecute his appeal to effect. We are further of the opinion that the construction of the bond, although a little informal in the first instance, in that it does not state that "we, H. A. Williams of Monrovia in the County of Montserrado, as appellant, and J. A. Gray and J. A. Howard of the County of Grand Bassa as bail, all of the Republic of Liberia," yet the bond in other respects is sufficiently descriptive in its construction and its legal bearing and purport, and before any court of law or equity it will have its binding effect.

Again, as to the motion for a new trial, the affidavit attached to the same is without importance, as its connection with the motion is not supported by any good reason; for, says a law maxim, "reason is the soul of the law," therefore the absence of reason leaves a dead law.

We now refer to what has been stated in the first point of the bill of exceptions, and would say that anything that is not calculated to work injustice to the appellees or materially affect their case, is not a matter to be raised in a motion; for the court will not lend its aid to mere technicalities or frivolous objections, nor is it our duty to do so. We have only to decide law questions which have been brought to the notice of the court below, either to correct them or confirm them, and such other questions of law that may arise during the progress of the appeal, the nature of which we have illustrated in the case of Attia against Payne.

It is very clear that the bill of exceptions is addressed to the judge of the particular court, with the names of

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the contending parties spread thereon. We admit that it was not signed by the appellant or his counsel, but it is clearly identified by the judge's signature as to what party the bill of exception is granted; therefore we cannot see what injury or inconvenience or injustice is done to the appellee in consequence of the non-signing of the bill of exceptions. Some irregularities in the proceedings of the case are apparent, but are not of such material importance as to disturb or obstruct the legal course to justice. Therefore the motion is not sustained.

In keeping with this opinion we do hereby announce to the parties in litigation, that as it does not appear upon the records of the case, on account of the mixture of questions of law and fact, for which party the judgment ought to be given, the case is therefore remanded to the court in which it was originally tried, to be tried over again.

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## JACOB JAMES ROSS, Appellant, *vs.* THE REPUBLIC OF LIBERIA, Appellee.

[January Term, A. D. 1893.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

*Misdemeanor.*

1. The statute relative to the clause of indemnification in appeal bonds applies to civil cases; in criminal cases the omission of this clause will not vitiate the bond.
2. The non-certification of records by the clerk in cases of appeal is a violation of the provision of the statute of appeals and a ground for dismissal.

This case comes up before us upon a bill of exceptions taken to the rulings and judgment of the Court of Quarter Sessions and Common Pleas of Sinoe County, at its November term, A. D. 1892.

On the case being called up for hearing, the appellee, through his counsel, submitted a motion to this court to dismiss the appeal, on the following points: 1st, That

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the law governing appeals requiring the certification of the record is not complied with. 2nd, That the bond in this case does not contain the statutory requisites, and therefore is illegal and void, and the appeal ought to be dismissed.

The court would here remark that the bond of the appellant being a bond to appear in this court on the day, month and year therein stated, to prosecute his cause, is sufficient, and that the statute referred to respecting bonds of indemnification applies only in civil actions and not in criminal cases.

The court would further remark that it has carefully examined the entire record in this case and nowhere finds the requisite certificate attached to any of the papers sent up to this court as copies, and especially since there is not attached to these papers the signature of the clerk or the seal of the court from which the appeal was taken. Therefore this court adjudges that as there is no lawful record before this court the appeal is dismissed.

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## JAMES WILLIAMS, Appellant, *vs.* CHARLES C. SIMS and CAROLINE C. SIMS, Appellees.

[January Term, A. D. 1893.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

*Damages.*

Where no return has been made to the writ or notice required by law to be served upon the appellee, within legal time, the court cannot exercise jurisdiction over the case and will, upon motion made, dismiss the appeal. The return, to be legal, must be made before the first day of the term to which the appeal is taken.

This is a case tried upon a change of venue in the Court of Quarter Sessions and Common Pleas, Sinoe County, at its May term, A. D. 1892, and brought from said court on appeal to this court upon a bill of excep-

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tions. Upon the call of the parties the appellee announced to the court that he had a motion to offer in the case, and begged that the same should be heard, to which the court consented. We would remark that this case lies under the same legal disadvantages which existed in the case of Toles against Dickinson. What is indispensably essential to give the court jurisdiction over the person of the appellee is the return of the writ or notice served upon the appellee, which must be made to the court before the first day of the term for which the case was entered, otherwise the court can exercise no jurisdiction whatever over the case. And this is very obvious from the fact that all appeals brought up here must be directed to the Supreme Court to be holden on the second Monday in January. All writs must be returned to the court on that day, otherwise for this default on motion to dismiss the case the court will sustain the case.

The court, on inspection of the record and the precepts, finds that the appellee was not duly notified to appear on the legal day of the opening of the court, viz., the second Monday in January; neither had the return to such a notice been made to the clerk of the court on the day just referred to, in order to give the court jurisdiction over the case; and here we must remark that the five days allowed for the docketing of the case do not give any right to the appellant to notify the appellee to appear and answer at the same term of the court, if the notice had not been given previous to the opening of the same.

The privilege of allowing the docketing of the case within five days was only given on account of the inconvenience of traveling at that time, there being no steamers plying along the coast so as to enable parties to have complete records supplied and sent up upon mandate from this court, or by other legal means. The writ or notice not having been served on the appellee

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and returned at the proper time, this court is without the jurisdiction to review the same; and the motion of the appellee to dismiss the case is sustained, and the appeal is dismissed with costs.

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## WILLIAM and A. A. MORRIS, Appellants, *vs.* WILLIAM and SARAH GATLIN and others, Appellees.

[January Term, A. D. 1893.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

1. The service of the notice of appeal upon the appellee can only be legal when done by the ministerial officer of the Supreme Court or his lawful deputy, and when returns thereto are made by the same persons.
2. Where a bond filed in an appeal in a civil action fails to contain the statutory clauses the appeal shall be dismissed.

This is an appeal from the ruling of the Court of Quarter Sessions, Sinoe County, at its March term, 1892, in a matter of habeas corpus then before said court, and is brought here by a bill of exceptions for review. At the call of the case the appellees, through counsel, submitted for the consideration of this court a motion to dismiss the appeal, 1st, "Because the record shows that *Willis* and Sarah Gatlin and others were plaintiffs below (now appellees) while the docket of this court shows a docket by William and Sarah Gatlin and others;" 2nd, "Because the appeal was not docketed within sixty days after the court had rendered its final judgment;" 3rd, "Because the writ or notice bringing the case up for review was illegally served, in that it was not served by the Marshal of this court;" 4th, "Because the return to the writ is both illegal and insufficient;" and, 5th, "Because the appeal bond filed in this case has not the stipulation expressly required by the statute."

It is the opinion of this court that the jurisdiction of courts over parties to a suit, although confined by law, does not warrant such court in exercising jurisdiction

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over cases not properly docketed for trial, and that although trivial errors, such as docketing a case in a wrong name, could be by leave of the court corrected, this should be done before legal objections are set up against the same. To this point we say that no leave has been given by this court; and here the court repeats the potent doctrine of the statute, as set forth in the Statute of Appeals, that an appeal not taken within sixty days after final judgment is without the statute. It is clear to the mind of this court that the law intends that an appeal shall be docketed in the appeal court within sixty days.

It is hardly necessary to say that the Marshal is by law the ministerial officer of this court, and all writs and other precepts issued by this court must be served by him, or his lawful deputy, and returned by him as is required by law. And the court says further, that while an appeal arrests and suspends the judgment of the court from which the appeal is taken, the statute allowing said appeal justly provides that every appellant must give security, to be approved by the court, that he will indemnify the appellee from any injury arising from the appeal, and will further comply with the judgment of the court to which the appeal is taken, or his appeal shall be dismissed.

It is the opinion of the court that the objections set up by the appellees against the bond filed in this case is well founded in law, for upon careful inspection of said bond the court finds it does not bear any such construction as is calculated to indemnify the appellees, nor does it stipulate to abide the decision of the appeal court, as is required by law, and from the law there should be no departure.

The court adjudges that the appeal is dismissed, and that the appellees recover from the appellants all lawful costs of the appeal.

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## E. A. L. McAULEY, Appellant, *vs.* S. LALAND, Agent for the business firm known as the Norwegian African Trading Co. of Sinoe, Appellee.

[January Term, A. D. 1894.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

1. In appeals it is the writ of summons or notice to appellee which gives the court jurisdiction over the case.
2. The statute relating to the time within which appeals must be taken is imperative and includes everything necessary to be done to bring the appellee properly before the appellate court. An appeal is not complete until the appellee has been summoned or notified, which must be done within the time allowed for the completion of the appeal or the court will refuse jurisdiction.

This is a case tried in the Court of Quarter Sessions and Common Pleas, Sinoe County, at its February term, A. D. 1893, and brought up from said court on appeal to this court, upon a bill of exceptions. Upon the call of the parties in the case, the appellee announced to the court that he had a motion to offer in the case, and asked that the same be heard, to which the court consented, and heard the arguments both in support of and against said motion.

With reference to the motion the court says that in all appeal cases it is the writ of summons or notice served upon the appellee and the returns thereto made, which give the court jurisdiction over the case. The statute regulating appeals is imperative in directing that all appeals shall be taken within sixty days after the rendition of the final judgment of the court from which the appeal is prayed: this implying that the appellant do or cause to be done all that is necessary to bring the appeal and the appellee properly before the appeal court.

It is needless for this court to enter into extensive arguments to establish the well-known requirements of the law, as it should be obvious to every reflecting mind that an appeal is not complete until the appellee is duly

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summoned, which summons places him under the jurisdiction of the court to which the appeal is taken; therefore the summons or notice forms a very integral part of an appeal and should be served within the time allowed for the completion of the appeal. And while we must admit the binding force of the legal maxim that "the acts of the court should prejudice no man," we are of the opinion that the acts of the court should be carefully distinguished from the unauthorized, unlawful or neglectful actions of its officers or of the parties to the suit. The neglect or omission of one of the said parties to do, or to cause to be done, any act essential to the progress of a case must be taken as a waiver of his rights, and it would be decidedly prejudicial to the lawful rights of the opposite party for the court to allow such waiver to be made and withdrawn at the pleasure of his opponent.

The next point submitted for the court's consideration is, "That the bill of exceptions shows no special questions of law specially relied upon in support of the appeal, as is required by law and the standing rules of this court. As to this point the court, after inspecting the bill of exceptions, is of the opinion that several questions of law are specially raised in the same and specially relied on in support of the appeal, which questions this court would have been bound, in consonance with the law, to decide, had the appeal been brought before it lawfully. The appellee's not having been summoned within the lawful time is in the opinion of the court fatal to the appeal.

Therefore the court sustains the motion to dismiss, and adjudges that the appeal is dismissed, and that the clerk of this court make known the same to the court from which the appeal is taken.

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# HERBERT E. COOPER, Appellant, *vs.* REPUBLIC OF LIBERIA, Appellee.

[January Term, A. D. 1894.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Murder.*

1. A witness called to testify on behalf of the State, if he fail to enter into recognizance for his appearance at the trial, may be imprisoned until said time, which imprisonment will not render him incompetent.
2. Voluntary admissions by a party is evidence against him even where it does not appear that he was warned by the judge of the penalty he might incur; if they were not made from threats, fear or inducement they will be admissible as evidence of a high grade. So, too, a copy of the record of a court containing admissions of a party made under similar circumstances, though in a different suit, will be admissible.
3. It is a constitutional right of every citizen charged with the commission of a crime to have compulsory process for witness, and where this right is denied it is a stupendous error of the court and a flagrant violation of the organic law.

This case is an appeal from the verdict and judgment of the Court of Common Pleas and Quarter Sessions, Montserrado County, at its March and June terms, A. D. 1893, and is brought up for review upon a bill of exceptions.

The first exception taken by the appellant is, "That one Bye, the first witness called and admitted by the court during the trial below, was incompetent to testify against him, because said witness had been imprisoned at the instance of the State since the month of December, 1892, and his evidence was therefore obtained by duress;" and second, "That if conspiracy existed and the said Bye was one of the conspirators, his evidence was not admissible against his co-conspirators."

On this point the court would say that it is a well settled rule of criminal law that a witness cited to appear to testify on behalf of the State, shall enter into recognizance for his appearance at the proper court, and failing to enter into such recognizance, shall be detained

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in prison until the session of said court, or until he shall have testified before the same. And this rule appears to be the more necessary when the witness is a suspicious or irresponsible character, or when his absence would be manifestly to the advantage of either of the parties and thus tend to hinder the ends of justice. On an examination of the indictment, we fail to discover that the witness was charged as *particeps criminis,* or a co-conspirator in the case, and as he was only detained in pursuance of said rule of law, the court below did not err in overruling the objection to the admissibility of said witness.

The next objection appearing on the bill of exceptions is, "That on the 21st of March, A. D. 1893, an extract from the records of the Court of Quarter Sessions and Common Pleas, Montserrado County, December term, A. D. 1892, under seal of said court, in the case Republic of Liberia *vs.* Benj. Lambert and Farmah, for murder, was admitted and read in said court as evidence against said appellant, notwithstanding his objection "that as he was not a party to that case this extract is not evidence against him."

On this point we would remark that the Statute Laws of this Republic (Chap. X, sec. 13) declare that "All admissions made by a party himself . . . are evidence;" and in the same chapter (sec. 14) that "Whatever has been said by a party himself is evidence against him." "A witness is not compellable," says Mr. Bouvier, "to testify when his answer would have a tendency to expose him to a penal liability, or any kind of punishment, or to a criminal charge." He may answer if he choose, and if he do answer, after having been advised of his privileges, he must answer in full; and his answer may be used in evidence against him for all purposes (II Bouvier Law Dict. p. 831.)

While it is not apparent from the record in this case that the judge below warned the appellant against

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any risk that he might incur in the premises, neither does it appear that he was compelled to testify, or that the giving of his testimony on said occasion was other than his own voluntary act and deed. The court below did not err in admitting the document in question.

The Constitution of this Republic (Art. 1, sec. 7) expressly declares that every person criminally charged, "*shall have a right* to have compulsory process for obtaining witnesses in his favor." There is no qualification whatever expressed in this connection. The language is unequivocal and imperative, clearly indicating the intention of the framers of that instrument to throw around the citizen or subject every conceivable safeguard against the exercise of arbitrary power by those who might be invested with authority. That this right has been denied the appellant is apparent on the face of the record of this case, and the action of the court below in this particular was not only a stupendous error, but also a flagrant violation of the organic law of the land.

After an exhaustive scrutiny of the evidence given by the witnesses in the court below, we are of the opinion that it is trifling, inconsistent and contradictory, that it does not establish in the slightest degree any connection between the appellant and the crime with which he was charged, and that as the judgment of the court below was based upon a verdict against law and evidence, substantial justice has not been done in this case.

The court therefore adjudges that the said verdict be set aside and that the judgment of the court below be hereby reversed, and that the clerk of this court transmit a mandate to the court below, setting forth the effect of this judgment.

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# H. A. WILLIAMS, Appellant, *vs.* M. J. JOHN and LAURA ALLEN, Appellees.

[January Term, A. D. 1894.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Grand Bassa County.*

*Ejectment.*

1. An answer which is general in its character and which does not raise specially some question of law, precludes the defendant from raising legal questions, and the court from deciding same at the trial. Courts of justice will only decide questions of law when properly raised in the answer and pleadings.

2. The phrase, "free and voluntary consent," in the Constitution involves facts which require proof of their existence before courts will take notice thereof; the term "otherwise" in the organic law relates also to facts which must be proven.

3. The private acts of a husband done in that capacity, are separate and distinct from his acts as a co-administrator of his wife's estate, and where in the latter capacity he makes a sale and transfer of a part of the estate of his wife, he is estopped from setting aside his own act for any cause whatever.

This is a case brought up on a bill of exceptions from the Court of Common Pleas and Quarter Sessions, Grand Bassa County, tried and determined at its June term, A. D. 1893, and brought to this court for review.

In reviewing this case the court finds that the case rests entirely upon the defendants' (now appellees) denial of the allegations of the plaintiff (now appellant) as laid in the complaint; for the answer of the defendant is a general one, which precludes him from raising any question of law not specially raised in said answer. The fundamental principles upon which all complaints, answers or replies shall be construed, shall be that of giving notice to the other party of all new facts which it is intended to prove, whether they are consistent with the facts already stated to the court, or being consistent with the present existence of such facts, admit or imply their former existence, or show that existing, they can have no legal effect. It must be remembered that when a defendant denies both the law and the fact, the question

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of law shall first be disposed of. This does not appear to have been done in this case, and the reason why is very obvious; the defendant neglecting to state in his answer what issue of law he intended to raise, the court could not determine upon the same. For courts can only decide law issues when raised in the pleadings. Much credit, however, must be given to the counsellors on both sides in this case, for the argument adduced in support of the positions they took, particularly the counsellor for the appellees, who ingeniously and skilfully presented points in his arguments not raised in his answer, for the hearing of the court, notwithstanding the disadvantages under which he labored to make good the same. In traversing his brief he referred to the Constitution of Liberia, Article V, Sec. 10, a part of which reads, "otherwise than by her husband." The term "otherwise than by her husband" involves a fact which requires proof as to whether the property referred to was secured to her by her husband, or not, which proof does not appear to the court. The phrase "free and voluntary consent," also involves facts which require proof as to whether Marshall Allen has had the free and voluntary consent of his wife, previous to her decease, to sell said property after her death, which proof does not appear upon the record in this case.

The last clause for our consideration comprises these words: "And such alienation may be made by her, either by sale, devise or otherwise." Here the word "otherwise" involves a question of fact, which requires proof as to whether Ellenorah J. Allen, at any time before her death, had requested her husband to sell and convey away said lot of land in question, to him, her husband, in support of their children, as in very many cases a faithful wife would do. We are compelled also to say that no proof on the record does appear in support of the position taken by the appellee, even if the argument could be admitted as having any legal weight;

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but it cannot be so considered, it being predicated upon points of law and facts which are raised contrary to the statute, which declares that the fundamental principle upon which all complaints, answers and replies shall be made, etc., shall be that of giving notice to the other party of all new facts which it is intended to prove, etc. (See Lib. Stat., Bk. 1, p. 45, sec. 8.)

As to the evidence given in the court below by witness Worrell, stating that he had informed Mr. Williams of something, and that he having some misgiving, at the first possible chance got his bond out of court,—this statement being founded upon hearsay, was inadmissible and ought not to have been allowed, on the objections of plaintiff.

The objections made to the questions asked witness Worrell, "Was Ellenorah in debt?" or "Was Marshall Allen in such a state of poverty that he could not support his children?"—the objections of plaintiff to these questions were well founded, and ought to have been allowed, because Marshall Allen did not act in the capacity of a husband of Ellenorah J. Allen, but was acting as co-administrator with J. W. Worrell, as administrator of Ellenorah J. Allen's estate, and therefore they represented her, they being the administrators of her estate; and their bond was responsible to her heirs and creditors for any mismanagement that might have occurred in the administration of the estate.

Notwithstanding that Marshall Allen was the husband of Ellenorah J. Allen, his private acts as her husband and father of their children could not legally be blended with his acts as co-administrator of the aforesaid estate. Such acts are separate and distinct, and this is very obvious from the fact that Marshall Allen's bond was only responsible for his acts as co-administrator, and not for his acts as father. Every purchaser is supposed to be innocent unless he has been legally warned. In this case it does not appear that the appellant was

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legally warned before he purchased the said piece of property.

Acts of courts against which no protest has been entered, or from which no appeal has been taken, are presumed to be founded in reason and therefore are legal, for reason is the soul of the law. The principle is applicable in this case to the act of the said Monthly and Probate Court, with respect to the sale of the said lot now in dispute, in that the deed executed is evidence against all parties to the same,—Marshall Allen and J. W. Worrell, co-administrators of the estate of Ellenorah J. Allen on the one part, and H. A. Williams, purchaser of said lot in the town of Edina, Grand Bassa County, on the other part, as contracting parties,—and by which the parties are estopped from alleging anything contrary to the terms therein expressed. The court simply passed upon these points, not because they could have any legal effect, they not having been raised in the defendant's answer.

Therefore the court adjudges that the judgment of the court below is hereby reversed, and that the appellant recover from the appellee the said lot of land as described in appellant's transfer deed, and all costs in this action.

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# ARTHUR BARCLAY, Appellant, *vs.* WILLIAM H. FREEMAN, Appellee.

[January Term, A. D. 1894.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Ejectment.*

1. A will devising an estate to "A" for her natural life, and after her death to her heirs for their natural life, and, in the event "A" shall die without heirs, to "B" and her heirs forever, creates a life-estate to "A" and her heirs and an estate in fee to "B" and her heirs upon the happening of the contingency mentioned; and although "B" dies before "A," but leaves a lawful heir, and subsequently "A" dies without issue, the fee therein will vest in the issue of "B" who survives "A."

2. Possession does not always mean ownership; it may sometimes refer to the right and enjoyment of a term. A party may be possessed of an estate and yet not be seized under the statutes.

This action was brought by the appellee, who was the plaintiff below, to recover possession of a half lot, number one hundred and five, in the city of Monrovia. From the record of this case a trial was had at the September term of the Court of Quarter Sessions, Montserrado County, 1893. At said trial the plaintiff below obtained a verdict and judgment, from which the appellant excepted and brings the same before this court upon a bill of exceptions.

In this case the defendant below claims ownership to lot number 105, in the city of Monrovia, by virtue of a deed in fee simple from J. W. Good, Sheriff of Montserrado County, who sold said lot upon an execution founded upon a judgment in debt, against Cornelius and Martha A. H. McKrae, known also as Martha Anderson, at which sale he, the appellant, bought said premises; while the appellee sets up claim to the half of lot number 105, founded upon the will and testament of the late Hull and Cheny Anderson, as the only surviving heirs of the body of Elizabeth Anderson, mentioned in said will. On inspecting the will we find that both Martha Ann Hull Anderson and Elizabeth Anderson

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(known as Elizabeth Freeman) were the grand-daughters of the testators, and that to them the testators devised certain estates. (See the will.) In the first paragraph of the will is created the interest of Martha Ann Hull Anderson (or McKrae) in the following language: "We will and bequeath unto the oldest daughter of my son Henry Anderson, namely, Martha Hull Anderson, my dwelling house and all the appurtenances thereto, for her natural life, and after her death it shall, should she have heirs, go to them, for their natural life, and should she die without any, then to her sister, Elizabeth Anderson, the daughter of Henry Anderson, and her heirs forever, so as to be understood that the above-named property shall remain in the family from heir to heir and not be sold." The language here used, in the opinion of the court, admits of no other interpretation than that it was the intention of the testators to secure to Martha Hull Anderson and her heirs during life, an estate for life in the premises mentioned in the will, and no more; and that in case she died without heirs, (here the testators unmistakably meant heirs of her body,) that the fee title to said premises shall be vested in Elizabeth Anderson and her heirs (meaning also the heirs of her body).

Nothing is more in harmony with the Statutes of Liberia than that the rights of parents descend to their children. (See Lib. Stat. 1st Book, page 137, sec. 5.) Every reflecting mind may at once agree, that with such plain language as was used in the will of the testators in relation to Martha Hull Anderson, she was only to enjoy a life estate, and that the same terminated after her death. Notwithstanding, her sister Elizabeth died before her. On the happening of such events it is the duty of this court to find out as nearly as possible what was the intention of the testators upon such contingent circumstances. Elizabeth Anderson dies first, but leaves an heir of her body, namely, W. H. Freeman, the appel-

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lee. Martha Hull Anderson dies, leaving no heir of her body. Nothing can assist the court in finding this out better than the following non-ambiguous language, used by the testators, viz., "so as to be understood that the above-named property shall remain in the family from heir to heir, and not be sold."

This part of the will, in the opinion of this court, interprets itself, and conclusively shows that Martha Hull Anderson held but a life estate in half of lot number 105, and could not convey the same; and that the fee simple title to said lot vests in the heir of Elizabeth Anderson, the appellee in this case. It is hardly necessary for this court to say that the practice of allowing the owner of property to direct its destination after his death is of very ancient date and coeval with civilization itself, so far as we know, and courts of law in all ages have respected that right. On inspecting the answer we find the following words: "That Martha McKrae during her lifetime was possessed of lot number one hundred and five, in the city of Monrovia." Now the word "possessed," says the learned Judge Bouvier, means the right and enjoyment of a term, or a person having a term who is said to be possessed and not seized under the statutes. This word embraces the idea "to occupy, to hold with or without ownership;" hence it is uncertain as to which meaning the appellant intended in the use of the term. However, it is due to the appellant conducting the defence in this case, for us to say he has displayed great ability in the effort to show that a will creating a perpetuity is unlawful, and had that point been raised in the answer this court would be bound to consider it. But the answer raised no such question; hence, in keeping with the former rulings of this court, the omission to make this point a ground of defence in the answer must by this court be held as a waiver. The court further says, on inspecting the record, that it does not appear in the testimony that the objections were sustained by testimony amounting to proof.

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To conclude, the court says, after a most careful review of the case, that it does not see why the judgment of the court below should be reversed. Therefore the court adjudges that the judgment of the court below is affirmed and that the clerk of this court make known to the court below the doings of this court.

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## KRISTIAN HERMAN JOGENSEN, Appellant, *vs.* URIAS KNOWLAND, Appellee.

[January Term, A. D. 1895.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

*Damages.*

1. A verdict which upon its face appears to be the unanimous conclusion of a petit jury upon facts submitted, is valid even though defective in form. Verdicts cannot be set aside for error in form; by the rules of practice such defects are allowed to be corrected.
2. The want of proof will defeat the best laid action; the statement of facts in a declaration, however clearly and logically they may be set forth, cannot be taken as proof of their truthfulness.
3. In actions for damages the jury should take into consideration the misconduct of the defendant when shown, in mitigation of damages.

This is an appeal from the proceedings and decision of the Court of Quarter Sessions, Sinoe County, at its February term, A. D. 1894. The action was brought by the appellee, plaintiff below, for damages on account of an alleged assault and battery. At the trial the appellee obtained judgment, the same being based upon the verdict of the jury, unto whom the facts were submitted by the court; from which judgment, and other proceedings of said court, exceptions were taken by the appellant and upon the exceptions thus taken the case is before this court for review.

The first exception taken is to the verdict of the jury, because it was without date, which objection the lower court did not sustain, and ordered said verdict recorded.

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This court says a verdict is the unanimous agreement of a petty jury as to facts submitted to them for determination, and the dating or non-dating of it is a matter of form; and that a verdict should not be set aside for want of form, as such defects are met by the rules and practice of courts, allowing such to be amended. Hence this exception is not well taken.

Second, because the verdict rendered is contrary to the evidence, as the evidence failed to prove the allegations set forth in the complaint, but rather sustains the plea of justification set up in the answer of the appellant.

This court is of opinion that this objection and exception is well taken, because "every party alleging the existence of a fact is required to prove the same, and also that the want of proof must defeat the best laid action, because facts, however logically set forth in a complaint, can never in law be accepted as proof, but must be supported by evidence to warrant either a court or jury to consider such statement true, upon the principle that "every man is presumed to be innocent until he is proven guilty."

This action is founded in damages for an assault and battery unprovoked, and without any legal cause. The appellant pleads justification in whatever may have been his acts. Hence the plain duty of the court is to ascertain, from the record and testimony rendered in the court below, whether or not the verdict and judgment are supported by the law and the evidence rendered in the case.

Having divested this case of all extraneous matter, we find the evidence as follows:

D. W. Frazier, witness, stated as follows: "I did not see the affair between the plaintiff and defendant. I was at the defendant's place of business, the Norwegian's store. The defendant asked the chief manager to assist him to clear the store, as a row was coming. I heard Knowland say the defendant had kicked him; this the

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defendant denied, and charged the plaintiff with being in his way. I saw no signs of injury done."

H. W. Brooks, Jr., says: "I saw the plaintiff below, and Daniel Beal, at the time mentioned in the complaint, sitting on the steps leading into the store of the Norwegian. I saw when the appellant came to the door, stood between them, and shoved them off; before this he told them twice to move. Knowland asked, Why did he shove him from the steps? He, the defendant, answered, You are in my way."

Samuel Ferguson states that at the time laid in the complaint, he was present, and that the plaintiff and Beal were sitting on the steps leading to the store of defendant. The defendant asked them, "What are you hanging round my store for?" Plaintiff looked up at him and went on talking. Defendant came up to the steps again and asked the same question; receiving no reply, he stood between them and said, "Excuse me." They did not move. Then with his feet he sidewise shoved them both off the steps. He thought the defendant was protecting his premises.

Daniel Beal says he and the plaintiff were much in liquor, sitting on the steps and talking very loud about the war at Palmas; that they annoyed traders in the store. The defendant below came to the door and asked, "What are you doing here?" They gave no answer. He came again and eased them off the steps. Had they not been in liquor it would not have happened. As to damages and injury, he does not know that plaintiff was injured; he was not.

C. B. Scotland knew nothing about the plaintiff being injured or damaged by the defendant. This closes the testimony bearing on the case.

From the evidence it is clear to the mind of the court that while it shows that the defendant did shove plaintiff with his feet from off the steps of the defendant's store, or place where he was employed, yet we are of

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the opinion that the court below, and the jury, should have taken into consideration the rule of mitigation of damages, because of the misconduct or provocation proved by the testimony, as well as the right of men to protect their premises.

Carefully looking into all the circumstances surrounding this case, we are forced to the following conclusions: First, that the verdict rendered in this case is against the law and the evidence; second, that the judgment rendered based upon said verdict is unlawful, not being founded upon a lawful verdict. Therefore, to sustain such proceedings would work great damage, and would place mercantile houses at the mercy of intruders.

Therefore this court adjudges that the judgment rendered in this case is hereby reversed, and that the appellant recover from the appellee his legal costs in this action; and further, that the clerk of this court issue a lawful mandate to the court in which the action was tried, to the effect of this judgment.

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## CHARLES H. DUNBAR, Appellant, *vs.* REPUBLIC OF LIBERIA, Appellee.

[January Term, A. D. 1895.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

*False Imprisonment.*

This case was tried in the Court of Quarter Sessions, Sinoe County, at its May term, 1894, and is brought before this court upon a bill of exceptions, for review. The exceptions taken below are as follows: First, "Because the court overruled a motion offered by the defendant below, praying an abatement of the indictment and process because of its uncertainty in setting forth the Christian name of the defendant and not describing him with certainty." Second, "Because the indictment

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contained abbreviations, whereas abbreviations are not allowed in indictments." Third, "Because the indictment failed to show that the imprisonment alleged was against the will of the party said to have been imprisoned."

The court takes occasion to say that the principle upon which cases are determined by the highest judicial tribunals of the world, under pleas of abatement for uncertainty in describing and identifying defendants, is so well known to the common law practice that we deem it unnecessary to enter upon it. In this case the defendant below was indicted and arraigned for false imprisonment, in due form; during the trial he motioned the court to abate the indictment, because it was vague and uncertain in that he was called in the indictment C. H. Dunbar, and if he, the defendant, was meant in the indictment, his name is Charles H. Dunbar.

This court is of the opinion that all indictments should set forth with clearness the Christian and surname of the defendant, so that he may be described and identified beyond doubt, and if his name is not known to the jury in the indictment, so as to describe and identify him, the indictment should state that his name is not known. This plea, upon which all others contained in the motion depended, was in the opinion of this court well founded and should have been sustained by the court below. Therefore, the court below erred in overruling this plea. Again, the court below in passing upon this motion also ruled that the defendant in answering at the arraignment waived all legal objections thereto. We are of the opinion that this ruling is erroneous, because the defendant was bound to appear, by law and practice, to answer and then put in his plea or objections, and his failing to do so, however wrong the name by which he was called, on motion made to the court, judgment by default could be demanded and obtained against him. The consideration of these points

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shows clearly that the trial below was not conducted according to law. Therefore the court adjudges that the judgment rendered by the court below be and the same is hereby reversed.

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## C. B. REEVES, Appellant, *vs.* MARK HYDER, Appellee.

[January Term, A. D. 1895.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Grand Bassa County.*

*Ejectment.*

1. Ejectment supports the idea of adverse possession in the defendant. The questions involved in such trials are of a mixed nature, which under the statutes must be tried by a jury under the direction of the court. It is not error for the court to refuse to instruct the jury on any point in such trials, when in its opinion it does not appear proper so to do.

2. In ejectment the plaintiff must show in himself a legal title to the property in dispute to recover it; by title here is meant the right of possession arising either from descent or purchase, and the right of entry.

3. Under the statute the probation of a deed makes it legal evidence; where there are objections to same they should be made at the time the instrument is offered for probation, where the party has knowledge of the transaction. In trials of suits of ejectment it is not error in the court to instruct the jury that a party has offered no legal evidence in the shape of deed to the property in dispute; it is also not error for the court to instruct the jury that the plaintiff must recover upon the strength of his own title and not upon the weakness of the defendant's. (Oliver *vs.* Bigham, 1870, Harris *vs.* Locket, 1875.)

This appeal was taken from the proceedings, rulings, and final judgment of the Court of Common Pleas and Quarter Sessions, Grand Bassa County, at its June term for the year 1894, and is brought before this court upon a bill of exceptions, for review.

Before passing upon the material points presented for this court's consideration, it is due to the learned counsels conducting both the prosecution and the defence in this case, for us to acknowledge the great skill and legal ability displayed by them in urging the cause of their respective clients. This case is without a parallel in the

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history of our courts, and presents features the most complicated; but as in every question of human action there is involved a principle of both right and wrong, we have spared no pains to search out the legal rights surrounding this case, which has enabled us to come to such conclusions as are drawn from sound principles of the law.

Nothing tends greater to disturb tranquility, to hinder industry and improvement in communities, than the insecurity of property, personal or real, to prevent which courts of justice are established. This is an action of ejectment, the method employed by a plaintiff to recover the possession of his lands wrongfully withheld from him by a defendant. Ejectment is therefore a possessory action and supports the idea of adverse possession, hence a trial of the legal titles of the contending parties. It being a mixed question of both law and fact, the statute provides that such trial is to be by a jury, with the assistance and under the direction of the court. (Lib. Stat. Book 1, page 47, sec. 3.) It is therefore among the peculiar trials wherein the court may not only assist, but may direct the jury in coming to the conclusion warranted by law and facts in the case. Hence it is not error in the court to refuse to admit or instruct the jury on any matter which, in its opinion, does not tend to establish the truth and justice of the case. For this reason the jury and the court have a right, in ejectment, to weigh probabilities and solve doubts as to matters of fact; and if in their minds the preponderance of proof, or rational influence as to any fact on which the title depends, is on the side of the plaintiff or defendant, they ought to find accordingly.

To recover in ejectment the plaintiff must prove in himself a legal title. To this point, however, the court says the term "title" as is here meant, may be briefly stated to be the means whereby the owner of the lands has the just possession of his property; and we further

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remark that title to real estate is acquired by two methods, namely, by descent, and by purchase. Purchase in a limited sense is applied only to such acquisitions of lands as are obtained by way of bargain and sale, for money or some other valuable consideration. Therefore in ejectment the plaintiff has a right to show a vested legal title, no matter how, if fairly acquired, or through whom it may have been delivered, and if no adverse right or possession be shown, such plaintiff may recover without showing possession or the right of possession, or any entry or the right of entry. This and similar situations authorize the exceptions to the general rule and doctrine frequently announced by this court and which the court reaffirms.

In ejectment the plaintiff recovers upon the strength of his own title and not on the weakness of that of his adversary. This support, however weak, that a defendant sets up title either legal or equitable, in the absence of both, in contemplation of law, debars the trespasser. None, therefore, can fail to see that the application of the above doctrine, without the exception pointed out, would defeat the very intention of the action of ejectment, whose primary use is to try the titles of the litigant parties in dispute.

In reviewing the transcript of the record showing the proceedings of the court in the trial below, we find that the estate of one John Parker, deceased, intestate, was by the Probate Court of Grand Bassa County, ordered to be sold by the administrator of the said estate, acting under authority granted by that court, and that a sale took place by public auction and that at the said auction Mark Hyder, the said plaintiff below, bought that part of said estate as is known to be lot number 17, in the township of Hartford in the County of Grand Bassa. The record further shows that he, the said plaintiff below, paid the purchase money for said land, but did not obtain a deed for the same from said

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administrator, and that the said administrator died (if previously to closing the said estate as required by law, the record fails to show); that during the year 1893, the said Mark Hyder made petition before the Monthly and Probate Court of Grand Bassa, S. S. Herring, judge presiding, to appoint administrators of the estate of the said John Parker, which was granted. P. M. Scott and John Watson were appointed, who completed the title of the plaintiff below to lot number 17, in Hartford, as aforementioned, by granting him a deed; that said deed was probated and registered according to law.

This court is of the opinion that the time a deed is offered for probation is the proper time to set up legal or equitable objections to it, by any party who may be affected by its probation; since by statute the probation makes it legal evidence before courts of law, all such objections being referable to the Court of Quarter Sessions for determination. The evidence in this case fails to show that any objections were offered at the time of the probation of this deed by the defendant below, or any one representing him; hence its probation was not opposed.

It is proper for us to notice next, the evidence furnished in the record of the Monthly and Probate Court of Grand Bassa County in the trial of this case. It appears that one Dr. Smith, being present at the time of the probation of this deed of the said Mark Hyder, stated to the court, as his objection, that he through mistake sold this tract of land number 17, to the defendant below. This was, as is obvious to all, not an objection to the deed, unless it applied to the one he gave to the defendant below through mistake. The jurisdiction of the Probate Court to appoint the acting administrators under surrounding circumstances, not having been put in issue, is not before this court, as it was not before the court below.

The third exception taken is because during the trial the plaintiff below offered as evidence a copy of the record

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of the Monthly and Probate Court containing matters and statements made in his absence. Had this point of exception contained an averment or statement that the plaintiff below omitted or refused to cite or give notice to the appellant to be present at the time when such statements were recorded in the court referred to, it would have been error in the court below to have admitted such evidence; but no such facts being found in the record, this court is of opinion that irregularities do not appear such as to amount to an error.

The fourth exception presented to this court for its consideration is, because the court below instructed the jury to the effect that the appellant in this case had no evidence in the shape of a deed of title. This court, after careful examination of the entire record and proceedings in this case, fails to see wherein the appellant offered either oral or written testimony to prove the right of possession or the right of entry, or any lawful or equitable title to lot number 17, in the township of Hartford in the County of Grand Bassa. Hence, considering that the trial was by a jury with the assistance and direction of the court, it was not error for the court to instruct the jury that the appellant had offered or had no evidence in the shape of title for the land in dispute. As to the point that the court instructed the jury to the effect that they should not notice the weakness of the appellant's title, but the strength of the appellee's, we remark that this is not error, but is in support of the repeated rulings of this court. See decision in cases of Oliver *vs.* Bigham, and Harris *vs.* Locket, namely, that the plaintiff in ejectment must recover upon the strength of his own legal title and not on the weakness of that of his adversary.

The fifth exception embodies the other exceptions taken at the trial below, which is, because the court refused to grant a new trial when prayed for after verdict. As to this point the court says, the granting or

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refusal of a new trial is a matter in the sound discretion of the court, according to the exigency of each particular case, upon principles of sound justice and equity, and this discretion is not generally reviewable on error, when the court is satisfied that the verdict is not contrary to the law, the evidence and its legal instructions. Otherwise it should grant a new trial.

Considering this case from every reasonable standpoint, this court fails to see sufficient cause to disturb the judgment of the court below, and therefore adjudges that the judgment of the court below ought to be and the same is hereby affirmed, and that appellant pay all costs in this action.

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## Z. T. GREEN, SAMUEL GRAY, and his wife ANNA S. GRAY, Appellants, *vs.* B. J. TURNER, Appellee.

[January Term, A. D. 1895.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

*Injunction.*

1. An answer filed within ten days after notice of the filing of the complaint is within the statute; it is the time the notice was served, and not when the complaint was filed, that governs the answer in this respect.

2. In injunctions the court cannot decide issue involving the validity of title, such being a mixed question which by statute is triable by a jury under the directions of the court.

This is an appeal case in an action of injunction brought up to this court from the Court of Quarter Sessions, Sinoe County, sitting in equity, by appellants (defendants below) upon a bill of exceptions.

Before coming to a judgment in this case, the court will proceed to notice the points in the bill of exceptions to which its attention has been carefully given, and will dispose of them as they stand in their order. The first point to be considered and disposed of is set forth thus: "Your Honor's ruling out defendants' sufficient answer,

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which was in keeping with the statute laws of the Republic of Liberia in injunction, because the sheriff did not serve the notice on the plaintiff until one day after the expiration of the ten days which the statute law of Liberia allows for the filing of answers."

After carefully reviewing the record in the case the court finds that the answer was filed within the time allowed by statute; and it is not prescribed by statute that the "answer" must be filed within ten days after the filing of the "complaint," but within ten days after *notice* has been given of the filing of the complaint. (Lib. Stat. Bk. 1, Chap. 5, sec. 5.) Therefore, it is the opinion of this court that the judge below erred in ruling out defendants' (now appellants') answer.

The second exception under consideration is, the objection of appellants to the first part of the decree of the judge below, in which the judge said that because the parties claimed titles to the land in question by deeds produced in evidence, which were given by the Republic of Liberia, he would not consider the validity of titles, or the matter of quiet enjoyment, which is collateral.

On this point it is the opinion of this court that the judge below did not err in refusing to consider and decide the titles, for such a decree would be deciding a mixed question of law and fact, which cannot be tried and determined in equity; for the statutes declare that "all questions of law and fact must be tried by jury, assisted by the court."

The third point is appellants' exception to the last part of the decree of the judge below, in that he said that "the court has carefully and thoroughly digested the laws bearing on this action, and it appearing to the court that there are sufficient grounds, therefore the court adjudges that the defendants be forever enjoined and prohibited from intermeddling or annoying and harrassing the said plaintiff in the cultivation of his twenty acres farm land, situated on Po River, and being

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number thirty-three, formerly styled number thirty-six, unless otherwise determined by law, and that the plaintiff recover from the defendants all legal costs in this action."

The opinion of the court on this point is that the judge below erred; for in the first part of the decree the judge said that he could not consider the question of validity of titles, or the matter of quiet enjoyment, which is collateral, both parties claiming said land under deeds from the Republic of Liberia. This court is at a loss to know by what parity of legal reasoning did the judge decree that the defendants, now appellants, be forever enjoined and prohibited from intermeddling, or annoying and harrassing said plaintiff in the cultivation of his twenty acres of farm land situated on Po River, and bearing number thirty-three, formerly styled number thirty-six.

And this court further says that the judge below erred in said decree by enjoining a perpetual injunction on defendants, now appellants, which, in the opinion of this court, is virtually deciding the validity of titles.

In this equity case the irregularity of the proceedings of the court below are so much opposed to equity and good conscience as to lead this court to the following determination: This court adjudges that the decree of the court below is hereby reversed and the injunction dissolved, and that appellants recover all costs in this appeal case from appellee. The clerk is hereby commanded to issue a mandate to the court from whence this case came, informing it of this decree.

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# EAST AFRICAN COMPANY, late Hendrik Muller of Rotterdam, Appellants, *vs.* HARRIET F. DUNBAR, Appellee.

[January Term, A. D. 1895.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

*Ejectment.*

1. The plea of estoppel is a good plea and will prevent a party from denying his own acts, if well founded; neither law nor equity will permit a party to disclaim his own acts as unlawful. The same rule applies to privies.

2. In ejectment, where damages are sought, the complaint must be so constructed as to put in issue this point; where it is not so framed it is error to award damages, and where under such circumstances the jury allowed damages, and a motion for a new trial on this ground was rejected by the lower judge, it is an error which the appellate jurisdiction will take cognizance of.

3. The Constitutional inhibition with respect to citizens only holding free-hold estates, does not preclude foreigners from holding lease-holds. The legal term of a lease to foreigners is twenty years, but it will be a good lease if it contains a provision for renewal after the expiration of the term granted. A conveyance made transferring the fee in certain lease-hold estate, but subject to the terms of the lease, creates a *future* estate, and where the consignee, acting in the dual position of assignee and administratrix for the lessee, conveys a title in the same estate to another party, she is estopped from raising any objection to the original lease and in denying the rights granted therein.

This is an appeal case that was tried in the Court of Quarter Sessions, Sinoe County, at its November term, A. D. 1894, and is brought to this court upon a bill of exceptions for review.

In considering this case we regret that the issues presented in the exceptions did not claim more of the attention of the counsellors in the case, as that would have enabled this court to see better the point aimed at by the parties. Such have been the irregularities in this case, in nearly every stage of its proceedings, that only after hard labor are we enabled to get the case into such a form as to apply the law and facts to the proceedings below. It may be well for us to remark just here, that the law makes no distinction between men

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when before it; the high and the low here are both on a level. The law, while just, has no sympathy; it neither makes men rich nor poor; hence the claim to be rich can have no influence with it, and to plead poverty can awaken no sympathy.

This is an action of ejectment and consequently subject to the law governing the proceedings in such actions. We will here repeat the rule of universal acceptance in such cases: The plaintiff must not only show in himself title, but lawful title to the lands in dispute, and also the right of entry at the time of purchase, or his legal claim would, if a remainder-man, be reduced to an equitable claim, until the happening of the contingency then effecting his right of entry. The exceptions taken in this case are many, and are so taken as to enter into two or three points, upon which the proceedings must tumble for the want of legal foundation; hence this court will notice only such as will enable it to arrive at a just determination of the case.

The first exception claiming the immediate attention of this court, is the second found in the bill of exceptions, and is as follows: "Because the court overruled the plea of estoppel set up in the defendant's answer." The plea of estoppel is among the pleas calculated to prevent one from denying his own acts or deeds, and when founded in truth must meet the sanction of the courts of law. Nothing would work greater injustice than for a man to execute a note or deed in favor of another, and then attempt to prove its unlawfulness. In law he would be estopped, or hindered from doing it, and if such acts committed by any party, no matter in what capacity acting, becomes a question of lawfulness, neither the party himself, nor any one representing him, should be allowed to impeach his own deed, note or acts. In this the court below greatly erred. The court should have sustained the plea and abated the suit in its very commencement, it appearing in the record that the

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plaintiff below, with others, sold and supported the entry of the defendant below in all the rights of the original lessee, for whom she acted as executrix.

The fourth exception taken is as follows: "Because the court sustained a motion opposed by appellant, to order a jury to assess damages, the verdict of the ejectment case having been rendered in favor of the plaintiff below." This irregularity tended not only to greater confusion, but to a direct violation of universal law. To make plain the meaning of this court we remark, that the forms laid down in the statute are but outlines or models and are to be modified to suit particular cases. In ejectment, where damages are also craved, the complaint should be so modified as to show damage, thereby giving notice to the defendant of the fact plaintiff intends to prove (Stat. 1st Book, page 45, sec. 8), otherwise a separate action for damage would be the only means whereby damage could be recovered. The complaint not being thus modified, the court erred in sustaining the petition.

The eighth exception is: "Because the court refused, on a motion of defendant below, to set aside the verdict of the jury returned and awarding damages to the plaintiff below." Nothing constitutes a more glaring wrong than this act of the court below, because the verdict on its face shows that it is returned in an action of damages, whereas the action of damages was never entered and tried by the court. Therefore in this the court below erred, and the verdict should have been set aside.

Before proceeding further we take occasion to say that to hold property and to enjoy a leasehold are two distinct things in law: the former none but citizens of Liberia may enjoy, under the Constitution; the latter anyone may enjoy, without respect to race or nationality. A lease may be for any term not exceeding that which may put the estate out of market, or in perpetuity. This term is limited by the decision of this court to twenty

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years, which this court in this present decision does not feel authorized to overthrow or to disturb. However, as the decision referred to does not annunciate the doctrine that a lease would be illegal if it contained a term of years, subject to a renewal of said term after the expiration of the first, this court is of the opinion that the lease in question for twenty years, to be renewed after the expiration of the first term, is not against the Constitution of Liberia nor the decision of this court referred to, and such leases may be made by the owners of lands to suit their own convenience; otherwise owners would not have absolute right to property in their own hands, but would be merely trustees of the same.

We shall now briefly consider the facts in this case. In the record it appears that one Mrs. E. M. Morris, the owner of lots numbered 59 and 110, in the city of Greenville, Sinoe County, by deed, leased said lots to one Jose B. Oliver, his heirs, administrators, executors or assigns, for a term of twenty years, for five hundred dollars, being the lease money. Said lease was to be renewed at the will or desire of the said Oliver after the expiration of twenty years, he paying all the taxes and giving one dollar, and further delivering up all improvements at the end of the second term, to the lessor. That this covenant not only bound the parties to the transaction, but all claiming under them, is the opinion of this court.

It appears that soon after the transaction referred to, the said Mrs. E. M. Morris sold to plaintiff below her fee titles to the said lots numbered 59 and 110, but in her deed to the plaintiff points out the lease of the said Oliver, so as to convey to her a *future estate*. This in the first instance constitutes a bar to an entry, and also admits the right of entry of the said Oliver, upon the terms and recitals in both his and her deed. And it further appears, that shortly afterwards both Mrs. Morris and Oliver died, and this event

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placed Mrs. Dunbar, the plaintiff below, in a dual position, first as assignee of Mrs. Morris, and secondly, Oliver leaving her executrix of his will, which appointment she accepted, thereby representing Oliver also.

And it further appears that the said Mrs. Dunbar and her co-executor sold unto one N. J. A. Maarschalk, agent of H. Muller & Company, his heirs and assigns, all the rights, titles and interests of the said Oliver in the lots now in dispute, one term having nearly expired, before which, it appears, those holding under the claim of Oliver tried by all means to secure an express renewal of the lease for the second term. But those claiming under Mrs. Morris' right failed to do as provided in the covenant, by remaining dormant and allowing over five years of the second term to expire. This silence on the part of plaintiff is, in the opinion of this court, equal to an implied ratification of the second term, the assent being equal to a consent.

Considering this case from every reasonable and honorable standpoint, this court adjudges that the judgment rendered by the court below be and is hereby reversed, to all intents and purposes, both as to the ouster until the expiration of the time limited in the covenant, and as to the damages awarded, and that the appellant recover from the appellee all legal costs of this action. Further, the clerk of this court is hereby directed to issue a mandate directed to the Court of Quarter Sessions, Sinoe County, to the effect of this judgment.

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## JAMES L. BROOKS, Appellant, *vs.* THE REPUBLIC OF LIBERIA, Appellee.

[January Term, A. D. 1896.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

*Attempt to Murder.*

1. In criminal prosecutions the party upon whom the injury or wrong constituting the offence charged was committed, is not disqualified as a witness on account of interest; he is, on the contrary, the best evidence which the case will generally admit of.

2. A party cannot justify his acts of violence upon another, where it appears that he went beyond the necessary and rational bounds.

3. A verdict and judgment for a greater offence than was proved at the trial is illegal; it is the offence proved at the trial and not the charge preferred, that the court has authority to pass upon.

This case was brought to the Supreme Court for review at its January term, A. D. 1895, from the Court of Quarter Sessions and Common Pleas, Sinoe County, by the appellant, on a bill of exceptions, but it was deferred for review until the present term. The court having now carefully considered the record of the case, is prepared to render its decision. But before doing so it may be well to consider and dispose of the several points in the bill of exceptions as they stand in their order.

1. The appellant objects to the ruling of the court below in admitting J. H. Strong as a witness in the case, upon the ground of interest, he being the party injured, and he quotes, to sustain his objection, I Bouvier's Law Dictionary, pp. 544–9 and 738–9 (Interest and Evidence), and Liberia Statutes, Bk. I, Chap. 12, sec. 9. On this point the court takes occasion to say that the judge below did not err in giving said ruling, inasmuch as the case before him was of a criminal nature; and the said J. H. Strong, though he was the party directly injured, yet he was not, in the sight of the law, the interested party, the issue being between James L. Brooks and the Republic of Liberia. Instead of being the party inter-

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ested, in a legal sense he was to all intents and purposes the best witness that the nature of the case admitted of. The law cited by appellant is not applicable. (Lib. Stat. Bk. 1, p. 52, sec. 8; Bouv. Law Dict. p. 545.)

2. This court further adjudges that appellant's plea of justification is not well founded, because the assault committed by the said J. H. Strong was not sufficient provocation to justify appellant to cut him on the neck or throat, thereby doing him, the said J. H. Strong, great bodily harm. Such an act on the part of appellant was excessive and bore no proportion to the assault. And further, the law cited by appellant to sustain his plea of justification (II Bouv. Law Dict.: "Son Assault Demesne") in the opinion of this court is not at all applicable, but rather sustains the contrary. (I Arch. Crim. Prac. & Plead. pp. 54 and 55, "Self-defence;" III Blackstone, top p. 619, last clause of sec. 1.)

3. The third point in appellant's bill of exceptions does not claim the attention of the court, for the reason that no such paper as referred to in the bill of exceptions appears in the record of the case; and in answer to a mandate of this court to the judge below, the court is informed that no such paper was filed in the office of the clerk of said court below. This court, therefore, has no jurisdiction in the matter.

4. Referring to the fourth point, in which appellant says His Honor erred in not sustaining the motion to arrest final judgment in this cause against him, because it was clearly proven by the witnesses that it was an affray gotten up under a sudden quarrel. This court says, that while it may be considered just and right that the judge below should render final judgment upon the verdict as rendered by the jury in the case, still it appears strange for such a judgment for attempt to murder to have been rendered, based on such a verdict, when the record does not show that there was deposed before the said court below, any evidence to sustain the charge

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of attempt to murder. And this court further says that the offence committed by the said James L. Brooks, appellant, is not, according to law, as viewed by this court, an attempt to murder, but rather an assault and battery resulting in great bodily harm, and the court below should have so instructed the jury in his charge as to influence them to bring in a verdict more compatible with the law and facts in the case. While the law contemplates that all transgressors shall be punished, still it is not the spirit and intent of the law that the punishment of one offence should be meted out for another of less magnitude.

In view of all circumstances connected with the case, as well as the law and facts, this court will now proceed to render such a judgment in the case as the court below should have rendered.

It appearing to this court, from the record of the case, that the said James L. Brooks is guilty of an infraction of the peace by committing an assault and battery upon the person of the said J. H. Strong, which resulted in great bodily harm, therefore this court adjudges that the judgment of the judge below be set aside, and made null and void; that the said James L. Brooks, appellant, is hereby fined the sum of one hundred dollars, to be paid within sixty days from the date of this judgment, and ruled to pay all costs of this action; and on failure to pay said sum of one hundred dollars, he shall be confined in the common county jail for the term of twelve calendar months, and to work in irons during said term.

The clerk of this court is hereby ordered to issue a mandate to the judge below, commanding him to carry into effect the decision of this court.

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# E. A. L. McAULEY, Appellant, *vs.* BENJAMIN MADISON and MARIA MADISON, Appellee.

[January Term, A. D. 1896.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

*Ejectment.*

1. The court is not bound to instruct the jury upon any point of law bearing on the merits of a case where such point was not formally raised in the pleadings, if it was proper so to do.

2. The statute limiting the jurisdiction of the Monthly and Probate Court in matters of debt does not apply to suits brought for the foreclosure of a mortgage.

3. The Monthly and Probate Court may order the sale of property accruing to an infant where it appears necessary to do so for its benefit.

4. A deed or other conveyance which is not entered for probate within four months after its execution, is by statute voidable.

5. A party who, being under no legal disability at the time, stands by and permits property, which he claims, to pass into the possession of another without objecting thereto at the time, is presumed to have assented to the transaction and is estopped from afterwards raising claims thereto. (Savage *vs.* Dennis, and Blunt *vs.* Barbour, 1871 and 1872.)

This is an action of ejectment tried and determined by the Court of Quarter Sessions and Common Pleas of Sinoe County at its August term, A. D. 1894, and brought up to this court for review by the appellant on a bill of exceptions, at its January term, A. D. 1895, but deferred until this present term. The court will now proceed to consider the case by reviewing the bill of exceptions and the evidence in the case, applying the law, and then rendering its judgment accordingly.

1. The appellant objects to the instructions of the judge below, in that he refused to charge the jury as to partition and collateral heir. This court says that the judge below did not err in refusing to give such instructions to the jury, since said question was not raised in defendant's (now appellant's) answer, so that said issue might be brought properly within the reach of the court. It is a principle of law that any matter not laid in the

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written pleadings of a case cannot be expected to receive the legal consideration of the court. (Lib. Stat. Bk. 1, Chap. 5, sec. 8.)

2. The court says it is of the opinion that the judge below erred in ruling against the jurisdiction of the Monthly and Probate Court in foreclosing the mortgage deed from Peel to Maarschalk, agent of Hendrik Muller & Co., for the reason that the law limiting the original jurisdiction of said court in cases of debt to two hundred dollars does not debar the said court of the right to foreclose a mortgage deed for that or any amount, any more than it hinders said court from probating such a deed. The matter of debt was not an issue before the court for its consideration, but simply foreclosing a mortgage, involving no trial of issue.

3. And the court further says that the deed of Lewis Brown should have been admitted as evidence; first, because the Probate Court did not transcend its jurisdiction in ordering the property in question sold, when it was made clear to said court that it was necessary to sell the same for the benefit of the said infant Julia Peel in question; and secondly, while it is true that the law requires the probation of all deeds and other conveyances (Act of the Legislature of Liberia, 1861, p. 91, sec. 2), still, section five of the same act voids prior claims when there has been a flagrant neglect of probation for four months, and when said neglect results in litigations arising from subsequent conveyances. And this court further says that even if the appellees are legal heirs, by descent, of the said Allen Peel, Sr., which has not been conclusively proven by the testimony adduced in the court below, still they are estopped from now claiming any part of said land in dispute, in that they are guilty of *laches* by allowing four subsequent conveyances of the said quarter of lot of land No. 13 to be made without enforcing their rights, to which in law the presumption is that they either assented or that

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they had no legal claims on said piece of land; and for which, the law under the circumstances will not lend its aid for the recovery. (See Decisions of Supreme Court of Liberia in the cases Savage *vs.* Dennis, and Blunt *vs.* Barbour.)

And again, this court says that the claim of appellees is not proven to be sufficiently strong as to entitle them to recover; for the principle of law prevails, and this court will ever maintain the same, that in cases of ejectment "the plaintiff must recover on the strength of his own claim, and not on the weakness of that of the defendant."

Therefore this court adjudges that the judgment of the court below is hereby reversed and made null and void, now and forever, and that appellant recover all costs in this action. The clerk of this court is hereby commanded to send a mandate to the judge of the court below, to the effect of this decision.

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## E. A. L. McAULEY, Appellant, *vs.* H. K. JORGUSIN, Agent for the African Norwegian Trading Company, Appellee.

[January Term, A. D. 1896.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

*Injunction.*

Property duly registered as a homestead under the Homestead Exemption Act of Liberia is exempt from the writs of creditors. Where fraud is alleged to have been the motive, objections should be made against the registration and from all benefits therein.

This is an appeal from the decree of the Court of Quarter Sessions, Sinoe County, at its August term, A. D. 1894, and is submitted by the parties, after arguments, to this court for its judgment on the proceedings of the court below.

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The appellant submits, first, that the decree of the court in this case should be overruled and set aside, because said decree was rendered without any reference to the issues raised and submitted in the pleadings by the parties to the suit; second, that the court below erred in dissolving the injunction, the plaintiff, now appellant, having made the property attached, a homestead for himself and family in accordance with the Statute of 1889.

The appellee maintains, first, that the decree of the court below should not be reversed, "because the plaintiff in the court below, now appellant, being in debt to the Norwegian African Trading Company at the time that he registered his property under the Homestead Exemption Act, it was fraud on his part, and that the court did not err in refusing to lend its aid to said fraud;" second, that "the appellant being only possessed of a part of lot No. 13, his act in having the whole of said lot registered under the Homestead Exemption Act was fraudulent and illegal and that said registration is therefore null and void."

These points the court has carefully considered, and will pass upon as many as may be necessary to enable the court to pronounce in this case the judgment of the law. It is the opinion of this court that the court below greatly erred in its decree dissolving the injunction; for while it may be to some extent discretionary with a court to perpetuate or dissolve an injunction, yet all courts are bound to consider the issue raised and submitted by the parties to a suit, and judgments in either courts of law or equity must be confined to the question raised before them, and cannot extend beyond them. In this case it is clear that the issues were not considered by the court below, for which reason the decree is voidable.

As to the second point raised in the exceptions, the court is of opinion that property registered under the

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Homestead Exemption Act cannot in any case be taken in execution for debt, and since the decree in substance is in violation of the property act it is further voidable.

And just here the court says, that all voidable objections to the registry of property under this act should be offered at the time creditors attempt to enjoy its benefit to the prejudice of their debtors, for property once secured under this act cannot be taken from under its protection either by legal or equitable remedy, according to its provisions.

Therefore the court adjudges that the decree be and the same is reversed and that the injunction be perpetuated, and that the appellant recover full costs from the appellee.

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## KROO MLANCH, Appellant, *vs.* THE REPUBLIC OF LIBERIA, Appellee.

[January Term, A. D. 1896.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

*Lewdness.*

This case comes up upon an appeal from the Court of Quarter Sessions and Common Pleas of Sinoe County. The Attorney General stated that he had examined the evidence as contained in the record, and was of the opinion that the Republic of Liberia, appellee, would not be able to sustain the charge and he therefore put in a *nolle prosequi.*

The court, after due examination of the case, has come to the following conclusion, namely: that the judgment of the court be and the same is hereby reversed, and the clerk of this court is authorized to inform the court below accordingly.

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## EAST AFRICAN COMPANY, late Hendrik Muller & Co., Appellant, *vs.* HOSEA McCALLA, Appellee.

[January Term, A. D. 1896.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

*Debt.*

1. A bill of exceptions signed by an attorney on behalf of his client is within the statute relating to appeals and is valid; the statute relating to the limit of time in which appeals must be taken out and entered in the appellate court is to be understood as meaning ninety days after the rendition of final judgment in the inferior court.

2. Where in appeals a question arises as to the payment or non-payment of costs in the lower court, the certificate of the sheriff is the best evidence to prove or disprove that fact.

In this action a ruling of the court is sought on the motion of appellee to dismiss the case for the following reasons: first, because the bill of exceptions is not signed by the appellant in person; second, because the case was not filed in the Supreme Court within the legal time; third, because the costs in the case have not been paid.

On the point of non-signing of the bill of exceptions by the appellant, this court says that it is its opinion that the spirit and intent of the Statute of 1894, Sec. 1, are not to debar the legal right of attorneys to sign bills of exceptions for their clients, nor does the court consider it to be illegal for the attorneys to sign, whether the signatures of the appellants be secured or not, since the attorneys would be acting by legal authority as the agents of appellants. Any other construction of the law would undermine and overthrow the practice of this court and result in serious inconveniences and trouble. The first point, therefore, is not sustained.

The court sustains the second point, because it is its opinion that the law does not mean that ninety additional days should be allowed from the filing of the bond to the filing of the case in the Supreme Court to consider the limit of time to complete the appeal, but that the whole time from the rendering of final judg-

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ment to the filing of the case shall be ninety days. The second point is therefore sustained.

As to the third point in the motion, the objection is well founded, for the best evidence that the costs had been paid would be a certificate to that effect from the sheriff whose duty it was to collect the costs; and since such certificate or other evidence does not appear on the record of the case, the third point is therefore sustained by the court.

Two points in the motion having been sustained, the court therefore rules said case out. The clerk of this court is hereby commanded to send a mandate to the judge of the court from which the case came, to the effect of this ruling.

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## H. A. WILLIAMS, Executor of the Estate of Mary A. Aenmy, Appellant, *vs.* CORNELIUS and MARTHA YOUNG, Appellees.

[January Term, A. D. 1896.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Contested Will.*

1. A will devising an estate to the wife and her children, with power to sell any portion thereof for their benefit, creates an estate in joint-tenancy as between the wife and children. Joint-tenancy is where parties have a unity of interest, derived by one and the same conveyance, commencing at one and the same time, and held by one and the same individual possession; it differs from tenants in common, in which case there is a unity of possession only.

2. An estate in joint-tenancy may be in fee simple for life, for years, or at will. The subtle principle of law applicable to this species of property is the "doctrine of survivorship," whereby upon the death of all the other tenants the surviving tenant takes the whole estate without any regard to the heirs or other representatives of the deceased co-tenants. Where in an estate devised to the wife and her children, the children die leaving the estate so devised, the wife will take the whole, upon the doctrine of survivorship, and may dispose of it by sale, will or otherwise.

3. Under the Constitution of Liberia a woman does not lose her title to property which she may have acquired, either before or after marriage, on account of her coverture with an alien.

This case is before the court by an appeal from the judgment of the Court of Quarter Sessions and Common

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Pleas, Montserrado County, determined at its December term, 1895, founded upon the verdict of a jury unto whom was referred and submitted the will of the late Mary A. Aenmy, the same being contested by the appellees when presented before the Monthly and Probate Court, Montserrado County, for probation.

The record and proceedings in this case furnish this court with sufficient light to enable it to render such judgment as will satisfy the ends of justice, to which ends appeal courts are established. In the transcript of record filed in this case it is seen that Mary A. Aenmy, testatrix, in her last will made the following gift and bequest, to wit: "I give and bequeath unto the Methodist Episcopal Church in the city of Monrovia, my dwelling house with three-quarters of lot No. 110, for a parsonage, with the proviso that my dear husband, Moorenus A. Aenmy, shall occupy the premises during his natural life, or as long as he would desire. After his vacation either by death or otherwise, then the said property is to be turned over to the trustees of the Methodist Episcopal Church aforesaid, by my executor hereinafter named, free of charge." The testatrix named as her executor H. A. Williams. The will above referred to, on being presented to the Probate Court for probation and registry, was sought to be impeached and contested by the appellees and was consequently sent up to the Court of Quarter Sessions and Common Pleas, Montserrado County, to be tried by a jury as the law directs. Before said court the objectors submitted, first, that the testatrix Mary A. Aenmy had no legal right vested in her for lot No. 110 in the city of Monrovia, and consequently could not will it to the legatee named in the will. The appellant opposed this objection, by claiming ownership and property in lot No. 110, alleged to have been derived from the will and testament of the late A. F. Johns, the prior owner of said lot and improvements. At the trial below the appellees obtained a ver-

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dict and judgment setting aside said will, from which judgment the appeal is taken.

Referring to the will and testament of the late A. F. Johns, an authentic copy of which, duly probated and registered, being filed in the court, we find the following language in the fourth paragraph: "I give and bequeath to my wife Mary Ann Johns and her two children, my dwelling house, furniture and lot in the city of Monrovia, together with all the rest, residue, and remainder of my property of whatever kind and nature, of real, personal or mixed, of which I shall die seized and possessed, or to which I shall be entitled at the time of my death; and it is my will and desire that my said wife shall remain the sole guardian of our two children during their non-age." The fifth paragraph reads: "I do hereby nominate and appoint my said wife Mary Ann Johns my sole executrix of this my last will and testament, without the intervention of any court, *i. e.,* it is my wish and desire that no bond be required of her for the execution of this trust; and she shall have power, should it in her judgment be necessary for her to do so for the support of herself and children, to sell at private or public sale any property personal or real belonging to my said estate not devised to my brother Philip or to my mother-in-law Susan Brown."

It is the opinion of this court that the fourth paragraph of this will surely creates a joint tenancy in the person of Mary A. Johns and her two children.

Subsequent provisions of said will must yield to parts admitting or containing but one hypothesis, and the fifth paragraph only refers to her official relation as sole executrix.

It may be well just here to say, that in law joint tenancy and tenancy in common are quite different and are consequently subject to different rules. The property in joint tenancy is derived from its unity, which is fourfold, —first, the unity of interest; second, the unity of title;

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third, the unity of time; and fourth, the unity of possession. In other words, joint tenants have one and the same interest accorded by one and the same conveyance, commencing at one and the same time and held by one and the same individual possession. A tenancy in common happens when there is a unity of possession only, but perhaps an entire disunion of interest, of title and of time. For example, if there be two tenants in common of lands, one may hold his part in fee simple and the other for life only; here there is no union of interest. One may hold by descent, the other under lease. In one may be found a vested fee estate of fifty years' standing, while in the other one of but yesterday. Between joint tenants there is a thorough union, in many respects not unlike co-partnership in business when the acts of one of the partners in violation of the partnership business binds them all, in contemplation of law, they being as one person.

Referring again to the will and testament of the late A. F. Johns under which Mary Ann Johns claimed ownership to lot No. 110 and improvements in the city of Monrovia, we cannot give other construction to the fourth paragraph of said will than that the said testator, A. F. Johns, gave to his wife Mary A. Johns, in lieu of dower, this estate jointly with his two children by her, and this is the more clear since the will in no part assigns her any dower whatever. And under the recital of this will it would be extremely absurd for any one to deny the absolute ownership of the two children to this property, lot No. 110 and improvements, had they survived their mother, Mary A. Johns; and this absurdity can be applied with no less legal force to Mary A. Johns, she surviving them.

It is clear that in considering this case the court and jury below wrongly acted upon the law applicable to tenants in common instead of that applicable to joint tenants. The right of joint tenants is thus defined by the learned Judge Bouvier (Bouv. Law Dict. Vol. 2,

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p. 113): "Joint tenants are two or more persons to whom lands or tenancies have been granted, to hold in fee simple for life, for years, or at will. In order to constitute an estate in joint tenancy, the tenants thereof must have one and the same interest, arising by the same conveyance, commencing at the same time, and held by one and the same undivided possession." This view of the law is ably supported by Sir William Blackstone. (Blackstone Commentaries, Vol. 2, p. 180.) "The principal incident to this relation," continues Judge Bouvier, "is the right of survivorship, by which upon the death of one joint tenant the entire tenancy remains to the surviving co-tenant, and not to the heirs or other representatives of the deceased; the last survivor taking the whole estate." Chancellor Kent in his comment on the American Law clearly sustains this rule, which, however, is changed in many states by statutory laws.

In this case the property in dispute is, by the will of A. F. Johns, a devise, gift and bequest to Mary A. Johns and her two children. The testimony discloses the fact that both of the children, devisees with M. A. Johns, died, and left her, the surviving co-tenant, in possession. She therefore took the whole estate by right of survivorship; consequently she had legal right to sell or will to any person capable of holding lands in this Republic. Hence the verdict and judgment rendered in this case are without legal foundation.

The next point to which this court's attention is called is as follows: That M. A. Johns, the testatrix, marrying an alien, a citizen of Holland, lost her citizenship of Liberia, under the law that the wife takes the nationality of her husband. To this the court says, this foreign law conflicts with the organic law of the Republic. The Constitution, which throws its powerful and protecting arm to uphold her, speaks in the following language: "The property of which a woman may be in possession before or after marriage otherwise than

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through her husband, shall not be taken for the payment of his debts whether contracted before or after marriage. Nor shall the property thus intended to be secured to the woman be alienated otherwise than by her free and voluntary consent, and such alienation may be made by her either by sale, devise or otherwise." We need not add that when foreign laws conflict with the provisions of the Constitution the latter must prevail.

Viewing this case from every legal standpoint, justice requires the following conclusion: This court adjudges that the verdict and judgment of the court below is without legal foundation and that the same is hereby reversed and vacated and rendered void; that the will of Mary A. Aenmy shall have legal effect as such and that the said appellant recover from the appellees all lawful costs. The clerk of this court will issue a mandate to the court from which the appeal was taken, to the effect of this judgment.

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## C. B. REEVES, Appellant, *vs.* W. S. SPILLER, Sheriff, Appellee.

[January Term, A. D. 1897.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Grand Bassa County.*

*Injunction.*

This case was brought up to this court on appeal for final trial, from the Court of Quarter Sessions and Common Pleas, Grand Bassa County, and was continued from the January term, A. D. 1896, to this present term. At the call of the case the appellee failed to answer, whereupon the appellant prayed the court for judgment by default.

When a party to a suit before a court of competent jurisdiction fails to appear, either in person or by counsel, on the day assigned for the hearing of said case, such

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failure is sufficient cause for the opponent to ask for judgment by default. In this case now before the court the appellee has failed to answer, which the court considers tantamount to an abandonment of the cause.

The court therefore adjudges that appellant is entitled to recover against appellee; and also adjudges as final judgment, that appellant recover from appellee all costs in this action. The appellee is hereby enjoined to desist from further disturbing appellant in the matter at issue, and the clerk is hereby commanded to issue a mandate to the judge below, informing him of the action of this court in said case.

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## RACHEL THOMPSON, *et al.*, Appellants, *vs.* SAMUEL BACON, Appellee.

[January Term, A. D. 1897.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Maryland County.*

*Bill in Equity.*

This case in equity was brought up to this court on appeal from the Court of Quarter Sessions and Common Pleas, Maryland County, and was continued from the January term, A. D. 1896, to this present term.

At the opening of the case the appellee motioned the court to dismiss said case for the reason that the costs of the court below had not been paid in taking the appeal, according to the law in such cases made and provided.

The court having satisfied itself that the fact stated in appellee's said motion is true, rules that the said case is dismissed, and appellant ruled to pay costs according to law. (Acts Leg. Liberia, 1894, p. 2, sec. 2.) The clerk is hereby commanded to issue a mandate to the judge below, informing him of the ruling of this court in said case.

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## A. WOERMAN, Appellant, *vs.* W. BRUMSKIN, Judge of the Court of Quarter Sessions, Grand Bassa County, Appellees.

[January Term, A. D. 1897.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Grand Bassa County.*

*Mandamus.*

This case was continued from the January term, A. D. 1896, to the present term, on a petition of appellant to grant a writ of mandamus against W. Brumskin, judge of the Court of Quarter Sessions, Grand Bassa County, to compel him, the said judge, to sign the bill of exceptions of the appellant, that the case might be within the legal grasp of this court, or on refusing so to do, to show cause at this term of the court. The court granted said petition; but during the interim of the term, the said judge below died and no return has been made to this court as to whether the said mandamus was obeyed or not.

This court therefore decides that the record of the said case is incomplete by reason of the said bill of exceptions not being signed by the said judge below according to law. (Lib. Stat. Bk. 1, p. 78, secs. 3 and 4; also Acts Leg. Liberia, 1894, p. 11, sec. 2.) Nor does the court attach any fault to appellant, he having done his duty to bring the case properly and lawfully before the court. This fact being established, it is the opinion of the court that the merits of the case cannot be considered, the case not being within the legal grasp of the court. It is also the opinion of the court that the case should not be remanded for a new trial, for the reason that it is not in such a state as to allow the court to know if there has been any breach of the law in the trial below. Nor would it be just to require the present judge below to sign the bill of exceptions, for this he could not do unless he try the case over; and his opinion

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and rulings might not be the same as those of his predecessor.

The neglect of completing the record places both the appellant and the original appellee in awkward positions, and deprives appellant of the opportunity to seek further remedy. The court therefore is of opinion that to do justice in the premises the principle of equity must be brought to bear; for it would be unjust to subject the appellant to further inconvenience, nor is the fault to be attached to the original appellee.

Therefore the court adjudges that the said case is dismissed, at the expense of the State, the neglect being on the part of the State, through the judge below, late deceased. The clerk is hereby commanded to issue a mandate to the judge below, to the effect of this judgment.

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## MESSRS. RICHTER & CO., Appellants, *vs.* W. BRUMSKIN, Judge of the Court of Quarter Sessions, Grand Bassa County, Appellee.

[January Term, A. D. 1897.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Grand Bassa County.*

*Mandamus.*

This is a case that was brought up to this court on appeal, from the Court of Quarter Sessions, Grand Bassa County, and was filed January 22d, A. D. 1895. At the call of said case for trial at the January term, A. D. 1896, before the reading of the records in said case the counsellor for appellant informed the court that the record in said case was incomplete, by reason of the bill of exceptions not being signed by the judge of the said court below, according to the law governing appeals, and he consequently, on behalf of the said appellant, motioned the court to grant a writ of mandamus to be

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served on the said judge below, compelling him to sign said bill of exceptions, or on refusing so to do, to show cause for the same at the January term of the court, A. D. 1897. The said motion was sustained by the court and the request granted, and the case was turned down until the next term of the court, January A. D. 1897.

At this session of the court the said case was called up for trial, when it appeared that neither of the parties was present, nor was there any return made respecting the writ of mandamus, the judge below having died before the present term of this court. Therefore the court regards the non-appearance of the parties concerned in the issue as an abandonment of the case, and rules that the said case be dismissed and stricken from the docket, according to law (Lib. Stat. 1894, Bk. 1, p. 11, sec. 2), and that the Republic of Liberia be ruled to pay costs. The clerk is hereby commanded to issue a mandate to the judge below to the effect of this judgment.

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## THE EAST AFRICAN COMPANY, late Hendrik Muller & Co., Appellants, *vs.* W. BRUMSKIN, Judge of the Court of Common Pleas and Admiralty, Grand Bassa County, Appellee.

[January Term, A. D. 1897.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Grand Bassa County.*

*Mandamus.*

This case has found its way to this court under the following circumstances: Some time in 1894 the Corporation of Buchanan instituted proceedings against the appellant (libellee in the court below) for violation of the license law. After investigating the facts as well as the law as presented in the Court of Quarter Sessions, Grand Bassa County, the judge rendered judgment in

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favor of the City of Buchanan, and from that decree the libellee (now appellant) took exceptions and tendered the necessary bill for the signature of the judge of said court. The judge denied, or refused to sign, the libellee's bill of exceptions, and upon a petition to this court a writ of mandamus was issued, requiring the judge of the court below to sign the bill of exceptions so that the libellee could obtain an appeal, or show legal cause for not doing so at the January term of the court, A. D. 1895. During the January term of this court, A. D. 1896, the judge of the court below made his return to the mandamus; but the same being unanimously declared unsatisfactory and insufficient, this court issued a peremptory mandamus on the judge of the court below, to which absolute demand no return has reached this court. In the month of November last the nation was startled by the information of the death of Hon. W. Brumskin, judge of the court below—the Court of Common Pleas and Quarter Sessions, Grand Bassa County. At the calling of the case on the fourth day's session of this court of the present term, the court discovers that no record of any description (save the petition for the writ of mandamus, the insufficient return of the judge of the court below, and the peremptory mandamus) is in the possession of the court.

This court has carefully examined the several decisions rendered by it from the foundation of the Republic and has discovered only one case bearing any affinity to the present, which decision was rendered in 1865, in the case of N. J. A. Maarschalk against the Republic of Liberia, and which reads as follows:

"This court decides that the record of the court below is incomplete, one or more essential documents being absent. The Compiled Statutes, page 61, sec. 5, require that the entire record shall be forwarded to the court of appeal. In consequence of this ommission this court rules that the case cannot be considered, and is therefore dis-

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missed at the expense of the State. The court, however, notices that the omission is on the part of the State through the clerk of the court below, and not on the part of the said N. J. A. Maarschalk, appellant. The fact suggests to this court that the said N. J. A. Maarschalk, appellant, is deprived of an opportunity further to pursue his remedy sought for. This being a culminating point, in order, therefore, to render a speedy and complete justice in this case, it appears necessary that this court notice the matter on an equity principle, for we conceive it to be unjust to put the appellant to further inconvenience after having obtained a writ in error, as well as employed other measures in order to obtain a further hearing of this cause. The omission of the State through the court below ought not to operate to the detriment of the appellant. The equity, which in the opinion of this court should operate and apply in this case notwithstanding it is dismissed, is that the said N. J. A. Maarschalk, appellant, ought in justice to be discharged from any further penalties or liabilities whatever."

This court sees no reason why the doctrine enunciated by said decision should not remain inviolate and apply in this case. Therefore the judgment of this court is that the case, The East African Company, late Hendrik Muller & Company, against W. Brumskin, Judge, be dismissed, and the appellant be discharged from any further penalties or liabilities whatsoever, growing out of said case.

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## PRINCE POPO, Appellant, *vs.* THE REPUBLIC OF LIBERIA, Appellee.

[January Term, A. D. 1897.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*False Imprisonment.*

A motion in arrest of judgment for legal defects upon the face of an indictment may be made before the rendition of final judgment whether a demurrer was previously made or not; a defective indictment on material points is not aided by the verdict, as in civil suits the declaration might be.

This case is an appeal from the several rulings and final judgment of the Court of Quarter Sessions and Common Pleas, Montserrado County, in the above case. In the bill of exceptions the appellant thinks the court below erred in not sustaining the motion in arrest of judgment.

From the record this court discovers that the Grand Jury for Montserrado County, at the June term of said court, A. D. 1896, indicted one Prince Popo for false imprisonment, and after a verdict of guilty was rendered against the prisoner, a new trial was prayed for by the prisoner's attorney and denied by the judge of the court below. The prisoner then motioned for an arrest of judgment and in said motion disclosed his real line of defence, which was for insufficiency in stating the time in the indictment. The ruling of the court below on the motion states that the time is not the essence of the offence, and therefore immaterial.

It is much to be regretted that the learned judge stopped so short and did not proceed with his research from the same authority, *i. e.,* Blackstone's Commentaries. That honored authority says: "But when he, the prisoner, appears in person either for a capital or inferior conviction, he may at this period, as well as at his arraignment, offer any exception to the indictment,

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in arrest of judgment, as for want of sufficient certainty in setting forth either the person, the time, the place, or the offence, and therefore a defective indictment is not aided by a verdict as defective pleadings are in civil cases." In examining the evidence for the State this court finds that none of the State's witnesses gave any date or even an approximate date when the offence is said to have been committed.

In all democratic governments the rights and liberties of citizens should be respected with scrupulous certainty. We do not mean the license of the noble called liberty, but the liberty we inherit from our Magna Charta, *i. e.*, the provisions bequeathed to us by our fathers in the entire second section of the Bill of Rights. Therefore this court is of opinion that the court erred in not sustaining the motion in arrest of judgment.

It is therefore the judgment of this court that the judgment of the court below be reversed; and further, it is ordered that the clerk of this court issue a mandate to the court below to the effect of this judgment.

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## DAVID D. FREEMAN, Appellant, *vs.* THE REPUBLIC OF LIBERIA, Appellee.

[January Term, A. D. 1897.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Stealing Money from Post Letter Bag.*

1. The statute relating to the responsibility and punishment of postmasters for neglect of duty and breach of trust comprehends carriers in the postal service as well; a common carrier in the postal service is answerable to the State for any unfaithful performance of the trust imposed in him.

2. Flight is in itself an offence against the law and carries with it great presumption of guilt; it will subject a party to forfeiture even where the accusation which produced it is not proven and the party not condemned.

In this case this court finds a labored effort put forward in an endeavor to show that neither the statute law

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nor the notes in Blackstone's Commentaries apply to govern us in this country. It is maintained that the Liberian statute law on page 164, section 9, is only applicable to offences committed by postmasters. It has also been asserted with great earnestness that the witness, Mrs. D. E. Sherman, said that she knew nothing about posting a certain letter and registering same on or about the 2nd of March last. But by reference to the record this court finds that the witness D. E. Sherman, in answering a question of the county attorney, gives this statement: "I did send such a letter to the post-office March 2nd, of which I hold a copy." Ques.—"Was said letter posted?" Ans.—"It was." "Did you get a receipt for same?" "I did." "Was the letter registered?" "It was."

This court does not find it necessary to give any expression on the notes in Blackstone's Commentaries at this time in addition to what was said by this court in the case of Sarah Ann Roberts against Jane Rose Roberts (ejectment) in January, 1878.

The statute laws of Liberia furnish sufficient data and authority for the elucidation and final disposing of this case. It would be absurdity for this court to think or believe that the Legislature intended to punish the postmaster only for betraying his trust by breaking the seal or making away with any letter, paper or package addressed to another person.

The appellant seems to have been employed as a common carrier, connected to and with the post-office, and as such he is answerable to the State for any unfaithful performance of the trust imposed upon him. If that is not the meaning of the law then any member of this community could secretly purloin a letter, or even a paper or package from the post-office, and should he be detected, *flagrante debito,* yet the postmaster alone would be responsible.

The motive of the State in allowing this case to occupy so much of the court's time, thought and study, is an

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enigma up to the present. Mr. Blackstone in his fourth book, page 387, uses the very striking words: "For flight also on an accusation of treason, felony, or even petit larceny, whether the person be found guilty or acquitted, if the jury find flight the party shall forfeit his goods and chattels." The very flight is an offence carrying with it strong presumption of guilt and is at least an endeavor to elude and stifle the course prescribed by the law.

From the authority of the Liberian Statutes and the legal principle to be deduced, this court decides that the prisoner David D. Freeman has been rightly convicted, from the statement of facts in this case, and that the judge below did not err in refusing to grant a new trial. Further, the clerk of this court is required to make known the judgment of this court to the court below; and appellant is ordered to pay all costs.

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# DORSEY BIRCH, Appellant, *vs.* ISAM QUINN, Appellee.

[January Term, A. D. 1897.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

*Ejectment.*

1. Several verdicts rendered in the same case in favor of the same party will not operate as a bar to an appeal to a higher judicature from the judgment entered thereupon, nor does it decide the matter in controversy so conclusively as to prevent the appellate jurisdiction from reviewing the whole cause and giving such judgment as it deems proper and legal. A verdict to be valid must be in conformity with the facts submitted and the legal instructions of the court.

2. In ejectment the plaintiff must show a legal and not simply an equitable title to the property in dispute; the weakness of the defendant's title will not of itself enable him to recover.

3. To enable a party to make a transfer of property he must first have acquired a title therein himself. Under the Constitution the wife takes a life-estate in one third of the real property of the husband of which he died seized.

4. Lands will escheat to the State when all the legal claimants become either extinct or legally disqualified to hold property. The mere possession of government lands for twenty years will not give the occupant a vested title therein, nor does it deprive the Government from conveying the same.

5. Where a party permits another by his silence and tacit assent to acquire and improve property which he claims, with the view to entrap, he will lose his relief.

This case has created considerable interest in the public mind on account of the surroundings, and it has had no little attention of this court because of its novelty. In many respects it is without a parallel in appeal cases brought before this court for review. From the record we notice that in the court below this case has had four trials upon its merits and three successive verdicts in favor of the appellee by three regularly empanelled juries, and that final judgment was rendered by the court upon the last of said verdicts, in favor of said appellee (or defendant below). While all of this may be strongly urged—as it has been by the learned counsellor for the appellee—as conclusive that the right of the appellee to the property in dispute should be considered as settled, yet the court cannot forget that ejectment is a

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suit in which there is involved mixed questions of both law and fact. The former is to be determined by the court, upon sound legal principles, which is to enlighten the jury in determining the facts submitted to them; and the latter is that which the jury will unbiasedly apply, connecting said instruction of the court with the facts presented in the case. Therefore the law provides that the verdict of the jury should be conformable to the law as laid down by the court and the facts in the case; should it be otherwise, and especially in cases of ejectment, the very foundation of legal rights to real property would be convulsed, if not absolutely destroyed. It is the province of the jury to try and determine the facts; but when their conclusions are either against the law, the evidence, or the legal instructions of the court upon a motion, the verdict should be set aside and a new trial ordered, that the ends of justice may be fully met.

In this action both the appellant and appellee claim ownership to farm land No. 24 in the settlement of Lexington, Sinoe County, the appellee being in possession. In actions of ejectment it has been laid down as a rule, both by ancient and modern law writers, that it is necessary in ejectment for the plaintiff to show in himself legal proof, *i. e.*, a good and sufficient title to the land in dispute, against the whole world. He must not only have a title, but he must be clothed with the legal title to such lands; an equitable title, as a general rule, will not answer; he must recover, if at all, on the strength of his own title and not on the defects in that of his adversary's. This is an elementary principle in actions of ejectment and it has been reiterated over and again by this court, as possession only gives a right against every person who cannot establish a better right.

The testimony in this case supports the following facts, which were submitted for the determination of the court and jury below, and now to this court for its determination:

First, that in the year 18— one Abram Sterling drew his emigrant allotment to the land in dispute and ob-

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tained for same a deed in fee simple from the Republic of Liberia; that subsequently the said Abram Sterling died intestate, leaving a widow, but no surviving issue of his body—the testimony showing none.

Second, that shortly after the death of the testator, Sally Ann Sterling, his widow, took to lodging with the appellant, who supported her until her death.

Third, that before her death it is said she made a will or testament, giving the land in dispute to the appellant.

Fourth, that this will or testament is said to be lost and that no trace of it can be found either in the book of probate or in the registry department.

Fifth, that the appellee sets up title to the same land under grant from the Liberian Government as his emigrant allotment, said deed having been issued, as required by the law in such cases, and further, that the appellee took possession of the same.

By this action the appellant seeks to eject the appellee, claiming prior ownership under the aforementioned will of the widow S. A. Sterling. This court is of the opinion, and in fact does say, that to establish the right of ownership of the land in dispute the appellant must show the legal title of the testator, Mrs. S. A. Sterling, under whose last will and testament he claims, and failing in this, his action must fall. It is a well-settled rule of law that the transfer of property must be by the true owner, as one cannot legally give away that which he does not legally own. By the eleventh section of the Constitution of the Republic of Liberia, the wife of a deceased intestate husband has a life estate in one third of the real property of which her husband died seized. This allowance does not in any way operate as a transfer or conveyance of such property, but only as a use or occupation, and the enjoyment of rents flowing out of such estate; nevertheless, she may, by the aid of the law, in assuming his debts obtain an equitable title, or even a legal title thereto, which in this case does not appear in the testimony. The very term "life estate"

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presents to the mind an estate which terminates at the death of the possessor. It is a settled policy of governments, that in case of an absolute failure of the legal ownership to lands, the same reverts back, or escheats to the original grantor—the State in this case. There is also another well-settled doctrine, established before the time at which the great "cake" flourished, which has not since been disturbed, and which reads, "Mere possession of government land, though open and exclusive and uninterrupted for twenty years, creates no impediment to its recovery by the Government or by anyone who within that period receives a conveyance from the Government." (1st U. S. Digest, p. 10.)

There is another feature in this case which the court desires to examine. The record shows that one James Birch, a son of the appellant, sold the appellee a portion of said land some years ago. At the January term of this court, 1872, in the case of Willis Blunt against J. W. Barbour, this court laid it down as a settled principle of law, that it is contrary to equity and good conscience that a man should stand by and allow his neighbour to expend money for the purchase and improvement of property and conceal the fact that he is the owner and thus entrap his neighbor and then come forward and take advantage of his laches. The rule in equity is, that he must assert his claim to property or lose his relief. (1st Story, Equity, 192, 384, 388; 2nd Story, Equity, 1537, 1542, 1546; Adams on Equity, 150, 151.) The court is free of doubt in saying that Sally Ann Sterling could not legally give to the appellant the land in question, it not having been transferred or conveyed to her by her husband. This court therefore fails to see why the judgment of the court below should be disturbed.

Therefore the judgment of the court below is confirmed, and the appellant ruled to pay all legal costs; and the clerk of this court is ordered to notify the court below to the effect of this judgment.

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## JOHN W. WEST, Appellant, *vs.* HARRIET F. DUNBAR, Appellee.

[January Term, A. D. 1897.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

1. A party who makes an illegal contract will not be allowed to take advantage of his own wrongs by showing the illegality of the same, nor can he seek relief at law or in equity, either to enforce or annul his illegal act; the doctrine of estoppel will not permit it.

2. A lease for lands to a foreigner for fifty years, although repugnant to the Constitution, will not nevertheless be set aside at the instance of a party thereto; a party will not be allowed to impeach his own deed.

This case comes up from the Court of Quarter Sessions and Common Pleas, Sinoe County, upon a bill of exceptions, under the statutes regulating appeals. The appellee sets up claim as owner and the right of possession to three fourths of lot No. 109, in the city of Greenville, alleging that the same is wrongfully withheld from her by the appellant, and by this action she seeks to eject the appellant from said lot.

The appellant in defence of his possession to the said three fourths of said lot No. 109, sets up the plea of estoppel, and declares that the appellee having during the year 1876, for the consideration of the sum of seven hundred dollars, under written contract, leased said three fourths lot to C. F. Bertrams, agent for A. Woerman of Hamburg, his heirs and assigns, and the said C. Woerman during the year 1892 having assigned to J. W. West, the appellant, all legal rights possessed by said C. Woerman, lessee, for the unexpired time therein, she is thereby estopped from impeaching her own deed; and appellant prayed judgment be estoppel.

The lease being for fifty years with the privilege of renewal on payment of fifty dollars, after the expiration of the first term, the appellee replied and declared that said deed of lease was in violation of the organic law of the State, as well as the ruling of this

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court in the case of Bigham against Oliver, determined at its January term, A. D. 1869, and hence not binding.

This case was among the many cases docketed in this court at its last session, the present appellant being then the appellee, who had obtained a verdict and judgment in his favor at the trial below. At the call of this case both parties joined in a formal motion requesting that the case be remanded to the court below, in order that the mixed questions of law and fact determined by the court below may be submitted to a jury as is required by law in all actions of ejectment, the court below having neglected to do so. This court accordingly ordered a remand of the case, and at the new trial the appellee, H. F. Dunbar, obtained a verdict in her favor, to which verdict and judgment the appellant, J. W. West, defendant below, excepts, which brings the case again before this court for review.

The general principles of law when applied to this case must lead this court and every unselfish mind to such conclusions as are founded in law and justice. In no respect is the plea of estoppel, raised in this case, different from that determined by this court at its January term, 1895, in the action of ejectment in the case of East Africa Company, late Hendrik Muller & Co., against H. F. Dunbar. Upon the plea of estoppel raised in the case, this court then said, and which doctrine it will here again reiterate, enunciate and declare, that the plea of estoppel is among the pleas calculated to prevent one from denying his own acts or deeds, and when founded in truth, must receive the sanction of the courts of law.

Nothing would work greater injustice and give greater encouragement to fraud, than for a man to execute a deed or note in favor of another, and afterwards to be allowed to invoke the aid of the law to prove its unlawfulness. In law he is estopped or hindered from doing so. The great principle founded in justice to prevent fraud is not confined to the common law, but by the

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fathers of our country it is emphatically carried and incorporated into our statute law, only in different words. Liberia Statutes, Bk. 1, page 24, section 13, reads thus: "No action can grow out of an immoral or illegal contract;"—which may be justly interpreted to mean that no one shall be benefited by his own illegal acts. Again, the maxim, "No one shall take advantage of his own wrongs," and further, "Whatever has been said by a party himself is evidence against him." Therefore the plea of estoppel entered in this case was well founded, and the court below erred in not sustaining it and submitting its opinion of the law as evidence to the jury, directing them to render their verdict accordingly.

Another exception taken by the appellant is because the court in admitting the deed under which he claims possession only admitted it in part and not as a whole. This fact appearing in the record compels us to say, this act of the judge of the court below was in violation of the rules of evidence, because by statute the whole deed, if admitted by the court, should have been submitted to the jury as evidence of all exceptions and denials contained therein and of all facts connected with the question stated therein. (Liberia Statutes, Book 1, page 56, section 25: "Deeds and all other writings shall be evidence against all parties to them, and shall also be evidence of the transfer of all titles or rights transferable by them against all mankind.") The appellee not objecting to the admission of the deed, but admitting it, the jury was then bound to consider it in all its parts, and in the absence of rebutting evidence could not disregard it, as its admittance established facts they were bound to consider in making up their verdict. In not doing this, the verdict was contrary to the evidence and should therefore have been set aside and a new trial ordered.

During the traverse of this case, repeated reference has been made to the ruling and opinion of this court

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as pronounced in the case of Richard Bigham against J. Oliver. The court sees no reason for disturbing that judgment, or any other opinion previously expressed by this court, and will not, unless bound by duty to do so, when it will be in either upholding or overthrowing such judgments as are not in keeping with law and the Constitution. This court feels bound only by the law, the Constitution, and well-founded precedents.

In this case the issue is not joined upon the point of legal or illegal contract, constitutional or unconstitutional agreement, but it is presented in this wise: The appellant in his answer sets up the plea of estoppel, insisting that the appellee is concluded by her own deed. To this the appellee replies, denying the legality of her deed of lease. Hence the issue rests in the plea of estoppel, which plea was prominently before the court below and which plea this court is bound to consider; and we here say all opinions given by courts not in conformity to the issues submitted to them may be considered *obiter dictum*.

This court feels bound by law and justice to pronounce the following decision: The court adjudges that the judgment rendered in this case by the court below be reversed, vacated and rendered null and void, the appellee paying all costs. The clerk of this court is ordered to notify the court below to the effect of this judgment.

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## LEWIS SOLOMON, trading under the style and firm name of Lionel Hart & Company of Liverpool, England, Appellant, *vs.* H. P. SHERMAN, surviving partner of the late H. B. Sherman & Bro., Appellee.

[January Term, A. D. 1897.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

*Debt.*

*Reply—Answer.*

Where a reply is struck from the pleadings the facts laid in the declaration may nevertheless be submitted to the jury.

A failure to file an answer to the declaration places the defendant upon a denial of the facts only.

This case was decided at the August term of the Court of Common Pleas and Quarter Sessions, Sinoe County, A. D. 1896, and the appellant being dissatisfied with the judgment and other rulings of the judge of said court, now bring said case before this court upon a bill of exceptions for review.

After carefully examining the entire record in the case as sent up to this court for its review and consideration, we unhesitatingly agree that the judge below erred in dismissing the case after ruling out the appellant's reply. The case should have been submitted to a jury to try the facts presented in the complaint and answer if no other law points had been raised.

This court does not find it necessary to enter into the reasons assigned by the judge of the court below for not sustaining the motion offered by appellant against the answer of the appellee, because the Statute Laws of Liberia, Book 1, page 45 and section 6, reads: "If no answer is filed as is provided in the last section, the defendant shall be understood to deny the truth of the facts, and to rest on that defence only." But this court failed to find in the statute any law authorizing the

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judge of any court to dismiss an entire case in the manner assumed by the honorable judge of the court below.

The appellant desires this court to render such judgment in this case as the court below ought to have rendered, and cites as our authority for so doing the law found in Liberia Statutes, Book 1, page 78, section 11; but this court does not understand the passage of law as cited by appellant to apply in a case like unto the one before us for adjudication. Cases may arise in which this court could act as is stated in the law above cited, but this court says that this is not one of such cases.

This case is therefore remanded back to the court from whence the appeal was taken, requiring the judge of said court to try the case *de novo* and according to law; because this court would be assuming too much to render judgment upon any case before the court and jury below had performed their legal duty. The case is therefore remanded, and the clerk of this court is required to inform the court below accordingly; costs to follow after final judgment.

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## C. B. REEVES, Appellant, *vs.* MARK HYDER, Appellee.

[January Term, A. D. 1897.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Grand Bassa County.*

*Damages.*

This is an appeal from the Court of Quarter Sessions and Common Pleas, Grand Bassa County. The irregularity of the trial below (the trial clearly not having been conducted according to law and the usual practice), has given this court no little trouble, and as yet does not enable it to say for whom judgment should be given. We find a total neglect in the court below, to take the

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appeal bond required in appeals as well as to render its final judgment in the case; hence the trial is incomplete. And although the case is here docketed for trial, it being sent up in obedience to a mandamus issued by this court, yet the court, in the present status of this case, cannot exercise such jurisdiction over it and the parties, as the law contemplates it should have. For this reason the court makes the following ruling:

First, That the case is hereby remanded to the Court of Quarter Sessions and Common Pleas, Grand Bassa County, to be tried over at its June term next, 1897. Second, That said court resume and take jurisdiction over said case and try the same according to law and practice. Third, That the parties be allowed to replead as is allowed in legal practice. The clerk is hereby ordered to issue a mandate to the judge below, to the effect of this ruling.

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## M. DINKLAGE, Appellant, *vs.* THE REPUBLIC OF LIBERIA, Appellee.

[January Term, A. D. 1898.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Grand Bassa County.*

*Extortion.*

This case having been tried and determined in the Court of Quarter Sessions and Common Pleas, Grand Bassa County, and a verdict and judgment obtained in favor of plaintiff (now appellee), the defendant (now appellant), being dissatisfied, brought the case up to this court on a bill of exceptions for review. At the calling of the case appellant appeared and answered, but appellee did not appear; whereupon appellant motioned the court for judgment by default, and subsequently motioned for final judgment.

It is the opinion of the court that appellee abandoned his case by not appearing and answering when called,

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and therefore, according to the law in such cases, appellant is entitled to recover. This court further adjudges that the judgment of the said court below is hereby reversed and appellant discharged. The clerk of this court is hereby ordered to inform the judge of the said court below of the judgment of this court.

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## WILLIAM M. COLEMAN, Appellant, *vs.* REPUBLIC OF LIBERIA, Appellee.

[January Term, A. D. 1898.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Rape.*

The common law definition of the term "rape," in the absence of a special statute defining the crime, prevails in Liberia by force of the Act of 1869, adopting the common law of England and America; the act becomes complete where penetration is proved, though there be no proof of emission. Rape may be committed upon a young as well as matured female; the evidence of the female ravished supported by circumstantial or presumptive proof is sufficient to warrant a conviction for rape.

Several exceptions filed to the ruling of the court below are presented to this tribunal for its consideration. The points submitted in the bill of exceptions have had the careful attention of the court, and several therein raised are of great importance to the decision of the case. We have no statute defining rape, or the necessary evidence to support the charge, and what shall constitute the offence; hence, under the authority of an Act of the Legislature of the Republic of Liberia, passed and approved in 1869, we have the common law of England and America for our guide, by which rape is defined to be the carnal knowledge of a woman by a man forcibly and unlawfully against her will. "Much difficulty has arisen," says the learned Judge Bouvier, "in defining the meaning of carnal knowledge." Some judges hold to the opinion that both penetration and

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emission are required. In England carnal knowledge is completely proved by proof of penetration. This, in our opinion, is a definition more in keeping with reason, when we survey animal nature. If emission must necessarily be proved, many offenders could and would escape the punishment such a crime deserves, and many helpless women of virtue might be insulted and the offender escape punishment. The bill of exceptions filed in this case has had no little attention of the court, and from the law and testimony we are led to the following conclusions:

As to the first exception in the bill of exceptions, this court is of opinion that the court below did not err in ruling out the question therein referred to, because it might have been answered either in the affirmative or negative without effecting the charge.

As to the second exception, we are of opinion that the statement of the year in which the witness was born had no tendency to establish the allegations set forth in the indictment. It should be remembered that rape may be committed upon a very young or old woman, hence in this the court below did not err.

This court sustains the ruling of the court below on the third exception, since the question, "How do you know that you are fourteen years old?" had no tendency to prove or to disprove the charge.

As to the fourth exception, we are of opinion that the jury is judge of the credibility and effect of all testimony submitted to it, and that in a trial for rape the testimony of the woman ravished, corroborated by signs of violence on her parts, her cry of alarm, and her publicly accusing her assailant, is sufficient proof to warrant a verdict of guilt, and judgment thereon.

It was strongly urged by the learned counsel conducting the defence that it would be dangerous to allow a conviction for rape, supported only by the testimony of a single woman or witness. To this the court says it

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would be alarmingly dangerous for courts of law, in such a heinous crime as rape, which is among the lowest and most debased crimes one can be guilty of, to require evidence to convict the offender beyond the testimony of the woman ravished and such corroborating evidence as the circumstances surrounding the case permit of; and if from fear growing out of threats she fails to make an alarm, or to expose her assailant immediately, to a great extent the law will excuse her failure to do so. This court does not see why a new trial should have been granted, and viewing the case in all its features we are led to the following conclusion:

This court adjudges that the judgment of the court below rendered in this case be and is hereby confirmed, and that the appeal be dismissed; and further, the clerk of this court is hereby ordered to notify the court below to the effect of this judgment.

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# WILLIAM C. DENNIS, Appellant, *vs.* THE REPUBLIC OF LIBERIA, Appellee.

[January Term, A. D. 1898.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Violation of Revenue Laws.*

*Landing goods after six o'clock p. m.—Presence of a customs officer does not legalize the act—What constitutes actions* in rem *and* in personam.

1. A ruling of the inferior court dismissing a motion for the restoration of goods seized in an action *in rem* and *in personam* brought in admiralty, upon the ground that it contained matters which should have been specially pleaded, was sustained.

2. In a suit brought by the Government for contravention of revenue laws by landing goods at a place not the Government's wharf after 6 o'clock p. m., where the defendant showed that the landing had been done in the presence of an officer of the customs, and that he was delayed in landing his goods before dark on account of waiting on board of the steamer for said officer, it was held that this could not justify the violation of law and that the acts of an officer of customs which are against law are invalid.

3. In admiralty a writ authorizing the marshal to seize goods and to arrest the defendant shows that the action is brought *in rem* and *in personam*. It was held that a seizure of goods made by the head of the Revenue department to prevent smuggling is legal.

4. Suits brought in admiralty will not be dismissed on account of legal technicalities, and where necessary, amendments to pleadings will be allowed, upon application, up to the stage of trial, and sometimes will be allowed in the appellate court.

This case, for the violation of the revenue laws of Liberia, was tried and determined by the Court of Quarter Sessions and Common Pleas, Montserrado County, sitting in admiralty, at its March term, 1897. The appellant (then libellee) feeling that substantial justice had not been meted out to him in the trial below, in the several rulings and final decree of the judge, brought the case up to this court for review, with the confidence that this final resort of judicature is sufficiently possessed of legal knowledge and moral integrity to mete out to him the justice that he earnestly craves.

The uniqueness of the case, as well, perhaps, as the peculiar circumstances that surrounded it at the time of

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its trial in the said court below, occasioned no little excitement and criticism, favorable and unfavorable. But this court, recognizing its responsibility as the chief and final legal resort of the country, and having due regard and high respect for the majesty of the law, which is not only the rule for the conduct of the court but also that for the civil and political conduct of all citizens, will proceed to review the case and come to its conclusion, in all good conscience, regardless of smiles or frowns. It shall be our duty, first, to treat upon the most important and reasonable points of the bill of exceptions, and see how far they are sustained by the law and evidence governing the case, and to conclude on the same.

The appellant excepts to the rulings, opinions and decisions, as well as to the final decree of the judge below, first, "Because when, on the 26th day of February, 1897, libellee submitted a motion to your Honor for restoration of certain goods therein named, and after arguments pro and con, your Honor refused the libellee's prayer contained in said motion, to which libellee excepts."

On that point the judge below ruled as follows: "The court, after hearing the arguments pro and con, is of the opinion that the matter set forth in the said motion in admiralty practice partakes of the nature of exceptions, and the said libellee having filed a first and a second answer to the libel, should have raised and specially pleaded the matter set forth in said answers; and his neglecting to do so is laches on his part, and the court could not at this stage of the proceedings admit the same to be pleaded, on the motion offered by said libellee. Therefore, the court rules that the motion is insufficient and it cannot sustain the same, as the parties are now confined to the issues relied on in the several pleadings filed in the office of the clerk of this court."

This court will now proceed to consider whether the

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judge below should be sustained in said ruling or not. From reviewing the record in the case, the court finds that the motion of appellant referred to contains a prayer to the court below for the restoration of the goods which appellant is charged with smuggling, for four reasons, viz: "First, that he considers that the instrument of writing of libellant does not purport to be a libel filed against said goods, which would constitute an action *in rem*. Second, that it does not purport to be an action *in personam*. Third, that the seizure of said goods was made by persons not authorized by law so to do. Fourth, that the libellee never refused to pay the legal duties on said goods."

Now, then, this court says that it is puzzled to understand the motive that influenced libellee, now appellant, to join issue with libellant, now appellee, by answering the libel and joining the reply, the issue being complete and finished, and last of all, to put in a motion praying for summary relief; for in the opinion of the court the new allegations laid in the motion should have been laid in the answer, which was the right and privilege of libellee to do. It appears to the court that the entertainment of said motion would have granted the said prayer, for the reason stated therein; and notwithstanding the issues already joined on other allegations, the cause would have been brought to an end without substantial justice done, which would have worked injustice to the other party. It would have been lawful for libellee to have filed an amended answer setting forth new facts. (Lib. Stat. Chap. 5, p. 26, sec. 6; p. 6, sec. 7.) And further, the face of the writ directed to the marshal shows that the action instituted is one of a two-fold nature, an action *in rem,* and an action *in personam*. The marshal was directed to seize and safely keep said goods for further orders, and also to arrest the body of said appellant (then libellee). Evidently there is an action *in rem* and *in personam*. But if there were no

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such action institution by the libel, then it was the right and duty of libellee, now appellant, to have raised such a question in his written pleadings, which he failed to do; consequently if he suffers it is by and through his own laches.

And again, the court below took jurisdiction in the action from the writ issued, served and duly returned by the marshal according to law. The marshal of the Republic, the lawful officer, acting by the authority of the Court of Quarter Sessions and Common Pleas, under the law is supposed to have seized and executed on said goods, as well as arrested the said libellee, now appellant; the court was then bound to take cognizance of its own action, it being within the scope of the law in such cases made and provided. And even though the first were made by parties to whom such duty is not specifically given by law, still it is the opinion of the court that no wrong was committed, particularly when the Secretary of the Treasury, the head of the Revenue department, whose duty it is to see that the revenue laws of the country are not contravened, and the Attorney General, who also is one of the safeguards of the public's interests, were of the party that made the seizure. The Supreme Court is not willing to, nor will it, establish the precedent that offenders of the law cannot be apprehended simply because the services of the lawful officer are not available at the time of the committal of the offence, so as to make the apprehension under legal warrant; nor will the strong arm of the law lend its aid in upholding such a dangerous precedent. Therefore, it is the opinion of the court that the judge below did not err in ruling out said motion.

The court will now consider the second point in the bill of exceptions, which reads as follows: "And also because when, on the said 26th day of February, libellee in his answer filed in this action motioned for the Honorable Court to dismiss this action for the reasons con-

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tained in said answer, after arguments pro and con, your Honor refused to dismiss the said libel, to which libellee excepts."

From the record the court has not ascertained the reason on which the said second exception is based. We find the points raised in the answer to be, "1st, That the libel is indistinct, unintelligible and vague; that is, it is not entitled of any cause. 2nd, That the libel does not show into what division of the Court of Pleas and Quarter Sessions the libellee is to appear, whether law, equity, admiralty, or otherwise. 3rd, That he denies having smuggled any goods. 4th, That he did not land goods at a wharf other than the Government's wharf, after 6 o'clock post meridian, with the intention of contravening the revenue laws of the Republic, he being detained on the steamer by circumstances which he could not control; that he did not land any goods with a view to the contravention of the revenue laws, there being a custom officer with him in the boat. 6th, That if there were any irregularity of landing, or if no official report were made of goods brought, the fault was that of the custom officer."

In considering the second exception as based on the foregoing reasons set forth in libellee's answer, the court says that in admiralty practice the law allows a greater scope of privilege to parties than in common law practice. In admiralty the court is bound to determine the cases submitted to its cognizance, upon equitable principles and according to the rules of natural justice. The grand object of doing justice between the parties is superior to technical forms and rules, and where the strictest practice of the English common law or the civil law would turn a party out of court, or defeat or pervert justice, by considering an arbitrary rule of proceedings as paramount to all other considerations, the American admiralty finds in the educated reason and cultivated discretion of the court the means of defeating chicanery,

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rectifying mistakes, supplying deficiencies and suggesting to the party the means of reconstructing his case, if necessary, without the loss of such progress as he may have already made. (Ben. Adml. p. 218, sec. 358.) In admiralty, interests of great moment are involved to the nation, whether in respect to its own citizens, or to aliens. It upholds the nation's majesty and credit; largely, it effects its revenue, which is its life-blood, that which enables it to exist and to maintain its independence, to develop its growth, and to afford it the means of support and protection to its citizens; therefore the law will not allow justice to be defeated through technicalities, or mere form, or slight non-essential omissions. It is sufficient, to meet the ends of justice, that the libel or complaint be laid out in such plain, intelligible and concise language that the charge may be fully and reasonably understood.

The court says that the heading of the libel, in the opinion of the court, clearly and distinctly shows in what division of the Court of Pleas the action was taken. The libel begins as follows: "Republic of Liberia, Montserrado County. In the Court of Quarter Sessions and Common Pleas, Montserrado County, sitting in Admiralty."

The third, fourth, and fifth reasons as laid in the answer, conveying the same idea and making the same denial, for the sake of brevity the court will consider them under the head of the fifth. The Legislature of Liberia in enacting the laws regulating navigation, commerce and revenue, was extremely careful in providing against the strangulation of the blood arteries of the nation; and while it may appear to the superficial reader that some of the statutory enactments on the subject of smuggling conflict, and are vague and uncertain, yet the unbiased legal thinker will easily discern that the spirit and intent of each enactment are the same. The following are the principal statutes governing the

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subject: Act of the Legislature of Liberia, 1857; Act of the Legislature of Liberia, 1883, page 3, sec. 7; Acts of the Legislature of Liberia, 1896–7. In carefully reading and comparing the acts referred to, the court has arrived at the interpretation that the spirit of the law is that landing goods from vessels after 6 o'clock p. m. at any other wharf than that designated by the law, is an attempt to contravene the revenue laws of the Republic, and if the act of so landing goods is to evade the law, then it consequently constitutes the act of smuggling. Now, then, whether appellant is guilty or not of attempting to contravene the revenue laws by smuggling goods on shore after 6 o'clock p. m., will be shown by the evidence in the case.

The presence of Custom Officer R. J. Clarke with appellant during the transaction of purchasing and landing said goods, and he remaining on board the steamer after 6 o'clock p. m. to accommodate the said Officer Clarke, do not constitute sufficient justification for appellant. The law supposes that Officer Clarke was furnished with a boat to take him to and from the steamer, and he should have detained his boat for his own accommodation, he not being a shipper. And as appellant is supposed to have had the sole command of his own boat, he was not bound to await Officer Clarke, knowing at the same time that he was responsible for his own acts and the officer for his, and that the one could not cover the other in law. But the fact that Officer Clarke having allowed his boat to leave him on board the steamer, and night-fall having arrived, together with other facts set forth by the evidence, instead of justifying the appellant shows a conspiracy with him.

And the court further says that appellant is not charged with refusing to pay the duties on said goods purchased and landed, but that he is held charged with smuggling the said goods on the shore with intention to contravene the revenue laws of the Republic. There-

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fore it is the opinion of the court that the said plea is shallow and insufficient.

The third exception in appellant's bill, based on the pleas set forth in the rejoinder, being save one the same as those in the answer, the court says that the said exception has already been fully disposed of and consequently no further consideration is necessary.

As to the fourth exception, it being to the ruling of the judge below allowing libellant, now appellee, to amend his libel, this court is of opinion that no injustice was done by said ruling of the judge below, for the following reasons: In admiralty the practice differs from that in common law. The former does not require all the technical provision and accuracy necessary in the latter; at any and every stage of the proceedings amendments may be made in matters of form, and new counts may be filed, and amendment may be made in matters of substance upon motion, at any time before final judgment. And if necessary, amendments may be made in the appellate court. The object seems to be to allow every facility to the parties to place fully before the court their whole case, and to enable the court to administer substantial justice before the parties without security of action or turning round in court, and never to allow a party to overcome his adversary by the man-traps and spring-guns of covert chicanery, or by the surprise of technicalities of mere pleading or practice. (Ben. Adml. p. 223, secs. 370, 371; p. 286, secs. 480, 488; p. 372, rule 24.)

And it is further the opinion of the court that sufficient time and notice had been given to appellant. According to the record in the case, the motion for amendment was made in open court in the presence of libellee, now appellant, and it appears from the record that at least two days elapsed before the putting in of the motion on the request of libellee for time. This court therefore does not consider the exceptions tenable in admiralty practice.

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Relative to the various exceptions of appellant to the rulings of the judge below on questions propounded to the witnesses, this court is of opinion that the major portion of said exceptions is not tenable, and that the materiality of those that are tenable is not sufficient to overthrow the case, since they do not seriously affect either side of the issue.

From the record in the case the court finds sufficient evidence adduced to establish the following facts: That William C. Dennis, appellant, on the 18th day of February, A. D. 1897, went on board the steamship Mandingo, an English steamer, then lying in the harbor of Monrovia, with the intention to purchase forty cases of gin; that he did purchase said gin, one bag of onions and one bag of potatoes; that he purchased the articles on board of the said steamer; that he purchased said articles after nightfall; that a lighted lamp had to be held to give light while taking said goods out of the ship's hold; that Custom House Officer R. J. Clarke was present when said goods were purchased; that said goods, with one case of kerosene, were landed by the said W. C. Dennis, appellant, after 6 o'clock p. m., even as late as 8 o'clock p. m. That they were not landed at the Government's revenue wharf, but that they were landed at another wharf not known to the law as the Government's revenue wharf; that the said W. C. Dennis, appellant, confessed to Hon. F. E. R. Johnson, then Attorney General, that he had done a risky thing, and being asked what he had done, said that he had bought forty cases of gin; and on being told by Mr. Johnson that he thought he (Dennis) had got himself into trouble, the said appellant replied that he had bought the gin for the election—for the *cause*. That he, the said appellant, asked witness Thomas Fuller (patting him on the shoulder) not to tell any one about his buying the gin, not even his (witness's) brother; that Custom Officer R. J. Clarke did not enter in his book said goods bought, to be reported to the Collector of

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Customs according to law, and that he did not make said entry until he had been spoken to by the Attorney General, nor until the seizure of said goods; that the said goods were not reported to the wharfinger.

These facts having been conclusively established by unimpeachable evidence, it is the opinion of the court that the charge against the said William C. Dennis, appellant, for smuggling goods ashore with the intent to violate the revenue laws of the Republic is fully sustained. His acknowledgment to witness Johnson that he had done a risky thing, and then asking witness Fuller not to expose his act, is sufficient proof of the intent of his mind, and fully shows that he understood the nature of the offence and the penalty attached, and willingly and knowingly committed the transgression, alleging as an excuse that he had done so for the *cause*.

The court takes occasion here to say that notwithstanding Officer Clarke was the agent of appellee, sent on board of the said steamship to take notice of purchases according to law, and to report the same to the proper revenue officer, still, if he was recreant to his trust and transcended his instructions as such agent, the principal, appellee, cannot be held responsible for his unlawful acts. (Bouv. Law Dict. p. 134, "Agent;" p. 136, "Extent of authority and duties and responsibilities.") Nor can appellant be justified by the neglect of the said officer, which fact he himself recognized when he confessed that he had done a risky thing, and asked not to be exposed.

And the court further says that it was not the duty of the Collector of Customs to assess and collect any duties from appellant on said goods, when they had already been seized; and his (the appellant's) confession that he had done a risky thing in connection with the purchase and landing of said goods was tantamount to a confession that he had contravened the revenue laws.

Now, then, in view of the facts in the case being established by law and evidence, the court says that the judge

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below did not err in his several rulings, judgment, and final decree in said case; and the Supreme Court adjudges that the final decree of the judge below is hereby affirmed, it being in accordance with law and evidence in said case. The clerk of this court is hereby commanded to issue a mandate to the judge of the court below, the Court of Quarter Sessions and Common Pleas, Montserrado County, to the effect of this judgment.

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C. B. REEVES, Appellant, *vs.* J. A. PAYNE, Appellee.

[January Term, A. D. 1899.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Grand Bassa County.*

*Damages.*

At the call of this case for trial, appellee failed to appear to defend the appeal as is required by law, whereupon the appellant motioned the court for judgment by default. This being a right growing out of law, therefore this court adjudges that the appellant is entitled to recover, and proceeds to the rendition of perfect or final judgment.

This court for lawful cause maketh void the judgment of the court below, and renders judgment that the appellant recover from the appellee the sum of twenty-five dollars as damages and all legal costs attending the suit; and the clerk of this court is hereby commanded to issue the proper mandate to the Court of Quarter Sessions, Grand Bassa County, to the effect of this judgment.

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## PRINCE R. FLOWERS and ALBERT HEAD, Plaintiffs in Error, *vs.* REPUBLIC OF LIBERIA, Defendant in Error.

[January Term, A. D. 1899.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

1. It is part of the jurisdiction of a court to pronounce sentence in cases which by laws are made cognizable before it.
2. Upon the trial of an indictment for an offence at the common law it was held to be unnecessary that there should exist statutes relating to the offence and the punishment attached, in order to make it cognizable before the criminal courts of Liberia; the rules of American and English common law prevail and are enforcible in Liberia unless where repugnant to the provisions of some statute or unsuited to the form of government.
3. A judgment inflicting excessive fines and punishments is repugnant to the provisions of the Constitution.

This case is before this court upon a writ of error. The plaintiffs in error before this court were jointly indicted and tried at the March term of the Court of Quarter Sessions and Common Pleas of Montserrado County, for committing an "assault and battery with intent to do grievous bodily harm," to which charge, they having plead guilty, judgment was pronounced against them by the court below, in which they were severally sentenced to fine and imprisonment. The counsel for the defendants, now plaintiffs in error, believing that the court below erred in its judgment rendered in the case, applied to this court for a writ of error and removed the case before this court for review.

Upon a careful examination of the record before us in the case, we find that the errors assigned in plaintiff's assignment of errors, raised the question with respect to the legal right and authority of the court below to sentence the defendants, now plaintiffs in error, to the punishment of fine and imprisonment, as is set forth in the said sentence. This point, in fact, appears to be the only one raised in plaintiff's assignment of errors,

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and therefore is the only error in the proceedings of the court below to which the attention of this court has been called.

We shall now proceed to consider the point submitted for our consideration. To question the right of the court below to inflict punishment in offences tried before it and over which it has legal jurisdiction, would seem to us to be questioning the most essential office of such a court, for if after hearing a cause brought before it for trial, over which it has been given jurisdiction by law, there should remain an inability or want of authority to pronounce the conclusions of law in the premises, it is then devoid of that essential feature which is absolutely necessary to make it a court in the true meaning of the word.

The Statute of Liberia establishing the Courts of Quarter Sessions and Common Pleas in the several counties of the Republic, have conferred upon these courts original jurisdiction in cases of crimes and misdemeanors above the degree of petit larceny. (Rev. Stat. of Liberia, Bk. 1, p. 121, sec. 1.) It was urged by the learned counsellor for the plaintiffs in error, that in the absence of statutory enactments defining certain crimes and misdemeanors and attaching to them specific penalties, the criminal courts of Liberia have no legal authority to punish such offences. And this position is also assumed in the error assigned for the consideration of this court. That the Legislature of Liberia has adopted a criminal code which comprehends and embraces the various crimes and misdemeanors known to the common law, we feel no hesitancy in asserting as a fact. In an act to amend an act entitled "An act defining certain crimes and relating to the punishment of crimes," we have the provision for the code just referred to, set forth at large: "It is enacted by the Senate and House of Representatives in Legislature assembled, (Section 1) That so much of the seventh section of an

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act entitled, An act defining certain crimes and relating to the punishment of crimes as reads, 'Such parts of the common law set forth in Blackstone Commentaries as may be applicable to the situation of the people, except as changed by the laws now in force, and such as may be hereafter enacted, shall be the civil code of laws of the Republic,' be so altered and amended as to read that Blackstone Commentaries as revised and modified by Chitty or Wendell, and the works referred to as the sources of the municipal or common law in Kent's Commentaries on American Law, volume first, shall be the civil and criminal code of laws of the Republic of Liberia, except such parts as may be changed by the laws now in force and such as may hereafter be enacted; and all laws or parts of laws conflicting with the provisions of this act be and the same are hereby repealed." (Act of Legislature of Liberia, 1860, p. 73.)

Here is an adoption not only of the Commentaries expressly mentioned in the above cited act, but the numerous works referred to by Kent in his treaties as constituting the sources of the municipal and common law of America are also, by virtue of the above cited act, made the civil and criminal code of Liberia, excepting where they are changed by the Statutes of Liberia or are not adapted to our form of government. Therefore, while the Statutes of Liberia are silent and do not declare what punishment the court should inflict in such cases as the one now under consideration, yet by the adoption of the laws referred to in the Statute of 1860, the courts of this Republic have a wide and almost boundless field in which to seek for all legal light and authority that they may require in the adjudication of cases as well as in the punishment of offences.

It appears to us very clearly that ordinarily the object of all trials in criminal courts is to relieve the innocent and to punish the guilty; and we feel warranted by law in enunciating this rule: that where the right to

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try a cause is conferred upon a court, the court also acquires thereby the power and authority—if not expressed, then implied—to declare what are the conclusions of law upon facts found or admitted in the premises.

Having shown that the court below did not err by taking jurisdiction of the offence charged against the defendants, now plaintiffs in error, and that it was its duty and fully within its purview to pronounce sentence or judgment showing the conclusion of law upon the facts admitted by the defendants, now plaintiffs in error, we shall next proceed to ascertain whether or not the sentence delivered in the case by the court below was warranted by law. By reference to the record in the case we find that the defendants, now plaintiffs in error, were charged in the court below with committing an assault and battery with intent to do grievous bodily harm, which offence, under the common law of Liberia, is a misdemeanor.

"A grievous bodily harm," says Mr. Archbold, "is a generic term and may comprehend severe wounds or hurts of various kinds; but they are not required to be such as are likely to produce permanent injury." (1st Archbold's Criminal Practice and Pleading, p. 872.) The punishment attached to this offence by the common law adopted by this Republic is fine or imprisonment, or both; and in all cases of assault occasioning actual bodily harm, the court, if it order imprisonment, may order the offender to be kept at hard labor during the whole or any part of the term. (1st Archbold's Criminal Practice and Pleading, top p. 927.) The sentence pronounced in the case by the court below, so far as it appertains to the nature of the punishment in such cases, will be found to be strongly upheld and supported by the authorities adopted by Liberia. This court entertains no doubt in its mind whatever on this point. Another point, however, presents itself very forcibly to the mind of this court, and it is one which we opine is

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essential to the determination of the cause. We refer to the degree of punishment pronounced against the defendants, now plaintiffs in error, by the court below. The Constitution of Liberia declares that "excessive bail shall not be required, nor excessive fines imposed, nor excessive punishment inflicted." (Const. Lib. sec. 10.) This section of our Constitution seems to have been introduced for the purpose of relaxing in a measure the rigor of the law, as well as to shield and protect the person, liberty and property of the people of Liberia from excessive punishment and fines.

This court, in calmly and maturely weighing all of the circumstances surrounding this case and the nature and magnitude of the offence charged, is firmly of the opinion that while it was legal and undoubtedly within the purview of the court below to fine and imprison the defendants, now plaintiffs in error, as the penalty for the offence committed by them, yet this court is of the opinion that the sentence pronounced in the case by the court below is excessive with respect to both the fine and the term of imprisonment. Therefore, in order that substantial justice may be had in the premises, this court will proceed to give the sentence which, in its opinion, the court below ought to have given.

This court adjudges that P. R. Flowers be imprisoned in the county jail of Montserrado County for the space of three calendar months, and that he forfeit and pay to the Republic of Liberia a fine of one hundred dollars lawful money of this Republic; and that Albert Head be imprisoned in the county jail of said county for the space of one and a half calendar month, and that he forfeit and pay unto the Republic of Liberia a fine of fifty dollars lawful money of the Republic. The clerk of this court is hereby authorized to issue a mandate directed to the judge of the court below, informing him of this decision.

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## FREDERICK J. JACKSON & COMPANY, Appellants, *vs.* JOSEPH D. SUMMERVILLE, Appellee.

[January Term, A. D. 1899.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Grand Bassa County.*

*Notice of appeal—Time allowed for entering appeals—Non-payment of costs.*

Where the records were not transmitted to the court of appeal until nine months after the appeal was taken it was held to be contrary to the Statute of 1894, which provides that the record must be transmitted to the clerk of the court of appeal within ninety days from the taking of the appeal. The appeal was dismissed for want of jurisdiction on this account.

This case is before this court on an appeal from the Court of Quarter Sessions and Common Pleas of Grand Bassa County, March term, A. D. 1897. Upon the case being called up for hearing, the counsellors for the appellee tendered this court a motion to dismiss the said case for the following reasons, to wit: First, "Because the appellee has not been summoned or notified in the court below to follow up said appeal." Second, "Because no plaintiff can appeal to this honorable court before complying with certain requisites, as will appear by the Amended Statute of 1894." Third, "Because this case was not filed in this honorable court within the time fixed by the statutes of this Republic regulating appeals." Fourth, "Because the appellants have neglected to pay the costs in the court below."

Upon a careful consideration of the first and second points raised in the motion, and on examination of the several statutes of Liberia relating to appeals, we are firmly of the opinion that the grounds relied upon in the first and second counts of the motion are not supported by the records, and therefore, without making any further observation on these points, we shall proceed to the consideration of the third count of the motion, which is in fact the salient point raised therein. This point raises a question as to the jurisdiction of this court over

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the cause. By inspection of the record in the case we find that the appeal was taken in April, 1897. The certificate of the clerk of this court to the record shows that the cause under consideration was not entered in this court until the 3rd of January, 1898, about nine months from the taking of the appeal. The act of the Legislature governing appeals, approved January, 1894, declares that "an appeal must be taken and the record in the cause transmitted to the clerk of the court of appeal within ninety days after the appeal has been taken."

This case not having been entered in this court within the time prescribed by law, we are of the opinion that this court cannot take jurisdiction of the cause. Therefore, for want of jurisdiction growing out of the failure on the part of the appellants to enter their case in this court within the time prescribed by the statutes of Liberia, this court dismisses the case, with costs; and the clerk of this court is hereby authorized to issue a mandate to the judge of the court below, informing him of this ruling.

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## ROSE WILSON, Appellant, *vs.* JOHN WILSON, Appellee.

[January Term, A. D. 1899.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Divorce.*

This case was docketed for trial at this term, and notice of appeal lawfully issued and served. At the call of the case the appellee failed to answer and appear, either in person or by an attorney; whereupon the appellant prayed for judgment by default. The failure of the appellee to follow up the appeal amounts to an abandonment. Therefore this court sustains the appellant's

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motion and adjudges that the appellant is entitled to recover in this action with full costs; and further, renders the following final judgment in this case, to wit:

First, this court adjudges that the judgment of the court from which this appeal was taken is hereby reversed and of no legal force whatever.

Second, That the matrimonial relation or civil contract of marriage made and entered into between John Wilson and Rose Wilson his wife, is by operation of law dissolved, to all intent and purpose, as if no such contract had ever been entered into between them, and that the said John Wilson and Rose Wilson his wife shall in future be held separate and distinct persons, unconnected by any mystical union or civil contract heretofore existing between them.

And further, the clerk of this court is hereby ordered to issue the proper mandate to the court below, informing it of this judgment, also directing said court to grant the bill of divorcement provided for by Liberia Statutes, Book 1, pages 231–2, as soon as the costs and fees required by law are paid by the parties concerned, or by either of them.

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## KISSA, *alias* FREEMAN COOPER, Plaintiff in Error, *vs.* A. B. STUBLEFIELD, Sheriff of Montserrado County, and MAX SCHMOJI, Defendants in Error.

[January Term, A. D. 1899.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Injunction.*

Where the Sheriff was stopped by writ of injunction from selling property levied upon by virtue of a writ of execution, and pending the hearing of injunction, he and plaintiff hired out the property to a third party, in whose possession it was lost, it was held that plaintiff could not be held in contempt, under the circumstances, for misconduct towards the court, by interfering with property under its wings, the assent and co-operation of the ministerial officer tending to show that it was done with no contemptuous design or disregard of the court's authority.

This is a case that was tried and determined in the Court of Quarter Sessions and Common Pleas, Montserrado County, at its September term, A. D. 1898, sitting in equity before His Honor H. W. Travis, and has been brought up to this court by the plaintiff in error upon a writ of error. Before advancing in the review of the case, it may be well for the court to consider its nature, by giving a brief history of the case as gathered from the record and assignment of errors. It appears that the case of injunction grew out of an action of debt, against Kissa, *alias* Freeman Cooper, now plaintiff in error, in the District Court of Marshall at its August term, A. D. 1896, in which action the judge of said district court granted a writ of execution against the said plaintiff in error, in satisfaction of said debt, and by virtue of said writ of execution, directed to one John Lewis, Sheriff for Marshall, the Sheriff of Montserrado County, A. B. Stublefield, now one of the defendants in error, seized and advertised for sale a certain surf-boat and its appurtenances belonging to the said Kissa, *alias*

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Freeman Cooper, now plaintiff in error. Whereupon the said Kissa, *alias* Freeman Cooper, now plaintiff in error, by proper process of law through the Court of Quarter Sessions and Common Pleas, caused a writ of injunction to be issued in his favor against A. B. Stublefield, Sheriff aforesaid, and Max Schmoji, now defendants in error, thereby stopping them from the sale of said boat and appurtenances until proper investigation should be made by the said court below, whence the injunction emanated. The plaintiff filed his complaint in the said court below, and the defendants in error answered; and alternate pleadings of reply, rejoinder, and surrejoinder were filed respectively by the plaintiff and defendants. The parties having joined issue, the case was called up for hearing at the September term of said court, 1898, when the said defendants put in a petition, setting forth that the said plaintiff had seized and taken out of the possession of the sheriff, without any warrant or authority, the said boat and appurtenances without awaiting the action and decision of the said court, and prayed that the court should summon the said plaintiff to show cause why he should not be attached for contempt shown the said court. This petition was made after the court had ruled out defendants' rejoinder, but still reserved ruling on the plea raised in the plaintiff's reply, as to the sufficiency of defendants' answer; which plea the judge subsequently ruled out in rendering final judgment. The judge below granted the petition, which when read was found to be in form and substance the same as the said answer in question.

Upon investigation of the subject of the petition the court ascertained that the boat had been hired to one J. W. Toles by an arrangement entered into by the plaintiff, the said Sheriff and J. W. Toles, and that the money to be paid for the hire of the said boat should go towards the payment of the debt. It also appeared that Attorney S. E. F. Cadogan was employed by the said Kissa,

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*alias* Freeman Cooper, now plaintiff in error, after the boat had gone to sea. On the return of the boat, it appeared that the said plaintiff sent it to sea again, being advised by his attorney, S. E. F. Cadogan. The court below in ruling held that the action of the said attorney, S. E. F. Cadogan, and the said Kissa, *alias* Freeman Cooper, plaintiff in error, was a contempt to the court, and therefore fined the said Attorney Cadogan seventy-five dollars, allowing him one month to pay, and also fined the said plaintiff fifty dollars, to be paid in one month. The judge also ruled out the answer of defendants, perpetuated the injunction, ruled the plaintiff to pay the costs, and granted an execution thereupon. The plaintiff, feeling that justice had not been meted out to him, filed an assignment of errors, and prayed the Supreme Court to grant to him a writ of error against the said judge below, that the case might be brought up to the Supreme Court for review and correction of errors, should there be any.

Having given a brief history of the case, as gathered from the record, this court will now proceed to review the same and render its decision.

Upon careful examination of the record in the case, the court finds that the answer of the defendants in error is not a sufficient answer to the complaint, in that it is not distinct and intelligible, nor does it affirm or deny the allegations of the complaint, nor does it set forth any new facts justifying him for the seizure of said boat in question. Therefore the court sustains the judge below in ruling out said answer.

The answer having been ruled out by the judge below, the defendants had no other alternative than to rest on the bare facts only. And it is the opinion of this court that the judge below erred when he admitted the petition of defendants, now defendants in error, it containing no facts relevant to the issue, but introducing facts foreign, which ought not to have been admitted at that stage of proceedings.

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From a careful review of the record in the case, the court finds that the said boat in question was not wrested out of the possession of the said Sheriff (one of the defendants in error) before action had been taken by the court below; but rather that the Sheriff as aforesaid with the said Kissa, plaintiff, entered into contract with one J. W. Toles for the hire of said boat, with the understanding that the money accruing from the use of it should go towards the payment of said debt. And he, the said Sheriff, being a party to the contract, and the boat being in his possession at the time, exonerated the said Kissa from an unlawful taking of the boat, and his act cannot be legally construed a disobedience and contempt. On the return of the boat from the coast, it does not appear from the evidence in the case that the arrangement with J. W. Toles ended, and the said Sheriff received back the boat, and the said Kissa wrested it out of his possession; but it does appear from evidence that during the absence of the boat the said Sheriff advertised the sale of it, notwithstanding the arrangement of hire. And again, it does not appear to the court that the act of Attorney S. E. F. Cadogan in advising the said Kissa, his client, to send the boat away can be construed to be a contempt, under the foregoing circumstances. And supposing it was, still this court says that a legal process should have been issued against him, and he be granted the right to defend himself. And again, a proceeding for contempt is regarded as a distinct and independent suit. (See I Bouv. Law Dict. "Contempt.")

Therefore it appears strange to this court that the judge below should treat the case proper and the contempt as one, by admitting the petition of the defendants, containing the same matter as the answer which he ruled out as insufficient, and also in rendering a joint judgment. This court recognizes that it is said that "it belongs exclusively to the court offended to

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decide what in its opinion amounts to a contempt; and in general no other court or judge can or ought to undertake, in a collateral way, to question or review proceedings for contempt, made by another competent jurisdiction." But it is also held that a court of superior jurisdiction may under certain circumstances review the decision of one of inferior jurisdiction on a matter of contempt. And had not the judge below based his decision for contempt on the violation of a principle of law, which this court fails to see, there might not be any interference with his ruling on that point. Viewing the whole matter, this court says that the judge below erred in his judgment for contempt.

This court also says that it fails to see the law, justice, or equity, by which the judge below, in his judgment on the injunction, perpetuated the injunction, and at the same time ruled the plaintiff in error to pay costs. In this the judge below erred.

This court therefore adjudges that the judgment of the court below, being erroneous, unlawful, and inequitable so far as refers to the costs, is hereby revised; and the defendants in error are ruled to pay all costs in this action. The clerk of this court is hereby ordered to send a mandate to the judge below to the effect of this judgment.

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## HILARY J. MOORE, H. R. W. JOHNSON and BEVERLY Y. PAYNE, surviving executors of the late firm of G. Moore & Son, of Monrovia, Appellants, *vs.* LEWIS SOLOMON of Liverpool, transacting mercantile business under the firm name and style of Lionel Hart & Co., Appellee.

[January Term, A. D. 1900.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Bill in Equity for relief against fraud.*

Where after the death of a sole partner a new business was started under the name and style of the old firm, which by will was allowed, but the transactions were carried on for the sole benefit of the new partnership and was in no respect a continuation of the original firm, in a suit brought against the executors of the original firm to recover monies advanced the new partnership, upon the ground that the name of the firm was the same and that one of the executors of the original firm was the managing partner of the new firm, it was held that the suit could not be maintained against the executors of the original firm in the absence of proof showing that in that capacity the debt had been created by one or more of the executors. It was also held that the use of the original firm's name, where it had been allowed, did not constitute fraud unless it could be shown that the partners of the new firm misrepresented themselves, and that under a delusion with respect to the real members of the new firm, caused by their misrepresentations, credit had been given which otherwise would not have been given.

This case is before this court upon an appeal from the judgment rendered in the Court of Quarter Sessions and Common Pleas, Montserrado County. At the trial of the cause in the court below, the counsels representing the parties in the case, with the view to shorten the proceedings and to put the case before the court below in a concise manner, admitted certain points relative to the facts and submitted the following queries to the court for its consideration, to wit: Query 1. "Were Lionel Hart & Co. misled by the executors of G. Moore as to the status of the firm of G. Moore?" Query 2. "Ought Lionel Hart & Co. to lose the money?" Query 3. "If not, who is responsible for payment, the executors as trustees of the late firm, or in their individual capacity

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as private persons? Can the debtor obtain payment out of the property of the late G. Moore, or not?"

The arguments on these points having been heard, the court below decreed in favor of the plaintiff, now appellee, as follows: "That Lionel Hart & Co. shall recover from the estate of G. Moore the sum of two thousand two hundred and sixty-nine dollars and ten cents, with accrued interest and costs." To this judgment the defendants, now appellants, expected and have brought the case before this court upon an appeal, for review.

After a careful examination of the evidence in the case and a careful research into the law applicable thereto, we have deliberately arrived at the conclusions, First, that it does not appear from the records that there has been fraud practiced upon Lionel Hart & Co., appellee, by the executors of the estate of G. Moore, nor any of them, in their capacity as such. Secondly, that the executors of said estate in their capacity as such cannot be made answerable and responsible to Lionel Hart & Co., appellee, for the payment of a debt not contracted by them jointly, nor by any one of them under color and by virtue of his executorship. And thirdly, that the estate of the late G. Moore now vested in the devisees mentioned in the will of the testator, cannot be held to pay a debt not created in the lifetime of the testator, nor by his executors after his death.

From the record in the case we find that G. Moore, who at the time of his death was the sole partner of the late firm of G. Moore & Son, made provision in his last will and testament for the continuance of his business after his death, should his sons so elect; that acting under this provision of said will Samuel Ford Moore, Hilary John Moore and Urias A. Moore, sons of the said testator, conducted mercantile business under the name and style of G. Moore & Son, in which business the said Hilary J. Moore appears to have acted as manager or agent; that for the sole benefit and trade of said firm, Hilary J.

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Moore in his capacity as agent for said firm and not as an executor of the estate of G. Moore, contracted the debt which Lionel Hart & Co., appellee in this suit, seeks to recover.

Before proceeding further we would observe, that from the business letters that were written to said appellee by H. J. Moore as the agent of said firm, as well as from the entire conduct of said firm towards the appellee, we have discovered no grounds upon which to draw a legal inference of an intent to commit either positive or constructive fraud. Nor do the said communications disclose the fact that means of cunning, deception or artifice were employed to induce Lionel Hart & Co., appellee, to deal with and credit said firm, at any time, or in any wise to mislead said firm. It does appear that at the time the debt was contracted, the said firm of G. Moore & Son, of which H. J. Moore was acting agent, did really exist and was actually conducting mercantile business at Monrovia under the name and style of G. Moore & Son.

"Courts of equity, sitting to decide whether or not a transaction be fraudulent, will be governed by the circumstances surrounding the case and the intent of the party, which intent is to be inferred from the circumstances; it is generally held to be a part of the equity doctrine of fraud not to define it; not to lay down any rule as to the nature of it, lest the craft of men should find ways of committing fraud which might escape the rules of such limit or definition. But it is also held that to constitute fraud there must exist artifice, deception, or cheat."

We shall now consider our second proposition. It was impliedly expressed in one of the queries submitted for the consideration of the court below, that the executors of the estate of G. Moore & Son having stood by and allowed the transaction to go on, cannot absolve themselves from responsibility to third parties, who by their negligence have been misled; and this position was main-

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tained by the counsel conducting the defence, in his arguments.

We would state as a general rule, that ordinarily an executor is responsible when there is negligence or improper conduct in administering an estate, and that for all maladministration or mismanagement of the estate the executor is liable in a court of equity. But Judge Story observes in his learned treatise on Contracts, "Courts are, however, extremely liberal in respect to executors and will not render them liable on slight and trivial grounds." (Story on Contracts, p. 335, sec. 289.) In the case under review the executors of the late G. Moore & Son's estate cannot be held responsible (as executors) to Lionel Hart & Co., appellee, for the debt he seeks to recover, nor can the said estate be made answerable for the payment thereof, for the foregoing reasons.

It is the opinion of this court, therefore, that the court below erred in ruling that Lionel Hart & Co. shall recover from the estate of G. Moore & Son the debt sued for by appellee, with interest and costs, and this court hereby reverses the said judgment of the court below. And this court further says that in order that substantial justice may be meted out in all the premises to all parties concerned, and the appellee obtain the relief to which he is entitled, this court, recognizing its authority conferred by law in matters of appeal to give such judgment as the court below ought to have given, when there are good grounds for reversal, will proceed to the rendition of its decision in the case.

This court decrees that H. J. Moore, the surviving partner of the firm lastly conducting mercantile business in the city of Monrovia under the name and style of "G. Moore & Son," in whom by operation of the last will and testament of G. Moore the contingent remainders of the estate devised to Samuel Ford Moore and Urias A. Moore, his co-partners, have vested, and who is presumed

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in law to be in possession of the assets of the said firm with whom and for whose sole benefit the debt sued for by appellee was contracted, shall pay unto Lewis Solomon of Liverpool, transacting mercantile business under the firm name and style of Lionel Hart & Co., appellee, the full and just sum of two thousand two hundred and sixty-nine dollars and ten cents ($2,269.10) for his debt, with interest thereon and costs. And the clerk of this court is hereby authorized to issue a mandate to the judge of the court below, informing him of this decree.

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## ROBERT T. SHERMAN, Appellant, *vs.* JOSHUA PHILIPS, A. B. STUBBLEFIELD and R. H. HILL, Trustees of Providence Baptist Church, Monrovia, Appellees.

[January Term, A. D. 1900.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Ejectment.*

This suit was brought by appellees as trustees of the Baptist Church to recover possession of property devised by Robert R. Johnson to said Church. The first paragraph of the will relating to the property, devised the estate to said Church subject to the provision that should the wife of the testator, who was made sole executrix, have need to dispose of the estate *during her lifetime* for her support, etc., she was at liberty to do so.

Another paragraph in the will gave the wife the right to sell without mentioning the happening of the contingency mentioned in the previous paragraph, and also to lease or give the property to any person or persons around her that she might deem fit.

Held, that the first paragraph devised a contingent legacy to the wife liable to the enjoyment of a fee title, should her need, the contingency, happen; that in case the contingency did not arise during the lifetime of the wife, the fee vested in the said Baptist Church to whom was devised in said will a contingent remainder in said estate.

It was also held that where the language of a will is ambiguous and its provisions conflicting, the real intention of the testator is to be ascertained and the will construed so as to admit of what was really meant by the testator.

This court has so often enunciated the principles of law governing actions of ejectment, which is but an

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action to try and determine the ownership of real property, that it would only be repeating itself to indulge in anything like amplification.

The claims of the adverse claimants to lot No. 65 in the city of Monrovia, being found in the wills and testaments of the late Robert R. Johnson and that of Mrs. I. B. Johnson, the widow of the said R. R. Johnson, both of whom executed their wills and testaments handed in as evidence, have had the special attention of this court. The will of the late Robert R. Johnson contains several legacies and to several legatees. But that which concerns us at present is the devise of the testator to the Providence Baptist Church, Monrovia, and that part of said will which refers to the late I. B. Johnson, sole executrix of the will of her husband and trustee of his real estate.

The following is the language employed by the testator: "I give and bequeath to my beloved wife, I. B. Johnson, all my real and personal estate that I have after my demise, except such part as I may dispose of in my lifetime; and after the death of my wife, I. B. Johnson, I bequeath my dwelling house in the city of Monrovia (providing that she doesn't have need to sell it in her lifetime); it is to go to the Providence Baptist Church; it is not to be sold after her death, but to be leased or rented out by the church for the benefit of the said church, and one third of the proceeds of the rent is to be kept for repairs of said house, and the other two thirds is to go for the benefit of the said Baptist Church."

The above is the paragraph in said will referring to the Providence Baptist Church, Monrovia, the appellee before this court. We now quote that part of the will referring to the rights of Mrs. I. B. Johnson, legatee and sole executrix of the testator R. R. Johnson. The language here employed is as follows: "I appoint my wife I. B. Johnson's advisers, R. T. Sherman and M. T. Worrell. Notwithstanding the above decree, my wife

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I. B. Johnson is at liberty to sell, lease, or rent any part or parcel of the whole of my estate for her own use, to give to any person or persons around her that she may see fit."

To harmonize these two provisions of the will we have had no little trouble in finding out the intention of the divisor, and to accomplish this we have been compelled to set aside the ambiguous and superfluous words.

This court says, a will being considered as an instrument made at a time when the testator, perhaps, could not secure the assistance of persons skilled in the law, courts have always held that it should not be construed strictly like a deed, but that the intention of the testator, though not expressed in proper, clear, legal, and formal words, should, notwithstanding, be ascertained and carried into effect. In construing a will, therefore, three questions arise; first, what the testator's intention is as it is to be collected from the words of the will; second, whether he has used words which in legal construction can carry such intent into effect; third, what effect must be given to every word in the will tending to point out the intent of the testator. To this end expressions admitting of two interpretations should receive that force which will best harmonize with other parts of the will; and this right is recognized in the Statute Laws of Liberia (Book I, p. 39, sec. 27), which says: "It shall be the right of the court to expound all written evidence."

From the will we gather the following facts: First, that the testator Robert R. Johnson, intended a vested fee interest in lot No. 65, in the city of Monrovia, to be employed by said Church after the death of his wife, I. B. Johnson, in case her need did not compel her to sell it during her lifetime. This grant or devise constituted a contingent legacy, liable to the enjoyment of a fee title, should the contingency (her need) happen. Second, that there is no evidence that such a contingency happened during the lifetime of the wife, I. B. Johnson.

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This court further says, nothing in the will in question supports the idea that it was the intention of the testator R. R. Johnson that said property should be devised and passed to others after the death of his wife, I. B. Johnson. Therefore the Providence Baptist Church is entitled to a vested fee interest in lot No. 65, in the city of Monrovia.

This court adjudges that the judgment and rulings of the court below are in accordance with the law and evidence in the case, and therefore affirms said judgment; appellant to pay all lawful costs. The clerk of this court is hereby ordered to issue a mandate to the court below, informing it of this judgment.

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## E. A. L. McAULEY, Appellant, *vs.* THE REPUBLIC OF LIBERIA, Appellee.

[January Term, A. D. 1900.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

*Injunction.*

1. In an action of injunction brought to restrain a Commissioner of Education from teaching public school, it was held that the judgment could not extend beyond perpetuation of the interlocutory injunction and costs, where there appeared reasons for restraining the defendant.
2. Commissioners of Education are the agents of the Government in matters relating to public schools and are therefore incompetent to employ themselves as public school teachers.

This case is before this court for review, upon an appeal from the judgment of the Court of Quarter Sessions and Common Pleas, Sinoe County, rendered at the November term of said court, A. D. 1899. The nature of this case as exhibited by the record may be briefly stated as follows, to wit:

Upon an application made to the judge of the court below, by the County Attorney of Sinoe County, representing the appellee (the plaintiff in the court below), a writ of injunction was issued against the appellant (the defendant in the court below) to restrain him as

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School Commissioner, and in his capacity as such, from doing certain acts, which acts, it was complained, he ought not to do. The court below, after hearing the cause, perpetuated the interlocutory injunction, and went further in its ruling and decreed that "the appellant should refund to the Government all moneys obtained by him from the Government as school teacher."

To this ruling and judgment the appellant expected, and has raised in his bill of exceptions three points for the consideration of this court, which we proceed to consider.

The first exception laid in the bill of exceptions is, that "the appellant excepts to your Honor's ruling upon the second count in appellee's complaint, in which your Honor in rendering final judgment said that E. A. L. McAuley, School Commissioner for the County of Sinoe, defendant (now appellant), desist forever from teaching school and charging upon Government funds, while under commission as School Commissioner of Sinoe County," etc.

The question which is here involved is whether the appellant, while holding the office of School Commissioner for Sinoe County, could lawfully and consistently employ himself as a public school teacher or not.

In construing statutory laws, courts should exercise the greatest care to ascertain the intention of the lawmakers. The apparent object of the Legislature is to be sought for, and made to harmonize with what is disclosed in the act itself. It would be adhering to a view not consonant with the spirit and intention of the act creating School Commissioners, to hold that such officers, who by the act creating them are constituted and made the supervisors and overseers of our public schools, can at their pleasure appoint themselves as teachers. Moreover, it is the opinion of this court that such a view of the law would work an injury to the educational interests and prosperity of the country.

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The object of the Legislature in providing for School Commissioners (or Commissioners of Education) was to promote a sound and healthy system of public schools in our country. They are the agents of the State, so far as relates to the appointment and discharge of teachers, and the general supervision of public schools. We proceed to recite a section of the act bearing on this point:

"There shall be appointed after the usual way of official appointments by the President, a learned and discreet person in each county to be styled Commissioner of Education, who shall have the general supervision of all public schools in said county, unto whom quarterly reports shall be made by all teachers of public schools. Said Commissioners shall visit public schools of the respective counties in person four times during each year; direct and examine all teachers. Said Commissioners of Education shall see that all teachers perform faithfully their duty as such, shall institute rules for the government of all public schools, and on failure of any teacher or teachers to discharge his or their duty, or for other sufficient cause, the said Commissioners shall discharge such teacher or teachers, subject to the approval of the Secretary of the Interior, and appoint others." (Act. Leg. Lib. appr. Jan. 23, 1869, pp. 33–34, sec. 1–2.)

It is clear to the mind of this court, that E. A. L. McAuley, the appellant in this case, while holding the office of School Commissioner for the County of Sinoe and exercising the functions of said office, had no power nor right to appoint himself as a public school teacher for Sinoe County; because, as we have already observed, his relation to the State in the matter of public schools, was that of an agent. The law implies a contract between every teacher of a public school and the State; and the appellant, who was the express representative of the State in such matters, could not contract

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with himself. To every contract there must be at least two parties. No person can contract with himself in a different capacity, as there must be an agreement of minds. (1 Bouv. Law Dict. p. 275, fig. 2: "Parties to Contracts.") Therefore it is the opinion of this court that the court below did not err in perpetuating the interlocutory injunction; and had the judgment of the court below stopped here, this court would have felt itself bound to uphold it.

The second exception in the bill of exceptions is as follows, to wit: "The appellant further excepts to your Honor's final judgment in which your Honor said that appellant should refund to the Government all moneys obtained by him from the Government as school teacher," etc.

This court has failed to discover the law upon which this portion of the judgment is founded. By reference to the record we find that the suit was brought to restrain the appellant from doing certain acts, and the form of action chosen by appellee (the plaintiff in the court below) was injunction. Undoubtedly the appellee could not recover moneys alleged to have been wrongfully and unlawfully received by appellant from appellee, under this form of action, for the issues involved in this question are clearly beyond the power of the court to decide in the case before it. An action of injunction is defined by our statutes to be an action in which the plaintiff seeks to compel the defendant to permit matters to remain in the present state. (Stat. Lib. ch. 1, p. 31, sec. 8.) And this definition is upheld by Mr. Kerr, a leading authority on the law of injunctions, as well as by Bouvier, Blackstone, and other law-writers.

If upon the hearing of an action of injunction it shall appear to the court that the defendant ought not to do the act from the doing of which he is sought to be restrained, the court shall simply proceed to perpetuate the interlocutory injunction and award costs for the

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plaintiff. The court below therefore erred in ruling the appellant to refund to appellee moneys received for teaching school, which, this court is of the opinion, could not be recovered in an action of injunction. This court therefore reverses this portion of the judgment and will proceed to give the decree which in its opinion the court below ought to have given in the premises.

This court adjudges and decrees that the interlocutory injunction sued out by appellee (plaintiff in the court below) against E. A. L. McAuley, appellant (defendant in the court below), to restrain him from teaching public school in the County of Sinoe while holding the office of School Commissioner for said county, is hereby perpetuated, and he, the said appellant, is hereby enjoined and prohibited from teaching public school in the County of Sinoe while holding the office of School Commissioner for said county. And the clerk of this court is hereby authorized to issue a mandate directed to the judge of the court below, informing him of this decision.

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# FAH SOCHO, Appellant, *vs.* REPUBLIC OF LIBERIA, Appellee.

[January Term, A. D. 1900.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Murder.*

*Justifiable and excusable homicide—Plea of self-defence—Manslaughter.*

In prosecution for murder in the first degree, the State to convict must prove beyond a rational doubt that the killing was wilful and that it was done from malice, expressed or implied. So where deceased met prisoner and suddenly assaulted him with a club and then drew from his pocket a pistol, and prisoner struck in self-defence, which blow produced death; it was held that the killing was murder in the second degree, technically termed manslaughter.

It was further held that a party assailed need not wait until he is disabled by his assailant before striking in self-defence; that while he is bound to use all means within his power consistent with his safety to escape from his assailant, yet if he is assaulted with a weapon that could produce death or great bodily harm and he is put in peril of life or limb, he may justify the stroke under the plea of self-defence, and if death results from the stroke it will amount to murder in the second degree.

In this case the appellant Fah Socho is charged with having committed the crime of murder, which is the highest offence of which one may be charged in the catalogue of crimes; a crime punishable in all ages, by both human and divine laws, with death; a crime the very mention of which causes humanity, however degraded, to recoil.

The record from the court below shows that at the September term of the Court of Quarter Sessions and Common Pleas, Montserrado County, A. D. 1899, Fah Socho, the prisoner (appellant in this court), was indicted by the grand inquest of the aforesaid county, for the wilful and felonious murder of one Walter F. Smith, on the twenty-second day of July, 1899, in the settlement of Bensonville, in the County of Montserrado, to which indictment the appellant was held to answer, and put upon trial for his life before a jury consisting of

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twelve of his peers, duly sworn to hear, try, and determine the facts. Witnesses were introduced and sworn, and deposed. The testimony having been concluded, the charge and evidence were in due form submitted to the jury by the court, with instruction to try the facts and return their verdict accordingly. The jury, after deliberation, made up and presented to the court a verdict of "guilty" against the prisoner, now the appellant before this court.

The appellant, being dissatisfied with the verdict thus rendered, motioned the court below for a new trial, maintaining that the verdict was contrary to the law, the facts, and legal instructions of the court, and that the evidence supported a verdict of homicide in self-defence; which motion the court below did not allow, and subsequently rendered judgment of death, the sentence of the law attached to the crime of murder. To this ruling and final judgment of the court the appellant excepted, and appealed to this court for a review of the cause.

Before noticing the testimony rendered in this case and the law controlling it, this court says: "Murder is defined to be the wilful killing of a human being, with malice aforethought, either expressed or implied by law, and to constitute the offence there must be, first, sound mind and memory in the agent; second, an actual killing; third, malice expressed or implied. Manslaughter is the unlawful killing of another, without malice either expressed or implied; as in mutual combat on a sudden affray or fight in which malice is presumed to be wanting; hence such killing is reduced to murder in the second degree, technically known as manslaughter.

This court further says: Homicide in self-defence is bound within the limits hereinafter described. To justify the taking of life in self-defence the party must employ all means within his power, consistent with his safety, to avoid the danger and avert the necessity. He is not, however, compelled to wait until he is rendered unable

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to protect himself, by reason of great bodily harm, or even to turn his back upon his assailant. If he is in imminent peril and can reasonably conclude that his assailant intends to take his life, which he may conclude by the means employed in the assault,—as, for instance, the employing of a dirk, an axe, a hatchet, sword, cutlass, hoe, gun, pistol, spear, or like weapons, the use of which is likely to produce death or great bodily harm,—under such peril he may strike in self-defence, and if killing be the result of such stroke, the killing would be in self-defence. The meaning of the law is clear. The assailant must be in possession of some deadly weapon, and he must make such demonstration as would put the assailed in the peril of his life, or in danger of receiving great bodily injury, or put him on guard to protect his house against a burglar, or against one who entered to commit rape or other felonious acts; otherwise the law will not allow the plea of self-defence.

Having pointed out in a concise manner the law controlling this and similar cases, we now proceed to the consideration of the testimony. It may not be amiss for us to say that evidence is that which demonstrates and puts in clear light the truth or falsehood of any accusation. Referring to the testimony in this case, we discover that Walter F. Smith, the person killed, had staying with him a native heathen girl, in whom he manifested uncommon interest. This girl was taken from his custody by legal process and put in care of Sheriff Stubblefield, so as to be forthcoming at the ensuing meeting of the Quarterly Court, Montserrado County, to give evidence in a prosecution instituted and conducted against the said Walter F. Smith for a high misdemeanor. That by some means Smith found out that Fah Socho, the prisoner, and this girl had agreed upon marriage. That Smith soon after saw the prisoner and told him what he heard about his intention to marry the girl, and that if he did so he intended to kill him.

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That shortly after this the prisoner was on his way to Monrovia, when Smith saw him and with a gun in his hand ran him a considerable distance, and that the prisoner for safety took refuge in the forest, where he was hidden from Smith. That the prisoner uttered his complaint to the Sheriff, to the County Attorney, and lastly to a Justice of the Peace, for legal process to restrain Smith, which for some cause was not afforded him. That after this the prisoner was heard to say that if Smith attacked him again he intended to defend himself by killing him with his sword (pointing to a sword he usually wore). The evidence further shows that during the month of July, 1899, (the facts above stated occurred during the month of June)—that on the 22nd day of July, as aforesaid, the prisoner Fah Socho was passing through the settlement of Bensonville, when and where he met Smith, and that Smith charged him with shaking his sword at him. (This, however, was not seen by any of the witnesses present.) That the prisoner had on or wore the sword he usually traveled with. That Smith and the prisoner met in close contact, Smith's advancing soon bringing them together. That as soon as near enough Smith struck prisoner with a large coffee stick, and made at him two or more other blows with said stick, which blows the prisoner avoided by fending. That the prisoner up to this time made no blows at Smith whatever, but firmly faced him, warding off each assault. That Smith then drew from his pocket a revolver, when the prisoner jumped back and struck Smith with his sword, from which blow, he, Smith, shortly after died.

This is a synopsis of the testimony sent with other record before this court for review. To us this is clearly a case wherein homicide may be said to have been committed in self-defence. The revolver, a deadly weapon, being drawn by Smith in the engagement, reasonably put the prisoner in imminent peril of his life, and both

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reason and instinct impelled him to strike in defence of his life. A new trial, therefore, should have been granted by the court below.

This court adjudges that the verdict returned in this case is contrary to the law and the evidence, and the same is therefore set aside; that the judgment rendered on said verdict is hereby reversed, set aside, and rendered null and void; that the prisoner Fah Socho be discharged from prison by order of the judge of the court below, as soon as he is informed in chambers of the ruling and judgment of this court; and that the clerk of this court issue in due form a mandate to the judge of the court below, as to this judgment.

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## T. T. BREWER, Appellant, *vs.* THE REPUBLIC OF LIBERIA, Appellee.

[January Term, A. D. 1900.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Maryland County.*

*Misdemeanor.*

*Indictment—Formal requisites of a valid indictment.*

1. A motion in arrest of judgment will be sustained where the indictment is defective in material parts.

2. In a trial upon an indictment which was found not to contain a distinct and certain averment as to the place where the offence was committed and the specific title of the offence charged, it was held that the indictment was bad and that a motion in arrest of judgment should have been granted.

This is a case in which the Grand Jury of Maryland County indicted appellant, T. T. Brewer, for making an aggravated assault with attempt to shoot with a loaded revolver one R. T. Ellis, Deputy Sheriff of said County, between the first and thirtieth days of April, A. D. 1899, and who was arrested and tried by the Court of Quarter Sessions and Common Pleas, Maryland County, at its August term, A. D. 1899. The said appellant, being convicted of the offence by the jury, considered that

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substantial justice had not been meted out to him, whereupon he motioned the court below for arrest of judgment, for the following reasons as laid in said motion: First, "That the indictment is insufficient, vague and uncertain, obscure and indistinct, in that it does not set forth with certainty the place where the crime with which he is charged was committed." Second, "That the indictment should be so framed as to give a certainty as to the nature of the crime or misdemeanor of which he is charged."

The court below not sustaining appellant's motion for arrest of judgment, he, the appellant, then submitted his exceptions to the rulings of the court, embodying the points raised in his motion, together with exceptions to the verdict of the jury, as being contrary to the law and evidence in the case; also, to the judgment of the court, upon the ground that according to the wording of the judgment, in his opinion, it does not emanate from any court, but simply from the "Judicial Department, August term, A. D. 1899," which does not correspond with the indictment upon which he was arraigned; and also, that the judgment inflicts a punishment for felony and not for misdemeanor. The case is therefore brought up to this highest Court of Appeal, upon the said exceptions, by the appellant, for review.

The court will now proceed to consider the indictment, ruling, judgment and evidence in the case, and to give its opinion on the same.

Bouvier defines an indictment to be "a written accusation against one or more persons for a crime or misdemeanor, presented to and preferred upon oath or affirmation by a grand jury legally convoked," and he lays down as the essential requisites of a valid indictment, first, that the indictment be presented to some court having jurisdiction of the offence stated therein; secondly, that it appear to have been found by the grand jury of the proper county or district; thirdly, that the

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indictment be a true bill and signed by the foreman of the grand jury; fourthly, that it be founded with sufficient certainty. For this purpose the charge must contain a description of the crime or misdemeanor of which the defendant is accused, and a statement of the facts by which it is constituted, so as to identify the accusation, etc.

The formal requisites are, first, the *venue,* which at common law should always be laid in the county where the offence has been committed, although the charge be in its nature transitory, as a battery, etc. (Bouv. Law Dict. Vol. 1, p. 789, under the head "Indictment;" Blackstone Com. Book 4, pp. 306, 307.)

Now, then, on examination of the record in the said case, the court finds that the indictment of the grand jury is defective in two essential points, namely, in that it is not framed with sufficient certainty, and that the charge does not contain a certain description of the misdemeanor of which the defendant, now appellant, is accused and a statement of the facts by which it is constituted, so as to identify the accusation. The general statement, "an aggravated assault with attempt to shoot," is not sufficient to constitute the crime or misdemeanor, since it does not convey to the mind the nature of the offence in law.

It is the opinion of this court, therefore, that the court below erred in refusing defendant, now appellant, an arrest of judgment. "Any want of sufficient certainty in the indictment (as in the statement of place, where material) of the person against whom the offence was committed, or of the facts and circumstances constituting the offence, or otherwise, which is not aided by the verdict, is a ground for arresting the judgment. In criminal cases an arrest of judgment is founded on exceptions to the indictment. (Bouv. Law Dict. Vol. 1, p. 185: "Arrest of Judgment.")

And further, there is manifest error in the ruling of the court below, where it assigned as a reason for refusing

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to sustain the motion of the appellant for arrest of judgment that "to admit an arrest of judgment would further work corruption in the Judiciary Department;" seeing that in the opinion of this court the motion for arrest of judgment was within the scope of the law and supported by its spirit and meaning. This court is also of the opinion that the judgment of the court below should not be affirmed, for the reason that it inflicts a punishment not compatible with law and justice in such cases made and provided, for the Constitution of Liberia declares that "excessive bail shall not be required, nor excessive fines imposed, nor excessive punishment inflicted." In this instance the punishment was a fine of fifty dollars, disfranchisement, and imprisonment in chains for two weeks with hard labor, which the court says is suitable to crimes and not to a misdemeanor.

The court further says that the court below erred in rendering said judgment, for the reason that the verdict of the jury was manifestly out of accord with the evidence in the case, which evidence shows conclusively that the appellant acted in self-defence against the said R. T. Ellis.

For the above reasons this court adjudges that the judgment of the court below is reversed. The clerk of this court is hereby ordered to issue a mandate to the judge of the court below, to the effect of this judgment.

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# J. H. TUBMAN, Appellant, *vs.* WESTPHAL, STAVENOW & CO., Appellees.

[January Term, A. D. 1900.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Maryland County.*

*Injunction.*

*Landlord and tenant.*

An action for the violation of contract is the proper action to bring against a tenant who has made default in the payment of rent; ejectment will not lie and if brought may be enjoined.

In an action of ejectment brought by the landlord against his tenant for the violation of the covenants and agreements of the lease, in which he sought to eject the lessee, it was held that an action for the violation of contract was the proper action, and an injunction on the ejectment suit was sustained.

This case was tried and determined in the Court of Quarter Sessions and Common Pleas, Maryland County, sitting in equity, at its November term, A. D. 1899. It is brought up to this court upon a bill of exceptions by the appellant, for review and final disposition. The record in the case is most voluminous, and therefore most fatiguing and distressing to review, but the court, after a careful and most laborious reading, has deducted the following summary as the gist of the case, which it will here give before concluding.

It appears that in the year A. D. 1897, J. H. Tubman, appellant, leased by agreement certain premises in the County of Maryland, City of Harper, to Westphal, Stavenow & Co., a German mercantile house doing mercantile business in the said county, for a term of ten years, to end A. D. 1907, for the consideration of three hundred dollars available money per year. It also appears that appellant opened an account business with appellees to a large amount, and was then indebted to appellees in the sum of twenty-five hundred dollars. Appellant applied to appellees for his lease money (three hundred dollars), when appellees informed him that they had

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placed the sum of three hundred dollars to his credit on their books. To this arrangement appellant dissented, and at once gave notice to appellees to vacate the said premises in question within fifteen days, or he, the appellant, would eject them by law. Appellees, to prevent the ejectment, sued out a writ of injunction against appellant, and in the meantime deposited in the custody of the court three hundred dollars, one year's lease money, and prayed the court to compel appellant to take the said sum of money, which appellant refused to do, alleging that appellees had violated the conditions of the agreement.

The injunction was tried by the court below, sitting in equity, and judgment was rendered in favor of appellees, perpetuating the injunction. To this judgment appellant took exceptions and appealed to the Supreme Court.

After a careful survey of the circumstances in connection with the case, this court says that appellant was wrong to order appellees to vacate the said premises and to give them notice that he would eject them if they failed to comply with the order to vacate said premises within fifteen days; for if appellees had violated the terms of the agreement he, appellant, should have entered an action against appellees for breach of contract. Appellant neglected to enter such an action, which he had a legal right to enter if proof was manifest that the appellees had violated the terms of the agreement; but instead, he took an unjustifiable course. Therefore this court says, that to secure themselves against unlawful ejectment appellees were justified in enjoining appellant.

Reviewing all the circumstances that govern the case, this court further says that the court below did not err in rendering judgment to perpetuate the injunction; for it is equitable and just that men should do unto others as they would have others do unto them. The perpetuating of the injunction simply enjoins appellant

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from further molesting appellees by unlawful ejectment in this particular case, and does not vitiate and make void the terms of the agreement made and subscribed to by the contracting parties. And the court further says that it is unwilling, as the last legal and equitable resort for justice, to lay a precedent on account of technicalities that will prevent all men from enjoying their full rights under the law of the land, be they Liberians or foreigners. The court knows no north, no south; no rich, no poor; no Liberian, no foreigner; and it can guarantee no rights or privileges other than what the Constitution and the laws of the land guarantee to each. Its motto is, "Let justice be done to all men." And the court will not lend its aid to men who seek to take advantage of others by evading a righteous and equitable course of conduct, however adroitly they may endeavor to cover their intentions, for equity is righteousness.

The court therefore affirms the judgment of the court below and adjudges that appellant shall pay all legal costs in this action. The clerk is hereby ordered to issue a mandate to the judge of the court from which this action emanated, to the effect of this judgment.

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## A. WOERMAN, Plaintiff in Error, *vs.* J. A. DOUGAN, Defendant in Error.

[January Term, A. D. 1900.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Grand Bassa County.*

*Debt.*

This is an appeal from the judgment and proceedings of the Court of Quarter Sessions, Grand Bassa County, at its March term, A. D. 1898. At the call of this case the defendant in error failed to appear either in person or by attorney, although cognizant of the fact that the case was docketed for review at this session of the court.

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Whereupon plaintiff in error motioned this court for judgment by default.

It being a well settled principle of law that whenever a party to a cause refuses or neglects to resist the claim of his adversary, or refuses or neglects to appear at the trial, because of this default judgment may be rendered against him, this court is of opinion that the motion is well founded and therefore adjudges that the plaintiff in error is entitled to recover. Under the provisions of the statute laws, as soon as an imperfect judgment is given the court shall proceed to render a final judgment. The court therefore enters the following final judgment.

This court adjudges that the plaintiff in error, A. Woerman, recover from J. A. Dougan, the defendant in error, the sum of fifty-eight dollars and ninety-four cents, the amount of costs demanded in this action, as well as all lawful costs of this action, and the clerk of this court is hereby ordered to issue a mandate to the court below, as to this judgment.

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# MARY C. BLACKLIDGE, Plaintiff in Error, *vs.* ABRAM BLACKLIDGE, MARY BLACKLIDGE, WILLIAM A. BLACKLIDGE, FREDERICK CLOCK and MARIA CLOCK, Defendants in Error.

[January Term, A. D. 1901.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Injunction.*

*Writ of summons—Fifteen days' notice—Actions of injunction—Formal requisites to affidavits.*

1. It was held that the statute requiring fifteen days' notice to be given to defendants in civil suits was general in its application and applied to suits in injunction as well as other suits. The Statute of 1870 permits the issuing of the writ and the hearing of the case at any time, whether in or out of term time, provided the defendant has had notice of the filing of the case at least fifteen days prior to the day the case is put down for hearing.

2. It was also held that where several persons have joined in an action of injunction as plaintiffs, and the affidavit required by statute to be attached to the application for the writ is signed by only one of the co-plaintiffs in his individual capacity and not as the agent of his co-plaintiffs, the affidavit is materially defective and will vitiate the entire action.

This is a cause of momentous importance, involving principles and interests of a far-reaching nature; and for the satisfaction of the general public these principles should be clearly defined and the complications which grow out of them settled for all time, thereby establishing a precedent that would put an end to unpleasant litigations of the kind and thereby give rest to the public mind. The court would be happy to improve the occasion to offer such a boon to the public; but, unhappily, the nature and circumstances of the case are such that the court finds it difficult to do so without violating vital and fundamental principles of the statute laws of the country.

It is the duty of litigants, for their own interest, to so surround their causes with the safeguards of the law as to secure them against any serious miscarriage and

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thereby pave the way to the securing of the great benefits which they seek to obtain under the law. Litigants must not expect courts to do for them that which it is their duty to do for themselves.

This case was tried and determined against defendant below, now plaintiff in error, at the September term of the Court of Quarter Sessions and Common Pleas, Montserrado County, sitting in equity, A. D. 1899, but she, the defendant below, believing that manifest wrong had been done her, brought the case to this final judicatory, upon a writ of error, for review. In the assignment of errors by the defendant below, now plaintiff in error, the said plaintiff in error sets up or complains in the first count in her answer to the complaint of plaintiffs below, now defendants in error, that she had not been legally summoned; that is, she had not been summoned fifteen days before the day of the meeting of the court, the writ of injunction having been served on the 6th day of June, A. D. 1898, and the first day of the meeting of the court took place on the 13th day of June, A. D. 1898; and therefore she prayed the judge to dismiss the case and rule the plaintiffs below, now defendants in error, to pay costs; and that the judge below refused to sustain the said plea raised upon the ground, as he, the said judge, alleged, that the serving of a writ on a defendant fifteen days before the first day of the meeting of the court to which the return is to be made does not apply to cases of injunction.

On inspection of the record in the case the court finds the assignment to be correct; but before giving its opinion on the subject it will first quote the law bearing on that point: "Defendants or defendant who shall have been summoned fifteen days before the first day of the meeting of the court to which a return is to be made, shall be deemed to have been legally summoned, and be compelled to answer plaintiff; provided the plaintiff shall have filed his complaint in the clerk's office at least

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fifteen days before the session of the court. Nevertheless, when the peculiar circumstances of the case render it necessary, the court may in its discretion grant further time to the defendant." (Lib. Stat. 1st Bk. p. 123, sec. 11.) Again, "An action of injunction is an action in which the plaintiff seeks to compel defendant to permit matters to remain in the present state, either in pursuance of a contract, or because of a right growing out of the general principles of law. It is classed with actions founded on contract, as a matter of convenience, although it is capable of being applied in cases where the wrong is not precisely a breach of any contract." (Lib. Stat. 1st Bk. chap. 1, sec. 8.) Again, the Statute of 1870 provides that the judge may assign a day, either in or out of the term, for the hearing of the case.

Now, then, this court, after carefully considering and digesting the laws just quoted, fails to see wherein the law referring to the time of fifteen days' notice given to the defendant does not apply in cases of injunction. In the first quotation no distinction of actions is given or defined, but defendants or defendant are referred to, who must have the benefit of the time specified. In the second quotation it is shown that an action of injunction is an action, and certainly if it be an action, there must be two parties to the action and one of them must be the defendant. In the quotation there is nothing set forth that would debar the defendant from the benefit of the fifteen days' notice for preparation to answer his adversary as the law contemplates he has a right to do.

And the court further says that the writ of injunction may be issued and served at any time, which, however, is not to be so construed as to deprive the defendant of the benefit of the fifteen days' notice; and the court may at any time appoint a day in or out of the term for the hearing of the case, provided the fifteen days are allowed after summoning the defendant. The court, therefore, in view of its conception of the law as given,

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says that the judge below erred in ruling out defendant's (now plaintiff in error) plea as aforesaid.

And further, in the third count of the assignment the plaintiff in error complains of the action of the judge below in ruling out the fourth plea in her answer to the complaint in reference to the insufficiency of the affidavit to the plaintiffs' (now defendants in error) complaint.

Mr. Bouvier defines affidavit as follows: "A statement or declaration reduced to writing and sworn or affirmed to before some officer who has the authority to administer the oath or affirmation." He goes on further to give the essentials thus: "An affidavit must intelligibly refer to the cause in which it is made; the place where the affidavit is taken must be stated to show that it was taken within the officer's jurisdiction. The deponent must sign the affidavit at the end." In general, "an affidavit must describe the deponent sufficiently to show he is entitled to offer it; that he is a party or agent or attorney of a party to the proceedings," etc. (1st Bouv. Law Dict. "Affidavit.")

The statute laws of Liberia require that "an action of injunction must be commenced by a writ of injunction, to obtain which the plaintiff must file his complaint, verified by his own oath and such other evidence as the judge may think proper." (Lib. Stat. 1st Bk. chap. 2, sec. 37.) Now, upon examination of the record in the case before the court, the court finds that the affidavit in question is most seriously defective, in that it is not signed by all of the plaintiffs as deponents, nor for any one acting for them, as the agent, but simply by Abram Blacklidge, one of the deponents. It not being signed by all of the plaintiffs as deponents, or one of them acting for the others, or an attorney as their agent, the neglect constitutes a non-joinder of interest and hence the affidavit is rendered void. This court fails to see, from its conception of the law governing the points

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raised in the answer of defendant below, now plaintiff in error, how the judge below could have proceeded to hear the merits of the case then pending before him and finally sustain the injunction.

This court, therefore, in view of the fact that there existed sufficient legal ground for the dismissal of the case on the pleadings before entering upon the merits, adjudges that the various rulings of the judge below are erroneous and illegal, and also reverses the final judgment, dissolves the injunction, and rules the defendants in error to pay costs. The clerk of this court is hereby ordered to issue a mandate, informing the judge below of this judgment.

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## REPUBLIC OF LIBERIA, Appellant, *vs.* JAMES JOHNSON, Appellee.

[January Term, A. D. 1901.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Assault and Battery.*

This case is before this court in obedience to a writ of certiorari issued by the Chief Justice for legal cause, in support of law and justice. The record of the proceedings in the court below discloses to this court evidence that there has been no trial of this case within the meaning of the law. Hence this court cannot see for whom judgment ought to be rendered. Therefore the case is remanded to the court from whence it comes, with directions that the said court resume jurisdiction over the case and parties, and try the same according to law and justice, recording all testimony, oral and written, offered at the trial. And further, that the trial of this case take place at the next session of the court in which it was first entered, after notice of this order.

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## A. FRANK, Agent for J. W. West, Appellant, *vs.* Z. T. GREENE, Appellee.

[January Term, A. D. 1901.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Debt.*

At the call of this case the appellee failed to appear and answer as is required by law, whereupon the appellant moved for judgment by default.

This court sustains the motion and hereby reverses the judgment rendered by the court below, and adjudges that the appellant recover from the appellee the debt sued for in this action, with all costs of the suit, and that the court in which the action was entered on the application of the appellant issue execution upon its judgment rendered.

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## SAMUEL S. LEDLOW, Appellant, *vs.* THE REPUBLIC OF LIBERIA, Appellee.

[January Term, A. D. 1901.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Murder.*

*Plea of insanity—Expert testimony—Grades of evidence—What the State is bound to prove, to warrant conviction.*

In a trial upon an indictment for murder it was held that the plea of insanity is a good plea in bar, and when entered by prisoner it becomes imperative upon the State to prove the sanity of the prisoner to warrant conviction. It was also held that expert testimony of a duly qualified physician is evidence of a high grade and when based upon diagnosis of the particular case should be received with great weight. So, also, evidence showing the strange actions of a prisoner tending to show an unsound state of mind, is admissable where insanity is plead.

It was also held that there are degrees of insanity and that a party may be mentally deranged with respect to certain things, as when one is under an hallucination that somebody is seeking to kill him, while on other matters his mind and memory may be sound.

This case is before this court upon an appeal from the Court of Quarter Sessions and Common Pleas, Mont-

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serrado County. From an inspection of the record in the case we find that the appellant was indicted and tried at the June term of the Court of Quarter Sessions and Common Pleas of said county, 1900, for the atrocious crime of murder, to which charge the appellant pleaded "not guilty."

A jury was empanelled to try the issue raised by appellant's plea, and after hearing the evidence in the case and the arguments by the counsels for and against the accused, the case was submitted to the jury, who, after deliberating, returned a verdict of "guilty." Upon the said verdict the court below, on the 30th day of June, 1900, pronounced sentence, condemning him, the said Samuel S. Ledlow, to the punishment of death. To this judgment, as well as to the several specific rulings of the court below, during the trial, on questions of evidence, the appellant excepted and has brought the case before this court upon a bill of exceptions, for its review.

Having thus stated the nature of the case, the court will now consider the several exceptions laid in appellant's bill of exceptions. As to the first, second and third exceptions laid in the said bill, the court is of the opinion that these exceptions are not well founded in law, because the queries put to witnesses Smith and Porte by the State's attorney, and objected to by the counsel for the defence, were relevant to the issue and were proper questions to be put to the witnesses. The court below therefore did not err in overruling the objections raised to said questions. Passing over the fourth exception in the bill of exceptions, which this court does not regard material to its decision, the court will now proceed to consider the points raised in the fifth, sixth, seventh and eighth exceptions to the rulings of the court below upon questions propounded to witnesses Moore and Coker.

From the record we find that witness Moore, who was a witness for the defence at the trial, gave in evidence,

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based upon his scientific knowledge as a regularly qualified physician, his opinion on the general nature and description of that disease of the mind called in medical jurisprudence *dementia accidentalis,* which disease, in one of its forms, the accused alleged he was affected with. This witness further stated that the accused had been under his treatment prior to the time when the homicide was committed, and that the diagnosis made in his particular case revealed the fact that the accused was suffering from some mental derangement which rendered him insane in a degree. This testimony was of vast importance to the case and, unless impeached by strong rebutting evidence, ought to have been received with a considerable degree of weight. So too with the testimony of Coker, which, although not coming from a medical man, was nevertheless pertinent to the case, because it revealed facts concerning the strange, uncustomary actions of the accused, shortly before the commission of the crime charged; which evidence, taken with that of Dr. Moore, would tend to enable the jury to determine whether or not the agent of the crime was such a person as the law would fix responsibility upon. The testimony of Moore and Coker was essentially relevant, as were also the questions propounded to them by the counsellor for the defence and ruled out by the court below. This court is firmly of the opinion that the judge of the court below erred in ruling out the said questions. (Lib. Stat. Bk. 1, Chap. 12, secs. 1 and 32; I Arch. Crim. Prac. and Pleadings, pp. 33, 34.)

We proceed next to consider the ninth and tenth exceptions laid in the appellant's bill of exceptions, upon which exceptions the case chiefly hangs. In these exceptions the appellant maintains that his guilt was not made out by the State at the trial with that certainty required by law, and that therefore the court below ought to have granted him a new trial, upon the ground that the verdict was manifestly against the evidence.

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Let us see by reference to the record whether sufficient evidence was produced at the trial to exclude every reasonable hypothesis as to the innocence of the accused; secondly, whether the plea of insanity raised by the counsellor for the defense in his arguments, in excuse of the homicide, was supported at the trial by unimpeached evidence, and whether the plea is sufficient in law to excuse the prisoner; thirdly, whether the prosecution made out the sanity of the accused beyond a reasonable doubt; fourthly, whether a person who is under an insane delusion as to existing facts, and commits an offence in consequence thereof, is thereby excusable; and lastly, whether there were apparent grounds for setting aside the verdict of the jury and awarding a new trial.

As to the first proposition, this court would remark that it has most carefully and scrutinizingly examined the whole evidence in this case, and has patiently applied the law governing evidence in such cases. From the testimony of the witnesses Coker, Moore and Porte there is proof that the accused was suffering from mental delusion on this particular point; namely, that some person or persons, fancied in his mind, were seeking to take his life either by means of witchcraft or otherwise; that the accused called at Coker's house three different times immediately before the day the crime was committed, and that his conduct on these occasions was not that of one in a sound state of mind. Witness Porte testified that he had discovered the accused not to be in a sound state of mind about five years ago; and he goes on to corroborate the strange conduct of the accused mentioned by witness Coker, which also led him to believe in the insanity of the prisoner. Witness Moore's statement is also very pertinent to the cause, first because of its scientific or professional character, and secondly on account of the direct knowledge which he claims to possess, growing out of his diagnosis of the accused made

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in this particular case. To the plea of insanity, upon which the case chiefly rested, the testimony of witness Moore was indeed of great weight and value to the determination of said plea.

This court is unanimously of the opinion that the testimony of the aforesaid witnesses did establish a cogent case in favor of the accused, which the State should have rebutted by evidence of such preponderance as would have excluded every reasonable and rational doubt as to the guilt of the accused. (I Arch. Crim. Prac. and Pleadings, p. 350, note 1; I Bouv. Law Dict. pp. 717, 718, under the head of "Insanity.")

As to the second and third queries, the court would remark before proceeding further that homicide is divided by the common law authorities into three classes, namely, excusable homicide, felonious homicide or murder, and justifiable homicide. To constitute murder, which is the crime for which the accused was indicted, there must be a wilful killing of some human being, and there must appear to have been malice, either expressed or such as can legally be implied. According to Coke's definition of the term (II Bouv. Law Dict. p. 201, under the head of "Murder"), the agent must be of sound mind and memory; and this definition of Mr. Coke is sustained by most, if not all, of the English and American common law writers.

Insanity, therefore, is a good and lawful plea in cases for murder, and if clearly and substantially proven will operate as a bar to a prosecution for murder, by showing that the law regards such homicide as excusable. But great care should be exercised in acquitting a prisoner on this plea. It would be as difficult as it would be unsafe, to lay down a rule that would apply to the infinite variety of forms in which insanity or derangement may show itself. Each case must therefore depend very much upon the circumstances, facts and developments which attend it.

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In the case of the United States against McGlue (I Curtis U. S. C. C. Rep.) the learned Judge Curtis remarked that there are undoubtedly persons of great general ability, filling important stations in life, who upon some one subject are insane; and there are others whose minds are such that the conclusion of their reason and the result of their judgment are very far from being right. But, says he, it is not the business of the law to inquire into these peculiarities, but solely whether the accused was capable of having and did have a *criminal intent*. If he had, it punishes him, if not, it holds him unpunishable. And it supplies the test by which the jury is to ascertain whether the accused be so far insane as to be irresponsible.

This court is of the opinion that there was strong and sufficient evidence produced at the trial, as already referred to by us, to show that the accused, at the time the crime was committed, was laboring under the delusion that people wanted to kill him and that his life was in imminent danger, and this fact, taken in connection with the circumstances under which the homicide was committed, renders the offence excusable in law. The court below therefore erred in not awarding a new trial and in pronouncing sentence upon one whom it had been clearly shown was not sound in mind and memory. This court does not hesitate to declare its unwillingness to confirm a judgment of death where it appears that the homicide is excusable. It is better, observes Sir Mathew Hale, that ten guilty persons go unpunished than that one innocent person should be punished; but how much more proper, is it not, that courts should in all cases acquit when the innocence of the accused is made apparent to it. The judgment of the court below is therefore reversed and the clerk of this court is hereby authorized to notify the judge of the court below of this decision.

And for the public safety this court further directs that the said Samuel S. Ledlow, who has been made to

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appear as not being in a sound state of mind, shall not be set at large, but must be confined in prison until such time as his sanity can be made to appear, upon a certificate to be signed by at least two qualified physicians, certifying to his sanity, whereupon the president, if satisfied, may grant his release.

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## M. DINKLAGE, Agent for A. WOERMAN, Appellant, *vs.* EDWARD W. LILES, Appellee.

[January Term, A. D. 1901.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Grand Bassa County.*

*Debt.*

Where in a suit for debt growing out of written and verbal contracts the declaration failed to state the contracts, as also the violation, it was held that the suit could not be sustained.

This action is before this court upon a writ of certiorari issued by the Chief Justice, upon the application of the appellant (defendant below.) The action is founded in debt, for the recovery of one thousand three hundred dollars and sixty-eight cents, said to be due to the appellee, or plaintiff below, by force of written instruments and a verbal contract. A trial of the facts was had before His Honor T. I. Tate of the Court of Pleas and Quarter Sessions, Grand Bassa County, at the March term of said court, 1900, at which trial the appellee, or plaintiff below, obtained a verdict and judgment in his favor. The appellant, not being satisfied with said verdict, judgment, and other rulings of the court during the trial, excepted to the same and moved for an appeal, under the provision of the statutes, to this jurisdiction, but on account of some alleged neglect of the judge the appeal was not completed within the time limited by law. Whereupon the appellant in lawful form applied to this court for a writ of certiorari, in order that this court might review the case and correct the

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errors, if any existing, which writ was granted and served upon the said Judge T. I. Tate and promptly obeyed.

This court in considering the case wishes to say that a complaint in an action growing out of contract must state the contract and the violation thereof; and if the contract is merely implied by law it must state the facts by which the law will imply it. In this case we fail to see wherein an expressed or implied contract is stated.

Viewing this case from every legal standpoint this court fails to see by what means the jury and court below arrived at the conclusion that the plaintiff below recover from the defendant the sum demanded in the complaint; the conclusion being unsupported by the slightest shadow of proof. Such verdict and judgment being so contrary to law and justice, this court feels bound to reverse it. Therefore this court adjudges that the judgment of the court below is reversed, and that the appellant recover from the appellee all legal costs of the action. And the clerk of this court in due form will notify the court below to the effect of this judgment.

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## S. S. LEDLOW, Appellant, *vs.* THE REPUBLIC OF LIBERIA, Appellee.

[January Term, A. D. 1901.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Murder.*

*Motion to Dismiss Appeal.*

In the above entitled case this court is asked for a ruling upon the motion of the Attorney-General acting for and on behalf of the Republic of Liberia, appellee, to dismiss the appeal pending before it, in which S. S. Ledlow is appellant and the Republic of Liberia appellee, upon the ground that the appellant failed to file a bond in taking out the appeal to this honorable court.

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After carefully considering the motion and investigating the law relied upon by the appellee's counsel, this court has failed to discover the legal foundation of the motion. The appeal in this case is taken in a trial for murder. The offence being a capital offence, the Constitution of Liberia forbids that bail be allowed (Const. Lib. Art. 1, p. 10, sec. 20), and therefore the appellant is legally presumed to be in actual custody. The custody of the appellant's person in the identical suit in which the appeal is taken, operates as a security and is what the Constitution regards as sufficient indemnity in appeals in capital offences.

"Reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself." (Legal Maxims.)

In the case of J. C. B. Roye against the Republic of Liberia, adjudicated before this court at its session of 1892, the court held that the idea of an appeal bond in capital offences is entirely excluded by the provision of the Constitution prohibiting bail in such offences; and we unhesitatingly affirm in the present case the same view with respect to bond in such cases.

The provision of the act of the Legislature (approved January, A. D. 1894) with reference to appeal bonds, on which the counsel for the appellee seems to have chiefly rested, must be construed in exact harmony with the spirit and language of the Constitution, which is the organic law of the State. A legislative enactment cannot overthrow or take precedence to a constitutional provision; the inflexible rule governing interpretation of the statutes is, that whenever in the construction of a statute there arises a conflict with some constitutional provisions, the latter must predominate.

It is the opinion of this court that the statutes requiring the filing of bonds in cases of appeal does not apply to appeals in capital offences. For the foregoing reasons the court will not sustain the motion of the appellee to dismiss the said appeal.

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## W. J. McBURROUGH, Appellant, *vs.* THE REPUBLIC OF LIBERIA, Appellee.

[January Term, A. D. 1901.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Seduction.*

*Motion to Dismiss Appeal.*

The Republic of Liberia, appellee in the above entitled case, in which W. J. McBurrough is appellant, "respectfully motions this honorable court to dismiss this case and rule the appellant to pay all costs, because the said appellant has violated the statute law of this Republic in that he has filed no appeal bond; that is to say, the document filed in this case as a bond is not the bond which the law requires, because it is not signed by the appellant himself or by any attorney or person acting for him, as will more fully appear to this honorable court by inspection of said document filed in the record of this case, as well as by inspection of the original paper filed in the clerk's office in the court below; all of which the appellee is ready to prove."

After arguments and the inspection of said instrument purporting to be an appeal bond, by the court, the court sustains the motion for dismissal of said appeal, the same being well founded in law. Therefore the case is dismissed and the court below is hereby authorized to resume jurisdiction in said case.

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## J. W. WEST, Appellant, *vs.* THE REPUBLIC OF LIBERIA, Appellee.

[January Term, A. D. 1901.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Libel for Non-Payment of License.*

*Motion to Dismiss Appeal.*

Upon this case being called up the counsellor for the appellee submitted a motion to dismiss the case upon the grounds, first, that costs had not been paid in the court below, and secondly, that no notice of appeal had been served upon the appellee in said case.

The court upon review of said motion finds that the case has been brought before this court upon a writ of certiorari, which is a remedial writ issued by a superior tribunal to a court of inferior jurisdiction commanding it to forward the record for review, upon some alleged irregularity in law which occurred at the trial in the court below. It is not in the nature of an appeal, nor a writ of error; the writ of certiorari operates as a supercedeas to further proceedings in the court below, which writ is peremptory and must be obeyed by the judge of the court below. It is therefore the opinion of this court that the act (Leg. Lib. 1894) respecting the payment of costs and issuing of notice in cases of appeals, does not apply to writs of certiorari.

For the foregoing reasons the court does not sustain the motion to dismiss the said case.

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## J. J. W. JOHNS, Plaintiff in Error, *vs.* HERMANN E. HIRSCH, Agent for A. Woerman, Defendant in Error.

[January Term, A. D. 1902.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

*Ejectment.*

*Withdrawal of Suit.*

Where before the case was called at the bar the appellant entered a withdrawal, the withdrawal was said to be in keeping with the statute and was allowed.

Before this case was called up for hearing and the suitors called at the bar, the clerk informed the court that the counsellor for the plaintiff in error had filed in his office a withdrawal of the suit, notwithstanding the case was assigned for trial today.

The court is of the opinion that a withdrawal of a case may be filed at any time "before the suit is ready for trial," and that a case is to be considered upon trial, within the meaning of the statute, after it is called up and the suitors called at the bar by the clerk. In the present case the withdrawal having been filed in the clerk's office prior to the case being called up for hearing, it is a right which the plaintiff in error may exercise.

Therefore this court allows the withdrawal, with the reservation therein contained that the party withdrawing shall pay all costs in cases of withdrawal.

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## A. FRANCK, Agent for J. W. West, Appellant, *vs.* J. F. SHERMAN, Appellee.

[January Term, A. D. 1902.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

*Debt.*

It is not a legal appearance where at the trial an attorney appears and states that he has only been instructed to offer a motion for continuation, but knows nothing of the case and can go no further; under such circumstances the opposite party will be entitled to judgment by default.

This case was brought up to the Supreme Court on a bill of exceptions by the appellant, for review, that substantial justice might be secured, he being dissatisfied with the judgment rendered in the court below, in Sinoe County. When the case was called up for review and final adjudication, the appellant answered in the persons of his counsellors S. A. Ross and S. E. F. Codogan. The appellee answered partially, by T. W. Haynes; that is to say, he so far answered as to inform the court that he had been authorized by Hon. R. A. Wright, counsellor for the appellee, to motion the court to postpone the case until the January term of the court in 1903, for the reason that he had received no notice of any appeal having been taken out and sent up to this court; but that he had no further interest in the case and knew nothing of its merits; which motion, as referred to, he made. The counsel for the appellant objected to the sustaining of the motion, upon the ground that appellee had a notice served upon him, which the court would find correct by referring to the record in the case.

After examination of the record by the court it was ascertained that the appellee had been legally notified of the appeal taken; and since the court is informed by Counsel T. W. Haynes that he does not represent the case further than offering the motion referred to, as a

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friendly act to a brother counsel, the court, while desiring to go into the merits of the case so as to be fully able to mete out the ends of justice, considers it just to consider the non-appearance of the appellee as an abandonment of the case.

Therefore, upon the motion of the appellant for judgment, the court adjudges that the appellant recover from the appellee the amount of debt claimed and all legal costs in the action. The clerk of this court will issue a mandate to the judge of the court below, to the effect of this judgment.

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## WILLIAM GOULD and WESLEY S. DUNN, Plaintiffs in Error, *vs.* AMANDA GOULD, Defendant in Error.

[January Term, A. D. 1903.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Maryland County.*

*Damages for Trespass.*

*Arrest of judgment—Party entitled to submit a motion first—Written evidence.*

1. The party filing the last pleading is entitled to motion the court first on any legal defect in the pleadings of his adversary.

2. Where in a civil action a party offered in evidence the record of a criminal court it was held that it was not admissible; but where in an action of damages for trespass the defendant offered in evidence a deed to prove that the property which was the subject of the trespass did not belong to plaintiff, it was held to be error in the judge below, in refusing to admit the document as evidence.

The case above named is one of great complexity, and owing to its peculiar proceedings is difficult to analyse. It was originally entered in the Court of Quarter Sessions and Common Pleas, Grand Bassa County, at the December term, A. D. 1900, but the venue was changed by W. S. Dunn, now plaintiff in error, to the Court of Quarter Sessions and Common Pleas, Maryland County. In that court it was tried at its February term, A. D. 1901. But the plaintiff, now defendant in error, being

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dissatisfied with the verdict of the jury, which she considered to be manifestly against the law and evidence in the case, motioned the court below for a new trial, which the said court granted, to be held at the same session of the court. The case was tried *de novo*, and a second jury gave verdict in favor of the plaintiff, now defendant in error, to which defendants objected and motioned the court for arrest of judgment, which the court would not sustain, assigning as a reason that the ground of the motion was not what the law requires for the arrest of judgment, and proceeded to render final judgment. The defendants, now plaintiffs in error, believing that injustice had been done to them, and being displeased with the verdict of the jury, and considering the various rulings and the judgment of the court as erroneous, brought the case up to this court on an assignment of errors, that they may be corrected (if any there are), and substantial justice given.

The assignment of errors consists of ten counts, but the court will only pass on those which are sufficient to determine the case, they being more pertinent. The first assignment is as follows: "Because on the fourteenth day of May, A. D. 1901, when the case was called up, the defendants, now plaintiffs in error, gave notice to the court that they had a motion to offer to dismiss plaintiff's action, but the court ruled that the plaintiff had a right to offer a motion first."

On this point this court says the judge below erred in his ruling, and is of the opinion that the party who pleads last has the right, legally, to motion the court to dismiss. The rule of court granting to plaintiff the right to begin and close all pleadings, does not preclude the defendants from petitioning the court to dismiss a cause for manifest error in the pleading, provided the defendant is in a position to move first, for it is evident that the plaintiff will not motion for the dismissal of his own cause. In the case under review the defendants,

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now plaintiffs in error, gave notice to the court that they had a motion to dismiss the action of plaintiff (now defendant in error), which this court says the court below should have heard, and, if based on law, should have acted accordingly. (I Bouv. Law Dict. under the head of "Motions.") The judge below, in failing to hear and entertain the motion of defendants, erred.

Passing over the second count in the assignment of errors, this court will quote and consider the third assignment, as follows:—

"And also, because, on the seventeenth day of May aforesaid, the plaintiff at the trial introduced as written evidence, in her own favor, the records of the Court of Quarter Sessions and Common Pleas, of Grand Bassa County, in the criminal proceedings instituted against the defendants for the same offence in which she was a witness, to wit: Republic of Liberia, plaintiff, against William Gould and Wesley S. Dunn, defendants, charged with assault and battery with intent to kill. The defendants objected, but the court overruled the objection and admitted the record, to which ruling the defendants excepted."

It is the opinion of this court that the judge below erred in admitting the said record as evidence, for the reason that the said record as evidence in the said criminal case could not be used to establish facts in a civil suit; for although the said Dunn and Gould were found guilty of the alleged charge, still the evidence would not be sufficient to establish facts in a case of trespass. (Lib. Stat. Chap. 11. secs. 19 and 21; I Greenleaf on Evidence, secs. 537 and 538; II Greenleaf, sec. 90.)

And again, the court could not admit the said record as evidence in this case because it would stultify the court in rendering judgment in the said case for assault and battery with intent to kill, as said case is now before this court for review, defendants having appealed from

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the verdict, rulings and decision of the court below; and should this court admit the said record as evidence in this case, as being conclusive and sufficient to establish the facts, it would be practically deciding the said case of assault and battery, appealed, before it is reviewed.

"Also because on the seventeenth day of May aforesaid, at the trial, the defendants introduced as written evidence in their favor the deed of Samuel Gould and the record of the Court of Quarter Sessions of Grand Bassa County, showing that the property was not Amanda Gould's, and that she had no right thereto; but the court refused to admit said written evidence, to which the defendants excepted."

The Statutes of Liberia declare that "deeds and other writings shall be evidence against all parties to them, and shall also be evidence of the transfer of all titles or rights transferable by them, against all mankind." (Lib. Stat. Chap. 11, secs. 1 and 25.)

Now, then, this court says that the judge below erred in not admitting the said written evidence; for defendants (now plaintiffs in error) were carried into court by plaintiff (now defendant in error) upon a charge of damages for trespass, and it was necessary for the defendants (now plaintiffs in error) to prove that they committed no trespass, as the property was not that of plaintiff (now defendant in error).

From inspecting the record in the case this court discovers no evidence, written or oral, sufficient to establish the claim of Amanda Gould, or to justify the verdict and judgment of the jury and court below against William Gould and Wesley S. Dunn. The foregoing points in the assignment of errors, quoted and traversed, together with non-conclusive evidence in the case, are sufficient grounds for the toppling and overthrow of the case.

This court therefore adjudges that the judgment of the court below be reversed, and that plaintiffs in error

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recover all legal costs of this action. The clerk will issue a mandate to the judge of the court of Quarter Sessions and Common Pleas of Maryland County to the effect of this judgment.

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## WILLIAM GOULD and WESLEY S. DUNN, Appellants, *vs.* REPUBLIC OF LIBERIA, Appellee.

[January Term, A. D. 1903.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Grand Bassa County.*

*Assault and Battery with Intent to Kill.*

1. Where in an indictment for felony the prisoner upon arraignment alleged that the offence committed did not amount to a felony, and this objection the inferior court overruled, the ruling was sustained by the appellate court, which held that where there are legal defects in an indictment they should be taken advantage of either before trial upon demurrer or motion to quash, or after verdict upon a motion to arrest judgment.

2. A party is not rendered incompetent as a witness on account of interest, in a criminal prosecution, because his name appears in the special plea of prisoner's defence; where a witness had been admitted and allowed to depose at the trial it was held to be error in the court in not allowing the testimony to go before the jury.

3. The misdirection of the judge to the jury upon the law, where it led to an erroneous and illegal verdict, will be corrected by the appellate court.

4. Where the prosecutrix had assented to an arrangement which acknowledged the right of possession of the prisoner in certain property, and afterwards sought to make a forcible entry upon the property which resulted in injuries to her person, it was held that the prisoner might show the assent of the prosecutrix to his right of possession, and her subsequent forcible entry in justification of his conduct.

This is a case of assault and battery with intent to kill. The appellants, defendants in the court below, were indicted by the grand jurors for the County of Grand Bassa, at the June term of the Court of Quarter Sessions and Common Pleas, for 1900, for the aforesaid offence, and arraigned, tried, and convicted at the September term of said court for 1900. The appellants, believing that the verdict of the jury was unsupported by the evidence, tendered to the court below a motion

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for a new trial, which motion, having been heard by the court, was overruled. Upon this verdict the court below, on the 11th day of October, 1900, pronounced sentence, to which judgment, as well as to the other rulings of the court in the cause, the prisoners excepted and have brought the case before this court upon a bill of exceptions, for review.

We shall now proceed to consider the several points of exception set forth in the bill of exceptions. The first exception is to the ruling of the court below upon appellant's plea, and is taken as follows, to wit: "Because when, on the 28th day of September, A. D. 1900, the defendants, being arraigned, pleaded that the offence charged in the indictment was no felony, though being so charged in the indictment, and prayed his honor the judge to dismiss them from such indictment, he overruled the plea; to which defendants excepted," etc. We fail to discover the legal grounds upon which this exception is founded. This court is of opinion that if there were defects upon the face of the indictment the prisoners could only have taken advantage of the privilege afforded them, before the trial, upon a demurrer or motion to quash; or after trial, upon a motion in arrest of judgment, in accordance with the rules of practice. The court below did not err in its ruling on this point.

Passing over the second exception, which this court does not regard material to its decision of the case, we shall next consider the third exception, which reads as follows, to wit: "Because when, on the first day of October, the State called Amanda Gould and Alexander Moore as witnesses in the case of the Republic against William Gould and Wesley S. Dunn, the defendants objected to their being admitted as witnesses against them, because the names of Amanda Gould and Alexander Moore appeared in the special plea filed in this court in this trial, as rioters with others who caused all the evils which occurred on the 8th day of December, A. D. 1899, in

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Hartford, but his honor the judge overruled the objection," etc.

The statute laws of this country declare that "every witness shall be considered as competent who cannot clearly be shown to be incompetent; all objections not absolutely and directly going to competency shall go to credibility only." (Lib. Stat. Bk. 1, Chap. 12, p. 58, sec. 4.) And again (in sec. 9, Chap. 12, of the same book) we have the law with respect to the incompetency of a witness on account of interest in the cause, stated as follows: "No person shall be deemed an incompetent witness on account of an interest in the cause, except he be a party thereto, or bail or otherwise security in the cause, for the party who calls him, or be answerable over to such party, or be responsible for the costs or a part of them, or except the verdict or judgment can be given in evidence against him, or except he has an interest in the plaintiff's claim or the thing in dispute." Examining the record of the case we find no facts which in the opinion of this court would tend to render Amanda Gould and Alexander Moore incompetent witnesses in the case. The grounds relied upon by the counsel for the prisoners are that the said witnesses, being pleaded against in prisoners' special plea, as rioters, they therefore have an interest in the cause. This court is unwilling to give its sanction to such a view of the law governing the competency or admissibility of witnesses, or to lay down a rule which does not seem to it to be in keeping with reason—and certainly is not in agreement with law—whereby material testimony may be barred and the ends of justice defeated. This court holds that the court below did not err in admitting the evidence of witnesses Gould and Moore, as the weight and credibility of their evidence were questions to be weighed and considered by the jury.

The fourth exception is taken to the court's ordering "the evidence of Samuel Gould to be struck from the

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record in the case," etc. Undoubtedly the court erred in its ruling on this point. It is the duty of the court to decide the admissibility of a witness, but when it is admitted it is with the jury to decide upon the credibility and effect of his testimony. (Lib. Stat. Chap. 12, Bk. 1, sec. 2.)

The fifth exception reads: "Because his honor the judge misdirected the jury, in that he told them that William Gould ought to have left the matter of pulling down the house for his father to settle with those who pulled it down, and that he was not the actual owner of the premises." Obviously the jury was influenced by this direction or instruction of the judge in arriving at their verdict. And upon this point, which also involves the question of ownership and possession of the property in dispute, the case largely hangs. For if William Gould, the principal defendant in this case, was in legal and rightful possession of the property, the conduct of Amanda Gould, the prosecutrix, in seeking to make a forcible entry upon the said property and to carry it off, was unwarranted by law, and Gould may be justified if in repelling force by force in defence of his habitation, an injury was inflicted upon the assailant.

From an inspection of the record we find that the land, upon which stood the house in dispute, is the property of Samuel Gould, father of Joseph Gould, husband of the prosecutrix; that Joseph Gould, by permission of his father, Samuel Gould, lived upon the premises during his lifetime and that after his death Samuel, the owner of said property, allowed William Gould, the prisoner, to occupy the premises as a tenant at will. It doth also appear from the record, that on the death of Joseph Gould, husband of the prosecutrix, the said house—independent of the land—was entered in the inventory of his estate; that subsequently it was objected to by Samuel Gould, who claimed the house by virtue of ownership of the land, and that upon the

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matter being brought before the Monthly and Probate Court of said County, said court decided that Samuel Gould might retain the house, but that he pay the prosecutrix dower out of the same; to which ruling, it appears, both the prosecutrix and Samuel Gould assented, and from the evidence of A. B. Brooks, the administrator of the estate of Joseph Gould, a portion of the amount allotted prosecutrix as dower in said house was paid by Gould and accepted by the prosecutrix.

This court refrains from making any observations as to the legality or illegality of the manner in which the said Monthly and Probate Court disposed of the question of title of Samuel Gould in and to said house, and of prosecutrix's right of dower in the same. It is sufficient to our conclusions of the case to observe that prosecutrix, having acquiesced in the rulings of the Monthly and Probate Court in the premises to the effect that Samuel Gould should retain possession of the house and pay her dower therein, and she having gone further and accepted a part of said dower from Samuel Gould, she is estopped from going behind her own acts, and attempting to make a forcible entry upon the premises to the extent of causing a breach of the public peace, even supposing she had an interest in the same. (II Arch. Crim. Prac. and Pleadings, pp. 1129 to 1133.)

This court further says that having carefully weighed the evidence in the case and the law bearing thereon, it entertains the opinion that the prosecution did not make out a clear and conclusive case against the prisoners; and it further says that in view of the facts surrounding the case the court below ought to have granted prisoners a new trial. The court below committed error in not so doing and also in giving judgment against the prisoners upon a verdict not supported by evidence.

This court therefore reverses the judgment of the court below, and the clerk is hereby authorized to issue a mandate informing the judge of the court below of this decision.

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## D. J. SMALLWOOD and ELIJAH SMALLWOOD, Appellants, *vs.* REPUBLIC OF LIBERIA, Appellee.

[January Term, A. D. 1903.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Assault and Battery with Intent to Kill.*

*Criminal Law—Penalty.*

The penalty of one crime cannot be inflicted for the committing of a different offence.

The above entitled cause was brought up to this court for review, by a bill of exceptions taken to the judgment or sentence of the judge of the Court of Quarter Sessions and Common Pleas, Montserrado County, at its March term, A. D. 1902, in which court the cause was tried and determined. In reviewing the record of the case, this court finds the four following facts laid out:—

1. That D. J. Smallwood and Elijah Smallwood were charged by the Grand Jury of Montserrado County, at the March term of the said Court of Quarter Sessions and Common Pleas, 1902, with committing assault and battery upon the body of one Madison J. Moore, all of the parties being of the settlement of Arthington, Montserrado County, with intent to kill.

2. That the evidence proves that the assault and battery was committed with a deadly weapon—a razor—by which, grievous bodily harm was inflicted upon the body of the said Madison J. Moore.

3. That a jury brought in a verdict of guilty of committing assault and battery with no intent to kill.

4. That the judge rendered sentence, not based on the verdict of the jury, but on the evidence and the criminal code of the Statutes of 1899–1900 (page 4), under the head of "Assault and battery with a deadly weapon, etc., with intent to do grievous bodily harm."

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The incongruity of the proceedings in the case has occasioned the court some trouble in arriving at a just and equitable conclusion. In the bill of exceptions filed, the appellants, then prisoners, excepted to the sentence of the judge and prayed an appeal to this supreme jurisdiction. The substance of the sentence is as follows: "That each of the prisoners be fined the sum of fifty dollars and be imprisoned in the common jail in Monrovia for the term of one year, and work in chains."

Now, then, it is the opinion of this court that it is a principle of law that the penalty of one crime cannot be inflicted for the committing of a different offence. The judge below was strictly correct in giving the statutory criminal code precedence over the common law for the punishment of assault and battery; but in the meantime let us remark that there are different grades of assault and battery as defined in the Criminal Code of Liberia—assault and battery, or common assault; assault and battery with a deadly weapon, or stabbing, cutting and wounding with the intent to do grievous bodily harm; assault and battery with intent to kill, etc.; and the penalty of the one cannot be inflicted for another.

The jury in this case brought in a verdict of guilty of assault and battery, notwithstanding the evidence shows the battery was completed by a deadly weapon; hence it may be held that the judge was right in conforming his sentence to the evidence in the case; but it will be observed that the admissibility of the evidence is with the judge, or court, and the credibility of the same is with the jury, and, that the jury is judge of all mixed questions of law and fact, while the court is judge of the law. And again, while the opinion of the judge of the law, in his charge to the jury is the law to the jury, yet in this case, this court fails to find upon the record any charge whatever to the jury. The jury therefore, exercising their right to judge the mixed questions of law and facts in the case, arrived at a conclusion that

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the prisoners were guilty of assault and battery with intent to kill, and stopped there, saying nothing about the intent to do grievous bodily harm. And suppose that the verdict was manifestly out of accord with the facts in the case, still the defect is not remedied by the judge's passing a sentence not in accord with the jury's verdict.

To correct the error in the proceedings, the case should have come up to this court of final jurisdiction by a writ of error, which, no doubt, appellants saw would be to their disadvantage, hence they came upon a bill of exceptions.

In view of all the circumstances of the case and the law governing the same, this court says that appellants' objection to the sentence of the court below is well founded, and that the judge below erred in rendering a decision manifestly incompatible with the law and the verdict. But since it appears in the record of the case that the jury did find prisoners guilty of assault and battery, by which the court is justified in inferring that the battery was completed, and in order that the ends of justice may be met and the law of the land sustained, this court now proceeds to render the judgment which the court below should have rendered.

This court adjudges that the sentence of the court below is hereby reversed, and appellants D. J. Smallwood and Elijah Smallwood are each fined the sum of fifty dollars, to be paid in lawful money of this Republic immediately after they are apprised of this judgment by the court below. This judgment is based on the Criminal Code, page 5, under the head of "Assault and Battery, or Common Assault." The clerk of this court is hereby ordered to issue a mandate to the judge below, informing him of this decision.

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# W. S. DUNN, TOM COFFEE, JOHNSON & MOSES, Appellants, *vs.* REPUBLIC OF LIBERIA, Appellee.

[January Term, A. D. 1903.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Grand Bassa County.*

*Criminal law—Expert testimony—Burden of proof—Dying declaration.*

To qualify a person to give expert medical testimony, he must show that he holds a diploma or certificate from a medical college that he is a physician.

In criminal cases, the prosecution must prove guilt beyond a rational doubt.

A declaration made ten days before death, during which interval a person appears to be in usual health, does not constitute a dying declaration.

This case is brought before this court upon an appeal from the Court of Quarter Sessions and Common Pleas of Grand Bassa County. The appellants (defendants in the court below) were indicted by the Grand Jurors of the aforesaid County, and tried at the March term of the said court, 1902, for the atrocious crime of murder. Upon arraignment the appellants plead "not guilty" to the charge. A jury was empanelled to try the issue raised by said plea, who, after hearing the evidence, returned a verdict finding the appellants guilty of "murder in the second degree." The appellants objected to the verdict, and on the 4th day of April during the said session of said court, moved the court below for a new trial. The court overruled said motion and proceeded to pronounce sentence against said appellants, whereby each and all of them were condemned to twenty years' imprisonment. To this judgment, as well as to the other rulings of the court below in the premises, the appellants excepted and have brought the case before this court upon a bill of exceptions, for review.

Having thus briefly stated the case we shall now proceed to consider the several points laid in appellants' bill of exceptions. The first exception laid is founded

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upon a query put to witness C. C. Brown, for the prosecution, touching a conversation had between witness and deceased; the appellants taking as their ground that the question related to matters which were "hearsay." By referring to the record we find that that part of the testimony of witness Brown, objected to by appellants' attorney, related to a conversation held with the deceased some time *before* the commission of the crime for which the appellants are charged. Applying this conversation to the *res gestæ* or subject matter of the charge, we find no chain of connection between them. This court holds that that part of the evidence of witness Brown was irrelevant to the issue and therefore was not proper evidence to be submitted to the jury. The court below erred in overruling appellants' objection on this point and admitting that portion of witness' testimony as evidence.

The second exception is to the admission of the testimony of witness A. L. Moore. From inspection of the record this court further finds that the evidence of witness Moore was disconnected with the charge alleged against appellants and did not tend in any way to substantiate any of the allegations set forth in the indictment. This evidence being irrelevant, was also illegal and ought not to have been submitted to the jury, to substantiate allegations to which it did not profess to refer. This court is of the opinion that the court below erred in admitting said testimony.

The third exception raises a question of considerable importance. We have endeavored to carefully examine the facts and to apply the law bearing thereon. The exception is taken as follows, to wit: "Because when on the second day of April, 1902, State's attorney introduced upon the stand one T. I. Tate, to testify in this case as a medical expert, prisoners objected to the witness on the ground that said witness was not a legally qualified physician, your honor overruled said objection," etc.

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The record shows that some time after the death and burial of the deceased, the body was exhumed and a *post mortem* examination made by witness Tate, in the capacity of a physician. The record also shows that the investigation made by witness upon the dead body, together with his conclusions drawn from said investigation, were afterwards submitted to the jury as evidence against the accused.

The questions which present themselves to the mind of the court in considering this evidence are: First, Was the witness such a person as the law would presume to be possessed of sufficient knowledge of the science of medicine to enable him to make a correct and scientific examination of the deceased, and to arrive at a just conclusion as to the cause of death? Second, Was proof of his qualification made out at the trial? Third, Could his evidence be received as that of a medical expert in the absence of such proof? We would observe that while, owing to the peculiar conditions of the country, persons inspired with a desire to alleviate the physical sufferings of our communities may take upon themselves the duties of a physician, and from a long and perhaps successful practice, may acquire the appellation of medical men, yet when it comes to giving evidence as a medical expert before a court of justice, evidence which may involve the life or liberty of a man, the law is careful that none shall be allowed to exercise this right who has not acquired his knowledge of medicine and the right to practice as a physician in a proper and legal manner. It would be extremely dangerous did the law admit of a reverse rule. Persons possessing no adequate knowledge of the science of medicine, and perhaps devoid of moral restraint, might come into court and give evidence as experts, upon which the jury might arrive at conclusions that would involve life or liberty.

Mr. Bouvier defines medical evidence to be, testimony given by physicians or surgeons in their professional

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capacity as experts, or derived from the statements of writers of medical or surgical works. (II Bouv. Law Dict. p. 171: "Medical Evidence.")

It was insisted by the attorney for the prosecution in the court below, that the witness having for a long time practiced medicine and having also served the State in a military expedition, as physician, this was evidence of his general character as a medical man. We cannot agree with this contention. The fact that witness had practiced as a medical man for a considerable time does not, in the opinion of this court, establish the fact of his qualification as a physician, to enable him to depose to matters of medical science. It is not *prima facie* evidence of his qualification as such. There is no evidence in the record to show that witness proved he held a diploma or certificate from any medical college or institution to this effect. The record, rather, shows the contrary. It is therefore the opinion of this court that witness Tate was not such a person as the law regards as competent to give evidence as a medical expert in a trial for murder. The court below therefore erred in admitting said witness as a medical expert.

Passing over the fourth point in the bill of exceptions, which we do not deem essential to our conclusions in the case, we now proceed to consider the fifth and sixth points in said bill.

From further inspection of the record we find that the jury having returned a verdict of guilt against the prisoners, their counsel tendered a motion, praying the judge of the court below to award prisoners a new trial, on the ground that said verdict was contrary to the law and evidence in the case; which motion the court below overruled, and subsequently, that is to say, on the 4th day of April, 1902, pronounced sentence against the prisoners. We feel no hesitancy in saying that there was a palpable misapplication of the law on evidence by the court below. We have examined with consider-

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able diligence the evidence produced at the trial by the prosecution, but have failed to discover such legal evidence as could warrant the jury in arriving at the conclusion of guilt. It is a well settled principle in criminal law, that "every one is presumed to be innocent until the contrary is proven." It is also an established rule, that the *onus probandi,* or burden of proof, rests upon him who maintains the affirmative, and although there are instances where the burden of proof shifts, as where the prisoner attempts to justify, the case under consideration does not fall within the exception to the general rule. And, says Mr. Archbold, where the plea of the defendant is "not guilty," the prosecution must prove defendant guilty of the charge before the latter can be called upon for his defence. (I Arch. Crim. Pleadings, p. 359.) And the prosecution must prove it beyond a rational doubt. In civil cases the jury may decide according to the preponderance of evidence, but in criminal cases—cases affecting life or liberty—the evidence must be so conclusive as to exclude every rational doubt of prisoner's guilt; for if, after hearing all the evidence, the mind of the jury is in such condition that it cannot say it feels a moral certainty of the truth of the charge, then there arises a doubt, which must operate in favor of the accused.

In the case under consideration we find that the cause of death was not made out by the prosecution, at the trial, with that degree of certainty that the law requires, and this, we would observe, was material to lay a foundation of guilt. There is no evidence to prove that from the pressure made upon the deceased, by one of the prisoners, she, within a reasonable time thereafter, became sick and, languishing, died. There is no evidence to prove that prisoners actually inflicted the injuries upon the deceased, that constitute the body of the crime, as laid in the indictment. On the contrary, it was given in evidence that the deceased was in unusual

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health thereafter; that she went about performing physical labor, such as one could not perform who had received an injury sufficient to cause abortion; and that about eighteen days elapsed from the time the affray occurred, to the death of the deceased. It was also stated that subsequent to said affray, deceased committed acts that could have produced abortion, and that one of these acts, namely, sewing on the machine, was done the day before the abortion occurred, which led to her death. It was also not clearly established whether the deceased actually came to her death from the mere fact of the abortion, or whether it was not due to the malpractice of the mid-wife, who, according to her own statement, failed to deliver or extract the placenta and to do such other acts the neglect of which might produce death.

It was strenuously argued by the learned counsel for the prosecution, that the declarations made by deceased to witness Mrs. Hall and others concerning the cause of her death, should be taken as the dying declaration of the deceased. Let us see if this is well founded. The general principle on which this species of evidence is admitted—observes Mr. Archbold—is that they are declarations in extremity, when the party is at the point of death, and every hope of this world is gone; when every motive to falsehood is silenced and the mind is induced by the most powerful considerations to speak the truth. (I Arch. Crim. Prac. and Pleadings, p. 428, note.) It does not appear to the satisfaction of this court that the declaration of the deceased was made at such time, and under such circumstances, as to constitute in law a dying declaration. Witness Mrs. Ware stated that the deceased made the declaration to her on the evening after the affray between prisoners and the deceased occurred. Witness Mrs. Crummada stated that there was a lapse of about ten days between the death of the deceased and the day she made the declaration to her. During these intervals, it was given in evidence,

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the deceased appeared to be in usual health and attended to her duties and even attended a church conference. Witness Mrs. Hall stated that deceased continued to make this declaration to persons who came to see her up to the time of her death, but it will be noticed that this testimony of witness Hall is unsupported by the evidence of the other witnesses.

Having well sifted the evidence and carefully considered the law bearing on this case, the court holds that the court below erred in not setting the verdict aside and awarding prisoners a new trial. And this court further holds that the judgment rendered in the court below is illegal in that it is founded upon a verdict unsupported by the evidence in the case. For the foregoing reasons this court reverses said judgment of the court below, and the clerk of this court is hereby authorized to issue a mandate informing the judge of the court below of this decision.

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## G. BERLIN, Agent for J. W. West, Appellant, *vs.* THE REPUBLIC OF LIBERIA, Appellee.

[January Term, A. D. 1903.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Grand Bassa County.*

*Violation of Revenue Laws—Evidence—Intent.*

A person who goes to a place in the Republic of Liberia, where foreigners cannot reside for the purpose of trading, builds a house, putting in shelving and counters, does not by such act alone violate the revenue laws. Such act is not sufficient evidence to show an intent to violate such laws.

At the July term, 1902, of the Court of Quarter Sessions and Common Pleas, Grand Bassa County, the above entitled cause was tried and determined, but has subsequently been brought up to this court by appellant on a bill of exceptions, for review. A brief history of the case is as follows: A libel was filed in the Court of Quarter Sessions and Common Pleas, Grand Bassa

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County, sitting in admiralty, July, 1902, on the part of the Republic of Liberia, by Edward W. Liles, Collector of Customs for Grand Bassa, against G. Berlin, agent for J. W. West, a merchant of Hamburg, Germany, transacting mercantile business in the County of Grand Bassa, for violating the navigation, commerce and revenue laws of the Republic of Liberia, by going to a place on the Liberian coast in the territory of Liberia, called Grand Colloh, not a port of entry and delivery, locating himself at said place for the purpose of trading, with intent in so doing to contravene the navigation, commerce and revenue laws of the Republic of Liberia, and for the actual violation of the said revenue law by beginning to trade by buying produce and importing goods, wares and merchandises into the said place of Grand Colloh, not a port of entry and delivery.

Witnesses were sworn and caused to depose, to prove or disprove the allegations as laid in the libel—five on the part of libellant, now appellee, and one on the part of libellee, now appellant. After the deposing of the witnesses, the judge of said court proceeded to render the following decree:

"In this case the Republic of Liberia charges G.Berlin, agent for J. W. West at Grand Colloh, with going to the aforesaid place for the purpose of trading, and also that the said libellee did trade at the said point known as Grand Colloh, to which the said libellee plead not guilty; and whereas after a careful examination of the witnesses pro and con, and after maturely considering the subject, the court finds that the said G. Berlin, agent for J. W. West as aforesaid, did leave Lower Buchanan and go to Grand Colloh for the purpose of trading, in contravention and violation of the port of entry laws of the Republic of Liberia, he knowing the said point to be a place where foreigners cannot reside for the purpose of trading, or in any way doing any kind of mercantile business; but notwithstanding the act of trading was not com-

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pleted, still the court decides that the fact of the libellee's leaving the port of Lower Buchanan and going to Grand Colloh, a place not a port of entry, and superintending the preparation of a factory house, which was being carried on by a certain carpenter employed by J. W. West, is a sufficient indication of the intention of libellee to violate the law. Therefore the court adjudges, orders and decrees, that the said G. Berlin, agent for J. W. West as aforesaid, pay a fine of eight hundred dollars immediately, with all costs and expenses connected with the case, or in default of paying said fine, costs and expenses, to be imprisoned in the common jail of this country for a term of sixteen calendar months, or until he shall pay the said fine, costs and other expenses before the expiration of said term, at which time he shall be released from further confinement."

To the above decree and other rulings of the judge below, the libellee, now appellant, excepted and appealed to this jurisdiction for a review of the case.

This court says that it has well considered and in a legal way digested all the proceedings and facts connected with the case, and is now prepared to come to a righteous and impartial decision. In the libel, the libellee, now appellant, is not only charged with going to Grand Colloh with the intent to contravene the revenue laws of the Republic of Liberia, but also that he did contravene the said laws by beginning to trade, buying produce and importing goods, wares and merchandise into the said place. Now, upon inspection of the record the court does not find a shadow of evidence to sustain the charge of an overt act by trading at and importing goods, etc., into the said place of Grand Colloh; nor is there any to prove that it was libellee's intention to contravene the revenue laws of the Republic. The only evidence that has a semblance of proof that it was his purpose to trade at that place in question is, the witness

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said that he, libellee, said that he had gone to Grand Colloh to watch A. Woerman, and that if he, Woerman, traded at that place, and the Liberian Government said nothing about it, he, libellee, would trade there also. And the court further says, that the mere act of going to Grand Colloh, building a house and putting windows, counters and shelves in it, is not sufficient evidence in law to prove an intent to violate the laws, or that he had violated the revenue laws.

Now, then, without further consideration, this court adjudges that the rulings and decree of the judge below are not well founded, and that they are hereby reversed and that the appellant recover all legal costs in this action. The clerk is hereby ordered to send a mandate to the judge below to the effect of this judgment.

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## JACOB WEST, Agent for J. W. West, Appellant, *vs.* THE REPUBLIC OF LIBERIA, Appellee.

[January Term, A. D. 1903.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Grand Bassa County.*

*Violation of Revenue Laws.*

An exporter of articles of African produce does not violate the revenue laws where he exports such articles without permit, when such permit is asked for, fee tendered and refused by the customs authorities.

This case was tried in the admiralty jurisdiction of the Court of Quarter Sessions and Common Pleas, for Grand Bassa County, at its June term, A. D. 1902. The appellant was libelled by the Republic of Liberia, libellant, for violating the revenue laws by exporting sundry articles of African produce from said County, without first obtaining a permit from the Collector of Customs for the privilege of so doing. Upon the case being called up, the appellant plead "not guilty" to the charge. The court below having heard the evidence pro and con in the case, on the fifth day of August of the aforesaid year,

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delivered its decree, by which appellant was condemned to pay to the appellee the sum of twelve hundred dollars and costs. The appellant, being dissatisfied with said decree, excepted thereto, as well as to other rulings of the court in the premises, and has brought the case before this court upon an appeal.

By reference to the record in the case we observe that the questions involved are chiefly as follows: Firstly, Had the Secretary of the Treasury legal authority to issue instructions and regulations requiring that permits be obtained from Collector of Customs by shippers of African produce prior to the shipping thereof? Secondly, Did the regulation in question contain a penalty for the violation thereof, or does the statute upon which it is founded supply that want? and Thirdly, Did appellant violate this regulation?

The Statutes of Liberia "establishing the Treasury Department and defining the duties of the same," provide as follows: "The Secretary of the Treasury shall, with the approbation of the President, have power to make and issue from time to time such instructions, rules and regulations, to the several collectors and all other receivers of public money—the treasurer and subtreasurers—as to the manner of performing their duties, and as to the rendition of their accounts and returns to the department, as may to him seem best calculated to promote the public interest." (Acts Leg. of Lib. 1858, p. 36, sec. 7.) By a subsequent enactment of the Legislature of Liberia, the power of the Secretary of the Treasury in this relation has been confirmed. He may issue regulations touching the collectors of customs, and his regulations, when not repugnant to the law of the land, are enforceable as law. (Acts Leg. of Lib. approved Feb. 1, 1900.)

This court is firmly of the opinion that the statutes above referred to confer upon the Secretary of the Treasury the power and right to issue from time to time such

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regulations with respect to the management of the customs as the public interest may demand.

As to the second proposition, the court would observe that it does not appear from the record that the regulation of the Secretary of the Treasury with respect to permits, which regulation appellant is charged with violating, contains a penalty for the violation thereof. Nor do the statutes above cited contain a clause providing a penalty for persons who may export produce without first obtaining a permit. This, we would remark, was essential; for, as Mr. Blackstone observes, the main strength and force of the law consists in the penalty annexed to it. (I Blk. Com. star page 57.)

The fourth section of the Act of 1900, above cited, which appears to be the authority upon which the court below predicated its decree, could not, it is the opinion of this court, be construed to apply to cases for the violation of revenue law by failing to obtain a permit to export produce, which is the nature of the case under consideration.

We now proceed to consider our third and last proposition. It appears from the record that libellee was charged in the libel field against him in this suit, with defiantly, persistently and unlawfully exporting from the port of Grand Bassa, nine boat-loads of African produce without first obtaining permits from the Collector of Customs to ship; although said libellee was duly requested so to do, he failed and refused to comply with the customs regulations of this Republic.

Let us see whether these allegations were proved at the trial or not. The evidence of the Collector of Customs, as well as that of the wharfinger whom the court would presume to be the best evidence in a suit of this nature, does not prove that libellee "defiantly, persistently and unlawfully" failed and refused to apply for a permit to ship on the day mentioned in the libel. The question was put to witness Liles, the Collector of

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Customs, by the attorney for the defence, as follows: "Did Mr. West, the appellant, apply to your office for a permit?" To this query the witness replied, "I am not positive; if he did, I refused him." It was also given in evidence by the wharfinger that appellant's clerk offered him, previous to shipping as aforesaid, the fee charged for permits, which fee he, the wharfinger, refused to accept, upon the ground that he had received instructions from the Collector of Customs not to allow appellant to ship. It was also stated in evidence by the same witness, that it was customary for appellant to pay him the fee charged for permits, and that the Collector of Customs had on previous occasions accepted the same from him in favor of appellant for permits. The evidence further shows that appellant sent his clerk to the customs department prior to shipping as aforesaid, and that the Collector was not there in his office. And further, it was stated that the said produce, excepting the coffee, was shipped under the eye and with the knowledge of the wharfinger.

From the circumstances surrounding this case, as well as the light thrown on it by the prosecution's own witnesses, this court is firmly of the opinion that the charge alleged against the appellant was not substantially proved at the trial, and this court has vainly sought to discover the evidence and the law upon which the decree of the court below is founded. The judgment of the court below is therefore reversed and the clerk of this court is hereby authorized to issue a mandate informing the judge of the court below of this decision.

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## C. L. ROSS, Appellant, *vs.* J. B. CLARK, Appellee.

[January Term, A. D. 1903.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

*Debt.*

This cause was tried and determined by the Court of Quarter Sessions and Common Pleas of Sinoe County, and judgment was given in favor of the plaintiff, now appellee. The appellant, then defendant, being aggrieved, and considering that injustice had been done to her, brought the said action to this supreme jurisdiction for review, upon a writ of certiorari. When the cause was called up for review on the 23rd of January (the 10th day's session of the Court), appellee did not answer, either in person or by counsel, notwithstanding a legal call was made by the marshal at the door of the court. Consequently the appellant, taking advantage of the neglect of appellee, exercised her legal right and prayed the court for judgment by default, which the court granted, being warranted in doing so by statute law.

The court adjudges that the appellant recover from the appellee the sum of forty dollars and twenty-five cents for her debt, and all costs in this action. The clerk of this court is hereby ordered to send a mandate to the judge of the court of Sinoe County, of the final conclusion of this matter.

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## A. J. WOOD, Appellant, *vs.* REPUBLIC OF LIBERIA, Appellee.

[January Term, A. D. 1904.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Grand Bassa County.*

*Violation of Revenue Law—Construction of Statutes.*

The statute, respecting the privilege of the Secretary of Treasury to instruct Collectors of Customs to require permits for the exporting of produce, provides no penalty for the failure of shippers to comply with such regulations.

This case was tried in the admiralty jurisdiction of the Court of Quarter Sessions and Common Pleas of Grand Bassa County, at its September term, A. D. 1902. The appellant was charged by the Republic of Liberia with violating the revenue laws of the Republic of Liberia, by exporting out of the Country six casks of palm oil without first obtaining a permit from the Collector of Customs for the port of Buchanan, Grand Bassa. Libellee, now appellant, in his answer to the libel, denied the truth of the charge against him as contained in the libel, alleging that he did apply to the Collector of Customs on the 18th day of July, 1902, for a permit to ship four casks of palm oil, and that the Collector refused to grant him the said permit; and also, that it is the custom for merchants at Bassa to ship produce without obtaining permits, whenever steamers arrive from the coast, provided that they deposit with the wharfinger the fee for permits.

The evidence in the case having been adduced, the judge was satisfied of the guilt of libellee, now appellant, and rendered judgment against him and decreed that libellee, now appellant, pay to libellant, now appellee, the sum of two hundred dollars (*i. e.*, one hundred dollars for each boat-load of cargo shipped), with all costs and charges. Libellee, now appellant, excepted to the decree of the judge below, as well as to all his rulings, and appealed to this court of final judicature.

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From a careful review of the record in the case this court discovers that in every important feature the case is one of the same nature as that of Jacob West, agent for J. W. West, appellant, against the Republic of Liberia, appellee, determined by this court at its January term, A. D. 1903, and will therefore enunciate in substance the same doctrine and adjudge the same decree, to wit:

The court fully recognizes the right of the Secretary of the Treasury, under the approval of the President, to make and issue from time to time such instructions, rules and regulations, to the several collectors and all other receivers of public money—the treasurer and sub-treasurers—as to the manner of performing their respective duties, and as to the rendering of their several accounts and returns to the department, as may to him seem best calculated to promote the public interest. But, in the meantime, the court fails to see, either from the record in the case or from the statute law respecting the privilege of the Secretary of the Treasury to instruct the several Collectors of Customs to require the exporting of produce to be by permits issued by them, any penalty for the failure of shippers to comply with the said regulation, which is essential; for the main strength of the law consists in the penalty annexed to it. (1 Blk. Com. star page 57.) The court therefore fails to see, under the law, the violation by appellant of the revenue laws as charged. And again, from careful study of the evidence adduced in the case, the court is of opinion that it is not sufficiently clear to sustain the charge.

Therefore, in view of the facts already stated, the court hereby reverses the judgment of the court below. The same is made null and void, and the appellee is ruled to pay all legal costs. The clerk of this court is hereby authorized to issue a mandate to the judge below, to the effect of this judgment.

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## J. NATHANIEL SKIPPER, Plaintiff in Error, *vs.* REPUBLIC OF LIBERIA, Defendant in Error.

[January Term, A. D. 1904.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Grand Bassa County.*

*Murder—Principal in the second degree—Punishment.*

The statutes and the common law adopted by the Republic recognize no difference with respect to the punishment to be inflicted upon principals found guilty of murder in the first and second degrees.

This case is before this court upon a writ of error, taken upon a judgment rendered by the Court of Quarter Sessions and Common Pleas, for the County of Grand Bassa. We find from examination of the record in the case, that the accused, J. Nathaniel Skipper, the plaintiff in error, was indicted at the June term and tried at the September term, 1902, of the Court of Quarter Sessions and Common Pleas, for the County aforesaid, for the atrocious crime of murder; that on being arraigned the prisoner plead "not guilty" to the charge; that a jury having been empanelled to try the issue raised by said plea, after hearing the evidence and arguments for and against the accused, it returned a verdict in which the said J. Nathaniel Skipper, plaintiff in error, was found "guilty of murder as principal in the second degree." Upon this verdict the court below, on the 7th day of October, 1902, pronounced sentence, whereby the said prisoner was sentenced to the punishment of death. To this judgment the prisoner excepted and has brought the case before this court, upon a writ of error, for review.

Upon the case being called for hearing at the bar of this court, the counsellors for the plaintiff and the defendant in error, waived arguments and jointly submitted for the consideration and determination of this tribunal one point only, namely, "Did or did not the court below err in pronouncing the sentence of death

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upon a verdict of murder as principal in the second degree?"

We would remark before proceeding further, that this is a case involving the life of a human being, and that therefore we feel it our solemn duty, as the court of last resort, to thoroughly investigate the whole case, so far as it has been brought within the grasp and purview of this court, in order that we may justly and impartially ascertain whether or not substantial justice has been done in the premises by the court below. And in doing this, we have not confined ourselves to the point submitted for our consideration by the counsellors, with respect to the legality or illegality of the judgment of the lower court, but we have extended our investigations to the facts surrounding the case, in order that we may ascertain, in the first place, whether the judgment which is now sought to be reversed, is founded upon a verdict substantially supported by the testimony of witnesses in the case; for if the verdict is unsupported by the evidence, the judgment, which is simply the conclusion of the law upon the facts found or admitted, must crumble. And first let us inquire whom does the law regard as principals in the second degree to a felony, and then applying the law to the facts found by the jury, let us see whether those facts will legally constitute the crime which the jury found the accused guilty of, and if so, what punishment does the law attach thereto.

The Statute of Liberia bearing on this point declares that "All persons actually present, aiding and abetting in any crime or misdemeanor described in the code, shall be amerced in a punishment not exceeding that inflicted upon the principal," etc. (Stat. Lib. appr. Jan. 24, 1900.) Now the crime which the accused was found guilty of committing as "principal in the second degree," or, in the language of the statute, as "an aider and abetter," is murder, the punishment for which, according to the provisions of the above cited act, is death by hanging, unless excusable.

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The common law writers of both England and America lay down three requisites by which principals in the second degree are distinguished. The first is, they must be present; the second, they must be aiding and abetting in the felony; the third, there must be a felonious intent to the felony. (I Arch. Crim. Prac. and Pleadings, pp. 58, 59; I Bouv. Law. Dict. pp. 461, 462.)

It should here be observed, that as regards the first requisite the statute requires an actual presence, but the rule of the common law is far more comprehensive and elastic, and admits of a constructive as well as actual presence. Thus, if A and B confederate to commit a certain felony and A approaches the scene, leaving B sufficiently near to render assistance if required, or B is left outside of a dwelling to watch and prevent surprise, while A enters the dwelling and perpetrates the felony which they both had assembled to perpetrate, though B is not an eye or ear witness to the transaction, the common law would regard him constructively present and hold him responsible as principal in the second degree.

The reason that the law holds persons who aid and abet in the commission of felonies equally responsible as the actual agent, is founded upon the sound principle of justice and right. If the law held to the contrary, if a man after aiding and abetting in the commission of a crime could afterwards screen himself from punishment upon the ground that his was not the hand that actually did the deed, although he had in a measure participated in its perpetration, there would be a strong inducement, we fear, for men of felonious intentions to influence the weak-minded and reckless to become the actual agents of crimes the perpetration of which they themselves have inspired, without any fear of being visited by the law. And therefore as a check upon such unscrupulous conduct, the law visits upon aiders and abetters to a felony the same punishment as that which

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it inflicts upon the actual perpetrators. (Stat. of Lib. 1900, p. 6; I Bouv. Law Dict. pp. 460, 461: "Principals in the second degree;" I Arch. Crim. Prac. and Pleadings, p. 62, star p. 13.)

As we have already said, the judgment of a court is the conclusion of law upon facts found or admitted. In the case under consideration the facts found by the jury showed the accused guilty of murder as principal in the second degree. Neither the Statute of Liberia nor the common law adopted by this Republic recognizes any difference with respect to the punishment to be inflicted in such cases and that which is inflicted upon the actual agent or doer. Both are equally guilty and both are visited with the same sentence of the law. And therefore since the law of the land punishes with death by hanging the principal in the first degree in cases of murder, except excusable, and since principals in the second degree, or aiders and abetters, are subjected to the same punishment as their principals, the court below did not err in sentencing J. Nathaniel Skipper, the plaintiff in error, to be hanged.

The judgment of the lower court is therefore hereby affirmed and the clerk of this court is hereby authorized to issue a mandate addressed to the judge of the court below, informing him of this decision.

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## HOUSTON BROTHERS & COMPANY, Appellants, *vs.* E. A. CLINE OGOO, Appellee.

[January Term, A. D. 1904.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Damages.*

The above entitled action is a cause that was entered in the Court of Quarter Sessions and Common Pleas, Montserrado County, at its December term, 1902, sitting

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in law, and purports to have been tried and determined by said court. In the court below E. A. Cline Ogoo was plaintiff and Houston Brothers & Company were defendants. Verdict was rendered by the jury in favor of plaintiff, whereupon the judge gave judgment for one thousand dollars as damages, and costs; and upon its refusal to grant the defendants a new trial as asked for in a motion, they, the defendants, took exceptions to the judgment of the court and brought the case to this resort of legal judicature for a review of the cause, that substantial justice might be secured.

The following, as far as the court can understand from the record of the case, is a synopsis of the history of the case: On the 16th day of July, A. D. 1900, the appellants entered into contract with the appellee to the effect that the former agreed to employ the latter in the capacity of book-keeper for their firm on the conditions that appellee would receive for his service the sum of four hundred and eighty dollars annually, to be paid to him by appellants in equal monthly payments of forty dollars in sterling money of Great Britain; that the appellee would be allowed by the appellants the sum of ten dollars per month in advance, over and above the stated salary of forty dollars, for and on account of his board and lodging; that he, the appellee, would properly and efficiently keep the accounts of the firm of the said appellants, and have all accounts posted monthly, and quarterly balance sheets prepared; that the appellee would hold himself subject to the orders and instructions (consistent with his work) of appellants; that appellee would attend office at the business place of appellants from the hours of 7 to 11 a. m., and from 12.30 to 5 p. m. daily, Sundays excepted, unless prevented from so doing by sickness, and in the case of sickness, appellee would notify appellants. On violation of the contract by either party, the violator would pay to the other party as fixed damages the sum of one thousand dollars in gold or silver coin.

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The record shows that appellee entered an action against appellants for the recovery of one thousand dollars fixed damages, for the violation of the contract on the part of appellants, the first contracting party. As we have previously shown, the jury brought in a verdict that plaintiff, now appellee, was entitled to recover damages, whereupon the judge rendered his judgment awarding the plaintiff, now appellee, the sum of one thousand dollars in gold or silver coin as fixed damages; to which judgment the defendants, now appellants, excepted and brought the cause before this tribunal.

From a further review of the record we find that the evidence shows that appellee was absent from his work seven months, but that his absence was occasioned by sickness, of which he notified appellants. But there appears to be no evidence adduced by appellee to show that appellants had violated the contract by refusing to pay him, appellee, his regular salary, aside from his mere statement that appellants owed him, and also a letter from appellee to appellants asking for the pay of his salary. Appellee's simple assertion that appellants owed him and had violated the contract, in the mind of the court, is not evidence of the truth of the facts as complained of by appellee. Neither does the court find on record any evidence that appellee was a defaulter, otherwise than that he was ill for seven months, of which he gave appellants notice. Appellants' assertion that appellee owed them, and that they did not owe appellee, in the mind of the court is not evidence that appellee owed them. Neither party has brought forth any legal evidence to support his or their position.

The court below erred when it refused to admit in evidence the account book of appellants when it was offered, for possibly in that book might be found entries in favor of appellants against appellee, or *vice versa*. The court below should have admitted the book in evi-

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dence and appellants should have shown, independently of their books, evidence to substantiate the correctness of the entries therein made.

There being no evidence in the case at all, the court is not in a position to award judgment in favor of either party; and the verdict of the jury being manifestly against evidence, or founded upon no evidence at all, and the judgment of the court being based on said illegal verdict, renders both verdict and judgment void. This court therefore adjudges that the judgment of the court below is hereby reversed, and made null and void; and that substantial justice may be meted out to the parties concerned, the court below is hereby ordered to resume jurisdiction and have a re-trial of the case, and in the meantime admit in evidence all books and papers which may have a tendency to prove or disprove the allegations.

The clerk of the Supreme Court is commanded to issue a mandate to Judge C. T. O. King of the Court of Quarter Sessions and Common Pleas, Montserrado County, to the effect of this judgment, ordering him to execute this judgment at the March term (1904) of his court.

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## RICHARD J. WILES, Appellant, *vs.* FLORENCE J. WILES, Appellee.

[January Term, A. D. 1904.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Partition—Homestead.*

A homestead set apart under and by virtue of the "Homestead and Household Exemption Act" answers to an estate in coparceny. The estate constituting such homestead cannot be devised while there are living heirs of the original householder.

This case was brought in the equity jurisdiction of the Court of Quarter Sessions and Common Pleas of Montserrado County, at its March term 1903, by

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Florence J. Wiles, appellee (petitioner in the court below), upon a petition in equity, for the partition of certain real property; to wit, lots 96 and 97, situated in the city of Monrovia, of which James T. Wiles, the father of appellee, was once seized, and which, during his residence thereon, that is to say, in May, 1899, he had set apart from the rest of his estate as a homestead for himself and his family, agreeable with the Homestead Exemption Act of 1889.

The pleadings appear to have stopped here, but when the petition was called up for hearing, Richard J. Wiles, the appellant before this court, appeared by counsel and objected to the granting of said petition, upon the ground that the said property which constituted the subject-matter of the petition had been devised by the will of James T. Wiles unto Richard J. Wiles, the appellant, and W. S. Wiles, his brother. The court below overruled the objections of the appellant and rejected the claim sought to be set upon said property by virtue of the will of James T. Wiles, and gave the following decree in the premises, to wit:

"That no one taking advantage of the said Homestead Exemption Act can afterwards dispose of said property by will or otherwise without having first applied to a court having competent jurisdiction and annulling his said act with regard to said homestead. Therefore this court decrees that the said homestead of J. T. Wiles, viz., lots 96 and 97, be held by the said Florence J. Wiles and Richard J. Wiles, heirs of the said J. T. Wiles, equally between them, as they are the only surviving heirs of J. T. Wiles."

To this decree appellant excepted and has brought the case before this tribunal for review.

It having been admitted in the arguments by the learned counsels, first, that the said J. T. Wiles did place the estate in question under the Homestead Exemption Act, and secondly, that the said J. T. Wiles

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did afterwards devise said estate unto his two sons, W. S. and Richard J. Wiles, there remains no question on the facts averred on both sides for this court to consider, and therefore we proceed to examine and construe the law bearing on the case. To enable us to consider systematically the several doctrines of law involved, we deem it convenient to arrange the case under the following heads:

1. What is the legal status of an estate upon which a homestead has been declared under the Homestead Exemption law of the country?

2. Who are the parties whom the statute contemplates shall enjoy an interest and derive a benefit out of a homestead estate?

3. What kind of an estate, as between the parties interested, does a homestead create?

4. Does an ancestor or "head of family" who may place property under the above cited act still retain an absolute fee therein?

5. If not, can he at his option alienate such an estate by will or otherwise?

Before going further we would remark that the law of homestead exemption is of comparatively recent origin. Anterior to the last century this species of real estate was unknown to the law. It is one of the two great doctrines which have been introduced into the law during the nineteenth century and which have marked the development of the legal science in the United States. This species of real property was first brought forward under the constitution and statutory enactments of Texas, when it existed as a separate and distinct Republic. A doctrine founded upon such a sound and judicious basis, instituted not for the purpose of encouraging and stimulating a tendency to fraud, but, on the contrary, with a view to protecting the honest and upright landholder against failures in the ordinary affairs of life,—failures which may at any moment dispossess the honest

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but unfortunate landholder and his family of a home,—could not fail to commend itself, and hence we find that in the United States of America the doctrine was readily taken up and state after state passed statutes adopting it, with such modifications as were deemed suitable to their respective conditions.

In 1889, the Legislature of Liberia passed an act entitled, "The Homestead and Household Exemption Act." Section 1 of said act reads as follows: "That from and after the passage of this act all householders and heads of families, owning real estate, shall have so much of that real estate exempt from the writs of their creditors, that is to say, one town lot or one acre of farm land upon which the house is situated, with all the appurtenances and out-dwellings of same, which exemption shall mean the homestead of the family, and this exemption shall *last as long as any of the heirs of the family so occupying it shall live.*" (Act Leg. Lib. 1889.) This is practically the law controlling this case. The language of the above cited act conveys to the mind of the court the idea that property set aside by the head of a family as a homestead for himself and family creates an estate in which all parties connected with and forming a part of said family, within the meaning and purview of said act, acquire an interest and a share therein.

The object of the lawmakers in passing this statute, which enables a householder to take out of market a limited portion of his real and personal property, and to have the same secured against the claims of his creditors, appears to be not only for the purpose that the head of the family shall have secured unto him an unassailable estate, but also that the wife and children, forming a part of said family, shall likewise take an estate therein, which cannot be set aside or destroyed, either by their own acts or by the acts of him who first held an absolute fee therein, or by the claims of third parties against any of the tenants thereto. And

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this view is upheld by the terms of a subsequent statute, which makes it a misdemeanor for either the clerk of court to issue, or the sheriff to serve, any writ upon a homestead estate. (Act Leg. Lib. 1897.) Undoubtedly this statute was not passed to screen property held in fee by debtors against the writs of their creditors. But it is because the putting an estate under the Homestead and Household Exemption Act creates an estate in coparcenary among all the parties constituting and forming the family, within the meaning of the original act, that this statute forbids all interference with it by the officers of the law. To hold to the contrary, we think, would be to declare this statute fraudulent and pernicious.

It was insisted upon by the learned counsel for the appellant, that James T. Wiles placed the property under review under the Homestead Act after Florence J. and Richard J. Wiles had attained their majority, and that therefore they could not be looked upon as constituting a part of the family at the time said property was homesteaded. The court would remark here, that there was no evidence submitted to support this statement, but supposing there had been, we could not have upheld the proposition. The unequivocal intention of the lawmakers, so far as we can draw from the language of the act, was, as we have said, to create an estate in perpetuity for the family. The last paragraph of the Act of 1889 reads: "This exemption shall last as long as any of the heirs of the family so occupying it shall live." Let us suppose that Florence J. and Richard J. Wiles were not living in the family at the time the property was homesteaded, yet would they not acquire a title therein by virtue of being heirs of the original head of the family and occupant? And if there survives any of the heirs of the original head of the family, would not the homestead remain in full force and virtue? The statute contemplates a lapse of a homestead estate only

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after the heirs of the original "*head*" and *occupant* have become extinct.

We are aware that the statutes of some of the American states enunciate a somewhat different principle, but in this case it is the *lex scripta* of the country and not the statutes of foreign states which is the controlling law.

We have already shown that a homestead under the laws of Liberia is an estate in which the wife and children constituting the family, hold an undivided interest therein. Such an estate could not be regarded as an estate in joint tenancy, as was suggested by one of the counsel, for an estate in joint tenancy is one acquired by purchase and is not subjected in all respects to the rule of descent. This species of tenancy is governed by the subtle principle of survivorship, which does not apply to homestead estates. Equally so, nor would the law regard it an estate in common, because the title thereto is not distinct and several; nor an estate in fee tail, because in homestead estates the wife acquires and holds an equal interest therein with the heirs of the original householder, whereas in fee tail the title is reserved to the "heirs of the body" only of him last seized. By analogy of the law of real property we find that a homestead under the laws of Liberia answers to an estate in coparcenary. The three units which the law demands to establish such estate, namely, time, title, and possession, are to be found in this species of property.

Let us now consider whether James T. Wiles, the original householder, had a legal right to devise the homestead created by himself or not,—and we may here observe that it is upon this point chiefly that appellant rested his case.

We have already endeavored to show what kind of an estate a homestead estate is, and who the parties are that acquire interest therein, by force of the law of

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the country. If our conclusions are supported by the law of real property and the Homestead and Household Exemption Act of Liberia, and we do not hesitate to say that we feel that they are, then it follows as a legal consequence, that the property in question cannot be disposed of by will. If James T. Wiles and his family held the property in question as a homestead, it could not afterwards be devised, as long as the heirs existed, without setting aside an inflexible rule of the law of real property. "A man cannot dispose of the rights of other parties." "He who would be generous must first be just."

Having traversed the grounds of the whole case, we conclude by saying that the will of James T. Wiles, devising lots 96 and 97, cannot take the property from under the exemption where it had been legally placed. Nor can the will destroy or in any wise annul the force of the homestead, or create a new and distinct estate while there are living heirs of James T. Wiles, the original householder and occupant.

The judgment of the court below is therefore affirmed and the clerk is hereby authorized to issue a mandate to the judge of the court below, informing him of this decision.

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## J. D. A. SCOTT, Appellant, *vs.* THE REPUBLIC OF LIBERIA, Appellee.

[January Term, A. D. 1904.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Witness—Recall—New trial—Discretion—Insanity—Expert testimony.*

It is within the discretion of the trial court to allow the recall of a witness for further examination, before the case is submitted to the jury. The trial court is not bound to grant a new trial upon motion.

The testimony of ordinary witnesses that a defendant had shown signs of insanity is not sufficient to prove insanity, but must be corroborated by the evidence of a medical expert.

This case of murder was tried and determined in the Court of Quarter Sessions and Common Pleas, Montserrado County, at its June term, 1903. John D. A. Scott, a citizen of the settlement of Caldwell, St. Paul's River, in the County of Montserrado, was indicted and presented to the court for the wilful murder, with malice aforethought, of one Joseph T. Gibson, also of the settlement of Caldwell on the St. Paul's River, Montserrado County, the former being formerly a minister of the gospel in the Methodist Episcopal Church, and the latter a minister of the gospel of the Protestant Episcopal Church.

Upon arraignment before the court, the prisoner Scott plead not guilty, whereupon the state introduced witnesses to substantiate the charge as laid in the indictment. The jury, being satisfied with the truthfulness of the evidence adduced, brought in a verdict of "guilty of murder," upon which the judge rendered judgment to the effect that the "prisoner be hanged by the neck until he be dead, on the 17th day of July, 1903." To this sentence the prisoner took exceptions and appealed to this court for a rehearing of the case.

In considering the bill of exceptions the court finds three points presented for consideration, as follows:

1st. That the judge below overruled the objections of defendant to recalling witness C. B. Douglas to rebut

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defendant's evidence, the objection being based upon the fact that the said witness had been examined, cross examined, and re-examined. To this, this court says that the court below did not err in admitting the said witness, for some fact might have been overlooked, that would throw important light on the case in favor of either party, that had not been drawn out in the previous examination, and the court, still having jurisdiction over the witness, before the arguments began in the presence of the jury, he had the discretion to admit or not admit the witness to testify again.

2d. That the judge below overruled defendant's motion for a new trial. To this exception this court says that the court below was not bound to grant a new trial, if in its judgment the verdict of the jury was not manifestly against law and evidence, or otherwise illegal.

3rd. That the judge below rendered judgment on the verdict of the jury, sentencing defendant to be hung. This court fails to see the error of the judge below in rendering said judgment, he considering that the verdict was based upon the evidence and law in the case, particularly when no other issue in the defence was raised by the defendant, which he, defendant, had produced evidence to substantiate. However, in view of the great excitement and popular opinion, that were rife at the time against the prisoner, the court might have granted a new trial if in its judgment it felt that the jury was thereby influenced, but it was not bound so to do.

We notice in the record of the case, that appellant endeavored in the court below to establish the fact that he was insane when he killed Gibson. Although he plead not guilty, still the evidence shows that the killing was done by him; but he labored to show that he was insane. Appellant's counsel in this court, notwithstanding, excepting to the judgment of the court below for three reasons already stated, namely, the overruling of their objection to the recall of witness C. B. Douglas,

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the refusal of the judge to set aside the verdict and to grant a new trial, and the final judgment of the court, yet in representing the case before this court in their brief, they set up in the first place the insanity of appellant, for which reason the judgment of the court below should be reversed.

In the record of the case, aside from questions asked and answered by counsel and witnesses, we find no plea of insanity raised; and had the issue been legally raised in the court below, it is our opinion that that issue should have been decided upon proper evidence before the main charge was taken up; for to allow evidence to prove or disprove allegations or facts not raised, would be irrelevancy. In this case, however, since the evidence on the point of insanity forms a part of the record, the court will briefly consider it and give an opinion.

Sarah J. Douglas, L. B. Douglas, C. A. Douglas, Milly Spelman and R. A. Kennedy were the most important of the witnesses who testified in the case, and without exception they all established the fact that appellant did kill J. T. Gibson on the 6th day of June, A. D. 1903. They further testified that the prisoner (appellant) at times would show signs of insanity, and at other times he would act and talk as any other sane person. Now it is the opinion of this court that while it does not discredit the evidence of the witnesses named, on the temporary insanity of appellant, yet, according to the statute laws of Liberia, it is not the best evidence that the nature of the case admits of; and uncorroborated by the evidence of a medical expert, it fails to establish the fact of insanity. The evidence of the actual killing of Gibson by appellant is conclusive, to the mind of the court.

Again, referring to the evidence to support insanity, we quote the 32d article of Chapter XII, page 60, of Liberia Statutes, and make comment thereupon: "A witness shall depose to facts only, not to opinions, except in cases of science, or peculiar knowledge which he may

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possess from his peculiar studies, occupation, or pursuits; and except in questions of general character." Now, then, this court says that insanity is a mental disease, and the testimony to substantiate the same must be sufficient and conclusive. Ordinary witnesses may depose in questions of general character as is within the meaning and spirit of the statute laws of Liberia.

The case cited by appellant, of Ledlow against Republic, in character and circumstances is not analogous to the case before the court, and consequently the court is not bound to render the same decision. In the case of Ledlow for murder, the evidence of ordinary witnesses of their belief of his insanity from his queer actions was corroborated by the scientific testimony of Dr. H. J. Moore, and chiefly upon which the court based its decision. Let us quote from that decision: "Witness Moore's statement is also very pertinent to the cause, first, because of its scientific or professional character, and secondly, on account of the direct knowledge which he claimed to possess, growing out of his diagnosis, made in this particular case, of the accused. To the plea of insanity, upon which the case chiefly rested, the testimony of witness Moore was indeed of great weight and value to the determination of the case." Again, "It would be as difficult as it would be unsafe to lay down a rule that would apply to the infinite variety of forms in which insanity or derangement may show itself. Each case must therefore depend very much upon the circumstances, facts and developments which attend it."

Now, then, this court is not responsible for so-called insane persons going at large and murdering useful citizens, when the insanity pleaded is not conclusively made out, and will not lend its aid to such violation of law. Therefore the judgment of the court below is hereby affirmed, and upon a mandate issued from this court by the clerk hereof, the judge below is authorized to resume jurisdiction and execute said judgment as speedily as possible.

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J. W. and C. R. HOUSTON, Active Partners of the firm of Houston Brothers & Company, Appellants, *vs.* FISCHER and LEMCKE, Dormant Partners of the firm of Houston Brothers & Company, Appellees.

[January Term, A. D. 1904.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Dissolution of Partnership.*

*Pleadings—Bill of equity—Evidence.*

In order that a decree may be properly found, the allegations in a bill of equity must be supported by sufficient evidence.

This case has had the greatest attention of this court, because of the intense feeling attending it from its commencement to the present moment, not only by those interested in its eventuation, but also by others. It is brought before this court upon an appeal taken under the statutes, against a decree of the Court of Quarter Sessions and Common Pleas, Montserrado County, December 31st, 1903, sitting in equity to hear and determine a bill or petition filed in equity by Fischer & Lemcke, dormant partners of the firm of Houston Brothers & Company, said bill praying a dissolution of the partnership of said firm,—

1st, Because J. W. & C. R. Houston did, in violation of the articles of agreement upon which the partnership was formed, ship produce to Europe other than to the house of Fischer & Lemcke, partners as aforesaid of appellants.

2d, Because J. W. & C. R. Houston were indebted to them, Fischer & Lemcke, for a sum of over twenty-six thousand pounds. (Pounds sterling are here understood by the count.)

The transcript of the record filed in this case supports the fact that the court, after hearing arguments pro and con, made the following decree: That the partnership be

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provisionally dissolved and the business placed in the hands of receivers. This decree, in the opinion of this court, was a final decree and answered all that portion of the bill that a court of equity in upholding the petition, could grant, hence from it an appeal would lie. The appellants, being dissatisfied with the proceedings and decree, appealed to this court in order that the doings of said equity court might be reviewed.

Now in order that justice may be done in the premises and the rights of the litigants duly protected, this court felt bound to thoroughly inform itself of the articles of agreement upon which the partnership was formed. By a careful investigation of said articles we find the following facts:

1. That on the 15th day of August, A. D. 1898, the appellants, J. W. & C. R. Houston of Monrovia, entered into a mercantile partnership with Messrs. Fischer & Lemcke of Germany, for mutual gain in proportions therein agreed to.

2. It was stipulated between the parties that the partnership should continue for five years, with the proviso that "should any of the members of the partnership wish to withdraw from the firm he should give other partners six months' notice." We find further that on the 19th day of March, A. D. 1902, by consent of all the parties, these articles of agreement were amended so as to read, "that in case of a desire on the part of Messrs. Fischer & Lemcke to withdraw from the firm during the lifetime of J. W. Houston and his brother, they would turn over the business to the Houston Brothers and allow them reasonable time to pay them off."

Neither courts of law or equity make contracts for partners, but are authorized to interpret and give them effect from the intention of the parties making them. Having set this case in clear sunshine by removing from its surroundings all cloud and appendages, we now proceed to notice the principles of law applicable to partnerships.

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"Where two or more persons combine their property, labor or skill for the transaction of business for their mutual gain, a partnership is created and is binding upon them. If the agreement does not contain a specified time for the continuation of such partnership, it may be dissolved at the pleasure of either partner, but if there be such a provision it should be regarded binding. However, against fraud and such like misconduct, and against unfair dealings, a court of equity may interfere and grant such relief as the nature of the case requires." The rule is generally laid down that an action between partners cannot be sustained in a court of law, but, "what a court of law cannot do, however, in this respect, a court of equity can; and, generally, equity has a full jurisdiction over all disputes and claims between partners, and may do whatever is necessary to settle them in conformity with justice." But although equity courts are clothed with extensive powers, yet they are bound by rules and practice, etc., in the exercise of their authority. A fundamental rule of pleadings and practice is that evidence must support the allegations or averments in both law and equity proceedings. This court says that in pleadings, allegations are intended only to set forth in a clear and logical manner the points constituting the offence complained of, and if not supported by evidence can in no case amount to proof. Evidence alone enables the court to pronounce with certainty concerning the matter in dispute.

After the most careful examination of this case we find no evidence, not the slightest, to support the allegations set forth in the bill of equity of the appellees. This court therefore adjudges, (1) that the court below erred in its decree that the partnership be provisionally dissolved and the business placed in the hands of receivers; (2) that the court below did further err when it refused to dismiss the petition or bill in equity filed in this case, for the reason that it was indistinct and uncertain. The

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bill being bad in part, should have been by said equity court adjudged bad as to the whole, and therefore dismissed.

Therefore the decree made in this case by the court below is hereby reversed and made void and of no effect, and the appellees shall pay all legal costs of the appeal. And the clerk of this court is hereby directed to issue a mandate to the court below as to this judgment; also directing him to immediately place the partners as they were before said decree.

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## J. G. MONTGOMERY, Appellant, *vs.* WILLIAM ZEISER, Agent for J. W. West, Appellee.

[January Term, A. D. 1905.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Grand Bassa County.*

*Appearance—Imperfect judgment—Final judgment.*

A communication by a defendant's attorney addressed to the clerk of the trial court requesting him to enter an appearance, amounts to a formal appearance if made within the time fixed by law.

Where the statute provides that upon rendering an imperfect judgment the court shall proceed to render final judgment, it is grossly irregular to proceed to trial without a jury.

After rendition of a final judgment, a case cannot be reopened by the trial court and another judgment rendered, although in conformity with the previous judgment.

This is an appeal from the ruling and judgment of the Court of Quarter Sessions and Common Pleas, Grand Bassa County, at its December term, 1903. From the transcript of the record to this court, it appears that appellant did enter into a mercantile agreement with the appellee during the month of May, 1903, to the effect that the appellee was to supply the appellant with goods or merchandise, thereby enabling him to open trade and exchange said goods for marketable African produce, and that the appellee did supply the goods as agreed. The record shows further, that the appellant on his part also promised and agreed to "deliver to the appellee all

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marketable produce bought by him, at market price." The appellant at the same time signed a note of hand for the goods thus delivered. Thus a business relation commenced May 15th, 1903, and continued until December, 1903, when the appellee, plaintiff below, instituted this action of debt on the aforementioned note. The appellant insists that in liquidation of this note, he made several payments in produce; while the appellee maintains that on the note there have been no payments. Several receipts from appellee have been filed in this case, yet they are indefinite as to what account payment was made by the appellant, although given by the appellee since the execution of the note. This is briefly a synopsis of the case under review.

At the call of this case for trial in the court below, the plaintiff, now appellee, offered and submitted to the court a motion urging that the appearance of the defendant, now the appellant, be struck from the record, on account of alleged informality, and that judgment be entered for the plaintiff; which motion the court allowed, and immediately rendered imperfect judgment for the plaintiff. In effect this judgment precluded the defendant from maintaining any legal defence against the action, as is virtually maintained, that he was not in court. The form of the imperfect judgment is as follows: "The court adjudges that the plaintiff is, or is not entitled to recover." (Lib. Stat. Bk. 1, p. 50, sec. 7.) In this case, the record further supports the fact that the defendant below did, within the time allowed by law, file in the clerk's office of the court in which the case was entered, the following purported appearance: "J. R. Moore, Clerk of Court, Quarter Sessions and Common Pleas: Sir, You will please enter upon record that I have appeared this day to defend myself in the case West *vs.* J. G. Montgomery. Yours, J. G. Montgomery, by P. J. L. Brumskine, his attorney." This instrument is dated Nov. 23d, 1903. By Stat. Book 1, p. 22, sec. 2,

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the appearance of the defendant is to be accounted as when it is entered upon the record of the court. For this reason this court is of opinion that the court below greatly erred in ruling out the appearance of the appellant, it being a sufficient appearance in law. It must be clear to every unbiased mind that this act of the court destroyed every legal resistance that the appellant could have made against the suit.

Again the record shows that after the court had rendered imperfect judgment, it allowed a trial without jury. This was also error in the court, because by statute, as soon as a perfect verdict is rendered, or an imperfect judgment completed, the court shall proceed to render final judgment. (Stat. Book 1, p. 52.) The proceedings in this case for irregularity and illegality are without a parallel in the history of cases tried in any court in the Republic.

We mention one more of the irregularities attending the trial below. On the ninth day of January, 1903, the court rendered final judgment, thus putting an end to the suit unless an appeal was taken. Now jurisdiction could not be resumed without an order from a higher court. Yet, on the eleventh, two days after the rendition of the final judgment, the court reopened the case, examined witnesses and rendered a judgment, although in conformity with the previous judgment.

For these errors and illegalities attending the trial of this case below, and with a view that justice be done to the litigants, this case is hereby remanded to the court from which it came, for trial *de novo,* costs to follow, until its final settlement. And the clerk of this court is hereby directed to issue and cause to be served on the judge of the Court of Quarter Sessions, Grand Bassa County, a mandate after the usual form, informing him of this decision.

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## KRA, Plaintiff in Error, *vs.* REPUBLIC OF LIBERIA, Defendant in Error.

[January Term, A. D. 1905.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Piracy.*

In Admiralty, it is proper for the trial court to order the issue of a monition, after a libel, charging a prisoner with a crime, has been filed and the case called for trial.

Because depositions are unsealed is not sufficient ground to rule them out, where it does not appear that they have been tampered with.

This case was heard in the admiralty jurisdiction of the Court of Quarter Sessions and Common Pleas of Montserrado County, at its May term, A. D. 1904. From the record it appears that a libel was filed against the libellee, now plaintiff in error, by the libellant, now defendant in error, in the December term of said court, A. D. 1903, charging the said plaintiff in error with piratically taking from the person of one Capt. Mauser, master of the wrecked ship "Lulu Bohlen," five hundred and sixty pounds sterling.

The case was called up for hearing on the 14th day of April, when the counsel for the plaintiff in error moved that the case be dismissed because no monition had issued, nor had an order to issue same been made by the judge. The court below refused to dismiss the suit for the reasons alleged, and ordered the monition to be issued. The case was postponed until the May session of the court, when a decree was made against the libellee, now plaintiff in error. To this decree, as well as to the several other rulings made in said case by the court below, the libellee, now plaintiff in error, excepted, and moved the case on a writ of error, before this tribunal of last resort, for rehearing.

The first exception taken, as appears from the assignment of errors, is to the ruling of the court below upon

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the motion to dismiss the suit and the subsequent order of the judge for the issuing of the monition.

This court would remark, that in admiralty the court of original jurisdiction may exercise greater powers than what are generally allowed by the arbitrary and technical rules of the common law. This rule was exhaustively considered by this court in the case, Republic of Liberia against W. C. Dennis, determined in 1898. In that case the identical point presented for our consideration in the first assignment, was submitted, and this court handed down the following rule, quoted from Benedict's Admiralty, as its opinion on this point: "In admiralty practice the law allows a greater scope of privilege to parties than in common law practice. In admiralty the court is bound to determine the case submitted to its cognizance, upon equitable principles and according to the rules of natural justice. The grand object of doing justice between the parties is superior to technical rules; and where the strictest practice of the English common law, or the civil law, would turn a party out of court, or defer, or prevent justice, by considering an arbitrary rule of proceedings as paramount to all other considerations, the American admiralty finds in the educated reason and cultivated discretion of the court the means of defeating chicanery, rectifying mistakes, supplying defects, and of reconstructing his case, as far as necessary, without the loss of such progress as he may have already made. In admiralty interests of great moment are involved to the nation, whether in respect to its own citizens or to aliens. It upholds the nation's majesty and credit. Largely it affects its revenue, which is its life-blood, and that which enables it to exist and to maintain its independence, and to develop its growth and afford to it the means of support and protection to its citizens; therefore the law will not allow justice to be defeated for the want of technicalities or mere form, or slight, non-essential omissions."

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Here in the case under consideration the ship of a friendly state, with whom we hold treaties of friendship and of commerce, had stranded at a remote point on our coast and the master had been piratically robbed of a large sum of money. The felon was discovered and taken into custody and the machinery of the court put in motion to punish the offence. A libel charging the prisoner with the crime was properly filed and the case called up for trial. But at this stage of the proceedings it was discovered that no process had been issued, nor had the judge below made the necessary order in the premises. According to the strict rules of the common law, such an irregularity could not be cured in the same suit and the motion to dismiss would have been well-founded. But, as we have already observed, the rule is otherwise in admiralty proceedings, where "the grand object of doing justice between the parties is superior to technicalities in form, or other slight omissions." Supposing the judge below had adhered to the contentions of the learned counsel for the libellee, now plaintiff in error, and dismissed the suit, and supposing before process could be issued the accused should have absconded and his discovery became impossible, is it difficult to imagine the ill-effect such a result would have produced upon the minds of the tribes scattered along our coast, where the wrecks of foreign merchantmen are frequently occurring, and whose piratical acts and maltreatment to the passengers and crew of these wrecks have more than once been made the subject of international inquiry.

Would it be illogical to presume that the non-punishment of the accused after guilt had been confessed and become generally known along the Kroo coast, would have encouraged the practice of piracy upon wrecks at remote points along our coast, by confirming the impression already held by the natives that wrecks and wreckage are *bona fide* the property of the tribes near whose

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town they happen to occur, and that the law of civilized states will not punish one who converts private property to his personal use under such circumstances?

It would seem in this particular case, that even if there had not existed that rule of law in admiralty practice, upon which the learned judge acted in refusing to dismiss the suit, he would have been justified in the course he adopted by the stern reasons of public policy and transparent justice.

We proceed next to consider the second assignment, which is taken to the court's admitting as evidence depositions taken by a justice of the peace, in a case of larceny, against the plaintiff in error, for the same act which constitutes the subject of this suit. The grounds laid are: (1) "That the said depositions were not taken by the deponent nor the Justice of the Peace, but by his clerk"; and (2) "that they were presented unsealed." As to the first ground, we fail to see the reason of it. It appears from the second, that the depositions were properly taken before a Justice of the Peace and that they were signed in the legal form by the deponent. The mere fact that they were recorded by the magistrate's clerk and not by the magistrate himself, cannot impeach their genuineness and validity; especially so when, as we have said, they were signed by the witnesses who made the statements, and a jurat in legal form signed by the Justice of the Peace before whom they were taken, which is *prima facie* evidence of their validity.

As to the second ground, this court is of opinion that the simple fact that the depositions were presented at the trial unsealed, but which fact is unconnected with any circumstance tending to show that they had been tampered with, or that they had in any respect been altered, was not, in the opinion of this court, sufficient ground for the court below to have ruled them out. It should be strictly observed, however, that the exception

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on this point as laid in the assignment of error, is to the taking and non-sealing of the depositions and *not* as to the legal right to use in evidence *ex parte* depositions in a case of this nature. This not having been raised in the pleadings and assignments, the court does not feel itself bound to pass upon it and therefore reserves opinion thereon.

The third assignment is taken to the decree of the court below, delivered in the premises on the 25th day of May, 1904, in which the libellee, now plaintiff in error, was adjudged guilty of piracy, and the following punishment inflicted; namely, "That the libellee, now plaintiff in error, will make restitution of the stolen money £560, less the amount recovered by the government, and forfeit and pay to the government two hundred dollars; and failing to pay said amount, he shall be imprisoned in the common jail, with hard labor in chains, sufficiently long to pay said amount at the rate of six dollars per month."

Summing up the evidence produced at the trial, this court finds that the conclusions of the judge below upon the facts submitted are well and substantially founded. Independently of the depositions, whose admission as evidence was contested by the learned counsel for the libellee, now plaintiff in error, a strong and cogent case was made out by the prosecution, from the oral testimony put in evidence. But this court is obliged to announce that after a careful study of the statutes controlling this case it has failed to discover the law upon which the court below predicated that part of its decree relative to the punishment inflicted. Beyond a controversy the learned judge below mistook the law on this point.

In an act defining piracy, found on the 145th page of the Compiled Statutes of Liberia, in Sec. 11 it is stated that "In all cases of conviction in any of the courts in this Republic of any of those crimes denominated by the law as piracy, to which no specific penalty has been

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assigned, and in which murder has not been committed, the penalty shall be a fine of not less than five hundred dollars, and in default of payment, imprisonment for a term of five years, but in cases in which murder has been committed the penalty shall be imprisonment for life." This we understand to be the law controlling the judgment in this case.

This court therefore, under the authority of the statute above cited, reverses the decree of the court below, so far as it relates to the punishment, and will now proceed to make the decree the court below ought to have made.

This court decrees that Kra, the plaintiff in error, is guilty of piracy and that he is sentenced to pay a fine of three thousand dollars. Failing to pay said fine, he shall be imprisoned in the common jail for a term of five years. The clerk of this court is hereby authorized to issue a mandate to the judge below, informing him of this decree.

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## AMSTEAD WOOD, Appellant, *vs.* REPUBLIC OF LIBERIA, Appellee.

[January Term, A. D. 1905.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Murder.*

*Constitutional law—Twice in jeopardy.*

Where after a jury has been empanelled to try a prisoner charged with murder, one of the jurors separates from the panel and goes beyond the precincts of the court, and the trial judge thereupon disbands such jury and empanels a new jury and proceeds to try the cause, such action is not in violation of the section of the constitution providing that "no person shall for the same offence be twice put in jeopardy of life and limb."

This case is before this court upon an appeal from the Court of Quarter Sessions and Common Pleas for the County of Montserrado. From the record it appears that the accused was indicted and tried at the December

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term of said court in the year A. D. 1903, for the atrocious crime of murder. Upon arraignment the prisoner plead "not guilty" to the charge, whereupon a jury was empanelled to try the issue raised by said plea. It further appears from the record, that during the progress of the trial, that is to say, on the second day thereof, it was brought to the knowlege of the judge presiding over said trial, that on the first day's hearing of said case, and after a part of the evidence on the part of the prosecution had been heard and submitted, and the jury duly charged with the acquittal or conviction of the prisoner, one of the jurors absented himself from the panel and went a considerable distance beyond the precincts of the court and out of the sight and hearing of his fellows. It further appears that upon these facts being brought to the knowledge of the court, his honor, considering the influence which may have been brought to bear upon said juror while separated from his fellows, either for or against the prisoner, and in order that the stream of justice might not be polluted by the possible misconduct of a juryman, in the exercise of sound discretion, well supported, as we think, by the principles of law, disbanded the jury to whom the case had been submitted and empanelled a new jury to try the cause.

At this stage of the proceedings the counsel for the accused presented a motion demanding the discharge of the prisoner upon the ground that the empanelling of a second jury to try the same cause operated as a second jeopardy to prisoner. The court below overruled the motion and proceeded with the trial. After hearing the evidence for and against the accused and the arguments presented by the learned counsel for the prosecution and defence, the jury, after due deliberation, on the 24th day of December returned a verdict of guilty. The counsel for the prisoner at this stage moved for a new trial, which motion was overruled, and the court below, on the 30th day of said month, pronounced sentence of death upon the prisoner.

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To this sentence, as well as to the other rulings of the court below in the premises, the counsel for the defence excepted and has brought the case before this tribunal upon a bill of exceptions for review. This court will now proceed to consider separately the several points laid in the bill of exceptions. So important does this court regard the principles of law involved in the first exception, that it deems it proper to set forth this exception in full. It is taken as follows: "Because when, on the 18th day of December, A. D. 1903, a jury having been empanelled to try the above entitled cause, your honor, on the 19th day of December, A. D. 1903, after the evidence had been gone into and not concluded, informed the counsel for the state and the counsel for the defence that one of the jurors had been seen away from the rest of the jury with one of the bailiffs of the court, and asked that the place of that juror be supplied and he be dismissed from said jury, or that the said jury be dismissed; to which the state's attorney assented and to which the counsel for the defence dissented, and your honor then disbanded said jury and ordered said case to be taken up *de novo,* to which prisoner excepted."

The law involved in this exception relates to a constitutional provision, and is one which the Supreme Court of the Republic of Liberia has never passed upon and thereby settled. The provision is borrowed from the American Constitution, after which our Constitution is framed, and appears to have been introduced into the organic law of this Republic as a safeguard against the abuse of public justice and an equitable protection to life and liberty. The last clause of the 7th section of the Liberian Constitution declares that "no person shall for the same offence be twice put in jeopardy of life or limb"; that is to say, no person shall for the commission of the same crime be twice tried.

The question as to what is jeopardy and at what stage of a legal proceeding it may be technically said

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to begin, is one which has afforded a wide field for legal discussion and research. In the American courts the express enactments of the several states have declared what shall and what shall not be regarded as jeopardy in criminal prosecutions before the courts of the respective states. And so divergent and technical are the shades of opinions expressed in these states upon this great subject, that a comparative study of them is rendered in a large degree perplexing, though exceedingly interesting and instructive.

But it is the common law definition of the term jeopardy which interests us in the consideration of the case under review, and not the *lex scripta* of the American states, and we shall therefore proceed to discuss the principles laid down on the point by some of the ablest and most profound common writers, whose works have been admitted as text-books in the courts of the Republic. And firstly, Mr. Bouvier defines jeopardy to be "The situation of a prisoner when a trial jury is sworn and empanelled to try his case upon a valid indictment, and such jury has been charged with his deliverance." (1 Bouv. Law Dict. p. 751.) Mr. Bishop in his treatise on criminal law confirms this view and enters into an exhaustive and minute treatment of the subject. We shall only quote here that part of his observations on jeopardy which applies to the case in point. "It appears," he says, "a point not very clear on the authorities, that the keeping of the prisoner's legal rights is not at all with the jury, but only with the judge; and that therefore if a juror of his own motive escapes so that no verdict can be rendered, such escape shows the prisoner *never* to have been in jeopardy. *The same result would perhaps follow if the jury separated with the consent of the officer in attendance who had no right to give any consent.*" "So it plainly must be," he continues, "if it should be found that a juror was legally incompetent to sit, or not sufficiently sworn, or

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if the cause should appear to have been tried by a less number of jurors than the law requires." (1 Bisp. Crim. Law, sec. 670.)

Besides these exceptions to the general rule mentioned here by Mr. Bishop, others laid down in the text books as legal necessities may be mentioned, and which have been uniformly upheld by the decisions of the English and American courts at law. As for example, where during the trial the judge takes sick and the trial cannot proceed, the jury, although sworn and empanelled, and the evidence perhaps gone into, may be disbanded and the trial postponed, and the prisoner is not entitled to a discharge on that account. So also the sickness or incapacity of a juror, sickness of the prisoner, expiration of the term, inability of a jury to agree, separation of the jury before their verdict has been made up. Whenever any of these cases arises during the course of a trial, the judge may, with or without the consent of the prisoner, disband the jury and if necessary postpone the trial, and the prisoner will not be entitled to a discharge nor can he legally raise the plea of jeopardy when a new jury has been empanelled to try his cause.

Let us for a moment enquire into the reasons of the law for so holding. And for this purpose we shall reason upon the facts presented in this case and which are pertinent to the foregoing observations.

Here, in the case before us, after the jury had been sworn and empanelled to try the issue raised by the plea of the prisoner, a juror separated from the panel and went beyond the precincts of the court. The possibilities were that he may, during said separation, have come in contact with some influence which may have swayed his mind and his vote in favor of or against the prisoner. He may have been approached by the hired agents or friends of the accused and bribed to give his vote in prisoner's behalf, no matter how conclusively the state may have proved his guilt. Or, on the other

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hand, what may be regarded as still more wicked and reprehensible, his vote and influence might have been secured by the haters of the prisoner, to bring down a verdict against him, however doubtful and insufficient the evidence against him may have been.

Under such circumstances, the judge, who, as we have seen, is charged with the keeping of the prisoner's rights, could not have an abiding conviction that the ends of public justice would not be defeated, if that juror were permitted to pass upon the prisoner's guilt. He could not feel a moral certainty that the verdict to be delivered under such circumstances would be guided by the preponderance of the evidence submitted, and that it would be free from the taint of corruption and perversity. What, then, let us inquire, would be his reasonable duty under such circumstances? Obviously, as a dispenser of transparent justice, his duty would be to disband the jury whose legal disinterestedness in the cause could no longer be relied upon, and to empanel a new jury.

In summing up the law bearing on the point raised in the first exception in the bill, this court will remark that in its opinion the court below did not err in overruling the motion to discharge the prisoner upon the ground that the former jury had been disbanded. Under the circumstances surrounding the case, the judge was in the exercise of sound discretion; the necessity arising justified this course. To hold that the disbanding of a jury under such circumstances is illegal and should operate as a discharge of the prisoner, would be setting aside plain principles of the statute and common law, and producing loop-holes for the escape of the guilty. But the case would have been far otherwise had the court at this stage of the proceedings disbanded the jury for any cause not recognized by the law as a reasonable necessity for so doing.

In handing down its decision on this much-disputed provision of the Constitution, the court desires to have

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its premises, which it thinks are well upheld by law and reason, distinctly and clearly understood. Jeopardy, as this court understands the law, attaches when, upon a valid indictment, the prisoner is arraigned and pleads, and the jury empanelled and sworn to try the issue raised by the plea. If at this stage of the proceedings the jury is disbanded and trial postponed, except for the plain causes of necessity mentioned in the common law and referred to above, the prisoner, under the great provision of the Constitution, may demand his discharge. But if, on the other hand, the postponement arises from palpable necessity, over which the court had no control, the prisoner may be tried and convicted by a second jury, upon the same indictment, which proceeding is only a continuance of the former proceedings.

The supreme object of the Constitution, it appears to us, is to protect the prisoner against the inconveniences of repeated prosecutions for the same crime, which would tend to cripple his liberty and freedom. The chief guarantee of the Liberian Constitution is the protection of the liberties and freedom of the commonwealth. The idea may have derived its origin from the study of the Roman and English law in its early stages, when the freedom of men was sometimes greatly crippled and hampered by repeated prosecutions for the same offence. But we fail to recognize in said provision of our Constitution any design to baffle justice and to screen crime. To admit this would be to impugn the righteous motives of the sainted framers of the organic law. This court refuses to entertain an opinion on this provision of the Constitution, which is in conflict with other portions of the solemn compact, in conflict with the interpretations of the American courts upon a similar provision in the American Constitution, and in conflict with natural law and the rules and principles of written law.

We proceed next to consider the 5th and 6th exceptions in the bill. The 5th exception is taken to the

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court's ruling on the motion presented by the learned counsel for prisoner, praying a new trial upon the ground that the verdict of the jury presented in said case "is manifestly against the law and evidence"; which motion the court overruled. The 6th exception is taken to the sentence pronounced upon said verdict.

The 5th exception brings us to the consideration of the evidence produced at the trial, upon which the guilt of the prisoner is claimed to have been established. Following the generally accepted principle of law that "every man is presumed to be innocent until the contrary is proven," and that "the burden of proof rests upon the party maintaining the affirmative," it follows that when a prisoner is charged with the commission of a crime the facts necessary to establish his guilt must be proven by the State. And so careful is the law in guarding the interest of the prisoner that the State, to convict, must not only make out an apparent case, but it must prove the guilt of the accused beyond a rational doubt. The proof must be so conclusive as to exclude every hypothesis of the prisoner's innocence.

Evidence is ranged by law writers into three general groups, namely, positive or direct evidence, presumptive evidence, and circumstantial evidence. Positive or direct evidence is that means of proof which tends to show the existence of a fact in question from a knowledge of such fact derived from one's own senses. Presumptive evidence is that which shows the existence of one fact by proof of the existence of another, from which the first may be inferred. Circumstantial evidence tends to prove a disputed fact by proof of the other facts, which have a legitimate tendency, from the laws of nature, or the usual connection of things, to lead the mind to conclude that the fact exists which is sought to be established.

From an inspection of the record we find that the evidence in this case chiefly falls under the last two

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heads, namely, presumptive and circumstantial. And the court would here remark that the greater number of crimes found upon the records of criminal courts are established by this species of proof. It is not frequent, speaking comparatively, that misdemeanors and crimes are committed before the public gaze. The natural tendency is to seek secrecy and concealment. So that if the law only recognized, as sufficient to convict, that quality of evidence we call positive, the safety of society would be greatly jeopardized by miscreants who would perpetrate their diabolical deeds either under cover of night, or under some other cover which the eye of justice could not penetrate. In this case the prisoner is charged with the wilful and malicious killing of a human being, under circumstances greatly aggravated.

Summing up the evidence, we find that some time before the commission of the crime with which the accused is charged, deceased and prisoner had a quarrel about some ducks, which deceased accused prisoner with stealing; that shortly after this affair, deceased's house was fired into and prisoner was arrested upon suspicion, but was discharged for want of proof; that later, deceased's house was burned, but the felon was not discovered; that after the shooting into the house, prisoner went to wife of deceased, and, referring to the incident, warned her that a greater calamity would befall her. He mentioned a conspiracy which had been formed, as prisoner said, against her, and asked for money, in consideration of which he promised to stop the plot, alleging that he had the power to do so. It was given in evidence by witness John Hagan, that prisoner subsequently confessed that it was he who fired into deceased's house, and that his intention at the time was to kill deceased. It was also stated in evidence that on the day deceased was killed, a warrant was issued against prisoner and as the prisoner saw the officer approach the house of Garnet, where he was, he fled. Another

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witness states that in the afternoon of the same day the crime was committed, he saw prisoner on the road to Careysburg, under circumstances which appear to the court very suspicious. He further states that prisoner had with him a gun. Witness Mulbar's testimony, when taken together with the other witnesses', removes much of the doubt which otherwise would have surrounded the case. It is the last link of a long chain of evidence, which enabled the law to finally trace the crime to prisoner. Without Mulbar's testimony it would have been difficult to connect the former acts and admissions of prisoner, which laid the foundation for strong presumption, and his flight from the officer and other suspicious conduct, with the actual commission of the crime charged.

The voluntary confession of the prisoner to witness Mulbar, under circumstances which excluded the idea of its having been made under duress, or threat, or fear, or inducement, established a strong case for the prosecution, the *corpus delicti* having been proven by independent testimony. Taking witness Mulbar's statement, which proves the confession of prisoner to the alleged crime, together with the presumptive and circumstantial proof submitted, we feel no hesitancy in asserting that the guilt of the accused has been made out with legal certainty. It was the privilege of the prisoner to have rebutted this evidence and thereby raise a rational doubt as to his guilt, which doubt, if well founded, would have operated in his favor. But we find that this was not even attempted. Traversing the whole evidence with a determination to discover whatever could be discovered therein, in prisoner's favor, we have found not the slightest foundation upon which to predicate his innocence.

It was insisted upon by the learned counsel for the accused, in his arguments, that prisoner was not in the settlement of Bensonville at the time of the commission

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of the crime; but this fact, if it really existed, and if the defence intended to utilize it in its defence, should have been pleaded under the plea of *alibi,* and proven. This the prisoner failed to do.

Having most carefully and deliberately examined the whole evidence in this case and the law bearing upon the questions of law raised, we are forced to conclude, upon the authority of the evidence, that the prisoner Armstead Woods did wilfully and of his malice aforethought kill and murder Samuel Coker.

This court is consequently under the painful necessity, in the discharge of its solemn responsibilities as the highest dispenser of public justice in this country, to affirm the death sentence pronounced against prisoner in the court below. The judgment of the court below is therefore affirmed and the clerk of this court is hereby authorized to issue from his office a mandate to the judge of the court below, informing him of this decision.

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## GUST LACKMAN, Appellant, *vs.* J. J. W. JOHNS, Appellee.

[January Term, A. D. 1905.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

*Damages.*

In an action of damages for the unlawful killing of a hog, the allegation of a sum as special damages must be proven by unimpeached evidence, otherwise only the assessed valuation can be recovered.

This case was tried in the Court of Quarter Sessions and Common Pleas for Sinoe County and judgment given against defendant, now appellant. From inspection of the record we find that the cause of action grew out of an injury alleged to have been done to the plaintiff, now appellee, by the unlawful killing of a hog by the defendant, now appellant. The action was brought to

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redress said wrong and the plaintiff, now appellee, in his declaration plead special damages in the sum of $150.00 for the injury complained of. The jury to whom was entrusted the duty to ascertain the damages, if any, the plaintiff, now appellee, had sustained, awarded the sum of $81.00 as damages, and upon this verdict the court gave judgment accordingly. From this judgment, as well as from other rulings of the court below, the defendant, now appellant, excepted and appealed to this judicature for a rehearing of the case.

There are three distinct exceptions set forth in the bill of exceptions, but this court finds it unnecessary to consider them distinctly, since they virtually raise one and the same point, and therefore we propose to consider them collectively. The main exception is to the amount awarded by the jury and confirmed by the judgment of the court. Before proceeding to traverse the evidence upon which the verdict purports to be founded, we would observe that actions of damages are legally brought to redress injuries which the law has not provided some other remedy for. The object of such actions, speaking in a general sense, is to compel the wrongdoer to make satisfaction for wrongs he has committed upon the person, property or relation of the party entitled to bring the action. Generally speaking, it does not partake of the nature of a criminal prosecution, whose object is to inflict punishment. But there are exceptions to the general rule, as will be found laid down in the statutes of Liberia; as, for example, in an action of damages for the seduction of a wife or daughter; the illegal taking away or harboring a wife, child or apprentice under twenty-one years of age; or enticing an idiot or insane person from his or her legally appointed guardian or trustee; the breach of contract of promise or engagement to marry, etc.

Actions of this kind, though sounding in damages, partake of the nature of criminal prosecutions, and a

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jury in assessing damages in suits founded upon the foregoing causes, will not only take into consideration the actual loss or inconvenience of the plaintiff and award such sum as would adequately satisfy such loss or inconvenience, but may exceed this bound and award a greater sum, as, what is called in law, *exemplary damages*. But the case under review does not fall within this category; that is, it does not belong to that class of injuries for the redress of which the jury is not only to consider the actual loss or inconvenience sustained by the plaintiff and award accordingly, but may give exemplary damages. It is true in this case that the plaintiff, now appellee, plead *special damages*; this, however, he was bound to prove substantially or the jury would not be justified in relying upon his claim as a just and equitable satisfaction for the injury complained of. It is a settled principle of law that special damages when relied upon must be specially pleaded and proven. The mere fact of alleging a sum in the complaint as requisite to satisfy the injury complained of, will not warrant a jury to take cognizance thereof unless it is proven by unimpeached testimony at the trial.

In the case under review there was no evidence submitted to show that plaintiff, now appellee, had been damaged to the amount pleaded in the complaint. This, as we have said, was necessary in a case where special damages is relied upon. The jury was then bound to award such damages as was shown by the evidence that the plaintiff, now appellee, had actually sustained. According to the evidence the value of the hog killed was assessed by appraisers to be $8.00. This court cannot see upon what evidence the verdict of the jury was predicated, and regards the damages awarded as excessive. The verdict being illegal, it follows that the judgment, which is predicated upon said verdict, must necessarily be illegal also, and this court adjudges that said verdict and judgment are illegal.

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The judgment of the court below is hereby reversed. This court further adjudges that the plaintiff, now appellee, shall recover from the defendant, now appellant, the sum of eight dollars for his damages, and all legal costs in the action. The clerk of this court is hereby authorized to issue a mandate, under his hand and the seal of his office, to the judge of the court below, informing him of this decision.

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## MANNY GOFAH and YANTEE M'LANH, Appellants, *vs.* PETER, *alias* DEBBOOH WREH, Appellee.

[January Term, A. D. 1905.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Native Custom. Damages.*

This case was entered in the Monthly and Probate Court of Montserrado County, at its August term, A. D. 1904, before His Honor Judge R. J. Clark. After hearing the petition and evidence in the case, his honor the judge was pleased to give a judgment in favor of Peter, *alias* Debbooh Wreh, defendant, now appellee, to the effect that Manny Gofah and Yantee M'lanh shall produce the body of Tetee in one month from date (24th day of August, 1904), and that they each give a bond of one hundred dollars for the safe production of the said Tetee; in failure thereof, they to pay to petitioner his dowry money of £28; and the costs to be paid by defendant. Whereupon, the defendants, now appellants, Manny Gofah and Yantee M'lanh, excepted to the judgment of the judge, and prayed for an appeal to this the Supreme Court, seeking substantial justice. The case, therefore, comes up to this court on a bill of exceptions.

From a review of the record in the case the court has been informed of its history, as follows: Peter, *alias* Debbooh Wreh, plaintiff, now appellee, "pryed," that is,

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abducted (the word is Kroo) one Tetee, the wife of Blackwill Sherman's son, which occasioned much dissatisfaction and trouble, to the extent that the town's people were two days deciding the matter, which they finally succeeded in doing by the plaintiff, now appellee, agreeing to pay the dowry money to Blackwill Sherman's son, according to the native or Kroo custom when a man "pries" another man's wife, which according to evidence he did. The woman Tetee then became the wife of appellee. A short time subsequently, Yantee M'lanh desired to go to the coast to see her mother, who was reported to be very sick; but appellee would not allow her to go at that time, so the question rested. A short time after, his wife Tetee left him and went to Manny Gofah. Appellee then agreed that his wife go to the coast to see her mother if Manny Gofah and Debbey would become security for her return to him in one month and fifteen days' time. They, Manny Gofah and Debbey, bound themselves by a written instrument to appellee for the safe return of Tetee within the stipulated time. Being thus secured, appellee allowed his wife Tetee to go. But it appears that Tetee did not return at the stipulated time, but was away for six months. Before she returned, however, appellee himself went to the coast, and after his return home the bondsmen produced and delivered his wife Tetee to him and he received her; but in a day or two his wife told him that she was not his wife, and she did not wish to stay with him, for she had another husband.

The bond and security given for her return from the coast in one month and fifteen days was kept by appellee for the reason, as we gather from the evidence, that he feared she would abscond, as it was reported that her family would send her away. She subsequently did abscond, left her husband, and went away on a steamer. The appellee then held Manny Gofah and Yantee M'lanh, aunt and sister of Tetee, for the delivery of his said wife

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Tetee, he still holding the bond given by Manny Gofah and Debbey. He held Yantee M'lanh because she was the sister of Tetee his wife, and because Tetee would often stay with her sister and kept her clothes at her house. This is a short but true history of the case. Now this court will review the evidence in the case and see how far the appellants are responsible for the detention and non-delivery of Tetee, and whether the judgment of the court is in keeping with the evidence.

Peter, *alias* Debbooh, petitioner and now appellee, states that Tetee is his wife; that he "pryed" her from her former husband and paid the dowry money, according to the custom of his tribe; that he consented to her going to the coast to see her mother, under bond and security given by Debbey and Manny Gofah, for her return at the time set; but after the expiration of six months she returned to him and that he received her, retaining the bond of Debbey and Manny Gofah; that subsequently his wife refused to take him as her husband, and said she had another husband, and finally absconded from him. Manny Gofah states, in answer to the question of Attorney C. B. Dunbar, that she did not have appellee's wife. In answer to the questions by the court, she states that she does not know where Tetee is; that she hears that she ran away on Sunday; that Tetee did not tell her that she was going away; that Tetee did not stop in her house when she returned from the coast, but that she stopped with Debbey, who brought her home; that she does not know how many days Tetee stopped with her husband. Yantee M'lanh stated, in answer to the questions of Attorney Dunbar, that last week Sunday Peter (appellee) came to her and asked her for Tetee, his wife, and says that she told him that she did not have her and that she did not know where she was at; that she saw her last week Sunday; that she went to her place and had a bath early in the morning; that her box was not at her place because

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they were relatives, and that they kept their clothes together because they were sisters. Much of the evidence is the repetition of the same given by other witnesses, hence we will quote only such evidence as may or may not have a tendency to support the judgment of the judge below.

Mr. Anderson, Governor of Kroo Town, states that Tetee was with her husband in his house, and that she ran away from her husband's house; that she said that she did not want Peter, appellee, as her husband; that their custom respecting a man "prying" another man's wife or a woman leaving her husband is that the man to whom the woman goes, or who "prys" her, pays the dowry money, and if she run away and go to her family, her family is responsible, and they must return the money; but if she run away of her own accord, no one is responsible; that the woman Tetee ran off from Peter her husband on Sunday morning; that he, Peter, lives next door to him, witness; that she went off before day; that Peter came and made complaint to him, saying that his wife Tetee had run off from him; that he heard her people were going to make her run; that he did not know if Manny Gofah sent Tetee away.

Now, then, after a careful review of the case and the evidence adduced, this court is of opinion, based on the law and the custom of the natives (meaning aborigines), that Peter, *alias* Debbooh Wreh, appellee, is estopped from holding security against Manny Gofah and Debbey, for the ostensible reason that notwithstanding the said Manny Gofah and Debbey gave him, the said appellee, security for the return of his wife Tetee in one month and fifteen days from the time she left home to go to the coast, and notwithstanding the time stipulated in the bond was not observed, he, the appellee, according to evidence, received her on her return, she being delivered to him by Debbey, one of the bondsmen. Appellee should have refused reception of his wife Tetee, since

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the sureties did not keep the stipulation, and should have held them responsible, and have the bond cancelled by law, even if he was disposed to take his wife afterwards; for he could have legally taken her according to native custom. Since the bond had nothing to do with the dowry money unless the sureties paid to him the dowry money, and again, since Tetee, appellee's wife, said she would not stay with him again as his wife, because another man had "pryed" her, he, the appellee, should have compelled this new "pryer" to return to him his dowry money. And the court is further of the opinion that no evidence has been adduced in the case to prove that Manny Gofah and Yantee M'lanh were parties to the absconding of Tetee, the appellee's wife. Tetee keeping her clothes and bathing at Yantee's house, which evidence in the case shows is the custom of the Kroos, is no proof that Yantee M'lanh was a party to Tetee's absconding.

This court fails to see the congruity of the judgment of the judge below, if the evidence in the case, both as to facts and Kroo customs respecting marriage, is to be considered. The judgment of the judge appears to be based on his personal knowledge of the Kroo customs, while the evidence in the case shows the contrary.

This court, therefore, is compelled to reverse the judgment of the judge below, and rule appellee to pay costs. The clerk of the Supreme Court is hereby ordered to issue a mandate to His Honor Judge R. J. Clark of the Monthly and Probate Court, Montserrado County, to the effect of this judgment.

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# HENRY A. PAGE and A. L. PAGE, Appellants, *vs.* JACOB HARLAND and ABBIE ABIGAIL KING, Appellees.

[January Term, A. D. 1906.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Grand Bassa County.*

*Ejectment—Statute of Limitations.*

It is error for a trial court to rule that pleading the Statute of Limitations raises a mixed question of law and fact triable by a jury.

In an action of ejectment, where the declaration sets up a claim to a specific parcel of land and distinctly describes it, a deed, wherein appears none of the boundaries and descriptions mentioned in the declaration, is not admissible as *prima facie* evidence of title.

A widow, who had but a life interest in one third of her deceased husband's estate, in 1863, conveyed the whole of the estate to T, with all the formalities required by law. In 1876, T conveyed the property to S, in due form, S improved the property and afterwards it was acquired by P, defendant in ejectment, in 1905. *Held*, that the right of action to recover accrued at the time of the original transaction and that simultaneously therewith the Statute of Limitations began to run, and further, no objections having been made to any of the transactions, by claimants or their privies, and it not appearing that they were legally disabled from so doing, that P acquired an absolute fee to the whole estate.

This case was heard and determined at the September term of the Court of Quarter Sessions and Common Pleas for Grand Bassa County, A. D. 1905. From the pleadings filed in the suit we find that the action was brought by appellees, plaintiffs in the court below, to recover possession of a certain parcel of land, the right and title to which they averred had descended to them by descent, and which they alleged was wrongfully withheld from their possession and enjoyment, by the appellants, defendants in the lower court. To this declaration appellants, defendants below, in their answer pleaded, *inter alias*, the Statute of Limitations in bar of the action, and in subsequent pleadings demurred to the replication of appellees, upon the ground that it did not distinctly reply to their special plea set up in their answer. At the trial of the cause the court below overruled the demurrer and held that the plea of limita-

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tion raised by appellants in bar of the suit was a mixed question, triable by a jury. The appellants excepted to this ruling of the lower court, and in their bill of exceptions addressed to the consideration of this tribunal have laid this point as their first exception. The nature and quality of a plea in bar, pleading the Statute of Limitations, is so distinctly understood in law, and the rules have been so uniformly and clearly laid down by this judicature, that it is difficult to understand how the court below could have mistaken the law controling same. In the case of Thomas Cassel against Matilda Richardson, determined by this court in 1876, it was held that "a plea specially pleading the Statute of Limitations in bar to a suit is a question *purely of law,* and under the statutes of this Republic could only be tried and determined by the court." We do not hesitate to uphold this opinion. It was manifest error in the court below to submit a plea of this nature to a jury.

The second exception is taken as follows: "Because on the 30th day of September, A. D. 1905, the attorney for the plaintiffs (now appellees) offered as evidence an instrument purporting to be a deed from the Republic of Liberia to Asbury Harland; the said instrument being objected to by the defendants' attorneys on the ground that the said instrument was irrelevant to the issue, as it did not bear on its face any description of the one third of an acre of land which the plaintiffs were seeking to recover, as laid in their complaint," etc. It is a fixed principle of law that all evidence must be relevant to the issue; that is, it must be pertinent to the facts it professes to support. It is also a settled rule that the evidence must agree with the essential allegations averred in the declaration, when offered by the plaintiff, and if there appears a material variance between the facts pleaded in the declaration and the evidence offered in support thereof, such variance is held by the leading law authorities to be fatal. It is not difficult to per-

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ceive the vast amount of inconvenience and injustice which a defendant would be subjected to if the rule was less inflexible.

Here, in the case under our consideration, the plaintiffs, now appellees, set up a claim to a specific lot or parcel of land, distinctly set forth and described in the declaration. In the deed offered as *prima facie* evidence of said claim, there appear none of the boundaries and descriptions mentioned in the declaration, which, in our opinion, was absolutely necessary in order to prove that the property claimed in the declaration is identical with that mentioned in the deed offered as evidence, as having been granted unto their ancestors, under whom they claim, by the rule of descent. A disagreement in these very essential points rendered the deed irrelevant to the issue and at variance with the facts laid and pleaded in the declaration.

The seventh, eighth and ninth exceptions, which we deem worthy of consideration, are taken to the court below rejecting as evidence offered on the part of the defendants, now appellants, the *transfer* titles for the property in question, first from Moriah Hatland to Samuel Toliver, and from Samuel and Jane Toliver to Lucinda Scotland, and from E. and John Allen Scotland, heirs of Lucinda Scotland, to appellants.

Beyond a doubt the lower court committed a gross error in rejecting as evidence the above mentioned conveyances, beginning with Moriah Harland to Samuel Toliver, and by a long line of transfers down to appellants, by virtue of which succession of titles made from time to time and openly held and enjoyed by the privies of appellants for more than forty years, which appellants sought to establish as their special plea in bar of the appellees' claim. It was imperative for the appellants in support of their plea, to prove that the property in dispute had been openly held and enjoyed either by themselves or their privies, under a color of right and

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adverse to the title of appellees, for a period of time not under twenty years, agreeable with the Statute of Limitations of this Republic; and having inspected the deeds ruled out by the learned judge below, we do not hesitate to pronounce them as evidence of the highest grade in this relation, and we are unable to find the authority, either in law or equity, upon which the court below predicated its ruling on this point.

Having considered specifically those exceptions in the bill, which we regard important to pass upon separately, we proceed to take up the last two points, involving the verdict and the final judgment pronounced thereupon. We would just here remark, that this court has spared itself no pains in diving deeply into the intricacies, and to some extent, perplexities of law surrounding this case. Not only does the law bearing on it afford the means for interesting study and research, but the vital issues which it raises are so very important to the peace, happiness and security of society that we have approached the case with all the legal skill and scrutiny at our command.

From the record we find that in 1851, the original grant for the property in question was made to Asbury Harland, the ancestor of the appellees, by President Roberts, by virtue of an act passed December 30th, 1850. There is also evidence to show that he had actual possession of it. Subsequently, Harland died, and in 1863, Moriah Harland, widow of Asbury Harland, not as widow or representative of Asbury Harland, but under a color of right in and to said property, conveyed it unto Samuel Toliver, with all the formalities required by law; thereby giving notice to all mankind that she had set up adverse title to said land. To this act of Moriah Harland it does not appear from the record that appellees, or their privies, objected, nor does it appear that they were legally disabled from doing so.

The property was again transferred in 1876, by Toliver and wife to Scotland, and the transfer probated

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and registered, and as far as can be inferred from the evidence, the appellees stood by and permitted these titles to be probated and registered, and thereby perfected, without raising their voice against it. Scotland, it was given in evidence, built a house upon the premises, which was an overt act of adverse possession. It was intimated by the learned counsel for the appellees in their arguments that at this juncture appellees sued out an action of ejectment against Scotland which was afterwards abandoned, but nowhere in the record is this statement verified. But suppose we admit its accuracy; if the suit was voluntarily abandoned, it would not supply an excuse for appellees, but, rather, it might be construed with considerable degree of legal weight that the voluntary abandonment of the suit was a tacit acknowledgment of the weakness of the appellees' title. The appellees' right of action accrued the moment the original transaction took place between Moriah Harland and Samuel Toliver in 1863, and it is the opinion of this court that simultaneously with this transaction the Statute of Limitations began to run.

But Moriah Harland, who never had a seizing in fee in said estate, but only a life interest in one third thereof, as widow of Asbury Harland,—let us see what legal effect her act of adverse title carried with it, and whether or not a title deducible from this original and unwarranted act of hers is upheld by sound principles and doctrines of the law of real estate. We propose, in this connection, to consider the following doctrines, which, we are of opinion, expound the law governing this case on this point of adverse title and possession; to wit: (1) The doctrine of adverse possession and enjoyment; (2) The doctrine of seizin and disseizin, and (3) The doctrine of limitations.

And firstly, as to the doctrine of adverse possession and enjoyment.

"It has been held," says Mr. Tyler in his treatise on Ejectment, "that the claimant in an action of ejectment

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must have not only a legal right to the land in dispute, but he must also have a right of entry or a right to the possession of the premises in controversy." "Title to land by adverse enjoyment owes its origin to and is predicated upon the Statute of Limitations, and although the statute does not profess to take an estate from one man and give it to another, it extinguishes the claim of the former owner and quiets the possession of the actual occupant, who proves that he has actually occupied the premises under a color of right, peaceably and quietly for the period prescribed by law." "The Statute of Limitations, therefore, may properly be referred to as a source of title, and is really and truly as valid and effectual as a grant from the sovereign power of the State." (Tyler on Ejectment and Adverse Enjoyment, pp. 87, 88.)

We would here observe that the subject of adverse enjoyment of real estate has always been one of considerable interest. In large countries possessing vast territories and great commercial and manufacturing interests, as, for instance, the United States of America, the subject has been one of very great importance, and one which has elicited much legal discussion and judicial decision. But we feel absolutely safe to affirm as a general rule, that quiet and peaceable possession of real property is *prima facie* evidence of the highest estate in the property, that is to say, a seizin in fee; and if such possession is continued without interruption for the whole period prescribed by the Statute of Limitations, which in Liberia is twenty years, the title becomes positive and conclusive, if the possession be adverse, as in the case under our consideration.

Let us take up next the doctrine of disseizin. As to what will amount in law to a disseizin, and when and in what manner it may be held to apply, and as to the title which the Act of Disseizin is presumed in law to convey to the wrongdoer, when this title is allowed to

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ripen by the lapse of years, the opinions of the most eminent English and American law writers are unanimous. Let us quote the rule *verbatim et literatim* as laid down by Mr. Washburn in his law on real property: "Disseizin," says this eminent writer, "is the privation of seizin. It is the commencement of a *new title,* producting that change by which the estate is taken from the *rightful* owner and placed in the wrongdoer. It is the ouster of the rightful owner of the seizin. To constitute an actual disseizin, there must not only be an unlawful entry upon lands, or in technical words, an entry not congeable, but it must be made with an intention to dispossess the owner, as the act otherwise would be a mere trespass." (3 Wash. on Real Property, p. 131, sec. 486; 1 Bouv. Law Dict.: "Disseizin.") But to render a title founded upon the doctrine of adverse enjoyment and disseizin conclusive and absolute, it must appear that the parties and their privies who claim by this right have not only had open and notorious possession of the property claimed, but that this possession has continued uninterruptedly for the space of time which, from the *lex loci,* is required before the rule can apply; and this brings us to consider the doctrine of limitation.

We would remark that the doctrine of title by limitation is of ancient origin. It is analogous in some respects to the doctrine of prescription found in the Roman civil law. The Statute of Limitations was first introduced into English law during the reign of James I. Since that time, by numerous statutory enactments, it has become law in the United States. States have by their own statutes attached such definitions and laid down such principles with respect thereto, as the requirements of the country and wisdom of its Legislature have dictated. In this country the Statute of Limitations dates from the very commencement of our laws, and it is worthy of note that while, in the process of time, statutes

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have been repealed, amended and modified, the Statute of Limitations has been sustained by the united concurrence and approbation of all succeeding legislators and jurists to the present time. No one who has reflected upon the subject, and whose observation and experience qualify him to judge, will but sanction and applaud the wisdom and policy of a statute the object and obvious tendency of which is to promote the peace and good order of society by quieting possessions and estates and avoiding litigation. But for the intervention of the statute there would be no end to the renewal of dormant and antiquated titles, and many an honest citizen who now, by its beneficent operation, enjoys in security the estate his industry and thrift have acquired, and which has been improved by his labor and enriched by the sweat of his brow, would be driven from his home by an enemy more insidious and more destructive to the peace of the community than an invading army.

Let us imagine the property of some of the thrifty, industrious citizens of this community, upon which palatial homes have been built and valuable farms reared, and which have been quietly held by them and their privies for a space of time sufficiently long for them to reasonably suppose that they held an unassailable title therein, suddenly claimed by one who had all the while stood by and allowed the person in actual possession to spend his means and time to improve what he deemed to be his conclusively, without asserting his better rights or giving legal notice that he is the heir. Is it difficult to perceive the unsettled state in which property would be held, and the contingencies that might at any moment eject the honest landholder from his possession? But such distressing possibilities are, happily, arrested by the genius and wisdom of the Statute of Limitations, which, taking its grounds upon natural law, presumes that no man will permit a stranger to take and hold adverse possession of property which

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he knows to be his, for twenty consecutive years (which is the limit in Liberia), without asserting his rights thereto, and ejecting the wrongdoer.

Nothing can be more ignoble and contemptible in posterity, than the wanton disregard and indifference in defending and protecting at the proper time, the estate which by the honest industry of the ancestor was acquired and left to be enjoyed by those who should represent and come after him. And when an heir stands by and from sheer neglect and carelessness permits a stranger to enter upon and take adverse possession of property which he knows was his ancestor's and to continue such adverse possession uninterruptedly for twenty consecutive years (without being under any legal disability to bring action), the law will look with disfavor upon his attempts thereafter to assert his rights and will bar forever his action and right of recovery, both in law and equity.

After a careful analysis of the facts surrounding this case and the law applicable, this court is of opinion that the appellees, Abbie Abigail King and Jacob Harland, are forever estopped from raising, either in law or equity, any title to the premises in litigation. And we further hold that the appellants, Henry A. Page and A. L. Joanna Page, claiming under their privies, by force of the doctrines of law governing this case, have acquired and do hold a seizin in fee in and to said estate, which is as valid, absolute and conclusive as a grant from the sovereign ruler of a State.

The judgment of the court below is hereby reversed and made null and void, and appellees ruled to pay costs. The clerk of this court is authorized to issue a mandate to the judge of the lower court, informing him of this decision.

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## BEGBAH, *alias* PETER, Appellant, *vs.* REPUBLIC OF LIBERIA, Appellee.

[January Term, A. D. 1906.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Murder.*

This is a case in which appellant Begbah was indicted for the murder of one Dumah, both of whom are inhabitants of Krootown, Monrovia. At the September term, 1904, of the Court of Quarter Sessions and Common Pleas of Montserrado County, he was tried, convicted, and sentenced to be executed. Appellant, by his attorney, motioned the court to set aside the verdict and to grant him a new trial, because to his mind the verdict was manifestly against the law and evidence in the case. Upon the court refusing to grant the motion, appellant excepted and prayed an appeal to the Supreme Court.

In reviewing the case this court has carefully considered the evidence to enable it to decide whether the facts as laid in the indictment were sustained at the trial below. Nothing is or can be dearer to man than his life, hence no other man nor a legal tribunal has the right to dispossess one of life, except by due process of law backed by unequivocal evidence. For this potent reason this court, the *dernier ressort* of justice, is slow and careful in weighing facts and evidence to the dispossessing of man of that life not given by man but given by God.

In this case, the court finds that there were employed seven witnesses on the part of the State, namely, N. H. Gibson, J. R. Allison, Africa and Willitoe Tobey, Dr. H. C. Faulkner, C. D. B. King and Iverson Thompson; on the part of the prisoner, appellant, one, namely, Johnson. By a careful examination of the evidence deposed, the

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court finds the depositions of the witnesses N. H. Gibson, J. R. Allison, Africa and Willitoe Tobey in substance to be the same, the variance not being sufficient to create doubt. That is to say, each of them saw appellant and the deceased fighting; that appellant was the assailant; that deceased had no weapon; that appellant stabbed deceased three times—in the nose, arm and left side; that after appellant had stabbed deceased, he ran. Iverson Thompson stated that appellant had a conversation with him, in which he said his heart was not good, because when he returned home from the river he caught a man in his bedroom having carnal intercourse with his wife. Upon cross-examination, he said that appellant told him that the man he caught was the deceased; that he, witness, asked deceased about the matter, and that he did not own or deny the charge, but simply smiled.

This is the gist of what witness Thompson stated. Dr. H. C. Faulkner stated that he was called to examine one Dumah on the 4th of August; that when he got there he found him dead, and the body was before a coroner's jury; that he examined the body and found four flesh wounds, one on the forehead, one through the nose, penetrating the cavity of the nose in the right side, one on the back part of the shoulder, one under the arm between the 6th and 7th ribs; that he carefully examined all these wounds, and one seemed to have been sufficient to cause death. He stated, upon cross-examination, that the instrument used, though not penetrating the heart, could in some cases cause death; that in this instance it penetrated the heart. The substance of the evidence of C. D. B. King is to the effect that notwithstanding appellant promised not to sue the man for trespass upon him, because he did not wish to have him bring trouble on him for a woman, but would leave her, yet subsequently, according to the evidence of other witnesses, three days having elapsed, he broke his promise and killed the man, or deceased.

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The statement of Johnson, the witness for appellant, and the only witness, is not, in the opinion of this court, sufficient to overthrow the preponderance of the other evidence given by seven witnesses, and besides, in many instances he contradicts himself.

In view of the evidence and law in the case, which this court has reviewed and studied, the court says none of the points in the bill of exceptions taken by appellant is sustained. The appeal simply breaks down for want of law and evidence to sustain it. (Lib. Stat. p. 53, sec. 27; II Bouv. Law Dict. under the heads of "Relevancy," "Opinion," "Verdict," and "New Trial"; I Greenleaf on Evidence, sec. 440 and note.) To support the court's decree on the verdict, see II Bouv. Law Dict. under "Judgment"; Lib. Stat. p. 69, sec. 1; Lib. Criminal Code: "Murder."

It is therefore the opinion of this court that the judgment of the court below, based on a legal verdict and supported by law and evidence, is correct, and the court adjudges the same affirmed, and commands the said court to resume jurisdiction in the case and carry out its judgment. The clerk of this court is hereby ordered to send a mandate to the court below, to the effect of this judgment.

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## E. A. McAULEY, Appellant, *vs.* GUST LACKMAN, Agent for A. Woermann, Appellee.

[January Term, A. D. 1906.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

*Debt.*

This appeal is from the proceedings and final judgment of the Court of Quarter Sessions and Common Pleas, Sinoe County, Judge William Wetherspoon presiding, and was rendered August, A. D. 1904. According to the record filed in this court, this case was

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originally entered and tried in the Court of Monthly Sessions, Sinoe County, over which His Honor B. J. Turner presides. The amount of debt demanded by the plaintiff in this action is one hundred and one dollars and fifty cents, which amount the defendant denies owing the plaintiff. The case was irregularly tried by that court, which rendered judgment that plaintiff recover from the defendant the one hundred and one dollars and fifty cents as sued for; from which judgment the defendant took exceptions, and was granted an appeal to the Court of Quarter Sessions and Common Pleas at its ensuing session, the August term of said court of appeal, A. D. 1904. At the call of this case for hearing, both the plaintiff and defendant, having agreed thereto, submitted the case for trial without argument, and the court, after examining the facts in the case, rendered judgment to the effect that the testimony before it did not sustain the allegation of debt, and therefore the judgment sent up for review was erroneous; and it dismissed the action with costs. To this judgment the plaintiff took exceptions, and was granted an appeal to this court, in order that this court might review the case, and determine what is law and justice in the premises.

This case, being an appeal from the judgment of an appeal court, is an exception to the practice; but since the right of such second appeal by a bill of exceptions has not been questioned by the party whose interest may thereby be effected, this court is not fully warranted in making further comment on the point.

This court again reaffirms the doctrine well founded in the statute laws of this Republic, that "every person alleging the existence of a fact is bound to prove it"; that "where a party charges another with a culpable omission or breach of duty, he shall be bound to prove it"; and further, that the allegations of a party, however logically stated in the court of law, cannot be taken as

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evidence. Proof to a judge, in the trial of a case, is what a compass is to a mariner on the ocean.

In this case, Stephen A. Dunbar is the only witness introduced to prove the alleged debt, and he states as follows: "The defendant, Lackman, told me that he had requested the plaintiff (now appellant) to take with him to Monrovia one thousand dollars county checks and exchange same for general government bills, and that he and McAuley, the plaintiff, would not fall out; that he knows of no special promise of the defendant to pay the plaintiff ten per cent commission on the dollar for so doing; and that Lackman, the defendant, never admitted to him that he promised to pay the plaintiff ten per cent on the dollar, for exchanging said bills."

The above statement constitutes all of the testimony or evidence offered at the trial, except a bill of the plaintiff where he charged for his services $101.50. It is therefore not required that one should go beyond the statute laws of the Republic, to conclude that the facts stated in the plaintiff's complaint have not been proved, and that the judgment of the Court of Quarter Sessions rendered in this case is erroneous.

This court adjudges that the appeal be dismissed, and that the appellant pay all legal costs; and the clerk of this court is hereby directed to notify in due form the judge of the court below, as to this ruling.

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## R. A. WRIGHT, Appellant, *vs.* ARTHUR STANTLY BACON and FRANCIS HOWARD BACON, sole members of the Firm of Edwards Brothers, Appellees.

[January Term, A. D. 1906.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.*

*Debt.*

This case was tried and determined at the November term of the Court of Quarter Sessions and Common Pleas, Sinoe County, 1905. The action was brought by appellees, plaintiffs below, to recover a certain sum from appellant, defendant below, which appellees averred had become due to them on account of sundry matters of merchandise stated in their bill of particulars. The appellant resisted the claims of appellees and plead, in bar of the action, the Statute of Limitations.

The pleadings were conducted to a considerable extent and rested, it appears, upon the rejoinder of the appellant. But upon the case being called for trial, the attorney for appellant tendered to the court a motion praying that the case be continued until the next term of court, for the reasons following: (1) That the material witness was absent and could not be had. (2) That appellant was sick and unable to attend the trial. The lower court dismissed said motion and proceeded to hear and determine the case. To this ruling, as well as to the several other rulings, verdict and judgment in the case, appellant excepted and appealed to this judicature for a rehearing of the case.

This case presents many features of vast importance to our commercial relations with other countries, which we do not deem expedient to notice at this time. The motion for a continuance, which was tendered to the judge of the court below and dismissed, appears to us

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to be founded upon legal grounds, and ought to have been granted, and the case postponed until the next term in order that transparent justice might be done to all parties concerned.

We would observe that an application for a continuance is addressed to the discretion of the court to which it is made. There are, however, certain legal grounds laid down as good causes for postponing a trial, and we are of opinion that when an application is founded upon any one of said legal reasons, and is well supported by affidavit, the court, in the furtherance of justice, should allow a postponement, unless it should come to its notice that the application is made solely with the view to baffle the suit or defeat justice. But an arbitrary refusal of the judge to allow a continuance, when the application is well founded and supported, may be remedied by a higher jurisdiction in many ways. In the case under consideration, the application being for legal reasons, it was error on the part of the lower judge to refuse to postpone the cause.

In order that substantial justice may be had in the premises, the case is hereby remanded for trial *de novo* at the first session of the court below after the receipt of this decision, and the former judgment is hereby annulled and made of no effect. Costs to follow the termination of the suit.

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## H. C. FAULKNER, Appellant, *vs.* JOHN D. MORRIS & CO., Appellees.

[January Term, A. D. 1906.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Debt.*

This case was determined at the sitting of the Court of Quarter Sessions and Common Pleas, Montserrado

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County, before His Honor A. J. Mathews, judge of said court. On inspecting the record filed in this court, we find that an action of debt was instituted by John D. Morris & Co., plaintiffs below, against H. C. Faulkner, the appellant, for the recovery of the sum of thirty dollars; in which action the plaintiff in the court below sustained the debt laid in his complaint, and the court rendered judgment to the effect that the plaintiff recover from the defendant the sum of thirty dollars, the same being the amount sued for. It appears further, that the defendant below prayed for time, as allowed under statute, which was granted him by the court, the judge allowing the defendant one calendar month to make payment. To this end the following bond was given to A. B. Stubblefield, the ministerial officer of the said court:

"Republic of Liberia, Montserrado County.—Know all men by these presents, that we, H. C. Faulkner, principal, and R. A. Philips, surety, all of the County and Republic aforesaid, are hereby held and stand firmly bound unto John D. Morris & Co., in the full and just sum of forty-five dollars, lawful money of this Republic, to be well and truly paid, and for the payment of which we do bind ourselves, or heirs, administrators and assigns, firmly by these presents."

This bond further stipulates that payment be made within one calendar month from the date of its execution. On the 21st day of October, 1905, (the bond being executed September 23d, 1905,) the defendant below did make payment of said debt in satisfaction of the judgment, to A. B. Stubblefield, Sheriff, the ministerial officer of said court, and took his receipt for same in the following language:

"Received from H. C. Faulkner the sum of thirty dollars, Liberian currency, as payment in full for his bond given to John D. Morris & Co. A. B. Stubblefield, Sheriff Mo. Co., R. L. Monrovia, Oct. 21st, A. D. 1905."

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The plaintiff below, not being satisfied with the kind of money paid, urged that he be paid in coin, and therefore applied to his honor the judge for a writ of execution against said H. C. Faulkner, which writ was granted and served. The defendant below refused to make other payment than that already made. Whereupon the said judge resumed jurisdiction over the case, and made ruling to the effect that the defendant, now the appellant, pay to John D. Morris & Co. their debt in Liberian silver or copper coin. To this ruling the defendant excepted, and brings his appeal before this court for review.

During the traverse of this case, it was urged with great skill and legal ability that the *lex loci*, or, in other words, the law of the place where the agreement was made, upon which the suit was brought, should control the parties thereto as to the manner of its fulfillment. Had this question been raised in the pleadings of this case, this court would not hesitate to give its opinion and ruling thereon. But as the appeal claiming our attention does not embrace that point, a ruling thereon would be *extra judicum*.

This appeal has claimed much of the attention of this court, and by following the letter and spirit of the statute law we are enabled to come to that conclusion maintainable by the laws of the land.

It is the opinion of this court that the judgment of the court below, rendered in this action of debt, September term, A. D. 1905, viz., that the plaintiff, John D. Morris & Co., recover from the defendant, H. C. Faulkner, the sum of thirty dollars, was the end of that trial, unless an appeal was prayed for. This court is further of the opinion that after payment of the bond and the discharge of the party by the officer in charge of it, the court below had no longer jurisdiction over the case or the party; and that that court, having lost its jurisdiction in manner already stated, could only resume

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jurisdiction by order of some superior tribunal; which does not appear in the records of this case to have been done.

Therefore this court adjudges that the writ of execution and judgment issued thereon December 13th, be reversed and hereby rendered null and void, the appellee paying all legal costs; and the clerk of this court is hereby directed to notify the Court of Quarter Sessions and Common Pleas, Montserrado County, as to this judgment.

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## JOHN B. DYSON, Appellant, *vs.* REPUBLIC OF LIBERIA, Appellee.

[January Term, A. D. 1906.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Embezzlement.*

It is proper to refuse an application to continue a criminal trial, because public excitement at the time was so great that the defendant feared he could not obtain an impartial trial; such refusal being within the scope of the discretion of the trial court.

The guilt of a prisoner beyond a rational doubt may be established by unimpeached circumstantial proof, to the exclusion of direct and positive evidence.

This case is brought before this court upon an appeal from the judgment of the Court of Quarter Sessions and Common Pleas, Montserrado County, rendered at its December term, A. D. 1904. From the record in the case we find that the accused was indicted at the aforesaid term of court for feloniously embezzling one General Government order purporting to be drawn on the sub-treasurer, Grand Bassa County, in favor of the East African Company, for the sum of four hundred and eighty dollars on account of special duty funds. To this charge the prisoner plead "not guilty," and his counsel addressed an application to the court, praying a continuance of the trial on the grounds, (1) that public

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excitement in the community at the time being great, he feared he could not obtain an impartial trial; and (2) that having just been indicted he had not had the opportunity of preparing himself for a proper defence. The court refused the application and proceeded to empanel a jury to try the issue.

The case was submitted without arguments and the jury, after hearing the evidence, returned a verdict of "guilty" against the prisoner. Upon this verdict the court below, on the 23d day of December, 1904, pronounced the following sentence: "The sentence of this court is that you forfeit and pay the sum of nine hundred and sixty dollars, and you shall be imprisoned for twelve months, with hard labor."

To this judgment as well as to the other rulings of the court below in the premises the prisoner excepted, and addressed the following points in his bill of exceptions for the consideration of this court: (1) The ruling of the court below on his motion for continuance; (2) the admission of a page from the account book of the subtreasurer's office as evidence against the accused; (3) ruling of the lower court upon prisoner's motion for a new trial, and (4) to the final judgment.

The law governing continuance has frequently been expounded by this court and we have uniformly held that where it is made apparent that to proceed with the trial of a case substantial justice would not be meted out to all parties concerned, the application should not be refused, provided it is founded upon legal grounds. Among the grounds commonly admitted as good grounds for granting a continuance may be mentioned the following: (1) Absence of material witness. (2) Inability to obtain the evidence of a witness out of the State, in season for trial. (3) Illness of counsel, etc.

We have carefully considered the grounds upon which the motion was founded as well as the circumstances which surrounded the case at the time of the trial, and

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we are of opinion that the lower judge acted within the scope of sound discretion in refusing the application. From the record, it does not appear to the satisfaction of this court that the accused made the least effort towards setting up a defence; nor is there any intimation that the machinery of the court was put in motion to obtain witnesses on his behalf, and that for want of time this could not be done. There is therefore nothing in the record in favor of the accused to have influenced the lower judge to believe that the application was not made solely for the purpose of delaying the trial; and therefore we do not regard the ruling on this motion an abuse of discretion, which we should correct.

The second exception is taken to the court admitting as evidence a page from the account book of the sub-treasurer's office. We have not been able to discover the legal ground upon which the learned counsel for the accused predicated this exception. It is a well established rule that entries made in books are admissible as evidence. In the present case the entry contained in the page offered as evidence was pertinent to the case and tended to throw such light upon it as was necessary to support the *res gestæ*. Its admission, therefore, was not error.

We shall now proceed to consider the objections to the verdict and final judgment.

In all trials upon indictments the State, to convict, must prove the guilt of the accused with such legal certainty as will exclude every reasonable hypothesis of his innocence; the material facts essential to constitute the crime charged, must be proved beyond a rational doubt or the accused will be entitled to a discharge. But we do not mean by this statement to convey the idea that before a conviction can be made there must necessarily be submitted to the jury direct and positive evidence of the crime charged. There are a great many human actions in which such evidence would be abso-

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lutely impossible to obtain, and so we have what is known in law as circumstantial and presumptive proof. This species of evidence was exhaustively treated by this court in the case of Armstead Wood against Republic of Liberia.

Reviewing the facts in this case it appears to us that the guilt of the accused has been established beyond a reasonable doubt by a chain of unimpeached circumstantial and presumptive proof. The evidence of witness Carter, the sub-treasurer, shows that the accused was employed in his office as clerk and was frequently left in charge of the office. That in this capacity it was customary for him to receive orders and cheques drawn by the proper Government authorities, from persons having transactions with said office. He further stated that the order which prisoner is charged with embezzling never came into his possession, and further, that the entry made in the account book of the office, which shows that the order was actually received in said office, is made in the handwriting of the accused. Witness Howard, in his capacity as Secretary of the Treasury, testified that the said order had not been transmitted to his department among the vouchers sent forward by the sub-treasurer. These statements taken together raise a very cogent presumption against the prisoner, which is nowhere in the evidence explained or attempted to be rebutted by the accused. On the contrary, we find that presumption is supported and the crime traced directly to prisoner by his own voluntary confession, made to witness Carter in the presence of one McCritty, in which he confessed selling the said bill to one West, but alleged that it was given him by one Andrews. It is remarkable that the prisoner made not the slightest attempt to prove that the order was actually given him by Andrews. His own voluntary confession, taken together with the presumptions proven at the trial, prove conclusively the guilt of the prisoner.

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It is the opinion of this court that a crime of this nature, which is so very pernicious in its example and so damaging and injurious to the public revenues of this Republic, should be punished rigorously. And therefore, as the judgment of the lower court is strictly within the purview of the statute controlling this case, we refrain from disturbing it in the least measure.

The judgment below is affirmed, and the clerk of this court is directed and authorized to issue a mandate under his signature and seal of office, informing the lower judge of this decision.

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## WILHELM ZEISER, Agent for J. W. West, Appellant, *vs.* JOSEPH G. MONTGOMERY, Appellee.

[January Term, A. D. 1906.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Grand Bassa County.*

*Debt.*

Where the relation of principal and factor or agent is created by written instrument, the principal should not bring an action of debt on such contract; the action brought should be for fraud or embezzlement.

This is a case that has been pending in this court since 1903, emanating from the Court of Quarter Sessions and Common Pleas, Grand Bassa County. At the last session (1905) of the Supreme Court, it was entered on the calendar as one of the cases sent up for review, but owing to many gross irregularities found in the record of the case in the trial below, the Supreme Court found it impossible to give it such judication as would result in justice; consequently it was remanded to the court from which it emanated, to be tried *de novo*. At this session it presents itself purporting to have been tried and concluded, but appellant, not being satisfied that he has received justice, appeals for another review.

From the record of the case, which has been carefully gone over, the Supreme Court finds that there still exist

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irregularities; but to prevent great expense to the litigants, the court will in the most possible legal and equitable manner endeavor to conclude the matter.

The Supreme Court, the last resort of judication of the country, recognizing its grave responsibilities and obligation to the law as well as to the people, keeps before its eyes, and in its heart, that there cannot be tolerated any partiality or favor to or for any man, whether citizen or alien. The condition of men is never taken into account. In fine, the court knows only law and justice, and it will always, according to its legal lights, conscience and convictions, endeavor to deal justice to all. And just here it may be in place to enunciate that the Supreme Court, one of the co-ordinate branches of the Government, is awake to all the interests of the country, and will do no act to impair international amity by taking or allowing advantage to be taken of citizens and subjects of foreign nations, residing in Liberia, who may have business relations, or otherwise, with Liberia.

The Supreme Court, aside from its legal knowledge, has a knowledge of human nature; it knows that men are selfish and mercenary, to a certain extent, and will take advantage of other men when the opportunities for so doing present themselves. While this enunciation, to the mind of the court, is true, still, the court cannot lend its aid in giving an advantage to aliens over citizens of the country in legal matters, simply to satisfy the prevailing opinion that Liberians seek to rob aliens in their intercourse with them, nor will the court give its aid to Liberians in fraudulent transactions with aliens. The court recognizes that Liberia is a weak nation; but honor is honor, and the court will only move on lines of honor, integrity, law and justice.

Now, then, there comes up before us a case that was once before us, for final review and conclusion. It might appear to the casual observer and the illegal and illogical mind that the case has been properly dealt with by the

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court below; but a review of the record will show that irregularities still exist in the conduct of the case in the court below, as well as in the several rulings, to wit:

1. Plaintiff, now appellant, brought an action of debt on a written instrument in the court below, to recover three thousand two hundred and thirty-nine dollars and twenty-three cents, as is laid in the declaration. The defendant, now appellee, joined issue by filing an answer of general denial of the truth contained in the declaration, which he said he was ready to prove. In the meantime defendant, now appellee, served on plaintiff, now appellant, a notice to the effect that he desired to put in evidence, at the trial of the case, the contract or agreement made and entered into between them in the month of October, A. D. 1902, and also notified the plaintiff, now appellant, to produce the original contract before the court at its March term, A. D. 1905. Subsequently, the court below gave a ruling against the appellee's answer, to the effect that it formed no part of the record in the case, upon the grounds that it was not intelligible and distinct, nor was it a sufficient answer to plaintiff's complaint. In the opinion of this court, the court below erred in its ruling on this point, which ruling is against the statute regulating the form of an answer, which gives defendant the right to answer by general denial any declaration made against him. (Lib. Stat. Chap. 5, secs. 1, 2, 3 and 4.)

2. Upon the dismissal of the defendant's (now appellee's) answer, the court proceeded to render an imperfect judgment, upon the ground that the answer was not intelligible or distinct, or a sufficient answer to the complaint, and subsequently submitted the finding of the debt claimed to the jury, in which this court says the court below erred. In the case of an imperfect judgment for the plaintiff in an action of debt, in which there is a written instrument, or instruments, ascertaining the amount of the debt, it shall be the duty of the court to

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ascertain the debt or the damages to be recovered from defendant. In all other actions of debt or replevin, and in all other contracts or damages it shall be the duty of the court, except as otherwise provided for, to cause the jury to ascertain the debt or damages. (Lib. Stat. Chap. 16, secs. 9 and 10.)

The case as entered, whether legally so or not, as will be shown further on, is debt on an instrument of writing; consequently, no jury had the right to ascertain the amount of debt, even had they brought in a verdict in favor of the plaintiff, now appellant, and the court erred in submitting the ascertainment of the debt to the jury. And if there was not sufficient evidence to sustain the cause in favor of the defendant, now appellee, the court should have so instructed the jury. In this respect the court erred, in that after the arguments in the case it was submitted by the court to the jury for a verdict, which verdict was found in favor of the defendant, now appellee, exonerating him of the debt claimed by plaintiff below. The plaintiff, now appellant, thereupon motioned the court for a new trial, which the court granted after hearing the arguments pro and con.

On the 7th of July, 1905, the new trial of the case began, but no written pleadings were allowed to be offered in the case by the court, upon the ground that the court had already passed on those pleadings in the first trial. That meant that the defendant's answer and demurrer were still held as ruled out, and the imperfect judgment, based upon the ruling out of the defendant's answer, still held good in the new trial. The defendant offered in evidence the contract between himself and the plaintiff, also his receipts for various amounts paid, that it might be proven that there was no specific debt otherwise than that growing out of the contract, and also to prove that the amount claimed by the plaintiff had been paid by him, the defendant; which evidence

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the court rejected, upon the ground that defendant was barred from introducing any new evidence which had not been previously introduced in the case. This the Supreme Court says was error. (II Bouv. Law Dict. under the head of "New Trial.") The arguments by the respective attorneys being concluded, the court submitted the case to the jury for verdict, when a second verdict was found for defendant; whereupon the plaintiff excepted and prayed an appeal to the Supreme Court.

Now, then, this court says that it is most difficult to understand how the two juries could find two verdicts for the defendant, seeing that all of the rulings of the court on the written pleadings of the case, and on the evidence, were in favor of the plaintiff. The defendant, as the record shows, was allowed to put in only one receipt as evidence, and that having no money value.

A careful review of the whole case, in all its parts, as it was before the court below, has certainly perplexed this court no little. Throwing upon it all the light possible, the irregularities are of such a nature that this court would not be able to give equitable justice in the premises, but would have been compelled to remand the case for a new trial, had not the counsel for both parties mutually agreed to submit all of the evidence of every nature—contracts, receipts and book accounts—that had been previously offered in the court below as evidence, and rejected, that we might be satisfied as to the nature and justness of the claim. The counsel on both sides made the following motion:

Whereas, it appears from the record in the above entitled cause (J. W. West, appellant, *vs.* J. G. Montgomery, appellee) the copy of the agreement, receipts and book-account were offered in the lower court as evidence and were not transmitted to the honorable Supreme Court with the record in the said case, and wishing substantial justice done to all, the attorneys at law for and on behalf of the appellant and appellee joined in tendering the above referred to agreement, receipts and book-account to your honors, for your review, in connection with other records in said case.

Respectfully submitted,

F. E. R. JOHNSON and S. A. ROSS, Counsellors for Appellant.

CHAS. B. DUNBAR, Counsellor at Law, for Appellee.

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Reviewing the evidence as tendered by the mutual consent of the parties, the court discovers the following legal facts:

1. That appellant contracted with appellee to do mercantile business for him as a factor or agent, and that he should receive five per cent on all produce bought, and twenty-five dollars per month for every four hundred dollars bought for the month.

2. It is further discovered that in the event that appellee proving a defaulter, action against him could be brought by appellant on book-account, or on note of hand, or for damages for violation of contract; and that each would be a bar to the other.

3. It is further discovered that appellee had the right to return all goods, in good condition, not sold, which were to be put to his credit.

4. It is further discovered that appellee should sign notes of hand for all amounts received; but said transactions or amounts should be kept in a ledger, or any other book used in the book-keeping of the said firm, that the debits or credits could be fairly seen.

5. It is further discovered from book-accounts that appellee's indebtedness was $3,239.73. The receipts, return of goods, five percentage and remuneration show as follows to his credit: Receipts, $208.26; return of goods, $441.82; percentage, $104.13; reward for produce bought in June and July, 1903, each exceeding four hundred dollars, according to the contract, $50.00; amount put against note, $296.37; total amount paid, $2,974.98. Balance due, to close the account under the contract, $264.78.

Now, then, from the record of the case, which this court has carefully examined, there is no evidence found to prove that appellee owed appellant the amount claimed in the declaration, previous to the making of the contract between them, that the appellee should give a note of hand for the security of that amount;

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but the contract does show that the amount charged appellee in the book-account is the same for which appellee gave a note of hand, and that there was no separate account from the book-account.

And this court further says that the action as brought is wrong and illegal, for the reason that appellant and appellee were transacting business under a mutual contract, which contract created appellee a factor or agent; hence, he could not be considered an ordinary debtor. Consequently there is no debt except under the contract. The action brought should have been for fraud or embezzlement. (Bouv. Law Dict. under the heads of "Contract," and "Fraud and Embezzlement.")

The court further says that the decisions of the Supreme Court cited by appellant's counsel in his brief are not applicable to the case now before the court, the nature and circumstances surrounding those cases being altogether different in law.

Under the circumstances of the present case, and viewing it from every legal and equitable standpoint and according to the evidence submitted, this court is compelled to reverse the judgment of the court below, and to give such decisions as the court below should have given.

This court therefore adjudges that from the evidence produced the appellee is not indebted to appellant for the amount claimed by appellant; but there does appear from the evidence submitted, on the whole transaction, as agent or factor for appellant, that he, appellee, owes appellant the sum of two hundred and sixty-four dollars and seventy-eight cents, according to the contract, and this the court adjudges that he shall pay to appellant and costs accruing from this action. The clerk of the Supreme Court is hereby commanded or authorized to inform, by a mandate, the judge of the court below, of the force and effect of this judgment.

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## E. A. DITCHFIELD, Appellant, *vs.* J. J. DOSSEN, H. J. R. COOPER and S. J. DOSSEN, transacting business under the name and style of the Cape Palmas Mahogany Company, Appellees.

[January Term, A. D. 1907.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Maryland County.*

*Libel and Slander.*

When an answer both denies the truthfulness of the complaint and sets up the plea of justification, it is evasive and contradictory, and is properly ruled out by the trial court.

Special damages may be recovered in actions for libel and slander when the tendency of the words is to impair plaintiff's reputation, to injure him in his trade or business or to impute to him the committing of an offence punishable by law; such damages arise by inference, and need not be proved.

This case comes up to this court of last resort of legal judicature, for review, on a bill of exceptions taken to the rulings and judgment of the Court of Quarter Sessions and Common Pleas, Maryland County, James L. Cox presiding, at the August term of said court, A. D. 1906. Before animadverting upon the gist and essence of the case, the court desires to put upon record for the benefit of all concerned, citizens and aliens, that the organic and statutory laws of Liberia, in legal matters put every man on equal footing in securing to himself the rights that are guaranteed to him; rights guaranteed not only by the law of the land as such, but by international treaties with the nations of the world. And again, that the Supreme Court, in its integrity, representing the Republic in judicial matters, would not, in the least degree, act partially in any litigation between the citizens of the country and aliens residing in the country. Too much would be involved on the contrary for such a principle to be established in the country by the *dernier ressort* of justice.

It is very painful, however, to the court and country at large, that whenever there be a litigation between

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Liberians and aliens, the latter, suspecting the integrity of the third co-ordinate branch of the government—the judiciary—begin at once to make representations to the representatives of their governments. This has happened in many instances within the last decade; and in each instance Liberia has been exonerated by those very governments and commended for its justice, equity and forensic knowledge. Aliens coming to Liberia to transact business, as it is supposed, under the laws of the country and treaty stipulations with other countries, conclude either that the governing forces are ignorant, and consequently wicked, or that they desire to bring about international complications affecting the independence of the state. These facts are glaring to the court from previous experience. The court comes now to the case.

In carefully and legally reading and endeavoring to digest the voluminous record of the case, the court finds not only irregularities, but incongruities, which were needless and not necessary to prove or disprove the issue before the court below; hence this court is not inclined to take notice of those irregularities and incongruities, but will only discuss the salient points which effect the life of the case.

In the Court of Quarter Sessions and Common Pleas, Maryland County, August term, A. D. 1906, Messrs. J. J. Dossen, H. J. R. Cooper and S. J. Dossen, transacting business under the name and style of the Cape Palmas Mahogany Company, brought a suit against E. A. Ditchfield for damages on account of libel and slander, as appears in the complaint of the plaintiffs, now appellees. The written instrument filed with the complaint, claimed by appellees to constitute the libel, reads as follows:

"J. J. Dossen, H. J. R. Cooper and S. J. Dossen, transacting business under the name and style of the Cape Palmas Mahogany Company, plaintiffs, complain that E. A. Ditchfield, defendant, wickedly intending to injure

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the plaintiffs heretofore, to wit, on the sixth day of January, 1906, did maliciously compose and publish of and concerning the plaintiffs a certain false, scandalous and defamatory libel; that is to say, that in a communication dated at Cape Palmas, January 6th, 1906, the following was published by the defendant."

Sir: I have the honor to state for your information that Mr. D. D. Freeman, traveling agent for Messrs. Millers, Limited, called at my office *re* the alleged lost logs in course of shipment from Cavalla to one of Messrs. Woesmann's steamers, during the latter part of 1904. He gave me to understand that he was here for the purpose of claiming money from the Cape Palmas Mahogany Company and H. Cooper & Son, who are the principals with Justice J. J. Dossen, the Company, and also to satisfy both Dossen and Cooper that the amount claimed from the underwriters by Messrs. Millers, was remitted, less their commission, which he, Mr. Freeman, finds to be a fraud, and that no logs were ever attempted to be shipped or lost. The claim on Messrs. Millers was for twenty (20) logs and Messrs. Jantzen and Thormahlen, Hamburg, twenty (20), making total 40 logs in all. Information reached me yesterday that an attempt had been made to secure and ship five logs on the beach at Blemalow near Bleiron, by the Cape Palmas Mahogany Company, who applied to Messrs. Woodins, Messrs. Elder Dempster & Company's agent here, for the "Congo" to call and take off the timber which I have stopped. I have written to Mr. H. M. Hozier, secretary for Lloyds, to see Messrs. Millers and the underwriters' brokers, Messrs. Wakham Bros., London, also the German underwriters, and obtain all papers to enable proceedings to be carried out *re* the claim made and the alleged loss.

I have the honor to be, Sir,
Your humble and obedient servant,
E. A. DITCHFIELD.

Captain Braithwaite Wallis,
His Britannic Majesty's Consul,
Monrovia, Liberia.

And further, taken from plaintiff's (now appellee's) complaint, aside from the instrument constituting the libel, the appellees complain in the following terms:

"And the said plaintiffs further complain that for that the said E. A. Ditchfield, defendant, wickedly intending to injure the plaintiffs heretofore, to wit, between the first day of November, 1905, and the thirteenth day of May, 1906, in certain discourses which he then had of and concerning the plaintiffs, did in the presence and hearing of divers persons maliciously and falsely speak and publish of and concerning the plaintiffs the follow-

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ing false, slanderous and defamatory words; that is to say, that the plaintiffs made a claim upon the insurance company for the loss of twenty logs, which twenty logs the plaintiffs had already made the Cavalla natives pay them for; thereby meaning that the plaintiffs' claim against the insurance company was false and fraudulent, and thereby meaning that the plaintiffs have received money under false pretence, by means of which the plaintiffs have been brought into public scandal and disgrace, and their business reputation greatly injured as well as their character, fame and good name."

The complaint of plaintiffs, now appellees, setting forth the offence alleged to have been committed against them by the defendant, now appellant, embracing the instrument of libel, was in the court below rebutted by the defendant's answer, upon the ground, first, "that the complaint is ambiguous in that it charges the said defendant with two separate forms of action; that is to say, libel and slander; which is contrary to the rule of pleadings. The said plaintiff in said complaint ought to have chosen one particular form of action against the said defendant to enable him to make a proper defence to same," etc.

Secondly, he avers that his communication to the British Consul comes under the head of all those communications that are made *bona fide* in the performance of a duty, whether public or private, or with a fair and reasonable purpose of protecting the interests of the party to whom they are made, or of the interests of both in a matter in which they are mutually interested; such communications are held to be excusable in law from the consequences which may follow.

As to this last point, the evidence in this case fails to show any relationship of the defendant, now appellant, with the British Consul thereby excusing him from writing, publishing and circulating the libellous letter constituting the grounds of the complaint.

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With reference to the point raised as to the incapacity of a non-incorporated company to sue for a wrong done to it or an injury sustained, this court is of opinion that any association of a number of individuals, formed for the purpose of carrying on some legitimate business, is as much protected by law as other associations, and as such is also liable for breach of contract or other wrongs; for only when chartered by Government are such associations known as corporations.

There are several questions raised in the pleadings, many of which do not tend to establish the truth of the allegations of the plaintiffs, nor the denials of the defendant, nor of the law assumed, and which consequently this court need not pass upon, and will therefore address itself to such points only as are calculated to lead to a just conclusion of the question.

It is alleged that the court erred in ruling out the defendant's answer because of its insufficiency. This leads us to consider the statute laws governing complaints, answers and replies. Carefully examining the answer in this case, it is clear to the mind of the court that the answer is not a sufficient answer to the plaintiffs' complaint; because an answer should contain a distinct and triable issue and should not be so evasive as to furnish no triable issue. For this reason the court below did not err in ruling out said answer, and hence with it all subsequent pleadings of the defendant. And such rulings are in harmony with the statute laws of this Republic, a citation from which, bearing on the point in issue, we quote: "The defendant may file an answer to the complaint, setting forth new facts to justify or excuse his conduct. Every such answer must be in writing and must contain a distinct, intelligent and sufficient answer to the complaint or to such parts thereof as it professes to answer, or judgment shall be given for the plaintiff." (Lib. Stat. Bk. 1, p. 44, secs. 3 and 4.)

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In this case the answer is evasive and contradictory, in that it denies the truthfulness of the complaint and at the same time sets up the plea of justification, which is a plea in bar. Hence it was the duty of the court below to rule out the answer and subsequent pleadings of the defendant and submit the questions of fact to the determination of the jury.

As to the testimony in the case the record shows that the plaintiffs, following the rules of the statute laws of Liberia, served due notice upon the defendant, requiring him to produce at the trial the counterpart original of the libellous letter, said to be in his possession, which the defendant failed to produce, or to prove that it was not in his possession; which failure the statute laws of Liberia do not only construe as an admission of the authority and truthfulness of the document sought to be proved, but also opens the door for the plaintiff to put in evidence a copy of said letter, as well as to bring in witnesses to prove its contents. (Lib. Stat. Bk. 1, p. 56, secs. 27, 28, 29 and 30; Odgers on Libel and Slander, p. 433; Taylor on Evidence, Vol. 1, sects. 440 and 441; Decisions of the Supreme Court of the Republic of Liberia in the case of J. C. Lowrie *vs.* Crusoe Brothers; Decisions of the Supreme Court of the United States of America, Book VI, p. 141, Book XXII, p. 338.)

The evidence of witness Ellegor states that the defendant told him that the libel laid in the complaint contains the exact words which he had written to the British Consul at Monrovia, which testimony proves conclusively the publication of the libel, by the defendant's own admission. And this evidence, in no wise rebutted by the defendant, beyond doubt caused the jury to find a verdict for the plaintiffs.

There is doubtless a difference between general and special damages. The former are such as the law will presume to be the material or probable consequence growing out of the defendant's conduct. They arise by

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inference of law, and need not therefore be proved by evidence. Such damages may be recovered when the tendency of the words is to impair the plaintiff's reputation, to injure him in his trade or business, or to impute to him the committing of an offence punishable by law. The jury should carefully consider the whole of the words complained of and give the plaintiff such damages as in their opinion will fairly compensate him for the injury done to his reputation thereby. They will, of course, be influenced by the circumstances attending the publication; by the character of the defamatory words; by their falseness, by the malice displayed by the defendant or the provocation given by the plaintiff. They may also faithfully take into their consideration the rank and position in society of the parties; the mode of publication selected; the extent and long continuance of the circulation given to the defamatory words; the tardiness or inadequacy, or entire absence, of any apology; the fact that the defendant could have easily ascertained that the charge he made was false, etc. "Where the words affect a trader in the way of his trade, figures may be laid before the jury showing that his business has fallen off in consequence thereof; even if no evidence be offered by the plaintiff as to damages, the jury are in no way bound to give nominal damages only; they may read the libel and give such substantial damages as will compensate the plaintiff for such defamation." "And although a plaintiff, at the trial, may fail to prove special damages, yet he may recover general damages." (Odgers on Libel and Slander, pp. 220 and 221.)

In the case under our consideration we find the defamatory words contained in both the libel and slander are words which the law regards as actionable *per se,* and by all the circumstances surrounding the publication of them and the conduct of the defendant in the premises, they fall within the rule of law just above quoted. In this case the jury, having been lawfully

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sworn to try the facts and assess the damages, if any, returned a verdict in favor of the plaintiffs, awarding them the sum of fifteen thousand dollars damages. To this verdict, and the judgment rendered thereon, the defendant filed a bill of exceptions, which brings the cause before this court.

Looking over said bill of exceptions, filed by the defendant, in clause eighteen the defendant says that he offered a motion for a new trial, for legal causes therein assigned. In this motion it is contended that the verdict is against the weight of evidence in the case. As to this point this court says, according to the statute laws of Liberia the jury is the judge of the credibility and effect of the evidence; and further, the court may, in the exercise of its own discretion, allow the jury to be separated even before coming to a verdict.

Surveying this entire case, this court fails to see that the trial has departed from the law, justice and truth of the case. But fearing lest the jury may have been in measure influenced by passion, considering the aggravation of this case, in increasing the damages to fifteen thousand dollars, this court therefore alters the judgment of the court below, so far as it refers to the amount of damages, and according to the statute laws of this Republic proceeds to give the judgment which in its opinion the court below should have given.

This court therefore adjudges that the plaintiffs, now appellees, recover from the defendant, now appellant, as their damages, the sum of ten thousand and one hundred dollars, and all legal costs incurred in this action. And the clerk of this court is hereby directed to issue a mandate to the court below, informing it of this decision.

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## WILLIAM GRAY, Appellant, *vs.* GIBASELY BEVERLY, Appellee.

[January Term, A. D. 1907.]

*Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.*

*Habeas Corpus.*

Where a writ of habeas corpus is directed to a sheriff, commanding him to produce certain aborigines in court, and he makes a return to the writ that he had previously taken them into custody and delivered them to a native chief, by order of the Secretary of Interior so to do, such return is not sufficient to warrant the court, to which the writ is returnable, to discharge the sheriff from the responsibility of producing the prisoners before it.

This suit was brought into the Court of Quarter Sessions and Common Pleas for Montserrado County, upon a writ of habeas corpus issued by order of the judge of said court, under date June 6th, A. D. 1905, which was directed or addressed to the appellee, defendant in the court below, commanding him, the said appellee, to produce in court the persons of Vombah Fahine and Carwee, who, it was alleged in the petition praying for the writ, were the wife and child of appellant and that they were in the unlawful custody of the appellee.

The service of the writ upon the appellee was certified by the sheriff under date of June 12th of the same year, but from the record it appears that notwithstanding the due and legal service of said writ upon the appellee as aforesaid, the prisoners, Vombah Fahine and Carwee, named therein were not produced in court as the writ directed, nor did the appellee make any return whatever to said writ. This necessitated the issuing of a compulsory writ of habeas corpus, which was duly sued out under date the 20th of March, A. D. 1906, and service upon appellee was certified by the sheriff on the 2d of April of the same year.

To this second or compulsory writ the defendant, now appellee, made a return alleging *inter alia* that he had

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taken custody of the prisoners by virtue of an order issued by the Secretary of Interior, under date of February 2d, 1905, which authorized him to take into his custody the said prisoners and to send them to Gorgee, to Tarway Dardo, a chief of that country. The returns further show that in keeping with said order the prisoners had been turned over to the chief named in the said order of the Secretary of Interior, and that they, the prisoners, were not in his custody or possession at the time of the service of said writ upon him. But it will be noted that the defendant, now appellee, did not claim in the returns that it was beyond his power to have produced the bodies named in the habeas corpus; on the contrary he impliedly confessed that he could and would have produced them had not Vombah been in delicate health and unable to travel, and Carwee been too young to travel without his mother.

Now let us see whether these returns of the defendant, now appellee, were sufficient in law to warrant the court below in discharging him from the responsibility of producing the prisoners, who, according to the appellee's voluntary confession, he had taken custody of, under color of the authority given him by the order of the Secretary of Interior. And firstly, let us inquire whether the Secretary of Interior had any legal authority for making such an order; and secondly, supposing he had, whether his whole actions in relation thereto would not be subject to a reviewal by a court of justice upon one of the highest writs of the country, the writ of habeas corpus, with the view of correcting whatever abuses of power there may have been in the exercise of his functions.

The Act of the Legislature of Liberia, approved January 23d, 1869, creating an Interior Department and providing for the appointment of an officer at its head, styled the Secretary of Interior, undoubtedly confers upon that officer very large duties and authority in

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relation to matters affecting the aborigines of the country. It would seem from the provisions of this act and subsequent enactments relating thereto, that the intention of the law-makers was to create in this officer a sort of arbiter in all purely native matters arising between themselves and referred to the chief of this department for settlement, which he must settle with due regard to native customary law and native institutions, where not repugnant to the organic law of the state.

We feel no hesitancy in asserting as our opinion, that in dealing with the numerous and varied matters that would come up under this act from time to time, relating to the rightful ownership and possession of native women, who according to native law are regarded and treated as chattels, occasions may arise where, after an impartial investigation of the facts and the application of the native customary law bearing thereon, it may become necessary for the Secretary of Interior, in the furtherance of justice and in the exercise of sound discretion, to issue orders to his subordinates of the nature of the one of February 2, 1905, by color of which appellee claims he took custody of the prisoners Vombah and Carwee. But this court declines to enunciate the rule that any such order affecting, as the one in question does, the liberty of individuals and the relations of husband and wife and parent and child, and being in itself unsupported by other facts, is a legal and sufficient return to a writ of habeas corpus. For it is obvious that the said order did not inform the court below whether the detention of Vombah and Carwee was lawful or unlawful, and this we hold is the real gist and object of the writ of habeas corpus.

Again we would observe that there is nothing in the returns to said writ, nor in the evidence produced at the traverse of the writ, to show that the detention of prisoners is lawful. It also appears that the returns

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were not made upon oath as the law directs, and therefore should not have been taken by the lower court as sufficient grounds for discharging appellee from the responsibility of producing the bodies of Vombah and Carwee before the court. (Stat. Lib. Bk. 1, Chap. 23, sec. 8.)

After duly considering the principles of law involved in this case, and the circumstances surrounding it, as appear from the record, we are firmly of opinion that to affirm the judgment of the lower court would be supporting a principle repugnant to the letter and spirit of the Constitution and setting at nought the office, object and purpose of the highest writ of the country, the writ of habeas corpus, the privilege and benefit of which, according to the language of the Constitution, "shall be enjoyed in this Republic, in the most free, easy, cheap, expeditious and ample manner." (Constitution of Liberia, p. 10, sec. 20.)

This court therefore hereby authorizes and directs the judge of the court below to resume jurisdiction of the cause, and by means of a compulsory writ to compel the appellee, defendant below, to produce before him the bodies of Vombah and Carwee, in order that the cause of their alleged unlawful detention may be fully and lawfully ascertained. And the clerk of this court is hereby authorized to issue a mandate to the court below as to the effect of this decision.

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# APPENDIX

WILLIAM S. ANDERSON, Appellant, *vs.* HENRY W. DENNIS, Appellee.

[January Term, A. D. 1872.]

*Before His Honor S. L. Parsons, Chief Justice, and the Honorable Associate Justices.*

## MOTION TO DISMISS APPEAL.

In the case of William S. Anderson, appellant, *vs.* Henry W. Dennis, appellee, the said appellee respectfully motions this honorable court to dismiss said appeal, and rule the said appellant to costs, for the following legal reasons:

1. Because the said appellant took his appeal at the March term of the court below, A. D. 1870, and failed to complete his appeal by paying the costs and giving his bond within sixty days, as the law directs.

2. Because the said appellant failed and neglected to have his bill of exceptions filed in said appeal case signed by the judge below, as the law requires, and therefore this court cannot legally take cognizance of the matters laid in said bill of exceptions nor in anywise consider this appeal.

3. Because the said appellant has not stated in his said bill of exceptions that the judge of the court below went contrary to the law in granting a new trial on the motion of defendant below, nor has he stated any other reason in law why he takes this appeal, so as to give notice to the appellee, as the law requires, of what he intends to prove before this court, so as to enable this court to clearly determine whether or not the decision of the court below was in accordance with the law in the case.

4. And also because the said appellee was not summoned or notified to defend this case of appeal in this court until the first day of the session of the court, and therefore this honorable court should not hold him to answer in this action.

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For the several foregoing reasons the appellee respectfully motions the honorable court to dismiss this appeal case, and to render a decree in favor of the said appellee for all his costs; and this the said appellee will ever pray.

Respectfully submitted,

H. W. DENNIS,

By his Counsel, W. M. DAVIS.

## COURT'S RULING.

In the case of W. S. Anderson, appellant, *vs.* H. W. Dennis, appellee, Counsel W. M. Davis for the appellee filed a motion to dismiss the case on the ground that there is no legal bill of exceptions before the court, as the bill filed in the record is not signed by the judge of the lower court as the law directs.

This question has been already decided, in the case of the South Baptist Mission *vs.* McGill Brothers, January term, A. D. 1861, namely, that this court cannot consider any case of appeal as legally before it, unless upon a bill of exceptions duly signed by the judge of the court from which the appeal was taken. The court finds that the bill of exceptions in this case is not signed. It is due to the judge who tried the case, to sign the bill of exceptions, and as there appears no evidence in the present case to show that he either neglected or refused to sign the bill of exceptions, it is therefore presumed to be the fault of the appellant.

The court dismisses the appeal, and rules the appellant to pay costs. The clerk is hereby commanded to issue a mandate to the court below, informing it of this decision.

Supreme Court, January Term, 1872.

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## MOTION TO DISBAR A COUNSELLOR.

Monrovia, 17th January, 1873.

*To the Honorable the Supreme Court of the Republic of Liberia, Chief Justice C. L. Parsons Presiding:*

The undersigned counsellors, members of the bar of the Supreme Court, most respectfully represent to this court that Henry W. Johnson, Sr., attorney at law, admitted a counsellor, and member of this Supreme Court bar, has, since the last meeting of this court, been convicted of felony, and is now, in law, a felon, and is unfit

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to associate with the gentlemen of this bar. We therefore motion the court that Henry Washington Johnson be expelled from this bar and his name stricken from the roll of counsellors.

COURT'S RULING.

In the matter of the motion to disbar Counsellor H. W. Johnson, Sr., the court says that the gentlemen of the bar constitute, in a sense, a distinct corps, possessing certain privileges, and as such they have a right to motion the court to suspend any counsellor, whenever they consider it necessary to the honor of the court. Gentlemen of the bar could not inflict a wrong upon one of its members without being morally and legally responsible for the same.

Therefore the court rules that counsellor H. W. Johnson, Sr., be and he is hereby suspended from his privileges as a member of the bar of the Supreme Court until the charges against him be disposed.

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## MOTION TO EXPUNGE FROM RECORD A BILL OF EXCEPTIONS.

January 30th, 1874.

*To the Honorable Chief Justice and Associate Justices of the Supreme Court:*

Russell Minis, Sub-Treasurer of the County of Sinoe, appellant in an action of damages, by his counsellor tenders to your honors this motion, praying that papers number 35 and 20, called bills of exceptions, and bearing date November 20th, 1873, be expunged and not received as a part of the record in the case of Russell Minis, Sub-Treasurer, *vs.* S. J. Crayton, Superintendent of Sinoe County, action of damages; because said papers called bills of exceptions are not signed by the judge of the lower court, and therefore should not be considered valid. See statutes as well as common law to which shall refer in regard to requisites necessary to constitute a bill of exceptions.

Respectfully submitted,

RUSSELL MINIS, Sub-Treas. Sinoe Co.,
By his Counsellor, J. J. Ross.

COURT'S RULING.

In the action of damages, R. Minis, appellant, *vs.* S. J. Crayton, appellee, up for review February 2, 1874: The court does not

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entertain the motion to strike out certain papers in the record of the case.

First, because the record, being properly certified and sealed, is conclusive.

Second, because the objection ought to have been made before the record in said case was read.

Supreme Court, January Term, 1874.

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ALEXANDER LEE, Plaintiff in Error, *vs.* REPUBLIC OF LIBERIA, Defendant in Error.

[January Term, A. D. 1875.]

*Before His Honor C. L. Parsons, Chief Justice, and the Honorable Associate Justices.*

MOTION TO DISMISS APPEAL.

The said defendant, in the above entitled case, respectfully motions the Honorable Supreme Court to dismiss the said case from the docket and to rule the plaintiff in error to pay all costs in the case, on the following grounds:

1. Because the so-called assignment of errors, in this case, is not made out in accordance with the rules of this court, and therefore this court should not entertain the same, nor require said defendant in error to make defence thereto.

2. And also because the writ of error in this case was issued illegally, inasmuch as it was issued on an assignment of errors that does not contain the necessary affidavit, nor the certificate of counsel, as required by the 27th rule of this court, and therefore said case is not legally in court.

Respectfully submitted,
W. M. Davis, Attorney General.

COURT'S RULING.

The court is of the opinion that the motion of the defendant in error contains matters of fact, in that it asserts that the assignment of errors has not thereto attached the certificates of one of the counsellors of the court, and is not made out in accordance with the rules of this court. Therefore this court rules that the motion is not entertained; because all motions containing matters of fact must have an affidavit thereto affixed, which is wanting in the motion before us.

Supreme Court, January Term, 1875.

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WALTER BROHM, Agent for A. Woermann of Hamburg, Appellant, *vs.* F. J. GRANT, Appellee.

[January Term, A. D. 1876.]

*Before His Honor C. L. Parsons, Chief Justice, and the Honorable Associate Justices.*

## MOTION TO STRIKE AFFIDAVITS FROM RECORD.

F. J. Grant, appellee, respectfully motions the said court to strike out all the affidavits which the appellant has had annexed to the record of the said case, subsequent to the final judgment rendered in the said case in the court below, because the said affidavits constitute no part of the record of the said case, which the law requires to be sent up to this court by the judge of the court below.

F. J. GRANT, Appellee,
By his Counsellors, J. W. HILTON and H. W. JOHNSON, JR.

## COURT'S RULING.

The court does not entertain the motion presented by Attorneys H. W. Johnson, Jr., and J. W. Hilton, for F. J. Grant, defendant in error, *vs.* Walter Brohm, agent for A. Woermann, appellant in error, in an action of damages; because the said motion involves a question of fact, as to whether the affidavits referred to were made and annexed to the record before or after final judgment had been given in the court below, which fact could only be established upon proof or affidavit which the said motion is devoid of.

Supreme Court, January 26th, 1876.

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## OPINION OF THE COURT ON INTERPRETATION OF SECTION 6, ARTICLE II OF THE CONSTITUTION.

In compliance with the resolution of the House of Representatives of the Republic of Liberia, requesting this court to give its interpretation of the sixth section of the second article of the Constitution of the Republic of Liberia, which reads thus:—"The Senate shall try all impeachments, the Senators being first sworn or solemnly affirmed to try the same impartially and according to law; and no person shall be convicted but by the concurrence of two thirds of the Senators present. Judgment in such cases shall not extend beyond removal from office and disqualification to hold an office in the Republic, but the party may be tried at law for the same offence."

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Having considered the position as stated, we proceed to give the interpretation of the same. It is requisite, from the literal words of the Constitution, to the organization of a competent court of impeachment, and to enable it to proceed as such, that the Senators be first sworn or solemnly affirmed, as the Constitution directs. However, the Senate has no right or power whatever, outside of the constitutional bounds, to exercise legal authority without jurisdiction. To give the Senate jurisdiction over cases of impeachment, it is absolutely necessary that the accused be, at the immediate time of the impeachment and at the trial of the same, an officer of the Republic of Liberia, otherwise the Senate would have no jurisdiction over him whatever.

In order to insure the administration of justice, the trial of impeachment must be conducted according to law, and the judgment in such cases must, as in all other cases, express the sentence of the law.

The Constitution declares that *judgments shall not extend beyond removal from office and disqualification to hold an office in the Republic, but the party may be tried at law for the same offence.*

The word "but," in this connection, means *further*, or *besides*. Hence we say, after conviction of the accused upon articles of impeachment, he may be further tried or held to answer at law, for the same offence.

C. L. PARSONS, C. J. R. L.

Supreme Court, February 1st, 1876.

## OPINION OF THE CHIEF JUSTICE.

It is my opinion that after an opinion has been delivered from a competent bench by the Chief Justice, and none of the Associate Justices sitting at the time of the delivery thereof expressed dissent to the opinion so delivered, their assent thus given excludes them forever after from expressing a dissent to the opinion thus given by the Chief Justice. Therefore I say the opinion delivered by me as the interpretation of the sixth section of the second article of the Constitution is the lawful opinion and interpretation given by the Supreme Court, of the said constitutional question, and that no opinion or interpretation given a day after by the same members of the court and while the applicant for the interpretation is not before the court, and had not been notified to be there, can have the force of law.

C. L. PARSONS, C. J. R. L.

Supreme Court, February 2d, 1876.

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## ADMINISTRATORS OF THE ESTATE OF AUGUSTUS WASHINGTON, Appellants, *vs.* MARIA A. LLOYD, Appellee.

[January Term, A. D. 1878.]

*Before His Honor C. L. Parsons, Chief Justice, and the Honorable Associate Justices.*

### MOTION TO DISMISS APPEAL.

Maria A. Lloyd, appellee in the above entitled cause, respectfully motions the said court to dismiss the appeal, because the said appellee, having obtained two verdicts in an action of ejectment, at two separate and distinct trials between the same parties, for the same property now in dispute, as will appear by the record and proceedings in the said case (certified copies of which verdicts are herewith filed with this motion), says that the said appellants have no legal right to prosecute any further an appeal in the said case, but that the said two verdicts are a final determination of the issues involved in the said case.

MARIA A. LLOYD, Appellee,
By her Counsellors, J. W. HILTON and H. W. JOHNSON, JR.

### COURT'S RULING.

The court having very carefully and deliberately considered the various authorities cited in support of and against this motion, have arrived at the following conclusions: That Section 20 of the Liberian Statutes (page 37) relates to the effect of verdicts in ejectment as evidence, and is to be interpreted that two verdicts and judgments in ejectment between the same parties, or those under whom they claim in favor of the same side, are conclusive evidence of title. There is nothing, however, in that action that may be so construed as to make those verdicts an estoppel or bar to further proceedings, or prevent an appeal from being taken on the judgment and proceedings in a trial in which a verdict may have been given, provided the party against whom the judgment is rendered should comply with the law regulating appeals.

An appeal is a relief authorized by statute and must be regulated by the provision of the act so granting it, and our statute declares that every person against whom any judgment is rendered shall be entitled to appeal from any decision or opinion of any court except such courts of appeal. (Lib. Stat. p. 61, Sec. 1.) Therefore the court adjudges that the motion to dismiss the appeal is not sustained.

Supreme Court, February 21st, 1878.

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J. C. LOWRIE, Appellant, *vs.* CRUSOE BROTHER & COMPANY, Appellees.

[January Term, A. D. 1879.]

*Before His Honor C. L. Parsons, Chief Justice, and the Honorable Associate Justices, J. E. Moore and James M. Priest.*

MOTION TO DISMISS APPEAL.

Crusoe Brother & Company respectfully motion this honorable court to dismiss the case, J. C. Lowrie, appellant, *vs.* Crusoe Brother & Company, appellees, and rule the appellant to pay costs, because the record in this case as filed in the Clerk's office does not appear to be signed by the judge of the lower court who tried the case. According to the practice of this court, the said record should be certified by him.

Respectfully submitted,
J. J. Ross and W. M. DAVIS, Counsel for Appellees.

COURT'S RULING.

The motion of the appellees to dismiss the case, because the record does not appear to be signed by the judge of the lower court, has been considered by this court. Every act of the court, unless otherwise directed by law or rule of the court, should be authenticated by the signature of the clerk and the seal of the court. (Lib. Stat. p. 30, Sec. 2.)

It is not made necessary by the law that the judge should affix his signature, though it is for him to do so to the bill of exceptions, and to approve the bond. Upon examination of the record the court finds them properly authenticated by signature of the clerk and seal of the court, and that the bill of exceptions was signed and the bond approved by the judge. The court therefore overrules the motion.

Supreme Court, February 6th, 1879.

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SIMON ATTIA, Appellant, *vs.* JAMES A. TUNING, Appellee.

[January Term, A. D. 1880.]

*Before His Honor C. L. Parsons, Chief Justice, and the Honorable Associate Justices, J. E. Moore and J. M. Priest.*

MOTION TO DISMISS APPEAL.

The appellee, J. A. Tuning, by his counsel motions this honorable court to dismiss this case, in which Simon Attia, agent for

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J. Piza & Company, is appellant, in an action of damages for violation of a written contract, and to affirm the judgment of the court below and rule appellant to pay all costs, for the following reasons:

The appeal was taken, as the bill of exceptions will show, before the verdict of the jury was delivered and before final judgment was rendered in said case. (See the bill of exceptions, the verdict of the petit jury and final judgment.)

Respectfully submitted,

W. M. DAVIS, J. J. Ross, Appellee's Counsel.

13th January, 1880.

## COURT'S RULING.

A motion having been submitted by appellee to dismiss the case because "the appeal was taken, as the bill of exceptions will show, before the verdict of the jury was found and rendered and before final judgment was rendered in said case," the court would state that the statute prescribes that every appeal must be taken *after* final judgment, or, after a case shall have been decided by the court; but instead of appellant being confined or restricted to an appeal from final judgment, he is "entitled to an appeal from any decision or opinion of any court except such courts of appeal."

Reference has been made, in the arguments in support of the motion, to the decisions of this court in the case of Minis *vs.* Crayton, and Cooper *vs.* McGill & Bro. The court still entertains the opinion enunciated in those cases. In the first the court stated that "no appeal lies from a court of inferior jurisdiction to the Supreme Court until after final judgment has been given." In the other case, while confirming this, it was added, that "while the right to except from every decision, *interlocutory or final*, is granted, the appeal cannot be taken until after final judgment is rendered."

It will appear, therefore, that while based upon the statutes of this Republic and upon the general principles that appellate jurisdiction cannot be invoked until after some final determination has been made in the court below, these rulings or decisions restrict appellants as to the time of taking appeals. They are not confined in doing so to any particular opinion or decision.

It is argued that the bill of exceptions having been filed before the rendition of verdict or judgment, the case should be dismissed. We regard it unnecessary to refer to legal authorities to make it clear that there is at least a shade of difference between the bill of exceptions *per se* and an appeal; for the completion of the one does not necessarily imply a completion of the other. Authorities

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have been cited by counsel on each side to demonstrate that the time required for taking and signing bills of exceptions is the same as that prescribed for taking out an appeal. We will regard this as not in dispute.

Another argument for dismissal of the case is that it does not appear upon the record that an appeal was prayed for after final decision had been given. While no prayer is found for the appeal, yet we do find that the bond was determined, offered and approved by the judge, and the record of the case ordered to be forwarded to the Supreme Court; and it is but a reasonable presumption that such proceedings of the court which should be subsequent to a prayer for appeal must have been founded on such a prayer, and that the appeal was thereby signed. The court therefore does not sustain the motion to dismiss the case.

Supreme Court, January 15th, 1880.

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JAMES S. SMITH, Appellant, *vs.* FENTON ANN HILL, O. G. R. HILL, and THOMAS L. HILL, Appellees.

[January Term, A. D. 1882.]

*Before His Honor C. L. Parsons, Chief Justice, and the Honorable Associate Justices.*

MOTION TO DISMISS APPEAL.

The appellees in the above entitled cause respectfully motion this honorable court to dismiss the said case and rule the said appellant to pay all costs, because,—

First, The said appellees have not all been cited to appear before this honorable court to defend this case, in the manner prescribed by law.

Second, And also because the whole costs accruing in this case in the court below have not been paid by the appellant to the said appellees.

Third, And also because the bill of exceptions filed in this case is not framed according to the law and the rules of this court, in that the said bill of exceptions does not clearly and distinctly set forth such of the rulings or decisions of the court below or such parts of said rulings or decisions as the appellant excepts to.

Fourth, And also because the said appellant, not having made a motion in the court below to set aside the verdict of the jury, or filed exceptions to the final judgment founded on said verdict, the said appellant has waived his right to question the correctness

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of said verdict and the justice of said final judgment which is founded thereon. All of which said appellees are ready to prove. Wherefore they pray the dismissal of said case with costs, as above stated.

FENTON ANN HILL, O. G. R. HILL, and THOMAS S. HILL, Appellees,
By their Counsellors, H. W. JOHNSON, JR., and HY. W. GRIMES.

## COURT'S RULING.

After reviewing the grounds set forth in appellees' motion to dismiss this cause, the court is of opinion that where an appellant appeals from any decision rendered in a court below in favor of joint suitors, whether plaintiffs or defendants, the non-summoning of each individual of the said joint suitors to appear and answer the appeal, as appellees, is not fatal to the appeal. If one of said joint suitors has been summoned, it is sufficient notice to all, especially when one of the joint suitors in the court below appears in the court where the appeal is taken, and does an act which raises the presumption that said act was done by and with the consent and authority of the other joint appellees, as in this case, where the appellee, Fenton Ann Hill, makes affidavit to, and signs, the motion tendered this court to dismiss the case. And it is just for this court to conclude that her signing the motion referred to was to secure that advantage to all the appellees, and in doing so she acted by and with the consent and authority of the whole. Just here we would remark that without this view taken by the court the failure of each of the appellees to sign the motion tendered, to dismiss, would be equally as fatal as the non-summoning of each appellee, and consequently could not be countenanced by this court.

Second, this court is of the opinion that the question referring to costs ought to have been raised and settled in the court below, or before the judge thereof. This court is authorized to examine matters in dispute upon the *record only*, therefore it can notice no question to which the attention of the court below does not appear to have been called by the bill of exceptions or other records; and this court is of opinion that the court below would not grant an appeal before the law has been complied with, and until the contrary appears on the record this court must regard the plea, in this particular, insufficient to support the motion.

Thirdly, in the examination of the bill of exceptions it is obvious that the opinions and statements therein made and cited respecting certain rulings said to have been made by the court below, tend to lead the mind of this court into a state of conjec-

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ture as to whether the court below proceeded in the trial of the case contrary to the plain principles of law and justice. The opinions and statements referred to signify that the court below maintained an opinion opposite to those stated in the bill of exceptions, and the fact that the bill of exceptions bears the signature of the judge of the court below leaves this court in a state of conjecture.

Fourthly and lastly, this court is of opinion that appellees had the right to except to the court below granting the appeal to the appellant at the stage of the case referred to. Such being contrary to legal practice, the neglect of appellees to do so amounts to a waiver of that right, and they cannot now set up any objection to the manner in which the appellant has obtained his appeal.

Therefore, in order to do justice to the parties concerned, and to keep good conscience, it is necessary to try the merits of the case, so as to enable this court to determine questions which the plea in appellees' motion has drawn under our consideration. The court will therefore make no further expression on this point before the merits of the case shall have been heard. Appellees' motion is therefore not sustained.

Supreme Court, 19th January, 1882.

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JAMES M. HORACE, Plaintiff in Error, *vs.* WILLIAM A. JOHNSON, Defendant in Error.

*Specific Performance.*

[January Term, A. D. 1882.]

*Before His Honor C. L. Parsons, Chief Justice, and the Honorable Associate Justices.*

MOTION TO DISMISS APPEAL.

The defendant in error in the above entitled cause respectfully motions this honorable court to dismiss the said case and rule the plaintiff in error to pay all costs, because,—

First, the purported affidavit attached to the assignment of errors in said case is vague and uncertain in its terms and does not show to what cause it relates; second, and also because the said affidavit does not show that it was subscribed to before the Justice of the Peace before whom it was sworn; third, and also because the plaintiff in error has not paid to the said defendant in error the costs accruing in the court below in said case. All

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of which the said defendant in error is ready to prove. Wherefore he prays the dismissal of the case, with costs, as above stated.

WILLIAM A. JOHNSON, Defendant in Error,
By his Counsellors, H. W. JOHNSON, JR., and HY. W. GRIMES.

## COURT'S RULING.

When this case was called for hearing, the defendant in error tendered this court a motion to dismiss the case. Upon a careful examination of the law we find no conflict as to what is an "affidavit." It being a statement or declaration reduced to writing, sworn or affirmed to before an officer authorized to administer such an oath, it must intelligibly refer to the cause in which it is made. The strict rule of the common law is that it must contain the exact title of the cause, and the place wherein the affidavit is taken must be stated, so as to show that it was taken within the officer's jurisdiction. The deponent *must* sign the affidavit at the end, and the jurat must be signed by the officer, with the addition of his official title. In general, an affidavit must describe the deponent sufficiently to show that he is a party, or an agent or attorney of the party, to the proceedings, and this matter must be stated, not by way of recital, or a mere description.

The opinion of this court is, that the affidavit of the plaintiff in error, in this action, ought to have stated therein the exact title of this cause, and the deponent should have signed the affidavit at the *end*. Our statute does not exempt the plaintiff in error from conforming to the rule, for it declares that a party may adapt the forms of affidavits to suit each particular case.

The affidavit under consideration, bearing on its face the words "and also that the facts contained in the writ are true," etc., is unintelligible and this court is not authorized to construe the meaning of the word "writ" contrary to what is generally understood by the term, especially as it is the solemn declaration of the deponent, the plaintiff in error in this case; and, more especially, as an assignment in error differs so materially from a writ of error.

Here it is proper to remark that any departure from the doctrine upon which affidavits must be founded, would defeat the very object of the affidavit itself; and, no doubt, that precedent thus set would plunge the court into inextricable difficulties.

Now, considering the nature and requisites of an affidavit, as above cited, this court is of the opinion, and must pronounce it

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so, that the affidavit attached to the assignment of errors in this case is insufficient to support it. The case is therefore dismissed, and the plaintiff in error is ruled to pay all costs therein.

Supreme Court, January Term, 1882.

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MATILDA A. ROBERTS, Appellant, *vs.* JOHN L. ANDERSON, Appellee.

*Ejectment.*

[January Term, A. D. 1884.]

*Before His Honor C. L. Parsons, Chief Justice, and the Honorable Associate Justices, H. J. Neyle and Z. B. Roberts.*

MOTION TO DISMISS APPEAL.

John L. Anderson, appellee in the above entitled cause, respectfully motions this honorable court to dismiss the case and rule the appellant to pay costs, first, because the appeal in this case was taken before the verdict of the jury in said case was recorded, and also because the appeal has been taken and no final judgment has been rendered in said case; all of which is directly against the law and the ruling of this honorable court. (1 Lib. Stat. p. 61, sec. 6.)

Respectfully submitted,
JOHN L. ANDERSON, Appellee,
By F. J. PAYNE, Atty. at Law.

COURT'S RULING.

The motion of the appellee in this case to dismiss the same is in perfect harmony with law, the rulings and practice of this court, as fully declared in the judgment rendered in the cases. Minus *vs.* Crayton, Henry Cooper *vs.* McGill Brothers, and Julia Williams *vs.* McGill Brothers. Because, when a new trial is granted it wholly destroys the existence of the former trial and verdict thereon. Therefore there can be no legal appeal from the same, and as there has been no final judgment rendered in this case the court proceeds to make the following ruling:

The court rules that no appeal lies from the order of a court granting a new trial upon which there has been no final judgment rendered. Therefore the case is dismissed, and the appellant ruled to pay all costs incurred in the action.

Supreme Court, January 24th, 1884.

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J. J. ROSS, Plaintiff in Error, *vs.* RUSSELL MINUS, Defendant in Error.

*Damages.*

[January Term, A. D. 1884.]

*Before His Honor C. L. Parsons, Chief Justice, and the Honorable Associate Justices, Henry J. Neyle and Z. B. Roberts.*

## MOTION TO DISMISS APPEAL.

Russell Minus, defendant in the above entitled cause, respectfully motions this honorable court to dismiss this case and to rule the plaintiff to pay costs, first, because the plaintiff in error has failed to file in this court a complete record; as the original deed from the Republic of Liberia to S. H. Crayton, and a transfer deed from S. H. Crayton to Russell Minus, for the remnant lot alleged to be appurtenant to lot No. 58, in Greenville, Sinoe County, part of the written evidence in the above entitled cause, can nowhere be found in the record filed in the office of the clerk of this honorable court. Second, and also because the above entitled cause was brought into this court before the rendition of the final judgment in said case, by the Court of Quarter Sessions and Common Pleas of the County of Grand Bassa, as will appear by the record filed in the office of the clerk of this honorable court.

Respectfully submitted,

RUSSELL MINUS,

By J. NANSTEDLAW LEWIS and ARTHUR BARCLAY, Counsellors at Law.

## COURT'S RULING.

This was an action of damages, tried in the Court of Quarter Sessions of Grand Bassa County, at its September term, A. D. 1883, and upon a writ of error was brought up to this court for review. In this case the defendant in error submits for the consideration of this court a motion to dismiss the case, first, because the record is incomplete; second, because certain deeds used as evidence of the defendant's title in the court below have not been sent up as a part of the record in this case.

Upon inspection of the record the court finds that a verdict has been returned by the jury in favor of the defendant, to which the plaintiff took exceptions; but for some cause which does not appear on the record, the exceptions were not allowed. So it was on account of this, and also because the defendant was allowed to withdraw certain deeds used as evidence at the trial of the cause,

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that the plaintiff brings his case before this court upon a writ of error.

And here it is proper for the court to state that according to the statute of this Republic regulating appeals, there can be no appeal until final judgment. Therefore the court says that a writ of error does not lie from the verdict of the jury. And the court further says, that it was not error in the court below to allow the defendant to withdraw deeds which he put in evidence during the trial of the case; for if it was the intention of the plaintiff in error to appeal from the rulings of the court, it was his duty to request the judge to order the clerk to take copies of all papers used in the trial of the cause, and his not doing so is his own neglect, for which he alone is blamable.

This court therefore adjudges that the writ of error is hereby dismissed, and that the defendant in error recover from the plaintiff in error all costs.

Supreme Court, January Term, 1884.

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J. J. ROSS, Appellant, *vs.* REPUBLIC OF LIBERIA, Appellee.

*Specific Performance.*

[January Term, A. D. 1884.]

*Before His Honor C. L. Parsons, Chief Justice, and the Honorable Associate Justices.*

MOTION TO DISMISS APPEAL.

The appellee in the above entitled case most respectfully motions this honorable court to dismiss the above entitled case and rule the appellant to pay all costs, because neither our Constitution nor our laws give any authority to citizens, or others, to bring suit for specific performance against the Republic, and therefore the courts of this Republic have no jurisdiction to try and determine such cases as specific performance; and when such cases are brought, the courts must dismiss them. All of which the said appellee is ready to prove. Wherefore he prays that this case be dismissed and the appellant be ruled to pay all costs of this action.

REPUBLIC OF LIBERIA, Appellee,
By W. M. DAVIS, Attorney General *pro tem.*

COURT'S RULING.

This case comes up by a bill of exceptions from the Court of Quarter Sessions, Sinoe County. Trial took place at its November term, A. D. 1883, and is here for review.

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This court preferred hearing the merits of the case, but as the appellee submitted a motion to dismiss the appeal, alleging that there is no statute giving authority for the maintaining of an action of specific performance against the appellee, its attention is thereto called. In respect to the motion this court says that after careful examination it is of opinion that until the Legislature of the Republic, by statute, grants the right to parties to bring actions of specific performance against the Republic of Liberia (appellee in this case), such actions cannot be sustained. Therefore this court adjudges that this case is dismissed.

Supreme Court, January Term, 1884.

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L. VAN DER WERF, agent for Hendrick J. G. Moddermann, the agent for Messrs. Hendrick Muller & Co., Plaintiff in Error, *vs.* JOHN H. LOGAN, of Grand Bassa County, Defendant in Error.

*Damages.*

[January Term, A. D. 1885.]

*Before His Honor C. L. Parsons, Chief Justice, and the Honorable Associate Justices, H. J. Neyle and Z. B. Roberts.*

MOTION TO DISMISS APPEAL.

John H. Logan of Grand Bassa County, defendant in error in the above entitled cause, respectfully motions this honorable court to dismiss this case and rule the plaintiff in error to pay all costs, first, because in the assignment of errors in said case the said plaintiff in error assigns as errors matters of fact not on the record of said case; and second, because the purported affidavit attached to said assignment of errors is illegal and void, in that it is not entitled of any cause and has no jurat.

Respectfully submitted,
JOHN H. LOGAN, Defendant in Error,
By HY. W. GRIMES, Counsellor at Law.

COURT'S RULING.

This case comes up from the Court of Quarter Sessions, Grand Bassa County, for review, upon a writ of error. The defendant in error submits for the consideration of the court a motion to dismiss the cause, first, because the petition upon which the writ is founded assigns errors not found in the record and proceedings of the court below; and second, because the affidavit attached to

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said assignment of errors is illegal and void in that it is not entitled of any cause and has no jurat.

The court says, after a careful examination of law and the motion submitted, it is bound to support the rulings made in the case of Horace *vs.* Johnson, as said ruling is in perfect harmony with the law governing affidavits. Upon inspection, the court is satisfied that the motion to dismiss is well founded, and that all affidavits ought to intelligibly refer to the action in which they are filed, and should contain below, the jurat and the signatures of both the justice officiating and the deponent. The want of these requisites being apparent on the affidavit, the court therefore adjudges the case dismissed and that the defendant in error recover costs from the plaintiff in error.

Supreme Court, January Term, 1885.

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## ALEXANDER LEE, Appellant, *vs.* THE REPUBLIC OF LIBERIA, Appellee.

*Libel in Admiralty.*

[January Term, A. D. 1885.]

### MOTION TO DISMISS APPEAL.

The appellee in the above cause respectfully motions this honorable court to dismiss the case, because, first, the bond of the appellant, sent up as part of the record in this case, is not approved by the judge of the lower court as the law requires; second, because the appellant's bill of exceptions, sent up as a part of the record of said case, is not signed by the judge of the court below as the law requires. All of which the record of said case will prove. Wherefore the said appellee prays that the case be dismissed.

THE REPUBLIC OF LIBERIA, Appellee,
By W. M. DAVIS, Attorney General *pro tem.*

### COURT'S RULING.

This is an appeal case from the Court of Pleas and Quarter Sessions, Sinoe County. On the calling of this case, the appellee made a motion to dismiss it, because the appellant's bill of exceptions and bonds had not the signature of the judge of the lower court.

Upon a careful examination of the record of the court below, we find that this fatal defect exists. This court has expressed before, and now repeats, that the statute laws of Liberia make it necessary that the judge of the lower court sign the bill of exceptions

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and approve the bond, in all appeal cases granted by him. (See ruling of this court in Lowrie *vs.* Crusoe Bros. & Co., Feb. 6, 1879.)

For the want of so important a requisite this court will not take jurisdiction over this case; and it therefore rules that appellee's motion is sustained, and that this case be and the same is hereby dismissed. The clerk of this court is hereby commanded, under the rules, to issue the proper mandate to the court below, to the effect of this ruling.

Supreme Court, January Term, 1885.

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STRALATUM E. F. CADOGAN, City Magistrate, prisoner, Appellant, *vs.* REPUBLIC OF LIBERIA, Appellee.

*Bribery.*

[January Term, A. D. 1890.]

*Before His Honor C. L. Parsons, Chief Justice, and the Honorable Associate Justices, H. J. Neyle and Z. B. Roberts.*

MOTION TO DISMISS APPEAL.

Stralatum E. F. Cadogan, City Magistrate, prisoner, appellant in the above entitled cause, most respectfully motions this honorable court to arrest the judgment, *in toto*, of the lower court in the above case of appeal, in which S. E. F. Cadogan, City Magistrate, prisoner, is appellant, and the Republic of Liberia appellee, because the said judgment would work great injustice to the said S. E. F. Cadogan, City Magistrate, prisoner, if not arrested, for the following reason: Because it does not appear on the face of the record in the above case that any return has been made upon the writ of arrest according to law upon which the said S. E. F. Cadogan, City Magistrate, prisoner, was arrested and tried, hence the court had no jurisdiction to proceed in the trial of the same, as will more fully appear by inspection of the record of the case, filed in the office of the clerk of this honorable court.

Respectfully submitted,

S. E. F. CADOGAN,

City Magistrate, prisoner, Appellant.

COURT'S RULING.

This is an appeal case from the ruling and judgment of the Court of Quarter Sessions, Montserrado County, on an indictment for bribery at the March term of said court, 1889. At the call of the case the appellant offered and submitted for the consideration of this court a motion praying a final arrest of judgment of

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the court below, because the record did not show any return of the writ upon which the proceedings against him are founded. The counsel for the appellee resists this motion by showing that an arrest of judgment, legally speaking, applies to courts of original jurisdiction, before the rendition of the judgment, also because the objection was not formally set up in his plea. This no doubt is the better application of the term "arrest of judgment." But as an appeal, when taken, brings before the appeal court the whole case, duty or the solemn obligation of this court to act in conformity to law and justice leads to an inspection sufficient to determine the question of jurisdiction. We do say, a superfluous expression used in a defence ought not to vitiate such pleadings, provided the matter plead is set forth grammatically right and sensible, which does so appear to the court in this case.

In viewing the circumstances surrounding this case and the nature of the charge, we find that there is a great distinction between it and the cases cited by the counsel for the appellee, they being civil cases, and the one under consideration, criminal. Therefore there must be a difference in principles applicable to the case.

When the life, liberty or character of a party is at stake, the court will, in keeping with a strict rule of justice, lend its aid to the discovery of any obscure fact that has a tendency to prevent a fair trial. A trial at law is the examination before a competent tribunal. The jurisdiction of the court over suitors and offenders is conferred by law, and this power is exercised by means of a writ, which is a mandatory precept issued usually in the name of the sovereign state, directed to a ministerial officer, who must not only serve it, but make return of the fact that it had been served. As this puts the person named in the writ under the jurisdiction of the court, therefore courts of justice *ex officio* are bound to notice the writ or foundation of their jurisdiction over the parties, and at any stage of their proceedings before final judgment, for want of jurisdiction, may entertain and sustain a motion to arrest judgment.

From the record it is clear to the mind of this court that the writ issued in this case has not been returned, hence the court had no jurisdiction over the person of the prisoner. Without further observations this court feels bound by law and a strict rule of justice to say that the trial below has not been conducted according to law. Therefore it is hereby adjudged by this court that the judgment of the court below in this case is reversed and rendered void.

Supreme Court, January Term, 1890.

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T. L. WARNER, Appellant, *vs.* THE REPUBLIC OF LIBERIA, Appellee.

*Conspiracy.*

[January Term, A. D. 1892.]

*Before His Honor C. L. Parsons, Chief Justice, and the Honorable Associate Justices.*

MOTION TO DISMISS APPEAL.

The Republic of Liberia, appellee in the above entitled cause, by Henry W. Grimes, Attorney General of said Republic, respectfully motions this honorable court to dismiss this case for the following reasons: First, because there is a provision made by the laws of said Republic for criminal cases to be brought to this honorable court by appeal. Second, and also because T. L. Warner, the appellee in this case, does not appear, from the record filed in this case, to have tendered a bill of exceptions and prayed an appeal in the court below. Third, and also because the bond filed in this case as appellee's bond is not such a bond as the law requires, as it does not bind appellant to indemnify the appellee from all injuries arising from the appeal and to comply with the judgment of this honorable court, or any other to which said case may be removed. Fourth, and also because the record in this case is imperfect, as no writ of arrest or other process appears in said record.

Respectfully submitted,
THE REPUBLIC OF LIBERIA, Appellee,
By HY. W. GRIMES, Atty. Genl. R. L.

COURT'S RULING.

The court here says, that the question raised in the motion of the Attorney General to dismiss the case has had its consideration, and the court takes pleasure in further saying that there are involved in the motion questions which have been frequently before it, and which were the subject of discussion twenty-five years ago. Coming directly to the merits of the motion, however, in regard to the right to appeal upon a bill of exceptions in criminal cases, we do not hesitate to say that it is our duty to consider what was the intention of the framers of the Constitution, by incorporating those acts of the Commonwealth with the laws of the Republic of Liberia. In noticing these, together with the Constitution of the Republic of Liberia, we find in the idea of the

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Constitution that the right of appeal in civil and criminal cases is one of the fundamental prerogatives upon which the liberty of the people stands. To do away with this idea would be to set aside the dearest provision of the fathers, made in the bulwark of our national fabric, which serves as a preventive against oppression and a security to the enjoyment of civil liberty; without which, the people must become dwarfed in manhood and enterprise, and as a consequence energy, thrift, enterprise and noble aspirations will cease to exist and flourish under our national flag, and will seek some other land for encouragement and protection. The framers of the Constitution, knowing this, and considering our situation, disadvantages, and our limited knowledge of law and of political government at that time, sought to make our national road to greatness plain and easy, and to be understood by the whole people; hence, by the Constitution, they clothed the Supreme Court with appellate jurisdiction in all cases of appeal.

The language by which the right of appeal to the Supreme Court is secured may not be mistaken by the simplest mind, if it be free from prejudice, hatred or influence of bribery. And it is also very clear that the fathers, in making the Statute of Appeals, intended it as the proper step by which both civil and criminal cases of appeal should find their way to the Supreme Court. This conclusion we come to from the fact that from the earliest existence of Liberia, both lawmakers under the authority of the Commonwealth and lawmakers under the Constitution of the Republic of Liberia, who knew best their intention in constructing the law, in their practice as lawyers before the courts, in both civil and criminal cases of appeal, followed the direction of the Statute of Appeal, to which we alluded. It is therefore the opinion of this court that appeals in criminal cases lie to the Supreme Court upon bills of exceptions, and a denial of the right would be gross injustice.

It is scarcely necessary for us to say that when several parties are indicted in one indictment they may make common defence, or elect to be tried separately; and if the trial be joint, all should join in the plea or defence, and in case an appeal be prayed, the bill of exceptions should embrace the names of all the parties appealing, however many there may be. On inspecting the record in this case we find a bill of exceptions purporting to be tendered by one F. J. Payne alone, thereby creating a non-joinder of the appellants in this case. This irregularity is not cured by the signature of the judge to said bill of exceptions. Regularly a bill of exceptions should be so construed as to come within the purview of the statute, and therefore should in all of its parts set forth with

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certainty the names of the parties thereto. This court is therefore of opinion that this point raised in the motion is of legal foundation.

This court therefore adjudges that the appeal be dismissed, and hereby directs that the clerk of this court make known the same to the court from which the appeal was taken.

Supreme Court, January Term, 1892.

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J. W. TOLES, Appellant, *vs.* I. C. DICKINSON, Appellee.

*Fraud.*

[January Term, A. D. 1892.]

*Before His Honor C. L. Parsons, Chief Justice, and the Honorable Associate Justices.*

MOTION TO DISMISS APPEAL.

The appellee, I. C. Dickinson, respectfully motions the honorable the Supreme Court to dismiss the above entitled cause and rule the appellant to costs, because the appellant has not brought up his appeal in the manner and form required by law and the rule and practice of this honorable court, in this, that at the last term of this honorable court, when this case was called for trial, upon the report of the marshal it appeared that the appellant had neglected to have appellee summoned into this court, nor was the appellee so summoned until the 28th day of December in the year 1891, more than one year after the case had been docketed, as will appear by the record of this honorable court and by the said summons. Wherefore appellee prays that this case be dismissed and the appellant ordered to pay the costs.

Respectfully submitted,
I. C. DICKINSON, Appellee,
By ARTHUR BARCLAY, Attorney and Counsellor at Law.

COURT'S RULING.

When an appeal has been taken, nothing ought to prevent the investigation of the same but the want of proper jurisdiction.

The case being an appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County, when it was called up Counsellor Haynes, for the appellant, requested the court to assign the case to some other day. Counsellor Barclay, for the appellee, informed the court that he was the attorney for the appellee in the court below and had not been duly summoned, neither had his

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client, and he requested the court to lay it over until the next session. After some remarks, it being a case of equity, the court ordered the case to be continued.

The court, however, says that rights which neither of the parties had within the term of the court at which the case was docketed to be tried, could upon any principle of law or method of reasoning accrue to him after the term in which the case was brought up to be heard, because of the continuation of the same. For it is very obvious that if the appellant neglected to summon the appellee to appear at the court in the term in which the case was to be reviewed, the court could take no jurisdiction over the person of the appellee, for it is the notice that gives the court jurisdiction. Therefore the court says that no notice served after the term of which the case was brought up for hearing could be substituted for the one which ought to have been given in the legal term of the court in which it was entered to be examined, nor could such a notice have any legal effect.

Therefore the court says the case is hereby dismissed, and the clerk of this court ordered to send down to the court below, in which the case was originally tried, a notice of the doings of this court.

Supreme Court, January Term, 1892.

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J. B. C. ROYE, Appellant,
*vs.* THE REPUBLIC OF LIBERIA, Appellee.

***Murder.***

[January Term, A. D. 1892.]

COURT'S RULING ON MOTION TO DISMISS APPEAL.

Statutes must be strictly construed as to intention and effects, therefore when any statute or part of it conflicts with the words, meaning and spirit of any constitutional provision, because of it, want of applicability to the case in which it is desired to be applied, such statute, or such part of it affected by the constitutional provision, can have no legal bearing in such a case. The Constitution, being the greatest and highest law, predominates, or destroys the power and effect of the statute or any part of it which conflicts with any of its provisions in that particular case; therefore we say, the Constitution forbids the taking of bail in capital offences, which entirely excludes the idea of an appeal bond of indemnification, or any other bond, as it would be without author-

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ity, and in violation of the Constitution. Our statute on appeal provides for both civil and criminal cases; in its use and application it must be reasonably construed to meet the nature of the case under its direction. Hence we say the second plea in the motion is insufficient.

In regard to the third plea, the court is of the opinion that a writ in the hands of the County Attorney which has not been returned to the court is not within the legal embraces of the court, whether such a writ be issued by the Justice of the Peace sending up the case for trial, or by the court from which the appeal was taken. Therefore the court says, the clerk was only bound to give a true copy of the record and proceedings of the case before the court. And this court, to make its position more plain as to this last plea in the motion that is before it, does say that a court, according to the Statutes of Liberia, is composed of the judge, clerk, and its seal. Hence the County Attorney is no part of the court proper; he is only an attorney, or prosecutor for the county.

The court further says the necessity of issuing a writ of arrest against a felon already apprehended and held in custody for trial, does not exist. His subsequent indictment is sufficient to warrant an arraignment and trial. Therefore the court does not sustain the motion to dismiss the case.

Supreme Court, February, 1892.

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## COURT'S RULING ON MOTION TO COMPEL ISSUE OF WRIT OF ERROR.

In the matter of the petition of C. B. Reeves, attorney below for Henry More, tried and convicted at the December term of the Court of Quarter Sessions and Common Pleas, Grand Bassa County, 1896, for a writ of error, by him handed to this court, praying an order for the issue of said writ.

The matter has been considered, and while it is the desire of this court to render its aid in the furtherance of justice, yet it does not feel warranted in setting aside its established rules. By Rule 26 a writ of error is obtainable, and is to be issued by the clerk whenever errors are assigned under its provisions; one of the requirements being that the appellant or applicant shall have attached to said assignment of errors, the certificate of one counsellor of this court, or one attorney of any of the country courts, certifying that in the opinion of said counsellor or attorney real errors are assigned therein.

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This rule does not bear an interpretation that can be met by the certificate of the petitioner in this case, although he may be a member of the bar of this county. As parties are unconsciously prejudiced to their own opinions and views, the rule contemplates that a disinterested counsellor or attorney shall certify that real errors exist. In this petition the petitioner assigns the errors, hence he should have procured the certificate of a counsellor or attorney, certifying that there are errors, committed or apparent, to warrant the issue of the writ required. This not appearing, the court cannot sustain the motion without setting aside its rules. The motion is therefore dismissed.

Supreme Court, January Term, 1897.

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## MOTION TO DISBAR A COUNSELLOR.

Monrovia, Jan. 11th, 1898.

*To the Honorable Z. B. Roberts, Chief Justice, and the Honorable Associates R. B. Richardson and J. J. Dossen:*

The undersigned counsellors of the Supreme Court of this Republic respectfully showeth to this honorable court that for a long period of time Francis J. Payne, one of the counsellors of this court, has conducted himself in a reprehensible manner, first by being habitually intoxicated, and secondly by committing infraction of the peace by using profane and obscene language in the public streets, to the disturbance of good citizens of this community, and is habitually being guilty of conduct unbecoming a gentleman and a member of this honorable court.

We therefore, as counsellors of this honorable court, bring these charges, requesting that he may be suspended from all the privileges of a member of this bar; he not even being licensed as an attorney. And this your petitioners will ever pray.

Respectfully submitted,

F. E. R. JOHNSON,
T. W. HAYNES,
Counsellors at Law.

## COURT'S RULING.

In the matter of the petition of counsellors F. E. R. Johnson and T. W. Haynes, brought before this court at its present session, in which the petitioners petitioned the court to suspend Counsellor Francis J. Payne from all the privileges of a member of this bar, for the following reasons, to wit: First, for being habitu-

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ally intoxicated; and secondly, for committing infractions of the peace by using profane and obscene language in the public streets, to the disturbance of the good citizens of this community, and also being guilty of habitual conduct unbecoming a gentleman and member of this honorable court.

The matter being one in which the right of a member of this bar to practise before it is the only point at issue, this court exercises original jurisdiction, and having heard the evidence and the arguments on the part of the prosecution and defence, will now proceed to give decision in the matter.

By reference to the petition now under consideration, we find the grounds upon which the petition is predicated, as indicated above, are "habitual intoxication, infraction of the peace by using profane and obscene language in the public streets, and habitual conduct unbecoming a gentleman and member of this honorable court." What conduct is referred to as "unbecoming a gentleman and member of this honorable court," is not stated and set forth in the petition. The court is therefore bound to deal with those charges only which are clearly, distinctly and specifically set out in the petition; and it will confine itself to the consideration of that portion of the petition only. To ascertain what acts or offences which, if committed by a member of the bar, will render him liable to be disbarred or suspended, recourse must be had to the laws of the country, and as in all other cases, so here, are we bound to confine ourselves to the principles of these laws and must strictly keep within the purview of them. The Statute of Liberia pertaining to attorneys, found on the 129th page, Art. 9, Sec. 1, of the Revised Statute, empowers the several courts of Liberia with the right to withdraw the license of any regularly licensed attorney whenever he should be guilty of indecorous language, either toward the court or jury. By a subsequent act of the Legislature of Liberia, passed by limitation, January 28th, 1878, the right and power to disbar or suspend members of the bar for the cause of contempt, was withdrawn from the inferior courts and conferred solely upon the Supreme Court of Liberia. (Act of Legislature, 1877–78, p. 11, sec. 1.) The right, therefore, to disbar, suspend or otherwise deprive a member of the bar from the enjoyment of the privileges and rights of a lawyer, on the ground of contempt, is a right which under the statutes of Liberia can only be exercised by the Supreme Court of Liberia. But it is clear and obvious that the above cited act relates to contempt only. There are other cases, however, which will warrant a court to disbar or suspend members of its bar, and it is to this

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class of offences that the petition under consideration strictly relates.

We shall now proceed to notice some of the causes. An attempt to make an opposing attorney drunk in order to obtain an advantage of him in the trial of a cause, is good ground for striking an attorney from the roll. (U. S. Digest, Vol. III, p. 85.) So too, where an attorney obtains money by false representations relative to matters entrusted to him in that capacity. (*Idem.*) When an attorney has been prosecuted by an indictment or information, and has confessed guilt, or been found guilty by a jury, the courts in which he practised have the power, upon his guilt thus appearing, to strike his name from the roll of attorneys. (*Idem.*)

It does not appear from the petition before us, nor from the evidence produced, nor was it maintained by the counsellor for the prosecution in his arguments, that the improper conduct alleged against Counsellor Payne had at any time subjected him to prosecution and conviction upon a bill of indictment or information, for an infamous offence. Nor does it appear that he has been guilty of committing any offence above the degree of petty infraction of the peace.

While we admit, without the slightest hesitancy, that habitual intoxication and the use of profane and obscene language is indeed against the morals of good society, and that such conduct may be made the subject of petty prosecution, yet we are inclined to the opinion that such conduct does not constitute an offence sufficiently grave and cogent in its nature, to subject one to such punishment as would disqualify him to be a member of the bar. Mere discreditable acts, if not infamous, and not connected with an attorney's duties, will not give the court the right to strike him from the roll. (U. S. Digest, Vol. III, p. 85; I Bouvier's Law Dict. p. 34: "Disbar.")

Allusion is made in the petition to the fact that Counsellor Payne has failed to renew his license as an attorney, and therefore should be suspended from the privileges of the bar. This fact having been admitted by him, we shall proceed to see how far it will operate against him as a member of the bar. It is an unquestionable fact that no lawyer can be admitted to practice before any court of this Republic before paying into the public treasury the annual tax imposed by law for the privilege, and obtaining a license from the officer designated by law, granting him the right to plead and implead before the several courts of the Republic. The rule governing the formal requisites of the license of an attorney having already been copiously laid down by this court

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in the case of Reginald A. Sherman against Republic of Liberia, decided by this court at its January term, A. D. 1881, we deem it unnecessary to enter into a lengthy discussion on this point.

While the court is of the opinion that Counsellor Francis J. Payne is not entitled to practise before this or any other court of the Republic before he has renewed his license as an attorney by paying into the public treasury the annual tax fee required by law, still this court does not find him guilty of an offence sufficient in law to disbar or suspend him from the roll as a member of this bar. For the foregoing reasons the court dismisses the petition, without costs.

Supreme Court, January Term, 1898.

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REPUBLIC OF LIBERIA, Appellant, *vs.* DONNER JUNGST, Appellee.

*Violation of Revenue Laws.*

[January Term, A. D. 1907.]

COURT'S RULING ON MOTION TO DISMISS APPEAL.

At the call of this case for trial, the appellee submitted to this court a motion to dismiss the cause, because the appellant had failed to give bond in taking the appeal, as required by law. In this case the Republic of Liberia was the plaintiff below, prosecuting for an alleged violation of her revenue laws.

This motion has had the careful consideration of this court, and after carefully examining the principles involved, the court has come to the following conclusions: To require bond of the Republic, and on failure, to subject her to attachment, arrest, etc., as private individuals, would tend to endless confusion, first, because the Legislature has not as yet made any law requiring bail in such prosecutions, whether civil or criminal; it has only provided for suits in actions of contract against the Government. For this reason the State is not bound by the rules of practice laid down for private prosecutors. Law is based upon reason, and the requirement of bail is to protect litigant parties against escape, etc. Governments can never escape, hence the reason of this law, to protect against escape, ceases to exist. Second, this court further says, the present laws requiring bail, and subjecting those neglecting to comply therewith, to arrest, execution, etc., in no way apply to the Government. The motion is therefore not sustained and this court orders that the trial proceed.

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DAVID ATTIA, Appellant, *vs.* ARTHUR RIGBY, Agent for William R. Drury, Appellee.

*Petition for Writ of Possession.*

[January Term, A. D. 1907.]

COURT'S RULING ON MOTION FOR CONTINUANCE.

This case was brought up before this tribunal upon a writ of certiorari. Before the case was called up for hearing the counsel for appellee moved the court to continue the trial until its next session, on the ground of diminution of records.

Diminution of records being a lawful ground for postponing the hearing of a cause before an appellate court, and a reason which this court has uniformly held for continuing suits brought before it, this court entertains the motion and rules that the hearing of said case is postponed until its next regular session, 1908. And that there may be no further delay caused by a diminution of records, we hereby order the clerk of this court to issue a peremptory mandamus to the judge of the lower court, commanding him to transmit to the office of the clerk of the Supreme Court, forthwith, all records not already transmitted, naming specifically the documents named in said motion.

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BOLUS, *alias* TOM PEPPER, and BO-TABAR, Appellants, *vs.* SOKINE, Appellee.

*Damages Growing out of Replevin.*

[January Term, A. D. 1907.]

COURT'S RULING ON MOTION TO DISMISS APPEAL.

This is a case brought to this court in the nature of an appeal by certiorari, for final determination. The trial below was conducted before the Court of Quarter Sessions and Common Pleas, Sinoe County, His Honor Judge William Witherspoon presiding, at its May term, A. D. 1906. At the call of the case the appellee failed to answer; whereupon the appellants prayed the court for judgment by default.

When a party to a suit before a court of competent jurisdiction fails to appear, either in person or by counsel, on the day assigned for hearing of said case, such failure is sufficient cause for his opponent to ask for judgment by default. In the case now before the court the appellee has failed to answer, which the court considers

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as an abandonment of the cause. The court therefore adjudges that the appellants are entitled to recover against the appellee, and renders final judgment that the appellants recover from the appellee all costs in this action. It further adjudges that the judgment rendered in the court below is reversed; and the clerk of this court is hereby ordered to issue and forward to the court below, in legal manner, notice of this ruling.

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## COURT'S ORDER ON ISSUE OF EXECUTIONS TO ENFORCE COLLECTION OF COSTS.

Whereas, the complaint of the marshal showeth that he has not been able to collect the costs following several cases determined before this court upon appeals, for want of proper process to enforce payments, therefore this court orders that in all such cases the clerk of this court is directed to issue a writ of execution, directed to the marshal, authorizing him to enforce collection of said costs by attachment, sale, etc., as otherwise directed by law.

And hereafter, the clerk of this court is directed, in all cases determined by this court, coming up from any county court leeward of Monrovia, for trial, that after trial and judgment the clerk shall issue execution for all costs not paid, and forward the same with the usual mandate to the court from which the appeal was taken. The marshal of this court shall endorse said writ, authorizing the county marshal to serve the same and pay to those entitled their costs, and make known his doings to the marshal of this court, who shall make return before this court as to how said writ was executed.

Supreme Court, January Term, 1907.

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## RULES OF THE SUPREME COURT OF THE REPUBLIC OF LIBERIA, AS REVISED AND AMENDED AT ITS JANUARY SESSIONS, A.D. 1888–99.

Rule 1. At 10 o'clock A. M. on the second Monday in January in each year the Supreme Court shall convene for business.

Rule 2. All constitutional questions legally introduced shall be considered and decided.

Rule 3. All writs of error from Superior Courts of Pleas and Quarter Sessions to be taken up and examined upon certified copies.

Rule 4. The Attorney General is to attend the Courts of Admiralty, and the Supreme Court, when the Republic is a party.

Rule 5. The Attorney General is to see that the several county attorneys discharge faithfully the duties of their office.

Rule 6. In all cases of reversal of any judgment or decree, in this court, except where the reversal be for the want of jurisdiction, costs shall be allowed in this court for the plaintiff in error or appellant, as the case may be, unless otherwise ordered by the court.

Rule 7. In all cases where the case shall not be docketed and the records filed with the clerk by either party until after five days from the commencement of the term the cause shall stand continued until the next term.

Rule 8. (Until otherwise ordered.) It is requisite to the admission of attorneys to practice in this court, that they have been such for two years past in the Superior Courts of the county to which they respectively belong; and that their private and professional character shall appear to be fair.

Rule 9. They shall respectively take the following oath, viz.:— I, A. B., do solemnly swear that I will demean myself, as an attorney of this court, uprightly and according to law, and that I will support the Constitution of the Republic of Liberia.

Rule 10. Hereafter the court will expect to be furnished with the material points of the case from the attorney on each side of the cause.

Rule 11. All motions hereafter made to the court shall be reduced to writing, and shall contain a brief statement of the facts and object of the motion.

Rule 12. No attorney officiating at this court will be allowed to interrupt another while addressing the court, either by argu-

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ment or motion; and for two to address the court at the same time shall in no case be allowed.

Rule 13. No attorney shall be allowed to use personal or reflecting remarks towards another attorney or his client; but shall in all cases confine himself strictly to the cause in which he may be interested by arguments and the records.

Rule 14. Only two counsellors or attorneys will be permitted to argue for each party, plaintiff and defendant, in a cause.

Rule 15. Upon the clerk or marshal of this court producing satisfactory evidence, by affidavit or otherwise, that a copy of the bill of costs has been served upon the party or parties ruled to pay costs (or their sureties, if any), an attachment shall issue against such parties (or sureties, if any) to compel payment of said costs.

Rule 16. No cause will hereafter be heard until a complete record shall be filed containing in itself, without references, all the papers, exhibits, depositions and other proceedings which are necessary to the hearing by this court.

Rule 17. The marshal shall appear in court with the proper marks of distinction.

Rule 18. To all mandates to judicial officers, and others, answers shall be returned in due time under the name and seal of the parties, together with the records or documents touching such matters as the writ may demand.

Rule 19. The form of a return, to be made by all judicial and other officers upon whom a process issuing out of this court may be served, shall be as follows:—

Return.

I acknowledge the service upon me of the writ of (name the writ) issued out of the court of (name the court) on the . . . day of . . . and in obedience to the commands of said writ I have (state what you do).

Witness my hand and official signature this . . . day of . . . A. D. 18 . . . .

Samuel Faithful, Judge, etc.

If the judge will not obey the commands of the writ he shall in like manner make his return, setting forth his reasons for not acting as the writ commands him.

Rule 20. Upon the reversal of any judgment or decree of the Quarterly Courts, the party in whose favor the reversal is shall recover his costs in the Quarterly Courts.

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Rule 21. Docket of the court to be read over by the clerk of the court.

Rule 22. The clerk of the Supreme Court shall furnish the Chief Justice and Associates with copies of the docket at least ten days before the sitting of the next session.

*January Term*, 1861.

Rule 23. All questions of law submitted by any attorney admitted to plead before this court shall be and are hereby required to have the signature or concurrence of at least five members of the bar before they can be submitted to the court.

*January Term*, 1863.

Rule 24. All written evidences sent up to this court must be read by the clerk in the same order that they were introduced in the lower court, and the clerks of the lower courts are ordered to number the written evidence accordingly.

*January Term*, 1865.

Rule 25. Cases shall be disposed of in the order they appear upon the docket.

*January Term*, 1867.

Rule 26. All persons wishing to bring a writ of error on the decision or judgment of any of the judges of the Courts of Quarter Sessions and Common Pleas in this Republic, given in any suit or action to which they were parties, shall file their assignment of errors with the clerk of this court and shall attach thereto his affidavit to the truthfulness of the facts assigned for errors, and that he does not apply for the writ of error for the mere purpose of delaying said suit for action. And he shall also have attached to his said assignment the certificate of one counsellor of this court, or one attorney of any of the County Courts, certifying that in the opinion of said counsel or attorney real errors are assigned therein. Said assignment of errors shall be considered a bill of exceptions in said case. The clerk shall then issue the writ of error, and the party applying for the same shall have it served upon the judge of the lower court, and the defendant in error duly notified by the marshal of this court.

Rule 27. No case shall be entered on the docket of this court until the records and papers belonging to said case have been sent up, and filed in the office of the clerk of this court.

Rule 28. No attorney or counsellor at law in this Republic shall be admitted as a member of the bar of this court unless he

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has previously been examined by some one of the judges of this court, and shall take the oath prescribed by the rule of this court.

*January Term*, 1869.

Rule 29. The Chief Justice in the interim of this court shall have authority to issue any and all remedial writs known to the common law necessary to the exercise of the jurisdiction of this court upon any judge of inferior jurisdiction, and to all such writs returns must be made in due time under the seal of the court over which the said judge presides.

Rule 30. After a motion has been presented for the ruling of the court, a second motion involving the same points, however ingeniously arranged, will not be allowed.

*January Term*, 1872.

Rule 31. The clerk of the Supreme Court shall in making up the docket give the title and nature of every action.

*January Term*, 1874.

Rule 32. It shall be the duty of the party who intends to appeal to this court to state in his bill of exceptions the questions of law to be especially relied on in support of the appeal.

Rule 33. It shall be the duty of any counsellor having a case before this court to set out in his brief the points to be argued, in a full and logical manner, with the law authorities in support of the same.

Rule 34. In all cases before this court the counsel for the appellant shall not be allowed more than four hours to make clear his cause of complaint, nor the appellee's counsel more than the same length of time for argument on the defence, without special leave of the court, granted before the argument begins. The time thus allowed may be divided between the counsel on each side at their discretion; provided, however, that only two counsellors shall be heard for each party on the argument of a cause.

Rule 35. 1. In all cases where any suit shall be dismissed in this court, except where the dismissal shall be for want of jurisdiction, costs shall be allowed to the defendant in error, or appellee, as the case may be, unless otherwise agreed by the parties.

2. In all cases of affirmance of any judgment or decree in this court costs shall be allowed to the defendant in error or appellee, as the case may be, unless otherwise ordered by the court.

3. In cases of reversal of any judgment or decree in this court costs shall be allowed to the plaintiff in error, or appellee, as the case may be, unless otherwise ordered by the court. The cost of

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the transcript of the record from the court below shall be a part of such costs, and be taxable in that court as costs in the case.

4. Neither of the foregoing rules shall apply to cases where the Republic of Liberia is a party; but in such cases no costs shall be allowed in this court, for or against the Republic of Liberia.

5. In all cases of dismissal of any suit in this court, it shall be the duty of the clerk to issue a mandate, or other proper process, in the nature of a procedendo, to the court below for the purpose of informing such court of the proceedings in the court, so that further proceedings may be had in such court as to law and justice may appertain.

Rule 36. When costs are allowed in this court, it shall be the duty of the clerk to insert the amount thereof in the body of the mandate, or other proper process, sent to the court below, and annex to the same the bill of items taxed in detail.

*January Term*, 1878.

Rule 37. All motions to dismiss appeals, and writs of error, must be submitted in writing; and the party moving or intending to move to dismiss shall serve notice of the motion with a copy thereof at least twenty-four hours before the time fixed for presenting the motion.

Rule 38. No motion to dismiss, except on special permission by this court, shall be heard unless previous notice has been given to the adverse party, or to the counsel or attorney of such parties.

C. L. PARSONS, Chief Justice.
H. J. NEYLE,
Z. B. ROBERTS, } Associate Justices.

January Term, 1888.

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## ADDITIONAL RULES OF SUPREME COURT.

*January Term*, 1899.

All mandates issued by the Supreme Court to any of the inferior courts of this Republic in any and all cases which have been before the Supreme Court for adjudication, shall be forwarded by the clerk of this court to the court to which the mandate is directed within five days, if possible, after adjournment of the term at which it was ordered. To every such mandate, the judge of the court to which it is directed shall make returns to this court before the . . . . meeting of its next regular session, which returns must show the action taken by him in the premises.

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Should the judge of any of the inferior courts to which a mandate from this court has been directed fail to make returns thereto as is stated above, he shall be held in contempt for such conduct by this court and process issued against him.

The clerk of this court shall record all such returns, presenting the original to the court at its next term.

The clerk, in issuing the mandates of this court to any of the inferior courts, shall insert therein a clause notifying them of this rule.

All writs or other process sent down by the marshal of the Republic to any of the marshals of the counties on any cause before the Supreme Court of this Republic shall be officially endorsed by him before transmission thereof. The mileage and other fees allowed by law for the service of such writs, or other process, shall be paid in full to the marshal of the Republic by the party, or parties, desiring to have them served, and he, the marshal, shall reserve one half the entire amount for his fees, and the balance to the marshal of the county where the writ is to be served, as his fees in the premises.

The marshal shall endorse on the writ received, the time of receipt and the date of transmission to the county marshal, who in turn shall endorse the date of receipt, time of service, and date of transmission after execution.

Hereafter, upon termination of a case the clerk shall make up the bill of costs, execution for which shall be considered as granted as of course to the successful party. The marshal shall collect the money in person, or by the county marshal, as he may deem best, and shall distribute proceeds to the officers and suitors interested.

The marshal shall make a report upon bill of costs collected, as the court shall order.

I do hereby certify this to be a true copy from the original.

Given under my hand and seal of office this 2d day of February, A. D. 1899.

ISAIAH J. SAUNDERS, JR.,
Clerk, Supreme Court, Republic of Liberia.

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## CONSTITUTION.

### ARTICLE IV. JUDICIAL DEPARTMENT.

*Judicial power, how vested—Judges hold their office during good behavior—How removed—Salaries may be increased but not diminished—Shall not receive other perquisites or emoluments—Supreme Court, original and appellate jurisdiction—what cases.*

Section 1. The judicial power of this Republic shall be vested in one Supreme Court, and such subordinate courts as the Legislature may from time to time establish. The judges of the Supreme Court, and all other judges of courts, shall hold their office during good behavior; but may be removed by the President, on the address of two-thirds of both houses for that purpose, or by impeachment and conviction thereon. The judges shall have salaries established by law, which may be increased, but not diminished, during their continuance in office. They shall not receive other perquisites or emoluments whatever from parties or others, on account of any duty required of them.

Section 2. The Supreme Court shall have original jurisdiction in all cases affecting ambassadors, or other public ministers and consuls, and those to which a county shall be a party. In all other cases the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the Legislature shall from time to time make.

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## AN ACT

ESTABLISHING THE JUDICIARY, AND FIXING THE POWERS COMMON TO THE SEVERAL COURTS.

### ARTICLE V. OF THE SUPREME COURT.

Section 1. The Supreme Court shall consist of a Chief Justice and three associates, two of whom with the Chief Justice shall be a quorum; they shall hold annually in the city of Monrovia, to commence on the second Monday in January, one session of said court, and shall sit until the business of the court shall have been disposed of. The judges of the Courts of Quarter Sessions shall sit with the Chief Justice at each session of said court; and the Chief Justice shall, before the first session of the court, notify the two justices to sit at the first session of court; and at that session he shall notify one of the judges who sat at the first session to sit at the second session with the one who did not sit, and thereafter the associate judges shall take their seats in the Supreme Court in regular order, two sitting and one out at each turn. Should the Chief Justice be interested in any case or cause, the three judges of the Courts of Quarter Sessions shall form the Supreme Court; and their acts, proceedings and decisions shall have all the force and validity as though the Chief Justice had presided; the one whose commission is the oldest shall preside; and should one of the associate judges be interested in any case when it is his turn to sit, his place shall be supplied by the other judge, and all decisions of said court shall be final. In any case in which two of the associate judges of the Supreme Court shall be concerned, the Chief Justice and the other associate judge shall be, and they are hereby made competent to preside over the proceedings in the case; and their acts, proceedings and decisions shall have all the force and validity as if the two associate judges had presided with the Chief Justice.

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## AN ACT

DECLARING THE MEANING OF THE SECOND SECTION OF THE FOURTH ARTICLE OF THE CONSTITUTION OF LIBERIA AND DEFINING THE JURISDICTION OF THE SUPREME COURT JUDGES UNDER SAID ARTICLE.

Whereas, a doubt exists in the minds of some people as to the true meaning of the language of the second section of Article IV of the Constitution, thereby giving rise to the issuing of original writs in actions of habeas corpus by the judges of the Supreme Court, whereby the people are put to great expense and trouble, and which doubt ought to be removed; therefore, it is enacted by the Senate and House of Representatives of the Republic of Liberia in Legislature assembled:

Sec. 1. That from and after the passage of this act, the second section of Article IV of the Constitution of Liberia shall be taken and held to mean, as formerly it was always held to mean, that the Supreme Court, and the individual judges thereof, shall have original jurisdiction, that is, have power to issue original writs, to commence a suit or action in law, or in cases affecting ambassadors or other public ministers and consuls, and those to which a county shall be a party.

Sec. 2. It shall be unlawful for the Supreme Court or any judge or judges thereof to issue any writ of habeas corpus, or any other original writ whereby a suit or action is commenced, or to try or determine any such suit or action upon an original writ so issued by him or them, unless it be in one or other of the cases where they are authorized to take original jurisdiction by said Article IV so declared by this act.

Sec. 3. Any judge or judges of said Supreme Court issuing the aforesaid writ or writs, or trying the aforesaid cases contrary to the provisions of the statute, shall be deemed guilty of high misdemeanor, and on evidence thereof, exhibited to the Chief Executive, he shall suspend him or them from office until he can lay the matter before the Legislature for their action, and such judge or judges shall also be liable in an action of damages to all parties against whom such writ or writs were issued.

Any law to the contrary notwithstanding.

Approved January 21st, 1890.

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