Ex parte J. J. MASSAQUOI, for his Wife, SARAH MASSAQUOI, Petitioner-Appellee, Administrators of the Estate of the Late MOMOLU MASSAQUOI, Intervenors-Appellants.

APPLICATION FOR REARGUMENT OF APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued January 6, 1942. Decided February, 1942.

1. Where there is no material variance between the opinion and the judgment a reargument will not be granted in order to correct same.
2. Where the opinion dismisses the case but the judgment remands same, there is no material variance.

Petitioner brought a suit in equity to correct a number in a mortgage deed. The court granted said petition. On appeal to the Supreme Court, the petition was denied. Ex parte *J. J. Massaquoi,* 7 L.L.R. 273 (1941). Application for reargument was granted by Mr. Justice Russell in chambers. Upon transferral to the Supreme Court *en banc, application denied.*

H. Lafayette Harmon for petitioner. *A. B. Ricks* for respondents.

MR. JUSTICE RUSSELL delivered the opinion of the Court.

This cause was continued on the docket after our last April term, 1941, upon an application for reargument granted by this Justice.

The principal cause for which same was granted was that contained in counts one and two of the motion for reargument, filed by J. J. Massaquoi for Carl Lahai Massaquoi and Lulu Gbessie Massaquoi, heirs of the

late Sarah Massaquoi, legatee of Carl Kurhmann, praying the Court to confirm the survey of one town lot of land Number 272 of the City of Monrovia, made by B. J. K. Anderson, Public Land Surveyor, Montserrado County, and to correct the number in a mortgage deed executed on the twenty-fifth day of February, 1939. Counts one and two of the motion recited the following:

"1. Because there is a material variance between the final judgment and the opinion handed down by Mr. Justice Dossen, where they ought to agree, in that, the final judgment shows that the said case is remanded to the court below for a re-trial in accordance with the opinion rendered, although the opinion on its face shows that although the judgment is not reversed, yet the case is dismissed with cost against the petitioner; for said inadvertent variance, petitioner feels that a rehearing of the case would enlighten the court's mind more clearly on the issues joined by the parties and enable it to remedy said palpable and unintentional mistake, as the records will more fully show.

"2. And further because from the reading of the opinion handed down in said case, the court has been seriously misled and has overlooked an important point of law and fact controlling this case, in that, the opinion entitles the party petitioner as 'J. J. Massaquoi, for his Wife, Sarah Massaquoi, . . .' as will more fully appear by careful inspection of the pleadings in said case, and as the records will show."

Upon inspection of the said opinion and judgment Ex parte *Massaquoi,* 7 L.L.R. 273 (1941), we find that there is a variance between certain parts of the two that should agree.

It does not appear from the petition filed for a reargument that any point of law or of fact material to the decision of said question was overlooked in the opinion

handed down in this case on May 3, 1941, as aforesaid, but rather that according to the opinion the case should be dismissed while the judgment decided that the case should be remanded.

Because of the premises herein laid down, we are of the opinion that said judgment of said court should be corrected and the case remanded in order that the petitioners may be allowed to file a new complaint according to the indications therein given and the respondents a new answer should they desire so to do, each party to bear his own costs, and the government tax fee and the cost of the officers of the Supreme Court to be shared equally between the parties; and it is hereby so ordered.

Application denied.