

**J. G. MONTGOMERY**, Appellant, vs. **WILLIAM ZEISER**, Agent for J. W. West, Appellee.

[January Term, A. D. 1905.]

Appeal from the Court of Quarter Sessions and Common Pleas, Grand Bassa County.

Appearance—Imperfect judgment—Final judgment.

A communication by a defendant's attorney addressed to the clerk of the trial court requesting him to enter an appearance, amounts to a formal appearance if made within the time fixed by law.

Where the statute provides that upon rendering an imperfect judgment the court shall proceed to render final judgment, it is grossly irregular to proceed to trial without a jury.

After rendition of a final judgment, a case cannot be reopened by the trial court and another judgment rendered, although in conformity with the previous judgment.

This is an appeal from the ruling and judgment of the Court of Quarter Sessions and Common Pleas, Grand Bassa County, at its December term, 1903. From the transcript of the record to this court, it appears that appellant did enter into a mercantile agreement with the appellee during the month of May, 1903, to the effect that the appellee was to supply the appellant with goods or merchandise, thereby enabling him to open trade and exchange said goods for marketable African produce, and that the appellee did supply the goods as agreed. The record shows further, that the appellant on his part also promised and agreed to "deliver to the appellee all marketable produce bought by him, at market price." The appellant at the same time signed a note of hand for the goods thus delivered. Thus a business relation commenced May 15th, 1903, and continued until December, 1903, when the appellee, plaintiff below, instituted this action of debt on the aforementioned note. The appellant insists that in liquidation of this note, he made several payments in

produce; while the appellee maintains that on the note there have been no payments. Several receipts from appellee have been filed in this case, yet they are indefinite as to what account payment was made by the appellant, although given by the appellee since the execution of the note. This is briefly a synopsis of the case under review.

At the call of this case for trial in the court below, the plaintiff, now appellee, offered and submitted to the court a motion urging that the appearance of the defendant, now the appellant, be struck from the record, on account of alleged informality, and that judgment be entered for the plaintiff ; which motion the court allowed, and immediately rendered imperfect judgment for the plaintiff. In effect this judgment precluded the defendant from maintaining any legal defence against the action, as is virtually maintained, that he was not in court. The form of the imperfect judgment is as follows : "The court adjudges that the plaintiff is, or is not entitled to recover." (Lib. Stat. Bk. 1, p. 50, sec. 7.) In this case, the record further supports the fact that the defendant below did, within the time allowed by law, file in the clerk's office of the court in which the case was entered, the following purported appearance : "J. R. Moore, Clerk of Court, Quarter Sessions and Common Pleas: Sir, You will please enter upon record that I have appeared this day to defend myself in the case West vs. J. G. Montgomery. Yours, J. G. Montgomery, by P. J. L. Brumskine, his attorney." This instrument is dated Nov. 3d, 1903. By Stat. Book 1, p. 22, sec. 2, the appearance of the defendant is to be accounted as when it is entered upon the record of the court. For this reason this court is of opinion that the court below greatly erred in ruling out the appearance of the appellant, it being a sufficient appearance in law. It must be clear to every unbiased mind that this act of the court destroyed every legal resistance that the appellant could have made against the suit.

Again the record shows that after the court had rendered imperfect judgment, it allowed a trial without jury. This was also error in the court, because by statute, as soon as a perfect verdict is rendered, or an imperfect judgment completed, the court shall proceed to render final judgment. (Stat. Book 1, p. 52.) The proceedings in this case for irregularity and illegality are without a parallel in the history of cases tried in any court in the Republic.

We mention one more of the irregularities attending the trial below. On the

ninth day of January, 1903, the court rendered final judgment, thus putting an end to the suit unless an appeal was taken. Now jurisdiction could not be resumed without an order from a higher court. Yet, on the eleventh, two days after the rendition of the final judgment, the court reopened the case, examined witnesses and rendered a judgment; although in conformity with the previous judgment.

For these errors and illegalities attending the trial of this case below, and with a view that justice be done to the litigants, this case is hereby remanded to the court from which it came, for trial *de novo*, costs to follow, until its final settlement. And the clerk of this court is hereby directed to issue and cause to be served on the judge of the Court of Quarter Sessions, Grand Bassa County, a mandate after the usual form, informing him of this decision.