KAISER A. A. KNOWLDEN, Appellant, *v.* **REPUBLIC OF LIBERIA**, Appellee.

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

Heard: October 30, 1979. Decided: December 20, 1979.

1. Counsellors-at-Law should desist from accepting and arguing points of law in the Supreme Court which they know in advance are baseless, and in no wise support their cause as the same is contemptuous.
1. Upon rendition of a verdict by the jury, what is essential is that the law gives the defendant rights of both a new trial and a motion in arrest of judgment but the defendant has to exercise the rights in five days.
2. To constitute the crime of obtaining money under false pretense, property must have been obtained by the accused who must be shown to have intended to defraud when he knowingly made some representation to the person defrauded thereby.
4. A person who knowingly twice accepts the payment of the same debt is liable for the commission of the crime of obtaining money under false pretense.

Appellant gave a loan to the private prosecutor, which was repaid and a receipt issued. Subsequently, with the intervention of the magistrate, based upon the request of appellant, the private prosecutor paid the loan for the second time but with the agreement that upon finding his receipt for the first payment, the second payment would be refunded. However, when the private prosecutor presented the receipt or evidence of the first payment, the appellant refused to refund the second payment. Whereupon the private prosecutor got the State to charge the defendant with the crime "obtaining money under pretense against the appel-lant". At the trial, the jury brought a verdict of guilty, which was affirmed in the trial judgment. On appeal, appellant contended that the trial court judgment was rendered out of term time, that his motion in arrest of judgment had not been filed because of the hasty rendition of trial judgment and that the verdict was not supported by the evidence.

The Supreme Court affirmed the judgment, ruling that a defendant against whom a verdict has been rendered in a criminal case must exercise his rights to new trial or to vacate the judgment within five days after the verdict. The Court noted that the appellant had failed

to exercise the right within the statutory period. The Supreme Court also ruled that the judgment was rendered in term time as the term had been extended for that purpose. The Supreme Court finally ruled that the verdict and trial judgment were clearly supported by the evidence. Accordingly, the judgment was *affirmed.*

Roosevelt Bortue appeared for appellant. The *Solicitor General* and *M. Fulton W. Yancy, Jr.,* appeared for appellee.

MADAM BROOKS-RANDOLPH delivered the opinion of the Court.

According to the records in this case, appellant was indicted in the November A. .D. 1975 Term of the First Judicial Circuit Court, Criminal Assizes "A," Montserrado County, Republic of Liberia, by the grand jury for the alleged crime: "obtaining money under false pretense," with one Seku Trawallay, as private prosecutor. The indictment charged the defendant as having committed the said offense between the period beginning the 1st day of June, A. D. 1966, up to and including the 30th day of June, A. D. 1966, in the City of Monrovia, County and Republic aforesaid, with intent to defraud and cheat Seku Trawallay of his lawful money of $3,000.00. The indictment further charged that appellant knew fully well, in deed and in truth, that the said Seku Trawallay had paid him the said sum of $3,000.00 upon receipt. Appellant then feloniously and fraudulently made false representation to deprive the said Seku Trawallay of the amount aforementioned and did wrongfully, unlawfully, fraudulently, feloniously and intentionally receive from the said Seku Trawallay the same amount of $3,000.00 thereby the said appellant according to the indictment did do and commit the crime of "obtaining money under false pretense."

The records in this case revealed that between the years 1965 to 1966, the private prosecutor Seku Trawallay obtained a loan of $3,000.00 from the Appellant Kaiser A.A. Knowlden, which loan was repaid out-rightly in the magisterial court, presided over by the late Peter B. Jallah, Sr. This fact was not denied by appellant. In fact, appellant stated the following in answer to a question posed by a juror:

> Ques: "In your testimony you have said that the first $3,000,00, that you credited Seku, he did not come up to the promise date made for payment and when Seku returned for the second $3,000.00 he went to you at 2 o'clock in the night in his bombor and T-shirt and hid himself in your garage. Well, since you know that Seku did not pay the first $3,000.00 on time, then why did you credit him the second $3,000.00 that time

of night?

Ans: Because the first $3,000.00 was paid the 7th and the second loan was granted to him after the first loan was paid in full, June 29th or thereabout."

The private prosecutor obtained a second loan from appellant in the amount of $3,000.00, payable in three months. Private Prosecutor, however, agreed to repay the same in two months. This second amount was repaid within the two months; at which time appellant gave him a receipt.

In 1969, appellant instituted an action of debt against the private prosecutor, Seku Trawallay, in the Magisterial Court, City of Monrovia for the sum of $3,000.00, but during the course of the trial the private prosecutor informed the Magisterial Court that the amount sued for had been paid. That as it had been such a long period of time, he could not locate the receipt.

Under pressure, the private prosecutor paid the $3,000.00 to the appellant under what may be termed a protest, stating that he would make payment on the condition that should he find the receipt of payment of the $3,000.00, which he had already paid, then the defendant, now appellant, would be required to refund his $3,000.00.

Two years later the receipt was recovered and refund sought, but to no avail. Thereupon, the private prosecutor, Seku Trawal-lay, through the State, entered an action in the First Judicial Circuit, Criminal Court "A" for the crime: obtaining money under false pretense - thus the case on appeal before this Honourable Supreme Court from a verdict of guilty and judgment in harmony therewith.

The two-count bill of exceptions filed by appellant is summarized as follows:

1. That final judgment was rendered before the statutory time prescribed, thereby depriving defendant of the opportunity to take advantage of filing a motion in arrest of judgment; and
2. That a reversible error was committed by the trial judge when he gave his final judgment after the expiration of the term time to which he was assigned.

The trial judge, Judge Johnnie N. Lewis, approved the bill of exceptions with the following observations:

"TRIAL JUDGE'S OBSERVATIONS TO PLAINTIFF'S BILL OF EXCEPTIONS

1. As to count one of the bill of exceptions, the trial judge hereby submits that section 23.2 of the Criminal Procedure Law provides: '. . . In no case, unless the defendant expressly waives his right to move in arrest of judgment or for a new trial, shall judgment be rendered or sentence pronounced before the expiration of five days after a

verdict or finding of guilty, and after the over-ruling of any motion in arrest of judgment or for a new trial.'

2. Thus a motion for new trial must be filed within four days of the bringing of a verdict of guilty, and a motion in arrest of judgment within five days of the bringing of a verdict, and as contended by defendant in count one of his bill of exceptions, five days after defendant's motion for new trial.
3. As to count two, the trial judge submits also that he had jurisdiction to render final judgment on April 15, 1976, during the 12th day Chambers Session, by virtue of having received an extension of my assignment for ten additional days, as of Monday, the 12th instant. The letter of His Honour the Chief Justice is dated April 6, 1976, and appears on minutes of Court, during its ninth day's Session, April 12, 1976, pp. 2-3.

With these observations, the bill of exceptions is approved.

Dated this 23rd day of April, A.D. 1976.

Sgd. Johnnie N. Lewis

Johnnie N. Lewis

ASSIGNED CIRCUIT JUDGE."

The letter referred to by the trial judge reads as follows:

"319/C.J./J.'76

April 6, 1976

Dear Judge Lewis:

I have pleasure to inform you that effective Monday, the 12th instant, your assignment is extended ten (10) additional days in the First Judicial Circuit, Criminal Assizes Court Room 'A,' as per your request, for final disposition of the case Republic of Liberia versus Kaiser A. A. Knowlden, now pending before you. With kindest regards,

Very truly yours,

Sgd: James A.A. Pierre

CHIEF JUSTICE

His Honour Johnnie N. Lewis

Assigned Circuit Judge

Temple of Justice

Monrovia, Liberia."

Taking the counts of the bill of exceptions in the reverse order, we would mention that after a lengthy argument before this Bench by counsel for the appellant that the trial judge had rendered judgment in the matter outside of term time of the trial court, the learned counsel conceded that the trial judge had not. Therefore, this Court would have found it unnecessary to consider the matter further, but it was the appellant himself who filed the bill of exceptions, and should be able to comprehend, at a later date, if not now, since he is a lawyer, the merits and de-merits of a situation in which he now finds himself, and the law controlling. Further, counsellors-at-law should be admonished to desist from accepting and arguing points of law which they know in advance are baseless, and in no wise support their cause, unless there is a desire to mislead this Honourable Court, and thereby to make the Members of the Supreme Court Bench appear ridiculous should they be led into accepting their points of view. Such actions are contemptuous, and therefore counsellors must desist from such a practice. This Court upholds the position of the trial judge that he had jurisdiction to render final judgment on April 15, 1976, during the 12th day Chambers Session, by virtue of the extension of time granted by the Chief Justice, dated April 6, 1976.

Turning now to count 1 of the appellant's bill of exceptions, counsel for appellee contends "that the motion for new trial was heard and ruling rendered denying same on the 15th day of April, A. D. 1976, when appellant noted exceptions thereto without giving notice of his intention to file a motion in arrest of judgment, whereupon the trial judge was left with no alternative but to render final judgment on the verdict which had been given seven days after the return by the petit jury of its verdict."

It is said in the case: *Barnes et al. v. Republic*, 5 LLR 395 (1937) that if a party has excepted to a verdict and given notice of a motion for a new trial, it is reversible error for the trial judge to enter judgment in less than four days (in this case 5 days according to the statutes) after verdict unless the motion had already been filed and disposed of. What is essential is that the law gives the defendant rights of both a motion for a new trial and a motion in arrest of judgment but the defendant has to exercise this right in five days. If at the denial of a new trial, the motion for arrest of judgment had been filed within the five days, it would have been a reversible error for the trial judge to proceed and render a judgment before he disposed of the motion in arrest of judgment. But this is not the case.

Counsel for appellant has argued before this Bench that the charge of obtaining money under false pretense is wrong because the transactions as they were, grew out of a business transaction, thus a civil suit instead should have been filed.

It is strange that a counsellor of the Supreme Court would assert such an argument when he knows fully well that there is an indictment for a crime as committed by his client, the crime of obtaining money under false pretense.

Under our common law, the offense of false pretenses is committed when the defendant, by means of a false represen-tation of a past or existing fact, made with intent to defraud, and knowledge of its falsity, induces another to rely thereon, and to transfer to him the title or possession of personal property to his loss. (See 2 Wharton's Criminal Law and Procedure, § 582, p. 305)

In the case *Kamara v. Republic,* 23 LLR 329 (1974), this Court held that to constitute the crime of obtaining money under false pretense, property must have been obtained by the accused who must be shown to have intended to defraud when he knowingly made some representation to the person defrauded thereby.

Before the Court proceeds to examine whether the State produced evidence to conform to this principle, it must first dispose of the argument by counsel that the magistrate court had no jurisdiction to try a case of $3,000.00 when in fact its jurisdiction was that of $500.00. In *Kamara v. Republic, supra,* it was stated: "The trial of a person charged with obtaining money under false pretense cannot be conducted in the magistrate court or before a justice of the peace, but in the circuit court." However true this is, the question here is not a question of jurisdiction in the matter by the magistrate court. Further the defendant/appellant insisted that he never sued the private prosecutor, he simply asked the magistrate to intervene.

We must now turn to the records and ascertain whether the indictment as charged was proven by the state.

On Sheet 4 of the minutes of Court, 42nd day sitting, Wednesday, March 31, 1976, witness Bazz stated, amongst other things, that while cleaning the magistrate's office, Counsellor Witherspoon and Appellant Knowlden came along with the late Judge Jallah into the office; that Appellant Knowlden told the magistrate that Seku Trawallay was owing him $3,000.00. When asked by the judge or magistrate, Seku's reply was that he was owing $3,000.00 to Appellant Knowlden but that he had repaid the same. The judge then asked if he had a receipt to which Seku replied that he had, but could not locate the receipt so the judge told Seku to "pay Knowlden his $3,000.00 and "whenever you get the receipt bring it to court." Continuing Witness Bazz stated: "I stood there and Seku pull out a bunch of money, counted it in the amount of 3,000.00 and paid it to Mr. Knowlden and this is all that I know."

On page 4 of the minutes of court, Tuesday, April 1, 1976, First Day's Session, answering on the cross-examination, the appellant told the Court that the first $3,000.00 was repaid at his residence and a notation was made on the promissory note below his name of June 7, 1976, if his memory serves him right. However, when the appellant was questioned about the money he had received through the magistrate court, the receipts forming a part of the records before this Court, he evaded answering the question as to the amount he received

for which his signature, as we observed, appeared on the receipts, by replying that he would have to look up his records or file.

The records showed further that the two loan amounts of $3,000.00 each made to the private prosecutor were known by the appellant's then Counsellor Samuel Pelham as having been repaid, and thus he refused to represent the appellant when he undertook to collect from Seku the $3,000.00 which he had already repaid. On the witness stand, Counsellor Pelham con-firmed that his client had been paid twice for the same 3,000.00, and when he advised his client to refund the $3,000.00 he got vexed with him, and it was then that appellant announced that he would personally handle the case. The records also revealed that the second lawyer, Counsellor U. T. J. Brooks also withdrew from representing Appellant Kaiser A. A. Knowlden.

Studying the evidence in this case, this Court is convinced that the State has proved the indictment as charged.

In view of the foregoing the judgment of the trial court, First Judicial Circuit, Criminal Assizes "A," Montserrado County, Republic of Liberia is hereby affirmed. The Clerk of this Court is hereby instructed to send a mandate to the trial court commanding the judge presiding therein to resume jurisdiction over this case and enforce the trial court's judgment. And it is hereby so ordered.

Judgment affirmed.