CAMER LIBERIA CORPORATION, represented by its Manager, Appellant, v. **A.H. BASMA AND SONS (LIBERIA) INC.,** represented by its General Manager, SAMIH BASMA, Appellee.

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

Heard: March 13, 1984. Decided: May 11, 1984.

1. A trial judge cannot reserve the right to investigate allegations into a complaint of jury tampering by a party. Rather, it is a judicially mandatory duty imposed on the trial judge by law and moral ethics to immediately suspend the trial and conduct an investigation pursuant to such allegations and, depending on the findings, disband the jury and award a new trial.

2. Any direct contact made between the trial judge and any member of the empaneled jury outside the court and/or in the absence of the parties, whether upon the volition of either the judge or the jury, raises a suspicion that rests most heavily upon the judge than the jurors since it is the judge who directs the court, including the jurors.

3. Every litigant is entitled to nothing less than the cold neutrality of an impartial judge; hence, a judge who is prejudicial, or otherwise disqualified, may be successfully challenged.

4. Since the writ of summons is usually unsealed at the time of service, the receipt and retention of the writ by the party against whom it is issued presupposes that the party has knowledge of its contents, and therefore has been served.

5.Territorial jurisdiction is conferred by law and not by consent of the parties.

6. Where want of jurisdiction over the cause appears upon the record, it may be taken advantage of by a plea in abatement or objection made to the jurisdiction at any stage of the proceedings, for any act of a court beyond the jurisdiction conferred upon it by law is null and void.

7. Jurisdiction over a person on the trial court level cannot be questioned beyond the time the person has submitted himself or herself to the jurisdiction of the court by his or her own acts.

8. The courts of law are bound by law never to do for litigants that which they ought to do for themselves.

9. Where the deportment, either by words or action, of a trial judge is suggestive of influencing the fine and delicate ends of substantial justice to the advantage or disadvantage of any party, a remand for a retrial constitutes a justified remedy.

The plaintiff/appellee hired the defendant, Camer Liberia Corporation ("Camber"), owner of a bonded warehouse at the Freeport of Monrovia, to store various bales and cartons of assorted goods. Subsequently, plaintiff notified defendant that the goods had reduced in quantity to the value of $111,033.14, for which defendant eventually accepted responsibility and agreed to pay plaintiff for the losses but never did. When defendant did not make good on its promise to pay, plaintiff instituted an action of damages for loss of goods in the Circuit Court, Sixth Judicial Circuit, Montserrado County, praying for general damages as well as special damages in the amount of $111,033.14.

The writ of summons and written notice of assignment were issued on December 20, 1982, but defendant's comptroller, upon whom it was served, refused to sign for and accept the assignment. Instead, the sheriff was directed to the defendant's counsel, the P. Amos George Law Firm, where again the precepts were refused by the secretary, maintaining that there was no lawyer around, and that the firm had nothing to do with the case. A second notice of assignment was issued on December 21, 1982 indicating that the trial of the case was scheduled for January 6, 1983 at 8:30 a.m. The sheriff's returns showed that this second notice was served on the counsels for both parties on December 27, 1982.

When the case was called the defendant and his counsel were absent, wherein upon the application of plaintiff, the rule controlling was invoked and defendant adjudged by default. A trial jury was selected, sworn, and empaneled to afford plaintiff an opportunity to establish his case. Just after plaintiff had rested with his first witness, defendant's counsel appeared, announced his representation, and requested to cross-examine the plaintiff's witness, to which the court agreed.

On the 7th of January 1983 when the court reconvened, the defense counsel informed the judge that when he (the defense counsel) left the court the previous day, he learned that plaintiff's counsel had accused the former of jury tampering. He requested the court to investigate but the judge simply stated that he will reserve the right to investigate, and proceeded with the trial. Both counsels rested, and the judge adjourned court without giving the jury its instructions. In the meantime, the defendant learned from witnesses that the jury's foreman had been seen visiting the judge's residence on Saturday, January 8, 1983. On January 10, the judge convened court, read out the jury instructions and, without entertaining any other matter that day, adjourned court until the next day. On January 11, the

jury returned a verdict against the defendant, awarding plaintiff $111,033.14 for special damages, and $10,000 for general damages. The defendant's motion for a new trial was denied and the verdict of the jury confirmed, to which defendant excepted and announced an appeal. On appeal, defendant contended, inter alia, that the writ of summons were improperly served, in that the sheriff returns did not specifically show that the writ had been read to the manager of the defendant corporation and a copy left with him. Appellant further contended that the judge should have disbanded the jury and award a new trial in the light of allegation of jury tampering. After careful review by the Supreme Court, the judgment of the lower court was set aside and the case was remanded.

P. Amos George and Joseph Dennis for defendant/appellant. Julius Adighibe for plaintiff/appellee.

MR. JUSTICE KOROMA delivered the opinion of the Court.

A. H. Basma and Sons, plaintiff/appellee before this Court, instituted an action of damages for loss of goods in the Civil Law Court for the Sixth Judicial Circuit against Camer Liberia Corporation, defendant/appellant, complaining to the effect:

(1) That the defendant, being owner and operator of bonded warehouses at the Free Port of Monrovia for the purpose of storing goods against the payment of fees and charges, the plaintiff/appellee, took advantage of these facilities and delivered to defendant/appellant, on diverse dates beginning 1978, various bales and cartoons containing assorted goods for storage in said bonded warehouse.

(2) That in due course, the plaintiff/appellee discovered that his goods were diminishing in quantity from the defendant/appellant's bonded warehouse and to which fact the latter's attention was called but to no avail. Consequently, the plaintiff/appellee pressed a claim for loss of goods against the defendant/appellant.

(3) That on September 22, 1981, the defendant accepted responsibility for the loss by signing the accurate adjustment of the various claims of plaintiff against the defendant which, when converted into money amounted to $111,033.14, but which the defendant failed to make settlement of.

(4)That by reason of the loss sustained through the acknowledged responsibility of the defendant, the plaintiff also paid duties and storage charges with funds not generated from the sale of the said goods. That the plaintiff suffered embarrassment and inconvenience caused by his inability to supply his customers the quantities of goods ordered in their behalf

thereby resulting in loss of business credibility and worthiness.

Based on the above averments, the plaintiff concluded his complaint by praying for special damages in the amount of $111,033.14, as well as general damages.

In keeping with the sheriff's returns on the back of the writ of summons, this complaint is said to have been served and returned served on the defendant on the 19th day of October A. D. 1982. Seemingly, the defendant did not appear nor answer within the time allowed by statute. Therefore, the plaintiff obtained a certificate from the clerk of the Civil Law Court to the effect that no answer had been filed to the complaint up to and including November 1, 1982.

Following this, two notices of assignment were issued by the clerk of the trial court. The first which was issued on December 20, 1982, was returned not served on the defendant because the sheriff's returns showed that the comptroller of the defendant corporation on whom it was served, refused to sign for and accept a copy thereof, but rather directed that said notice be served on the corporation's counsel, the P. Amos George Law Firm. The sheriff's returns showed further that when the notice of assignment was carried to the P. Amos George Law Firm, no lawyer was present therein and the secretary refused to accept the notice, stating that the law firm had nothing to do with the case.

Predicated upon the foregoing returns, a second notice of assignment was issued from the office of the clerk on December 21, 1982, notifying the parties to attend upon the trial of the case at 8:30 a.m. on January 6, 1983. According to the sheriff's re-turns, this notice of assignment was served and returned served on the counsels for both parties on December 27, 1982, or at least ten days before the trial date.

At the call of the case on the date and hour specified in the notice of assignment, both the defendant and its counsel were absent wherein, upon the application of the plaintiff, the rule controlling was invoked and the defendant adjudged by default. A trial jury was selected, sworn, and empaneled to afford the plaintiff an opportunity to establish his case.

During the progress of the trial, after plaintiff had rested with the first witness, the P. Amos George Law Firm appeared in court and announced representation for defendant and simultaneously requested the court for permission to cross-examine plaintiff's first witness. When the announcement of representation was recognized by the court and the request granted to cross-examine the witness, defendant's counsel proceeded to note on the record that, up to and including his appearance in court, no precept had been served upon him or his client in the case at bar. At this point, defendant's counsel was interrupted by the judge

who reminded counsel that he had only requested for and was granted permission to cross-examine plaintiff's witness. The defendant's counsel did not take any exception to this action by the court. Instead, he proceeded not only to cross-examine plaintiff's first witness but also participated in the trial until the plaintiff rested its side of the case. Following this, the defendant's counsel made an application to the court and because of the importance we attach to said application, the resistance thereto and the court's ruling thereon, we have decided to quote them for the benefit of this opinion.

"APPLICATION
At this stage counsel for defendant requests for the issuance of a writ of subpoena on Camer who is defendant and is in possession of the evidence. And submit.

"RESISTANCE
Counsel for plaintiff objects to the submission made and requests court to deny same for the following reason:

1. Defendant has had ample notice by way of assignment of this case to be present today and defend his case. Not only was he absent, but was called three times at the door and failed to respond. The machinery of the court was out to work in his favor in that he was adjudged not liable and that judgment by default be rendered if the plaintiff proved his case. Defendant received the notice of assignment since December 27, 1982 to be present here today. The application just made is, therefore, a clear tactic to delay and baffle justice, and submits that the application be denied."

"COURT'S RULING
THE COURT: According to our statute, Civil Procedure Law, Rev. Code 1: 9.1 (2), at 105: "If a defendant appeared within the time prescribed by sec. 3.62 his failure to inter-pose an answer shall be deemed a general denial of all the allegations in the complaint. At the trial, such a defendant may cross-examine plaintiff's witnesses and introduce evidence in support of his denial, but he may not introduce evidence in support of any affirmative matter. This is not the condition in this case. However, for transparent justice the defendant's counsel having appeared and announced himself and participated in crossing the witnesses, he may be permitted to introduce witnesses. The objection is not sustained. The clerk of court is ordered to issue a subpoena on the defendant in this case to appear today the 6th day of January 1983 to testify as to the general denial of the allegation made in the complaint. This case is recessed until 2:30 today the same being January 6, 1983. And so ordered.

This request having been granted as shown herein above by the ruling of the court, the defendant proceeded to introduce evidence upon the resumption of trial the next day,

wherein two witnesses were duly qualified. They testified and were discharged. Prior to resting evidence, the defendant submitted on the record of court as follows:

"Counsel for defendant wishes to observe that after the adjournment of court on yesterday, the 7th instant and after defendant and his counsel had left the court yard and premises, plaintiff's counsel appeared in open court and in a clandestine manner charged defendant's counsel with having bribed some of the jurors and naming a bailiff as an accomplice. Counsellor Peter Amos George submits that he, as a lawyer of long standing, has endeavored to build and maintain his reputation and therefore cannot sit supinely and permit such allegation to go unchallenged, especially so since it has been confirmed by the judge and he has instructed the sheriff to investigate same among his bailiffs who, after investigating same, is to report his findings to the court. We submit further that never had any of the jurors been to my office in the discussion of this case or any case for that matter so as to try to bribe them. Since it was done in open court, defendant is afraid that should same be contested it might have a tendency to inflame the minds of the jury and cause them to bring a verdict because of fear and not of their own volition. We pray therefore that in view of the fact that such information has been brought to the attention of the court Your Honour will conduct an investigation and let the informant appear before the court with his witnesses and testify thereto. And submits there-on."

"THE COURT'S REACTION TO THE SUBMISSION
THE COURT: The court notes the information made by Counsellor Peter Amos George and reserves the right to investigate the act of the jury at such time to be named by this court. The case will be proceeded with, and the defendant will proceed to produce witnesses. And so ordered"

The defendant noted exceptions to this ruling of the trial judge, rested evidence and submitted for argument. The court entertained argument but did not charge the jury on this day and date, which was Friday, January 7, 1983. The records certified to this Court show that on Monday, January 10, 1983, being the 15th day jury session, the said case was the first, and in fact the only case called for trial on that day. The records further show that said case was called for resumption of trial immediately after the opening of court on that morning. The parties being present and represented as of record, the trial judge proceeded to read a prepared written charge to the jury. This case being the first called for trial on the morning of January 10, 1983, and the judge having only read a six and a half page charge to the jury, it is hard for us to understand why the trial judge ordered the adjournment of the court for that day immediately following the retirement of the jury into their room of deliberation without making any record to the effect as to: (1) Why the court was being adjourned so early that morning against the rules controlling the day to day opening and adjournment of

court? (2) What should happen to the verdict in case the jury arrived at same before the official adjournment hour of court for that day? (3) In case the jury did not arrive at their verdict on that day, what would happen and how would they be protected from intruders? These and many other questions which are the consequence of the conduct of the trial judge remained unanswered on January 10, 1983 when the court adjourned in the morning. We shall address this issue later on in this opinion.

On the following day, January 11, 1983, the jury returned a verdict of liability against the defendant, awarding plaintiff $111,033.14 as special damages and $10,000.00 as general damages. A motion for a new trial was heard and denied and a final judgment entered confirming the verdict of the trial jury. Exceptions having been noted by the defendant, and an appeal announced and granted, this case is now before this forum of last resort on a six-count bill of exceptions, approved by the trial judge on January 28, 1983 without any objections. For the purpose of this opinion, we shall give judicial cognizance to counts one, two and four herein below quoted:

1. "And also because defendant submits that the court having adjourned the case to the morning of 8th January, 1983 defendant's counsel upon entering court heard that plaintiff's counsel had reported to Your Honour that the foreman and another member of the jury had visited counsel for defendant's office. Upon the call of the case, counsel for defendant made record to this effect stating, among other things, that this act on part of plaintiff's counsel has a tendency to inflame the minds of the jury and cause it to bring a verdict because of fear and not of its volition and prayed Your Honour to conduct an investigation into the matter. Your Honour made the following ruling.

"THE COURT. The Court notes that information made by Counsellor P. Amos George and reserves the right to investigate the act of the jury at such time to be named by this court. The case will be proceeded with and the defendants will proceed to produce witnesses," and ordered the case proceeded with, which ruling defendant then and there excepted to. (See sheet 2 Jan.1, 1983 14th day's session). "

2. Defendant contends and submits that with such information made known to the court, it was incumbent upon the judge, in his neutrality, to have disbanded the jury, award a new trial and conduct an investigation into the matter to ascertain the efficacy of both allegations and punish the guilty party. Instead, defendant counsel observed, in the presence of witnesses, the foreman of the jury entering into Your Honour's place of residence and into Your Honour's room. Your Honour having already charged the jury, the action of Your Honour, defendant submits, was contrary to law and procedure. Defendant further submits that the report having been made to Your Honour by the plaintiff's counsel and Your

Honour having ordered the sheriff to conduct an investigation, you should have disbanded the jury and conducted the investigation yourself and not to have any member of the jury in close consultation with yourself.

3. And also because defendant avers that according to the returns of the writ of summons, the bailiff did not properly serve same on his corporation, that is to say, the writ of summons commands the sheriff to make his returns on the back of the writ as to the manner of ser-vice. Defendant submits that according to statutes extant a writ of summons against a corporation shall be read to him, the manager, and a copy of the writ and the com-plaint delivered to him. By unimpeached testimony, it was established that at the time of the alleged service of the writ of summons, the defendant and manager was without the bounds of the Republic of Liberia, and according to the returns of the writ endorsed on the back, same was not read to him. This mandatory provision of the statute not having been carried out and the writ endorsed accordingly, makes said writ a nullity and a falsehood. That is to say, the writ was never served on the defendant and read to him.

During the trial of a case, where it is required that justice be equally measured, it is judicially mandatory and morally necessary for a judge to stand perpendicular between the parties thereto. It is only from this geometric position that he or she is able to see and measure both sides from the same angle. The records in the instant case show that this cardinal judicial virtue was never exercised by the trial judge. While it is true that a judge may reserve unto himself the exercise of certain rights during the trial of a cause, for instance, the right to entertain or deny argument on a point of law, nevertheless this right is infinitesimally remote and in fact does not exist when it comes to the question of factual issues touching and affecting the substantial rights of the parties. In the instant case, it was not a right reserved unto the trial judge to investigate the allegations as laid in counts one and two of the bill of exceptions, but rather it was a judicially mandatory duty imposed upon him by law and moral ethics to have immediately suspended the trial of the case and conducted an investigation to decide the truthfulness or falsity of the allegations of the defendant's counsel before proceeding to either continue hearing the case or disband the jury and award a new trial, predicated upon the outcome of the investigation. To the contrary, the trial judge never conducted any investigation into the allegations of the defendant's counsel, nor did he ever mention anything about it during the residue of the trial. This act is a gross, prejudicial and reversible error.

Count two of the bill of exceptions charges the trial judge with an even more serious misconduct in his handling of the case at bar. Although no record of the trial reflects this allegation, the conduct and behavior of the trial judge on January 10, 1983, clearly supports the position of the defendant. For instance, the trial judge having charged the jury on the

morning of January 10, 1983, immediately adjourned the court for that day upon the retirement of the jury into their room of deliberation without making any record as to the reasons for adjournment of court that morning, or what should occur thereafter, showed that he had an ugly motive in acting as he did. This motive was materialized when the foreman of the trial jury which he had left in the room of deliberation visited him in his hotel room, most probably upon the invitation of the judge. We cannot conclude that the foreman went to the judge to make any inquiry as to what would happen to them for the rest of the day and possibly Monday night, for the sheriff and his group of bailiffs are in the court for that purpose. All necessary steps are taken to ensure that jurors do not come into contact with anybody on the outside, including the judge, until they have arrived at their verdict and/or returned from their room of deliberation to report in open court. Any direct contact between the trial judge and any member of the empaneled jury outside of the court and/or in the absence of the parties, whether upon the volition of either the judge or jury, raises a suspicion that rests most heavily upon the judge than the jurors, for it is he who directs the court, including jurors.

"The judge of a court," said Mr. Justice Grigsby, "is not merely appointed to an office, but he is also elected to a dignity. As such he is dedicated and consecrated to the adjudication of the rights of litigants and, hence, must avoid any course of conduct which would cause his impartiality to be questioned. Every litigant is entitled to nothing less than the cold neutrality of an impartial judge. Hence, a judge who is prejudicial or otherwise disqualified may be successfully challenged." The renowned jurist went further to say that "it is of great importance that the courts should be free from reproach, or the suspicion of unfairness, as the judiciary should enjoy an elevated rank in the estimation of mankind." Ware v. Republic, 5 LLR 50 (1935). "The principles of impartiality, disinterestedness and fairness on the part of a judge", said Mr. Chief Justice Grimes "are as old as the history of courts of justice, and it is reliance on those three cardinal principles which supposedly give credit and tolerance to the decrees of judicial tribunals." Republic v. Harmon and Brownell, 5 LLR 300. (1936).

These settled principles of law, so well pronounced by judicial 1uminaries of this court in times past, and venerated by both judges and lawyers as the yardstick in measuring transparent justice, were disregarded and violated with impunity by the trial judge in the instant case. What a mockery of justice! Counts one and two of defendant's/appellant's brief are therefore sustained.

The defendant/appellant contended in count four of the bill of exceptions, and strongly argued same in count five of the brief, that the writ of summons was not properly served on the defendant corporation. The defendant maintained the returns on the back of said writ does not show the manner of service, such that the writ was read to the manager of the

corporation and a copy thereof, together with the complaint, delivered to him. Recourse to the returns to the said writ of summons, we find the following:

SHERIFF'S RETURNS

"On the 19th day of October, A.D. 1982, Philip Nelson, a bailiff of the People's Civil Law Court, served the within writ of summons on defendant who received copies in person and I make this as my official returns into the office of the clerk of court.

Dated this 19th day of October A.D. 1982.

[Sgd], P. Edward Nelson, II, Sheriff, Mo. Co., R. L."

It appears to us that the contention of the appellant is not that the writ of summons was not served, but that it is not shown in the returns that the writ was read and personally delivered to the manager of the defendant corporation. It is however, stated in the returns that the writ of summons was served on the defendant who received copies in person, a fact which the defendant has deliberately decided not to see and accept in the returns. One's receipt of an article presupposes delivery. Since the intended purpose of reading a writ of summons to a defendant is to appraise him of what such document contains as to the action and commands to be performed, the receipt and retention of such open document by the parties against whom it is issued presupposes knowledge of its contents. The defendant in the instant case is Camer Liberia Corporation, represented by its manager of the City of Monrovia. The returns show that the writ of summons was served upon him and he received copies in person. "Reason" is the soul of the law and whenever it is void of reason, it ceases to exist to serve the purpose for which it was made. In the instant case, we are reasonably convinced from the returns on the back of the writ of summons that same was properly served in keeping with law. Therefore the employment of legal technicalities cannot change our position.

More to this point, during the argument before this court when the defendant/appellant contended that it was not properly served a writ of summons and hence not brought under the jurisdiction of the trial court, this court strongly questioned the legal sanctity and wisdom of such argument. When the defendant's counsel was asked as to what did he do when he claimed that he had not been duly brought under the jurisdiction and had been allegedly denied the opportunity to bring this fact to the attention of the trial court, he answered by saying that the trial judge, His Honour J. Henric Pearson, was his scout master and he, Counsellor P. Amos George, was laboring under the fear of having Judge Pearson lose his job for his illegal acts in the trial of this case if he had proceeded against him. (See minutes of Court. March 13, 1984, sheet four). In the light of this answer, the counsel for the defendant decided to submit the defendant to the trial jurisdiction of the court, participated

fully in the trial to its conclusion without taking advantage of any of the remedial writs, only to belatedly raise such issues at this appellate level. Where want of jurisdiction over the cause appears upon the record, it may be taken advantage of by a plea in abatement or objection made to the jurisdiction at any stage of the proceedings, for any act of a court beyond the jurisdiction conferred upon it by law is null and void. Further, territorial jurisdiction is given by law and not conferred by consent of parties. Hill v. Republic, 2 LLR 517 (1925). On the other hand, jurisdiction over the person on the trial level cannot be questioned beyond the time such person has submitted himself or herself to the jurisdiction of the court by his or her own acts, as in the instant case, wherein the defendant claiming not to have been served with the writ of summons decided not to have even moved the court to refuse jurisdiction over its person, nor did it move the Supreme Court by any remedial process in this respect. Rather, the said defendant submitted to the jurisdiction of the court over its person by fully participating in the trial of the case to its conclusion. What an anomaly if this court could at this stage lend itself to this belated contention of the defendant! Courts of justice are not prone to be moved by any power on earth except the law, and they are bound by law never to do for litigants that which they ought to do for themselves. Coleman et al. v. Cooper et al., 12 LLR 226 (1955). Count four of the bill of exceptions and the argument in count five of the appellant's brief are therefore overruled.

In the exercise of reviewing this appeal, we have avoided passing upon the substantive matters of contention between the parties as we are judicially convinced that the conduct of the trial judge, as enumerated in this opinion, definitely and adversely affected the jurors' conclusion. Where the deportment, whether words or conduct, of a trial judge, is suggestive of influencing fine and delicate ends of substantial justice to the advantage or disadvantage of any party, a remand for retrial constitutes a justifiable remedy.

Wherefore and in view of all the facts, circumstances and legal citations herein paraded, it is our holding that the judgment appealed from be, and the same is hereby set aside and the case remanded with the following instructions: (1) That the trial court resumes jurisdiction and try the case anew, (2) that the defendant will rest its defense upon a bare denial of the allegations laid and contained in the complaint. Costs to abide final determination of the case. And it is so ordered.

Judgment reversed; case remanded.