ANDREW KENNEDY, Appellant, *v.* REPUBLIC OF LIBERIA, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT, SINOE COUNTY.

Argued March 19, 1969. Decided June 13, 1969.

1. Justice of the peace courts, and not the circuit courts, are empowered to try cases of petty larceny.
2. Though a jury may return a verdict finding a defendant guilty of a lesser crime than the one charged in the indictment, such lesser crime must lie within the jurisdiction of the court where the verdict was returned.
3. A guilty verdict returned where the crime is not within the jurisdiction of the trial court, is invalid, and the judgment of the court thereon is void.
4. Jurisdictional powers are given by the law and cannot be conferred upon courts by the consent of the parties.
5. The Supreme Court has no authority to order an inferior court to enforce a void judgment.
6. The Supreme Court will not dismiss an appeal in criminal cases because of the defendant's failure to have made a motion for a new trial in the court below.

The appellant and a codefendant were once tried for grand larceny and both were convicted. On appeal the judgment of the trial court was reversed, on the ground the evidence proved petty larceny only, and a new trial was ordered. They were tried again for grand larceny, and only the appellant was convicted by the jury, which found him guilty of petty larceny. The trial court affirmed the jury's finding, and an appeal was taken from the judgment. The appellee also moved the Supreme Court to deny consideration of the appeal on the ground that appellant had not made his motion for a new trial before the trial court prior to taking his appeal. The appellee's *motion* was *denied,* the *judgment* was *reversed,* and the appellant ordered discharged forthwith.

Clarence O. Tuning for appellant. *The Solicitor General* for appellee.

MR. JUSTICE ROBERTS delivered the opinion of the court.

Andrew Kennedy and Weah Johnson were indicted on July 13, 1967, in Sinoe County, for the crime of grand larceny. The case came up for trial in the February 1968 Term of the Third Circuit Court, Judge Frederick K. Tulay presiding, at which time the jury returned a verdict of guilt against them. On the grounds of the verdict being at variance with the instructions of the court and inconsistent with the evidence given during the trial, they filed a motion for a new hearing in which they contended that the evidence tended to prove petty larceny and not grand larceny, for which they were indicted. The judge, agreeing with the argument, awarded a new trial.

The case was again tried the same year during the August Term of court, and the jury returned a verdict acquitting codefendant Weah Johnson, but convicting Andrew Kennedy for the crime of petty larceny. Appellant's counsel, having noted exceptions, requested the court to refuse further jurisdiction over the matter for, as he held, the crime for which his client was pronounced guilty could not be properly before the circuit court. The record at this point, recites:

> "At this stage the defendant Andrew Kennedy excepts to the verdict of the empaneled jury and respectfully requests your Honor to refuse further jurisdiction over this matter because the said defendant has been declared guilty of a crime not cognizable before the Circuit Court. It is true that the defendant can be indicted for a higher crime and the verdict of a jury reduce that higher crime to that of a lower degree, but the degree reduced to must be of necessity cognizable before the Circuit Court. This being so, we request your Honor to discharge defendant Andrew Kennedy, and if needs be, prosecution may take the

advantage of the opportunity to adopt the right procedure, for even if your Honor would render judgment against defendant for the crime of petty larceny, which is not cognizable before the Circuit Court, and not within the province of the high dignity of this Court to try and determine, we will feel that it will not be legal, and prejudicial to our interest, so we pray your Honor as we have stated, and so we pray. And submit."

The state, represented by the County Attorney in resisting the application relied solely on the Penal Law, 1956 Code, tit. 27, § 37. Judge Emanuel N. Gbalazeh in denying the application, also relied on the same section.

Section 37 reads:

"Upon the trial of the indictment the prisoner may be convicted of the crime charged therein, or of a lesser degree of the same crime, or of an attempt to commit the crime so charged, or of an attempt to commit a lesser degree of the said crime. Where there is reasonable doubt of which degree the defendant is guilty, the jury must convict of the lowest degree."

Although this statute is not relevant to the issue, it should be known by jurists that no statute should be interpreted to annul existing statutes, especially when the interpretation is not of a repealing function. While a jury is authorized to reduce a crime to a cognate nature, the crime to which it has been abated must be within the province of the court to affirm. Hoary with age, petty larceny has been within the trial jurisdiction of justices of the peace. Circuit Courts, therefore, have no original jurisdiction to exercise. The jurisdiction for petty larceny is clearly set forth by statute.

"Trial jurisdiction of justices of the peace.—Cases of petty larceny, and of any other crime punishable by a fine of one hundred dollars or less without mandatory

imprisonment. . . ." Judiciary Law, 1956 Code 18:556.

When this case came up for hearing on appeal from the final judgment, the Solicitor General filed a motion requesting this Court to refuse jurisdiction over the appeal and to send a mandate to the trial court directing it to resume jurisdiction and enforce its judgment, on the ground of appellant's neglecting to file a motion for a new trial. Dismissal of an appeal for failure of a defendant to file a motion for a new trial does not apply in criminal cases. The grounds for the dismissal in criminal procedings are set forth in our Criminal Procedure Law, 1956 Code, tit. 8, § 380:

"(a) Failure to file an approved bill of exceptions within the time specified in section 373 (10 days therein);

"(b) Failure to file an approved appeal bond or material defect in such bond;

"(c) Failure to have notice of appeal served on appellee; or

"(d) Nonappearance of the appellant on appeal."

Failure to file a motion for a new trial not being one of the causes for dismissal of an appeal, this Court cannot grant the motion of the Solicitor General. Nor are we empowered to order an inferior court to perfom a duty which is barred by statute. In *Hill* v. *Republic of Liberia,* 3 L.L.R. 130 (1929), it was held that in order that a crime may be punished through the judicial process, it is necessary first that the court itself should have jurisdiction over the crime.

Again, we have said in *Sonet American Cable Co.* v. *Johnson,* 11 L.L.R. 264 (1952), at 269,

"A judgment is void if it is not rendered by a court with competency to render it."

In concluding this opinion we wish to stress in summary form:

1. The statute giving authority to a jury to reduce a crime for which a defendant has been indicted refers to crimes that are cognizable before the circuit court.

2. Circuit courts do not have original jurisdiction over petty larceny.

3. Jurisdiction is given by law and cannot be conferred by the consent of parties.

4. In criminal cases this Court will not dismiss an appeal because of defendant's failure to file a motion for a new trial.

5. The Supreme Court is without authority to order an inferior court to enforce a void judgment.

All existing opinions contrary to item four of the foregoing summary are hereby overruled.

The appellee's motion requesting us to refuse jurisdiction is hereby denied. The clerk of this Court is ordered to direct the lower court to immediately discharge the defendant. And it is hereby so ordered.

Motion to deny consideration of the appeal denied; judgment reversed and appellant ordered discharged forthwith.