REPUBLIC OF LIBERIA, Appellant, *v.* ISAAC COLLINS, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT, MARYLAND COUNTY.

Argued November 3, 1959. Decided January 14, 1960.

1. In a criminal case, the Republic may appeal only from a judgment for the defendant on a motion to quash the indictment, or from an order arresting judgment.
2. The Supreme Court has no jurisdiction over the subject matter of an appeal by the Republic from a ruling discharging a defendant in a criminal case on the ground of double jeopardy.

Appellee was indicted on charges of manslaughter. After a jury had been empanelled, the prosecution entered a *nolle prosequi.* Subsequently appellee was reindicted and brought to trial on the same charges. The trial court granted appellee's application for discharge on the ground that appellee had been twice placed in jeopardy for the same offense. On appeal from the ruling of the trial court, *appeal dismissed.*

Assistant Attorney General J. Dossen Richards for appellant. *O. Natty B. Davis* for appellee.

MR. JUSTICE WARDSWORTH delivered the opinion of the Court.

The genesis of this case as culled from the records before us may be succintly stated as follows. Isaac Collins, defendant-appellee, was held to answer for the crime of manslaughter upon indictment of the Grand Jury for the County of Maryland. The case was called for hearing during the February, 1959, term of the Circuit Court of the Fourth Judicial Circuit, Maryland County, when the County Attorney stated that he was not ready for the trial

of the case on this particular day, and prayed the court to suspend the matter for a day or two to secure evidence that was not at the moment available. The trial Judge nevertheless had the defendant arraigned and entered his plea of Not Guilty.

At this stage the County Attorney entered a *nolle prosequi* before a jury had been empanelled. Subsequently the defendant was reindicted. When brought to trial, the defendant, through his counsel, filed an application for discharge, alleging that he was being twice put in jeopardy for the same offense. This application for discharge was resisted by the prosecution, and, after a hearing, His Honor, A. L. Weeks, presiding by assignment over the May, 1959, term of court entered a ruling granting the application of the aforesaid defendant, and ordered his discharge.

The prosecution, regarding this ruling as unsupported by law and prejudicial to the interest of appellant, recorded exceptions and announced an appeal to this Court of last resort for a review. The appeal was docketed and set down for hearing. At the call of the case for hearing, it was observed by the Court that appellee, Isaac Collins, was not represented in person or by counsel. Thereupon the Court suspended the case and ordered the clerk to inform the appellee that he should be present at the next assignment, which was on November 3, 1959 at nine o'clock in the morning.

In keeping with the second assignment of this case as mentioned, *supra,* Counsellor O. Natty B. Davis informed the Court that he had been retained to represent the appellee in these proceedings. Subsequently Counsellor Davis filed a motion containing two counts to dismiss the appeal. We deem it expedient to quote the said two counts of the appellee's motion, which read as follows:

"1. Appellee says that this Court has no jurisdiction over this appeal because the statutes clearly point out the grounds upon which the State can appeal

in a criminal case, namely, from a ruling made on a motion in arrest of judgment, and from a ruling made on motion to quash an indictment. Appellee submits that the law having specified these two grounds upon which the State can appeal, the Appellant has no legal authority to employ or use other grounds not provided by law upon which to base an appeal; and, therefore, this Court can exercise no jurisdiction over said appeal, it not having been authorized by law to so do. Wherefore, appellee prays that the appeal be dismissed and the judgment of the lower court affirmed.

"2. And also appellee says that appellant has violated one of the indispensable requisites to an appeal because he has failed to file an appeal bond. In mandatory terms, the statutes provide: 'Every appellant shall file an approved appeal bond.' This provision admits of no exception. Appellee contends, therefore, that it was incumbent upon the appellant to file an appeal bond, and her failing to do so renders the appeal dismissible. And appellee so prays."

Appellant filed resistance containing two counts against appellee's motion to dismiss the appeal under review. We quote hereunder the said two counts of appellant's resistance, which read as follows:

"1. The Republic of Liberia submits that it is a universally recognized and settled principle of law that the State may properly appeal in criminal cases from the ruling of the Court discharging the defendant on an issue of law. While it is true that our statutes give two grounds upon which the State may appeal in such cases, yet the obvious intent and purpose of the Legislature was to have the ruling of the Judge reviewed at the instance of the prosecution on points of law, especially a ruling discharging the defendant. To hold other-

wise would be saying, in effect, that, no matter what erroneous or prejudicial ruling may be made on a point of law discharging the defendant, and especially in matter preliminary to the trial, and before jeopardy has attached, the State would be without remedy. This could never be the spirit and intent of the law. The law cannot envisage all the possible issues that might arise in every given case and provide for them; but the court, in construing the relevant statute may search for the intent of the Legislature and, ascertaining it, give force and effect thereto. In each of the grounds allowed for the State to appeal is the review of a court's ruling discharging the defendant on a point of law. Developing this to its logical conclusion, it follows that the State could properly appeal the ruling in this case, discharging the defendant on a point of law—double jeopardy.

"2. As to Count '2' of the motion, appellant submits that it is not only void of legal merit but it has no foundation, even in common reasoning; for who can be surety to the Republic of Liberia? The statute requiring the appellant to file an appeal bond obviously does not, and cannot, apply to the Republic of Liberia. Said Count '2' should therefore be denied, and the appellant so prays."

In examining the appeal statutes of Liberia, we find that the contention of Isaac Collins in Count "1" of his motion to dismiss the appeal in this case is well founded.

"An appeal may be taken by the Republic only from:

(a) a judgment for the defendant on a motion to quash the indictment; or

(b) an order arresting judgment." 1956 Code, tit. 8, § 355.

From the foregoing citation of statutory law, it is obvious that appellant is not legally entitled to appeal in

criminal causes, except upon the two grounds specifically provided by law, beyond which this Court is without jurisdiction to determine the merits of an appeal, as in the instant case.

Count "2" of appellee's motion under review is unmeritorious, since the controlling statute provides:

> "When the Republic appeals, the attorney for the Republic shall perform the following acts to perfect the appeal within sixty days after judgment is rendered dismissing the indictment or information or within sixty days after the granting of an order arresting judgment:
>
> (a) immediately upon rendition of judgment or granting of the order he shall except to the judgment or order and state his intention to appeal;
>
> (b) within ten days after rendition of the judgment or granting of the order, he shall file a bill of exceptions with the judge for his approval and signature;
>
> (c) he shall file with the clerk of the court the bill of exceptions signed by the judge." 1956 Code, tit. 8, § 373.

Barring the provisions contained in the above citation of law, nothing more is required to perfect an appeal when the Republic is appellant especially in criminal cases. Therefore, Count "2" of appellee's motion is not sustained.

In view of the fact that Count "1" of appellee's motion to dismiss the appeal under review is well taken, said Count "1" is hereby sustained and the appeal is therefore dismissed. And it is so ordered.

Appeal dismissed.

MR. JUSTICE PIERRE concurring.

Although I am in perfect agreement with the opinion in this case, and have therefore signed the judgment, I still feel that our decision to dismiss the appeal upon the statutory grounds stated therein does not legalize and can-

not remove the errors committed by the Judge when he discharged the defendant from further answering the charge in the court below. I am of the firm opinion that the Judge was in error when he held that the defendant had been twice placed in jeopardy because he was made to plead a second time to an indictment after a *nolle prosequi* had been entered in his favor at a previous arraignment on a similar indictment. So sacred and important have we regarded a plea of double jeopardy that, throughout our trial history, there is no instance when our courts have not jealously guarded this constitutional right of a defendant against infringement and violation. However, I hold it to be gross error for the plea to be misused and its legal interpretation misapplied.

Because of the peculiarity in construction of the American criminal trial system, the question of jeopardy has been frequently raised by parties, who have in many instances used this peculiarity in the system, to dodge between federal and state criminal courts. For instance, a federal criminal court might or might not have jurisdiction over a crime committed in one of states, depending upon the laws of the particular state, the class of crime, and the conditions under which it was committed. Hence, a defendant convicted in a state court can, in some cases, effectively appeal for review by the United States Supreme Court; in other cases the federal court might not have jurisdiction. There have been instances where the United States Supreme Court has reversed the decision of a state court, and there have also been instances where a state court has convicted after a federal acquittal of the defendant for the same offense.

In Liberia, our judicial structure is much more simplified, and therein lies the beauty and strength of our system of criminal trials. There is only one criminal jurisdiction, holding under Article IV, Section 1st of the Constitution which states:

"The Judicial power of this Republic shall be vested

in one Supreme Court, and such subordinate courts as the Legislature may from time to time establish."

Under Section 7th of Article I of our Constitution, it is guaranteed that "no person shall for the same offense be twice put in jeopardy of life or limb." I would hold that jeopardy, as contemplated under this provision of the Constitution, implies a guarantee against the probability of a second trial of any defendant, for the same offense, before any of the courts of our Country. We have read with alarm and horror of trials conducted in the courts of some countries in the world today where this guarantee of our Constitution is not enjoyed. To mention a case reported in a New York paper published not long ago, a nineteen-year-old boy was tried in an Asian country for killing a man whilst committing armed robbery on a store. The court sentenced the youth to from ten to twenty-five years imprisonment upon his conviction. Public sentiment ran high and it was claimed that this sentence was inadequate and too lenient. The boy was therefore tried a second time, a second time convicted, and thereupon sentenced to death.

Under our system, we would hold this to be oppressive persecution and an infringement of the constitutional rights of the defendant. In a dissenting opinion handed down by Mr. Justice Black in *Bartkus* v. *Illinois,* 359 U.S. 121 (1959), and in which two other Justices joined, I was moved by certain references to principles regarded as fundamental under the due process clause of the Constitution of the United States of America. These fundamental principles were termed "implicit in the concept of ordered liberty"; without which it would be impossible "to maintain a fair and enlightened system of justice"; "fundamental principles of liberty and justice which lie at the base of all our civil and political institutions"; and principles whose absence creates "a hardship so acute and shocking that our polity will not endure it." Such are my own views in every instance where any of the consti-

tutional safeguards come into question; and it is in that light that I consider the question of jeopardy raised by the defendant in the court below.

Mr. Justice Black, continuing in his dissenting opinion, said:

> "Fear and abhorrence of governmental power to try people twice for the same conduct is one of the oldest ideas found in western civilization. Its roots run deep into Greek and Roman times. Even in the Dark Ages, when so many other principles of justice were lost, the idea that one trial and one punishment were enough remained alive through the canon law and the teachings of the early Christian writers. By the thirteenth century it seems to have been firmly established in England, where it came to be considered as a 'universal maxim of the common law.' It is not surprising, therefore, that the principle was brought to this country by the earliest settlers as part of their heritage of freedom, and that it has been recognized here as fundamental again and again. Today it is found, in varying forms, not only in the Federal Constitution, but in the jurisprudence or constitutions of every State, as well as most foreign nations. It has, in fact, been described as a part of all advanced systems of law and as one of those universal principles 'of reason, justice, and conscience,' of which Cicero said: 'Nor is it one thing at Rome and another at Athens, one now and another in the future, but among all nations it is the same.' While some writers have explained the opposition to double prosecutions by emphasizing the injustice inherent in two punishments for the same act, and others have stressed the dangers to the innocent from allowing the full power of the state to be brought against them in two trials, the basic and recurring theme has always simply been that it is wrong for a man to 'be brought into Danger for the same Offence more than once.' Few principles have been more

deeply 'rooted in the traditions and conscience of our people.'" *Bartkus* v. *Illinois,* 359 U.S. 121, 151–55 (1959).

Many views have been expressed as to when jeopardy begins to run. In this case, the Judge's decision to disregard the County Attorney's announcement that his office was not at that stage prepared to begin the trial might have been correctly taken, in view of the defendant's constitutional right to a speedy trial. I have always held that the State's unreadiness to prosecute criminal cases, after the terms during which indictments are found, can, and in some instances does, adversely affect the constitutional rights of a defendant. On the other hand, I feel that it was also within the trial rights of the prosecution, to enter a *nolle prosequi* at any stage before a jury was empanelled and charged with the defendant's deliverance, without putting him in jeopardy. I have not been able to bring myself to agree with the Judge's ruling that the subsequent arraignment of the defendant amounted to double jeopardy; and therefore I feel it was error to have discharged the defendant on that ground. The defendant's discharge, therefore, was not in keeping with the "due process" provision of our Constitution.

Authorities are generally agreed on this point; I will quote a few.

> "A mere plea of not guilty to an indictment does not amount to putting accused in jeopardy under it." 22 C.J.S. 655 *Criminal Law* § 248.
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> "Jeopardy does not attach until a legally constituted jury have been charged with the deliverance of accused. A jury are said to be thus charged when they have been impanelled and sworn. Thus, it is generally held that accused is put in jeopardy when the jury selected to try him have been sworn, and not until then." 22 C.J.S. 655–56 *Criminal Law* § 249.
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> "The ordinary effect of a nolle prosequi is to terminate the charge to which it is entered and to permit the

defendant to go wherever he pleases, without entering into a recognizance to appear at any other time. If it is entered before jeopardy has attached, it does not operate as an acquittal, so as to prevent a subsequent prosecution for the same offense. According to the weight of authority, however, where the defendant is arraigned on a sufficient indictment and pleads not guilty and a jury is impanelled to try the issue, the dismissal of the indictment without the consent of the defendant amounts to an acquittal and bars further prosecution for the same crime." 14 AM. JUR. 966 *Criminal Law* § 295.

"The submission of an indictment to the grand jury and the examination of witnesses before them, or even the finding of the indictment, does not amount to a putting in jeopardy; but the accused is placed in jeopardy where he has pleaded and has been put on trial before a court of competent jurisdiction upon an indictment valid and sufficient in form and substance to sustain a conviction and the jury has been sworn and impanelled and charged with the case." 12 CYC. 261 *Criminal Law.*

In view of the foregoing, and of the legal authorities which I have quoted, and because I feel that, without this clarification of the reasons back of our dismissal of the appeal, that the Judge's act discharging the defendant might be regarded as legal, I have prepared and filed this concurring opinion. I feel strongly that society could be outraged, by a repetition of such positions by Judges in the criminal trial courts; I feel equally as strongly that appeal by the State from such erroneous rulings is, as yet without legal authority according to our present statutes.

Our present appeal statutes provide, in definite, certain and mandatory language, that the State can appeal in criminal cases only in the following two instances:

"An appeal may be taken by the Republic only from:

(a) a judgment for the defendant on a motion to quash the indictment; or

(b) an order arresting judgment." 1956 Code, tit.8,§ 355.

Our courts are thus without authority, either constitutionally or statutorily, to add to or subtract from the specific wording of a statute, or to in any manner interpret the text to include more than the Legislature had intended to provide under the statute.

This Court has recently held that:

"... It is not sufficient that the separation of constitutional powers should be stated and specifically designated; the proper working of the checks and balances of the Constitution compels the enforcement of that separation.

"In interpreting statutes, this Court is only empowered to pass upon the specific wording of a statute, and place a legal interpretation upon the text. Our power to construe and interpret does not extend to adding words or phrases to the text of a statute. That power belongs solely to the Legislature. It is their constitutional right to amend statutes, and not this Court's. We can only interpret what has been legislated." *Kofflah* v. *Republic,* 13, L.L.R. 232, 244 (1958).

Under the circumstances, as much as I might favor enlarging the scope within which the State might appeal in criminal cases, the law has given the Supreme Court no authority to do so; hence, until appropriate legislation is passed, this Court must remain within the limits of the text of our our present appeal statutes.