

**THOMAS E. BEY-SOLOW**, Appellant, v. **JOHN F. MOORE**, Appellee.

ARGUED JANUARY 9, 1912. DECIDED JANUARY 24, 1912.

Toliver, C. J., and McCants-Stewart, J.

A judgment by default is an imperfect judgment under the control of the court until the rendition of final judgment; and in order to make it effective, it is the duty of the court to complete it.

Mr. Chief Justice Toliver delivered the opinion of the court:

Damages—Appeal from Judgment. The above entitled cause was filed by the appellant in the Court of Quarter Sessions and Common Pleas, for the Territory of Grand Cape Mount, sitting in law at its November term, A. D. 1908, growing out of failure of appellees to perform a contract entered into between the appellant and appellees, in which it appears, that appellees contracted to erect a building for appellant : it further appears that upon concluding the contract, the appellant advanced the appellees the sum of three hundred and sixteen dollars and ninety cents (\$316.90), after which they failed to perform their part of the contract. The appellant then brought his action of damages referred to in the court above mentioned. The case was laid" over from November term 1908 until the February term, A. D. 1909. The appellant represents that he was absent in the City of Monrovia attending the Supreme Court when his case was called at the February term and judgment by default obtained by the appellees; it appears that appellant reentered his case at the November term of the Court of Quarter Sessions and Common Pleas for the Territory of Grand Cape Mount, November term, A. D. 1908; appellees filed a motion to dismiss said case because final judgment had already been rendered in said cause, whereupon His Honor Judge A. J. Mathews ruled as follows:

"Republic of Liberia. Territory of Grand Cape Mount, in the Court of Quarter Sessions and Common Pleas, November term, 1909, sitting in law, Territory of Grand Cape Mount.

Thomas E. Bey-Solow, plaintiff versus Geo. W. Hunter et al., defendants.

This action was dismissed upon the grounds that said case having been once determined by the court and final judgment given by default; therefore this court dismissed said case, and ruled the plaintiff to costs.

Given under my hand and official signature this 11<sup>th</sup>, day of November, A. D. 1909.

sgd. A. J. Mathews,  
Judge, Ct. Qr. Sess. & Corn. Pleas, Terri., G. C."

The appellant took exceptions to the above judgment and completed an appeal to the Supreme Court at its January term, A. D. 1910, after which the clerk of the court for the territory locked up the records and left the territory, thus preventing the appellant from carrying on his case in the Supreme Court. To prevent delay appellant applied for and obtained a writ of certiorari in order that the cause be reviewed by this court. This is a concise history of the case brought before this court for review.

At the call of the case the plaintiff in certiorari answered, the defendant did not, whereupon plaintiff moved for judgment by default, which motion the court entertained. This court is from legal causes prohibited from perfecting judgment in this case; because of the irregularities at the purported trial of the court below, the judge of the court below committed a legal blunder when he asserted that a judgment by default is a final judgment. (See I Lib. L. R., pp. 189, 333, final judgment; I Lib. L. R. 437; Lib. Stat., ch. 16, p. 49). A judgment by default is an imperfect judgment under the control of the court until the rendition of final judgment; in order for a judgment to have effect, it is the duty of the court to complete it. It is clear in the mind of the court that this case has never been legally tried, and for various other reasons, this court adjudges that the case be rewarded to the court below, and that a jury be empanelled to try the issue according to law, at its next session. The clerk is commanded to issue a mandate to the court below as to this ruling, costs to abide the event.

*T. E. Bey-Solow*, in person. No one appearing to defend.

