

**REPUBLIC OF LIBERIA, Plaintiff/Appellant, v. BORBOR HOWARD,
Defendant/Appellee.**

JUDGMENT WITHOUT OPINION

Decided: December 20, 1979.

At the call of the case, the Solicitor General, Honourable E. Winfred Smallwood and Counsellor M. Fulton W. Yancy, Jr., appeared for the Republic of Liberia, appellant and Counsellor Lewis K. Free appeared for the defendant/appellee. According to the records before us, this case was tried and verdict of guilty returned by the jury. The defendant filed a motion for a new trial which was argued and submitted. Unfortunately the judge did not pass upon this motion before she left the circuit and went out of term. Whereas the statute allows five days within which to file a motion in arrest of judgment, it was one hundred and sixty days before such motion was filed; and then without disposition of the motion for a new trial by Her Honour, Judge Emma Walser, who had presided over the trial, before she left the circuit.

Judge Alfred Flomo followed her in the succeeding term of court, and heard the motion in arrest of judgment, and granted the same on the grounds laid therein, and the Republic of Liberia appealed from the ruling on the motion. Up to this point no final judgment has been rendered on the verdict of the jury, but an appeal has been taken on the ruling granting the motion.

It is our opinion that the case was erroneously handled by the trial judge, due to no fault of the defendant; and therefore the defendant should not suffer as a result of the errors of the trial court. On the other hand, it is also our opinion that the motion in arrest of judgment, filed one hundred and sixty days after return of the verdict is contrary to law. It was also irregular to file a motion in arrest of judgment while the ruling on the motion for new trial was still pending. The motion in arrest of judgment was therefore a nullity, and should not have been considered by Judge Flomo. It is therefore adjudged that the case should be, and the same is remanded to the trial court below for a new trial to be had. The Clerk of this Court is ordered to send a mandate to the trial court commanding the judge presiding therein to resume jurisdiction and give effect to this judgment. And it is so ordered.

NOTE: Mrs. Justice Brooks-Randolph and Mr. Justice Barnes, being recused, did not take part, hence have not signed this judgment.