

**H. W. JOHNSON, sr., and L. A. JOHNSON, his wife, Plaintiffs in Error, Vs.
THE REPUBLIC OF LIBERIA, Defendant in Error.**

LRSC 1; 1 LLR 91 (1878)

[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 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 aforesaid, 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.

Key Description: Appeal and Error (Abandonment; Voluntary dismissal or withdrawal)