ALLEN N. YANCY, Appellant, *v.* REPUBLIC OF LIBERIA, Appellee.

APPEAL FROM CONVICTION OF OBTAINING MONEY UNDER FALSE PRETENSES.

Argued December 3, 1934. Decided December 21, 1934.

1. In construing statutes the apparent object of the Legislature is to be sought as disclosed by the Act itself, in some cases by the preamble, by similar statutes relating to the same subject, the mischiefs of the old law, and other circumstances.
2. In construing remedial statutes there should be considered the old law, the mischief and the remedy.
3. The gravamen of the offense of "obtaining money under false pretenses" is the fraud practiced by accused.
4. Justices of the peace are without jurisdiction to determine a cause civil or criminal in which fraud is one of the essential elements.
5. The original enactment establishing the Courts of Quarter Sessions, presently the Circuit Courts, gave said courts trial jurisdiction of all cases of crime and misdemeanour in which the minimum amount of fine capable of being imposed was twenty dollars; and in all civil cases triable in said court in which the amount in dispute was twenty dollars, either party might require a jury.
6. *Semble* the passage of subsequent statutes extending the jurisdiction of the justices of the peace does not appear to be prohibitive of the exercise by the Circuit Courts of the jurisdiction as to the amount in controversy originally conferred, but is permissive to the justices of the peace for the more speedy disposal of causes involving such amounts.
7. For, according to a subsequent enactment, if an action, not for personal injury, be brought in a court which ought to have been brought before a justice of the peace, said court is not deprived of jurisdiction to hear and determine same, but plaintiff loses his costs.
8. Statutes are to be construed not according to their mere letter, but according to their intent and object.
9. Hence in expounding statutes it is sometimes necessary to depart from the mere meaning of the words in order to give effect to the clearly apparent intent. Words ought to be subservient to the intent, and not the intent to the words.
10. "Fine" and "penalty" are often used interchangeably in statutes, especially when a punishment consists of a fine and restitution, and the collection of the restitution is contingent upon the conviction of the offender.

Appeal from conviction of obtaining money under false pretenses. *Appeal denied.*

Messrs. Tubman, Cooper, and *Caranda* for appellant.

MR. CHIEF JUSTICE GRIMES delivered the opinion of the Court.

For the second time since the reconstitution of the Supreme Court just a year ago, the act defining petty offences, passed and approved January 14, 1925, is submitted for the consideration and interpretation of this Court.

The former instance was in the case of *Cummings* v. *Republic,* 4 L.L.R. 16, 1 Lib. New Ann. Ser. 20 (1934). The appellant was indicted for a theft totalling fifty-nine dollars and sixty cents, and appellant's counsel, Mr. Tubman, contended here that larceny of such an amount was not a proper subject for an indictment; but that the appellant should have been summarily prosecuted for petty larceny. He then cited sections 1 and 3 of the aforesaid act, which enactment we shall now proceed to quote in full, as follows:

> "Section 1. That any offence punishable by a fine of $100.00 or less without imprisonment as a necessary element of said punishment shall be and is hereby made a petty offence.
>
> "Section 2. All offences punishable by a fine and imprisonment with the exception of petty larceny shall be prosecuted by indictment found by a grand jury; and the accused shall have to be tried by a jury.
>
> "Section 3. That the jurisdiction of Justices of the Peace in Criminal cases is hereby extended to all matters in which the fine shall not exceed $100.00 including cases of petty larceny which shall be punishable as provided in the Acts of the call session of 1920 page 4, section 1." (L. 1924–25, ch. XVI.)

The Court then unanimously held that:

> "The Act of 1924–25 defining petit offenses and extending the jurisdiction of justices of the peace over these offenses, was not intended to increase the amount in petit larceny to one hundred dollars as was contended by the counsel for appellant, but simply brings within the category of petit offenses such offenses in which the penalty is a fine of not more than one hundred dollars. . . ." (At p. 19.)

In the case at bar, Allen N. Yancy, appellant, was indicted for obtaining by false pretenses an amount of nine hundred sixty dollars; and having been duly tried and convicted, was sentenced to make restitution in said sum of nine hundred sixty dollars, and pay a fine of one hundred dollars.

At the call of this case appellant, through his counsel, Mr. Tubman, submitted a motion to reverse and set aside the said judgment for want of jurisdiction, claiming that inasmuch as the offence of "obtaining money under false pretenses" is punishable by a fine of one hundred dollars, he should have been prosecuted summarily before a justice of the peace, and not by an indictment before the Circuit Court of the Fourth Judicial Circuit as was the case, —Mr. Tubman and his colleagues claiming that in a case of this sort the Circuit Courts of this Republic have no jurisdiction of the subject matter.

The Court desires to observe in passing that it is a source of regret to it that during the hearing of this motion the Honorable the Attorney General of Liberia neither appeared, nor filed any brief, in opposition to the contention that counsel for appellant was making, having treated the whole proceedings in this Court with supreme indifference. Nevertheless, as a result of questions propounded from this Bench to the counsels who appeared for appellant, the Court has come to the conclusions which follow.

First of all, one of the cardinal rules for construing statutes is:

> "The apparent object of the legislature is to be sought for as disclosed by the act itself, the preamble in some cases, similar statutes relating to the same subject, the consideration of the mischiefs of the old law, and perhaps some other circumstances." 2 B.L.D. 1660, "Interpretation."

This rule was originally stated by Blackstone in the following terms:

> "There are three points to be considered in the construction of all remedial statutes; the old law, the mischief, and the remedy: That is, how the common law stood at the making of the act; what the mischief was, for which the common law did not provide; and what remedy the parliament hath provided to cure this mischief. And it is the business of the judges so to construe the act as to suppress the mischief and advance the remedy." 1 Blackstone, Commentaries * 87 (rev. ed. Jones 1916); see also 1 Stephen, Commentaries 73.

Judged by the standards hereinbefore laid down let us proceed now to consider what was the mischief in the law which the Act of 1924–1925 sought to remedy.

According to the report of the Attorney General of Liberia submitted to the second session of the 35th Legislature, and printed on pages 7 *et seq.* of the Report and Opinions of the Attorney General for 1924, we find that

> "William Bowens, H. L. Harmon, Joseph A. Benson, Willis Deshields, Joseph Smith, Thomas Deshield and Henry Deshields were appellants from a summary conviction for violation of the election laws of the Republic. As defendants they had been tried under a statute which provided that upon information of the County Attorney offenders against such law should be tried in a summary manner, and upon conviction fined

a sum not less than two hundred dollars ($200.00) nor more than one thousand dollars ($1,000.00)."

From this conviction they appealed; and the principal point they raised, decided adversely to the Republic, was that:

"Under the Constitution of Liberia, Article I, section 6, in all cases not arising under martial law or upon impeachment the parties shall have 'a right to a trial by jury,' and that the statute providing for a summary hearing of a cause of such magnitude was in conflict with the above section. It was also contended, that dovetailing thereinto is that of section 7 of said Article, which provides substantially that omitting cases of impeachment and those arising in the army and navy the said section of said document exempts from the humiliation of being put upon trial any person charged with any other than a petty offence except previously indicted by a Grand Jury. The said Constitution does not define, nor as far as we are aware has such omission been supplied by any statute, what a petty offence is; and the wording of the first sentence of the section under consideration tends to increase the difficulty of deciding what the framers of our organic law really meant, since in their classification they seemed to have taken no account of those crimes which are below the degree of felony, and above what they saw fit to style 'petty.' Reading the two sections together it seems clear that the spirit and intent of the Constitution is, as expressed by Mr. Justice Davis of the Supreme Court of the United States of America in ex parte Milligan, 4 Wallace 122:

'If ideas can be expressed in words and language has any meaning, this right of trial by jury, one of the most valuable in a free country, is preserved to everyone accused of crime who is not attached to the army or navy or militia in actual service.' See

2, Watson on the Constitution of the United States of America, p. 1474.

"Just here I must observe in passing that there are several of our laws which illegally provide for summary trial. The administration of justice summarily in England from whence our system of judicature is derived is, as far as I have been able to ascertain, 'done by Petty Sessional Courts composed of unpaid local magistrates not necessarily of legal experience, nominated by the Lord Chancellor, but in the Metropolis, and other cities and popular places . . . by paid Stipendiaries who are barristers of standing and repute appointed by the crown. The great mass of Petty offences against the law is dealt with by these tribunals.' In other words justice is only summarily administered against persons accused of trivial transgressions.

"Unlike ours the Constitution of the United States of America does not exempt from presentment by a Grand Jury persons charged with petty offences. This is also an argument against the tendency to summary prosecution which has crept into our legislation, and now to prevent confusion in the future, I hereby submit as our first recommendation for the year that you pass a law defining petty offences, and enact that all offences not expressly or impliedly falling within said definition be prosecuted by indictment."

The report from which we have quoted was submitted to the Honorable the Legislature of Liberia on the 10th day of December, 1924; the law which it is now necessary to interpret was, as aforesaid, passed and approved January 14, 1925,—approximately one month thereafter. It is important to note that the mischief complained of was that of subjecting to the humiliation of trial and punishment, without the previous presentment of a grand jury, a person who by his conviction might be condemned to a

forfeiture of as much as one thousand dollars; that it was considered a violation of the constitutional provision that no one "shall be deprived of life, liberty, property, or privilege but by judgment of his peers or the law of the land," when the penalty involved was a fine of not less than two hundred dollars nor more than one thousand dollars. The remedy which the said legislation was to provide was that cases of such magnitude instead of being instituted merely upon the information of the County Attorney should be commenced by the finding of a grand jury, and the facts adjudged by a petty jury under the direction of a Circuit Judge. In the case before us, counsels for appellant have contended, in effect, that a case of this magnitude should not only be tried by a Circuit Judge, the evil that was sought to be remedied by this legislation, but even by a justice of the peace, unmindful of, or indifferent to, the fact that our Circuit Judges are, by the laws in vogue, presumed to be learned in the law, while justices of the peace are not; and hence are not competent to deal with cases of this magnitude. Moreover, counsels for appellant, as well as our learned colleagues who have seen fit to dissent from these views, appear to us to have overlooked the fact that the gravamen of the offense of "obtaining money under false pretenses" is the *false pretenses,*—the fraud practiced by the defendant whereby he has induced his victim to part with the money or other valuable thing which is the subject of the false pretenses. It is unthinkable to us that the Legislature of Liberia, in enacting the law defining petty offenses, ever conceived the idea of giving to a justice of the peace the power or privilege of passing upon fraud in any way, shape or form. Nowhere in our statutes is there any provision whereby a petty magistrate of the grade of a justice of the peace can pass upon a case of fraud even in a civil cause: for the power of trying and decreeing a specific performance, the cancellation of instruments for fraud or otherwise, and of decreeing a dis-

covery are all placed beyond the jurisdiction of a justice of the peace, and within the power and original jurisdiction of a Circuit Judge; and it is inconceivable to those of us who have concurred in this opinion that the Legislature in civil cases would have withheld such powers and jurisdiction from a justice of the peace, and given it to them in a criminal cause.

This brings us to another point, for, as my learned colleague, Mr. Justice Dixon, pointed out during the argument, according to the polity of our laws the Courts of Quarter Session as originally established, now the Circuit Courts of the Republic, were originally intended to have original trial jurisdiction of all cases of crime and misdemeanor in which the minimum amount of fine capable of being imposed was twenty dollars. Statutes of Liberia (Old Blue Book), Judiciary Act, 121, art. IV, sec. 1.

Compare the *Old Blue Book* at 46, chapter VII, section 2, which reads:

> "The trial of all questions of mere fact, shall be by a jury, if required by either party, and the value of the matter in dispute exceed twenty dollars. . . ."

It is true that the jurisdiction of the justices of the peace has been from time to time extended in sundry cases beyond this jurisdictional amount; but it would seem from a careful study of the relevant enactments, that the object was to gradually relieve the Circuit Courts of the congested dockets which have been almost a chronic condition in said Courts ever since the Legislature, by an act approved December 23, 1871, first endeavored to make provisions for clearing the dockets of said Courts. We, the Justices concurring, are not yet convinced that these extensions of the jurisdiction of the justices of the peace were, except as otherwise expressed in the act, intended to prohibit the Circuit Courts from exercising original jurisdiction in such cases, but were rather permissive in favour of the justices of the peace. This view of ours

would seem to be borne out by a provision in the first enactment of Liberian legal forms and principles which reads as follows:

> "If an action, not for personal injury, be brought in a court, which ought to have been brought before a justice, the court shall, if the plaintiff establish a claim, deduct from the debt or damages, the whole costs incurred by the defendant, and give judgment for the balance, without any costs; or if the costs of the defendant, equal or exceed the debt or damages, shall give judgment for the defendant, either without costs, or for the excess of his costs, as the case may require. If the plaintiff fails, the court shall give judgment for the defendant, for full costs." Statutes of Liberia (Old Blue Book), Legal Principles and Rules, ch. XXI, § 7.

It is true that the law quoted would seem on its face to be applicable solely to civil cases, but when taken in conjunction with the whole original establishment of our judicial system and the judicial history and life of our country, we are of opinion that the essence of the principle applies as well to the provisions of the criminal law as to the civil.

Emphasis was laid by counsel for appellant in the argument, and by our colleagues who are dissenting from us, upon the literal wording of section 1 of the act under construction which reads: "that any offense punishable by a *fine* * of $100.00 or less without imprisonment as a necessary element of said punishment . . ." and section 3 which provides "That the jurisdiction of Justices of the Peace in criminal cases is hereby extended to all matters in which the fine shall not exceed $100.00. . . ." And Mr. Tubman contended during the argument that that word "fine" as used in the act should be construed literally and strictly. When reminded that in the case now before

* Italics added.

us the restitution of nine hundred sixty dollars and the fine of one hundred dollars would exceed the one thousand dollars' fine against which Bowens, Harmon, Benson and DeShields had complained, and which had led to the passage of the law defining petty offenses, he answered blandly that the statute says specifically: *fine;* and had no reference to the restitution. To adopt this view would, in our opinion, lead us to give a strained interpretation inconsistent with the principles that:

> "Statutes are to be construed not according to their mere letter, but according to the intent and object with which they were made. It occasionally happens therefore that the judges who expound them are obliged, in favour of the intention, to depart in some measure from the words. And this may be either by holding that a case apparently within the words, is not within the meaning; or that a case apparently not within the words, is within the meaning. . . ." 1 Stephen, Commentaries, 71.

This rule of construction has been considerably expanded and elucidated by another authority as follows:

> "Ordinarily, the legislature speaks only in general terms, and for that reason it often becomes the duty of the court to construe and interpret a statute in a particular case, for the purpose of arriving at the legislative intent, and of determining whether a particular act done or omitted falls within the intended inhibition or commandment of the statute. . . . There is always a tendency, it has been said, to construe statutes in the light in which they appear when the construction is given. The true rule is that statutes are to be construed as they were intended to be understood when they were passed. Statutes are to be read in the light of attendant conditions and the state of the law existent at the time of their enactment." 25 R.C.L., "Statutes," §§ 211, 215.

Among the general principles laid down for construing statutes, and the necessity at times for departing from the literal meaning of the words thereof, we find that:

> "It often happens that the true intention of the law-making body, though obvious, is not expressed by the language employed in a statute when that language is given its literal meaning. In such cases, the carrying out of the legislative intention, which, as we have seen, is the prime and sole object of all rules of construction, can only be accomplished by departure from the literal interpretation of the language employed. Hence, the courts are not always confined to the literal meaning of a statute; the real purpose and intent of the legislature will prevail over the literal import of the words. When the intention of a statute is plainly discernible from its provisions that intention is as obligatory as the letter of the statute, and will even prevail over the strict letter. The reason of the law, as indicated by its general terms, should prevail over its letter, when the plain purpose of the act will be defeated by strict adherence to its verbiage. It is frequently the case that, in order to harmonize conflicting provisions and to effectuate the intention and purpose of the lawmaking power, courts must either restrict or enlarge the ordinary meaning of words. The legislative intention, as collected from an examination of the whole as well as the separate parts of a statute, will prevail over the literal import of particular terms, and will control the strict letter of the statute, where an adherence to such strict letter would lead to injustice, to absurdity, or contradictory provisions. . . . It is an old and well established rule of the common law, applicable to all written instruments, that 'verba intentioni, non e contra, debent inservire'; that is to say, words ought to be more subservient to the intent, and not the intent to the words. Every statute, it has been said, should be expounded, not ac-

cording to the letter, but according to the meaning; for he who considers merely the letter of an instrument goes but skin deep into its meaning. Qui hæret in literâ hæret in cortice. Whenever the legislative intention can be discovered, it ought to be followed with reason and discretion in the construction of the statute, although such construction may seem contrary to the letter of the statute. It is a familiar canon of construction that a thing which is within the intention of the makers of a statute is as much within the statute as if it were within the letter; and a thing which is within the letter of the statute is not within the statute unless it be within the intention of the makers. The principle that if a thing, although within the letter of the law, is not within the intention of the legislature, it cannot be within the statute, has been applied in cases where there was presented a definite evil, in view of which the legislature used general terms with the purpose of reaching all phases of that evil, and thereafter, unexpectedly, it is developed that the general language thus employed is broad enough to reach cases and acts which the whole history and life of the country affirm could not have been intentionally legislated against, or cases which could not have been legislated upon because of constitutional limitations on the legislative power. . . ." 25 R.C.L., "Statutes," § 222.

Our colleagues who dissent from us seem to be laying stress upon the fact that the restitution goes to the party aggrieved, and only the fine to the Republic; and, as far as we have been able to see, it is for that reason that they appear to us to be influenced by the argument of Mr. Tubman that the word "fine," as used in the act under construction, should be literally construed. We cannot under any circumstances agree with that contention. We have already pointed out that not only are we bound to strive to arrive at the spirit and intent of the lawmakers

in construing statutes, but also that similar statutes are among the many things to be considered in seeking the object of the Legislature in enacting statutes that come up for construction.

Judged by that rule, and referring to the former Criminal Code of 1899–1900 (L. 1899–1900, 1), we find under "Larceny," sections 9 and 10, that:

> "Section 9. In all cases where the fine is paid by the defendant, one half such fine shall be paid over to the loser of the goods stolen, but in no case, where the fine cannot be collected the defendant having no property attachable, shall the Government be held to pay any sum to such loser.
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> "Section 10. Provided always, that whenever the stolen goods are recovered, they shall be forthwith restored to the loser, without charge, in that case nothing shall be paid to the loser."

Turning to the punishment for "obtaining money by false pretences" under the same Code above cited we find practically the same provision in that "restitution shall be made when fine is collected." This Code was repealed by that of 1914, but the provisions thereof as a similar statute, are indicative of the policy along which our judicial system has been developing.

But, in addition to the foregoing, it is now pertinent to inquire what is the legal interpretation that has been placed on the word "fine"?

> "The true signification of the word 'fine' when used in a statute must depend somewhat on the context, and the meaning should be gathered from the intention if that can fairly be ascertained from the language used. In general a fine is a sum of money exacted of a person guilty of an offense as a pecuniary punishment, the amount of which may be fixed by law or left to the dis-

> cretion of the court. In certain connections the word 'fine' has been held to be synonymous with 'penalty'; but by the great majority of decisions it has been confined to its ordinary meaning. However the words 'fine' and 'penalty' are often used interchangeably to designate the same thing. The terms 'fine' and 'penalty' signify a mulct for an omission to comply with some requirement of law, or for a positive infraction of the law." 8 R.C.L., "Criminal Law," § 280.

In view of all these facts it is our opinion that when a person shall have been tried and convicted, and the sentence of the court is that he shall pay a fine and make restitution, the fine and restitution together are the penalty imposed by the law, and, without a conviction, it would be just as impossible for the trial judge to sentence an offender to make restitution as it would be impossible to sentence him to pay a fine. This principle has been, in effect, already endorsed by all of the Justices now upon this Bench when, on the 7th instant, we dealt with the case *Davies* v. *Republic,* 4 L.L.R. 177, by ordering that the period of imprisonment of petitioner should continue until the fine and restitution combined shall have been liquidated at the rate of twelve dollars per month as is provided in the present Code.

In view of the foregoing it is our opinion that the motion of appellant claiming that the court below had no trial jurisdiction of the subject matter, viz.: "obtaining money under false pretenses," should be denied, and the case heard upon its merits immediately after we shall have reassembled following the Christmas vacation; and it is so ordered.

Appeal denied.

MR. JUSTICE DOSSEN, with whom MR. JUSTICE RUSSELL concurs, dissenting.

On the 7th day of February, 1931, Allen N. Yancy, appellant, defendant below, was charged for the commis-

sion of the crime of "obtaining money under false pretenses"; he pled not guilty to the charge, whereupon a jury was impanelled to try the issue joined between plaintiff and defendant below.

On the 21st day of November, 1932, said jury brought a verdict of guilty against him, the said defendant, from which verdict, judgment and several rulings of the trial judge, he excepted and brought the case to this Court upon an appeal for review. On the 3rd day of December, 1934, at the call of the case, appellant submitted a motion for the consideration of the Court, attacking the jurisdiction of the court over the offense charged.

In the case at bar Mr. Justice Russell and the writer find ourselves unable to agree with our colleagues in overruling the motion to the jurisdiction of the trial court, filed by appellant's counsel, as the fine for said offense brings it under our Criminal Code within the statute defining petty offenses.

Judge Bouvier defines "jurisdiction" to be the power or "authority by which judicial officers take cognisance of and decide causes." 2 B.L.D. 1760, "Jurisdiction."

The Legislature of Liberia in the year 1924 in defining petty offenses made the following observations:

> "Whereas the Constitution of Liberia provides that no person shall be held to answer for a capital or infamous crime except in cases of impeachment, cases arising in the Army or Navy, and Petty offenses, unless upon presentment of a Grand Jury; and, WHEREAS said Constitution does not define what are petty offences, It is therefore enacted by the Senate and House of Representatives:
>
> "Section 1. That any offence punishable by a fine of $100.00 or less without imprisonment as a necessary element of said punishment shall be and is hereby made a petty offence.
>
> "Section 2. All offences punishable by a fine and imprisonment with the exception of petty larceny

shall be prosecuted by indictment found by a grand jury; and the accused shall have to be tried by a jury.

"Section 3. That the jurisdiction of Justices of the Peace in Criminal cases is hereby extended to all matters in which the fine shall not exceed $100.00. . . ." Acts of the Legislature 1924–25, ch. XVI, §§ 1–3.

This fact having been established by the Legislative enactment just cited, we are now to turn our attention to the Criminal Code of Liberia and see what constitutes the offense for which the appellant, defendant below, is charged and what is the fine to be imposed. Under the *Criminal Code of Liberia,* "obtaining money under false pretenses" is defined to be:

"Any person who shall make false representations, with a fraudulent design to obtain money, goods, wares or merchandises [*sic*], with intent to cheat another, or representation of some fact or circumstance alleged to be existing calculated to mislead, which intent is not true, or does not exist, with intent to cheat or defraud another of his goods, wares, money, merchandises [*sic*] or other property of value, shall be deemed guilty of obtaining money under false pretenses. The penalty shall be restitution of the money or thing of value obtained, and payment of a fine of no more than one hundred dollars." Criminal Code of Liberia, 18, § 75.

Under our statute, "The object of actions for injuries is to redress the injured party, not, like that of prosecutions for crimes, to punish the guilty." Statutes of Liberia (Old Blue Book), 22, t. I, ch. I, § 1.

The fine for this offense being one hundred dollars, we are therefore of opinion that it falls within the category of petty offenses and should have been tried by a justice of the peace, and not by the Circuit Court, because in our opinion, restitution is no part of the fine; therefore ap-

pellant's motion to release and set aside the judgment for want of jurisdiction is in our opinion sound in law, and should have received the favorable consideration of the Court, for our Constitution declares: "No person shall be deprived of life, liberty, property or privilege, but by judgment of his peers, or the law of the land." Lib. Const., art. I, sec. 8.

It is the fine in criminal cases that gives jurisdiction over the subject matter; hence we are of opinion that the judgment of the trial court is void for want of jurisdiction over the subject matter.

We are further of the opinion that the Constitutional power of the President to grant pardons for all fines and forfeitures, does not include restitution in criminal cases, because it is no part of the punishment for the crime or offense committed. Lib. Const., art. III, sec. 1.

For the reasons assigned, and the laws supporting same, we do not agree with our colleagues in denying the motion, hence this our dissenting opinion.