

said goods. See record. Witness Crawford said he could not say directly that the goods mentioned were sold, but Mr. Saline told him that he was getting some goods from libellee on commission, afterwards he saw the goods as they were being brought to Saline's place.

He further stated that to the best of his knowledge no money or piassava has yet been paid by Saline against said goods. He also said that Saline gave libellee a receipt, not a note in part payment for the goods named.

Witness Clarke stated that he knew nothing of libellee's violating revenue laws as set forth in libellant's libel, that he was present when libellee transferred certain goods to Saline, but did not know the conditions upon which this was done; see record. This constitutes a brief synopsis of the evidence brought by the State to prove the allegations of appellee, libellant below, against appellant, libellee below.

Considering the evidence before us, we do not have any scruples touching its insufficiency.

The evidence is positive touching the non-sale of the goods by appellant to Saline; it was clearly proven that the goods were transferred by libellee to Saline, but the statements of none of the witnesses in any form established a sale, and when we consider the various forms by which mercantile business is carried on, and compare the evidence in this case it is clear to our minds that the allegation is not proven. The judgment of the court below should be reversed and made of no effect. And it is hereby so ordered. And the clerk of this court is hereby commanded to forward a mandate to the court below to the effect of this decision.

*T. E. Bey-Solow and Anthony Barclay*, for appellant.

*L. A. Grimes, Attorney General*, for appellee.

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MOHAMADU LAMINE, Plaintiff in Error, *v.* SARDU FUTEH,  
Defendant in Error.

ARGUED NOVEMBER TERM, 1923. DECIDED JANUARY 31, 1924.

*Dossen, C. J., Johnson and Witherspoon, JJ.*

1. If a defendant be dissatisfied with the judgment of a justice of the peace he should either take an appeal or apply for one of the remedial writs, else the judgment will not be disturbed.

2. An omission to take an appeal is a waiver of all questions raised in the Court of the Justice of the Peace save that of jurisdiction, as a defendant when arrested upon a writ of execution can not, upon return of said writ of execution, raise questions which should properly have been raised in the answer.
3. Although a case may have been dismissed in the Court of a Justice of the Peace upon motion in arrest of judgment, still according to the statute laws of Liberia the Circuit Court upon hearing the appeal from such judgment of said court should hear the case *de novo*, and not remand it for a rehearing.
4. Immediately after the entry of final judgment the successful party may demand a writ of execution.
5. When a person is brought before a court upon a writ of execution it is the duty of the judge to require him to satisfy the judgment or to imprison said party until payment shall have been made.

Mr. Justice Johnson delivered the opinion of the court:

Action of Debt. This is a writ of error sued out by Mohamadu Lamine, plaintiff in error, plaintiff in the court below, in an action of debt brought before J. R. Stryker, Justice of the Peace for the Territory of Grand Cape Mount, against Sardu Futeh, defendant in said action, now defendant in error.

The history of the case is as follows: On the 10th day of March, A. D. 1922, Sardu Futeh, the defendant in error, was summoned in an action of debt by Mohamadu Lamine, the plaintiff in error. Defendant failing to appear on the return day, which was the 11th day of March, judgment by default was rendered against him, and execution issued. Upon the return of the execution before Judge Isaac A. David of the Territorial Court of Grand Cape Mount, the said judge entertained a motion to dismiss the case for the alleged irregularities in the trial in the said justice court, notwithstanding the objection of plaintiff in error, and dismissed the execution, and remanded the case to the said justice court, ordering the said justice of the peace to resume jurisdiction in the case and to rehear same. On the second trial by the said justice of the peace, defendant in error filed a motion in arrest of judgment, which was denied by the justice; whereupon the defendant in error took an appeal to the Territorial Court of Grand Cape Mount. The judge instead of hearing the case *de novo* reviewed the case on the motion in arrest of judgment, and granted same. For these irregularities, the case has been brought by the said plaintiff before this court for review. There are a few facts essential in this case, and they lie in a narrow compass, and do not require discussion. The main point relates to

the action of the judge of said Territorial Court, in entertaining a motion to dismiss the case for alleged irregularities at the trial, and, notwithstanding the execution, annulling judgment and ordering the justice of the peace to resume jurisdiction.

While it is undoubtedly true that the defendant may raise questions of law in a justice court respecting irregularities in the proceedings, yet if he is dissatisfied with the judgment of the justice, he is legally bound to take an appeal or apply for one of the remedial writs or the judgment will not be disturbed. An omission to take an appeal is a waiver of all questions raised in a justice court, except that of jurisdiction. The defendant can not, when arrested on an execution, raise such questions before the judge to whom the writ of execution is made returnable.

The next error assigned is the action of the judge of the said Territorial Court in the proceedings on the appeal taken by the defendant in the second trial had before the justice, to the said Territorial Court, which is stated as follows: Because the defendant in error, having filed a motion in arrest of judgment in the said justice court on the 24th day of March, A. D. 1922, which motion was denied by the said justice, the said judge of the said Territorial Court, before whom the said case was taken on appeal, instead of hearing the case *de novo*, as the statutes of Liberia direct, refused to do so, but confined his review of the case to the motion in arrest of judgment, made and denied in the justice court, and granted same. This was manifest error on part of the judge. (See Lib. Stat., ch. XXI, sec. 8.) The judge of the Territorial Court therefore erred in entertaining the motion to dismiss the case, and in remanding the same to the justice court for rehearing.

The statute laws governing executions, read as follows:

“Immediately after the entry of the final judgment, the successful party may demand a writ of execution.

“A writ of execution shall be directed to the sheriff, commanding him to seize and expose to sale, the lands, goods and chattels of the party against whom the judgment has been rendered until he has raised the sum of money named in the judgment, and interest; and if he can not find any lands, goods and chattels of the said party, to arrest him and bring him before the court or some judge thereof to be dealt with according to law, unless he pay to the said sheriff the said sum of money and interest or show him property to seize and sell for the same.” (Lib. Stat., ch. XVIII, secs. 1, 2.)

It is obviously then, the duty of the judge before whom a defendant is taken under such an arrest to deal with him according to law; that is, to require him to satisfy the judgment or to imprison him until payment is made.

In consequence of these irregularities, the judgment of the said Territorial Court of Grand Cape Mount should be reversed, and it is so ordered.

*Arthur Barclay*, for plaintiff in error.

*E. J. S. Worrell* and *T. E. Bey-Solow*, for defendant in error.

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JULIA A. DOSSEN by and through her husband James J. Dossen,  
S. D. Ferguson and L. Manoah Ferguson, heirs of S. D. Ferguson,  
Plaintiffs in Error, *v.* REPUBLIC OF LIBERIA,  
Defendant in Error.

ARGUED NOVEMBER TERM, 1923. DECIDED JANUARY 31, 1924.

*Johnson and Witherspoon, JJ.*

Any form of expression in a devise which shows an intent to give the whole title will be held sufficient to pass the title in fee-simple.

Mr. Justice Johnson delivered the opinion of the court:

In re the Estate of the late Sarah E. Ferguson, deceased—Application for Escheat. This case originated in the Circuit Court of the first judicial circuit, Montserrado County; being an application by the county attorney of Montserrado County, praying the judge of the said Circuit Court to cause a parcel of land in the City of Monrovia, owned by the said Sarah E. Ferguson, to be escheated to the Republic, under the existing laws of the Republic, for want of legal heirs.

The said plaintiffs in error, made their appearance in court and laid claim to the real estate of the said Sarah E. Ferguson, and after hearing the cause, the judge of the said Circuit Court decreed, *inter alia*, that the said property, lot number 249, in Monrovia, with all the appurtenances thereto belonging revert to the Republic of Liberia, under the statute laws of Liberia.

To this judgment, counsel on behalf of the said heirs of S. D. Ferguson took exceptions, and has brought the case up to this