NEW YORK, Alias KARPEH, Appellant, v. **SEABREEZE**, Alias NABUAY, Appellee.

1. The withdrawal of his appeal-case by appellant constitutes a waiver of his right to appeal.

2. It is error for a trial court, having once given judgment, and an appeal from said judgment having been taken and completed, to resume jurisdiction over the cause in which said judgment was given.

3. A court may resume jurisdiction over a cause in which a judgment has been rendered, during its sitting but not after its adjournment.

4. Errors in the trial of a cause can only be corrected by an appellate court on a writ of error or bill of exceptions.

Motion to set aside Judgment. On appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.

This is a case coming up to this court on a bill of exceptions to the judgment of the Court of Quarter Sessions and Common Pleas, Montserrado County, December term, A. D. 1908, sitting in chambers.

It appears from the records that the case emanates from a decree of a former case entitled—"New York, alias Karpeh, Plaintiff, versus Seabreeze, alias Nabuay, Defendant," on a writ of habeas corpus, for the detention of his wife, tried and determined by the said court below, September term, A. D. 1908, sitting in chambers, in which Seabreeze was worsted by a decree given in favor of New York.

From the records of this case as filed in the Supreme Court, it is discovered, that after the judge below had rendered a decree in favor of New York, Seabreeze became dissatisfied, and prayed an appeal to the Supreme Court for review on a writ of error that he might receive substantial justice.

The appeal was granted and completed and filed in the Supreme Court, he, Seabreeze, complying with the law regulating appeals ; but failing to present his appeal, withdrew it. See certificate of the Supreme Court which reads as follows *:—*

Clerk's Certificate.

"Chief Judicial Department, Clerk's Office,
Monrovia, November 8, 1908.

I do hereby certify that the writ of error in the appeal of the case Seabreeze alias Nabuay, versus New York alias Karpeh,habeas corpus, has been withdrawn by Atty. N. B. Seton for Seabreeze, alias Nabuay aforesaid.

Sgd. L. M. Ferguson,
Clerk Sup. Ct. R. L."

On this point, this court says that the said Seabreeze, had a perfect legal right to except to the decree of the judge below, and appeal from said decree according to the law of Liberia made and provided; but this court further says, that the said Seabreeze, committed a waiver when he withdrew his appeal, thereby debarring himself from receiving the justice he was seeking. And again, in the withdrawal of his appeal, what becomes of his obligation taken upon himself by bond and security to prosecute the appeal ? Should not the said bond be forfeited ? Most assuredly; for it was given of his own volition.

Again, it is disclosed from the records in the case that after the elapse of four months from the trial of the case, and after Seabreeze, the defendant, now appellee, had completed his appeal to the Supreme Court, that he withdrew the same, as is already shown by the certificate of the clerk of the Supreme Court; and filed in the court below a motion to set aside judgment. And, notwithstanding the judge below being cognizant of the facts stated above, in reference to the time of four months elapsing from the adjournment of his court, to the filing of the motion, as well as of the appeal, which he granted, and had signed the bill of exceptions, still he entertained the said motion, sitting in chambers, December, A. D. 1908; heard the argument *pro* and *con,* and reversed his previous decree in favor of New York, and rendered a decree in favor of Seabreeze, ruling New York to pay all cost.

Again, referable to the second suit of New York against one Woleh for the detention of his wife, Boteh, which suit appellee, as well as the judge below, accepted as evidence that New York admitted that he had no claim against Seabreeze for the detention of his wife, this court says that it has no knowledge of such a suit and the trial of the same, there being no record of said suit before this court as evidence.

Neither has it been shown in the records that this wife of New York was not prized twice : once by Seabreeze and again by Woleh, or that Woleh was an aider and abetter in the prize by Seabreeze. Any testimony therefore, of the sheriff, or of New York himself, as is found

stated before the judge below, has no legal bearing on the case now before this court, and this court will not admit it as sufficient evidence for the setting aside of the judgment in the previous case ; and sustaining the motion for same, reverse said judgment, and decree in favor of Seabreeze. Now then, this court says, 1. That Seabreeze in abandoning his appeal from the September term of the court, 1908, which he had taken and completed, committed a waiver. For while he had a perfect legal right, according to statute law of Liberia, to except to the decree of the judge below, and appeal to a higher judicature for redress, still when he had done so, and subsequently abandoned his right, he relinquished, or refused to accept the right. "In practice, it is required of every one to take advantage of his rights at the proper time; and neglecting to do so will be considered as a waiver." (2nd Bouv. L. D. under the head of Waiver.)

The defendant, now appellee, having waived his right, was debarred from offering a motion to set aside judgment. He should have prosecuted his appeal taken, as in duty bound he was, after filing bond to the effect of indemnifying the plaintiff if he failed so to do.

2. By entertaining and sustaining the motion of the appellee to set aside judgment, the court below erred, for he had lost jurisdiction in the case after final judgment had been rendered, an appeal granted and taken, and the adjournment of the court effected. This court is at a loss to know by what law, statutory or common, was the court warranted to resume jurisdiction in the case under such circumstances. And further this court fails to see the legal congruity in the court rendering one decree in favor of the plaintiff, now appellant, in the previous case of habeas corpus, and rendering another in favor of the defendant, now appellee, in the case of motion to set aside judgment, with the substantial evidence as a basis, even if the court had had jurisdiction.

This act on the part of the court below is inconsistent and illegal. It had lost its jurisdiction, and could not resume it. It is a maxim in law "that the act of a court beyond its jurisdiction is a nullity." (2nd Bouv. L. D., Maxims.)

This court knows that the law, both statute and common, warrants a court to resume jurisdiction in cases; but the principle is that such privileges may be taken advantage of during the *sitting* of the court and not *after its* adjournment. (See 2nd Bouv. L. D., under the head of Judgment.)

We quote : "All the judgments, decrees, or other orders of the courts, however conclusive in their character, are under the control of the court which pronounced them during the term at which they are rendered or entered of record, and may then be set aside, vacated or

modified by the court; but after the term has ended, unless proceedings to correct the errors alleged have been taken before its close, they can only be corrected by writ of error, or appeal, as may be allowed in a court which by law can reverse the decision."

For the reason above given the court below did not only violate the law but placed itself in a position not to understand itself; and mystified matters to that extent, that this court does not see its way sufficiently clear to confirm either decree.

Therefore, this court reverses the decision, or judgment of the court below, and remands the case under peremptory orders to be taken up *de novo* and tried at the March term of said court, 1909; and that all cost follow until the final conclusion of said case.

The clerk of this court is hereby ordered to issue notice to the judge below as to the effect of this judgment.

Given under our hands and seal of court, this 10th day of February, A. D. 1909.
By the Court.