

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

LRSC 2; 1 LLR 67 (1874)

[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 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.