

S.A. BENSON, Appellant, vs. J.J. ROBERTS, Appellee.

LRSC 4; 1 LLR 32 (1865) (1 January 1865)

[January Term, A. D. 1865.]

Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.

Libel against the reputation.

1. The 15th section in the Bill of Rights relates to criminal prosecutions in actions for libel and slander.

2. Where the truth of a fact stated is denied, it is an issue of fact, but where the right in law is denied, it raises an issue of law.

3. Where a mixed question of law and fact is presented, it is tried by jury under direction of the court. The opinion of the court is evidence to the jury of the law of the land. The question whether certain written matter is libellous, is a question for the court to decide independently.

The court before proceeding to the points upon which the case is pending will state briefly the nature and rules for the management of a suit at law. A suit at law is simply a legal examination of matters in dispute between two parties, and in which case the plaintiff alleges that he has been injured by reason of the defendant's conduct and prays that his country by due course of law inquire into the same and the matter be determined accordingly. Hence the importance of referring such matters of dispute to some competent tribunal for judicial examination and adjustment.

To this end, however, it is required by law that the facts alleged by either party be substantially proved by the testimony of competent witnesses, and the injury done determined by the law governing and controlling such cases particularly. It is true in the early stages of our society, when our reputation was only known at home, and our property but little valued, every case was decided on its own circumstances by the exercise of common sense. Notwithstanding, the court admits the fact that, by chance, justice may be well administered by impartial judges, without a knowledge of any of the established rules of law, yet the court must say that as our society advances in wealth and refinement, our relative rights become more complicated and difficult. Doubtful questions arise daily, which cannot be easily decided by the exercise of common sense without infringement upon the constitutional rights of one of the parties to the suit. And for this reason the court says that for the perpetuation of the government and the better order of society, it would be well for those who have never pretended to study law as a science, who know nothing of the spirit and reason of law, and who must consequently be ignorant of the natural foundation of justice, to learn always to respectfully bow to the decisions of courts of justice, reserving always their constitutional rights. These ideas will lead us to consider the points in question particularly.

And first, it is the opinion of the court that the latter part or clause of the fifteenth section of the Bill of Rights relates particularly to criminal prosecutions for libel, and that a mere law question was raised as to this point, which ought to have been settled by the court below. For it is very plain to the understanding of the court that every contradiction raises an issue. If the truth of the fact stated is denied, it is an issue of fact. But if, on the contrary, the right in law is denied, it is an issue of law. Or if one party in pleading denies the other party's right in law, the party claiming under the law is bound to assert his right in law, or he will be taken to admit the want of law to support his point, in which the question is involved. But

if the party claiming under the law asserts his right in law, an issue of law is raised. And it is for this reason that the court must determine all questions of mere law. And it is the duty of the court in all mixed questions of law and fact, to expound the law to the jury, and direct them in the investigation of the matter under their consideration. The opinion of the court shall in all cases be the evidence to the jury of the law of the land, the jury being compelled to bring their verdict accordingly.

Thus it is clear, as will be seen emphatically expressed in the fifth section of the seventh chapter, Liberia Statutes, first book, page twenty-eight, that in all cases whatever (criminal or civil) the opinion of the court to the jury is the evidence of the law of the land. And this is quite reasonable from the fact that the trial of all mixed questions of law and fact shall be by a jury, with the assistance and under the direction of the court. The two laws harmonize in principle, and the reason for it is plain without commentation. But if the court mistake the law, that is, the meaning and spirit of the law, the party claiming the benefit thereof where his rights are thereby infringed upon, is consequently entitled to an appeal, because the evidence of the law emanated from an erroneous opinion of the court. Because no one will doubt the fact that if the evidence of the law to the jury is erroneous, the conclusions drawn therefrom are erroneous also. Therefore, if the jury received the impression from the court that they were the judges of the law and fact, they were misled; because the jury is to try all mixed questions of law and fact, and determine them, under the direction of the court. The word "under" is a preposition meaning "in subjection to," and the word "direction" is a substantive meaning "order, command, prescription." Thus it is clear, from the word used in the latter clause of the fifteenth section of the Bill of Rights (also from the words used in the third section of the seventh chapter, Liberia Statutes, first book), that the jury are not the judges of the law and fact, because the jury can only determine the law and fact according to the instruction of the court, or, in other words, according to the prescribed rules laid down by the court; otherwise an appeal lies from the verdict.

And secondly, the court ought to have decided the law questions (respecting libellous written words), since it was a question of mere law. If they were libellous in tendency, the Court ought to have instructed the jury to ascertain from the evidence whether the defendant could establish the truth of the allegations against the plaintiff, or that if the tendency of the words written were only by way of advice, or public information, to instruct the jury how far this right is guaranteed by the Constitution of the Republic of Liberia.

And thirdly, the court is of the opinion that two of the counts are bad from the fact that the defendant has sustained the allegations respecting lands.

The defendant is not responsible for the innuendoes written by the plaintiff. The law only holds him for his own acts. (See page 1, sections 1 and 2, Liberia Statutes, first book.)

And lastly, the verdict being general, that is, not leaving out the bad counts which appear upon the record, and the entire damage assessed having been given without specifying on which count the jury found their verdict, renders the verdict fatal. The entire damage in contract means the whole amount agreed upon by the parties to be forfeited, but it is not so in an action of damage for injury to the reputation. The whole or entire amount in this case means what you have contracted to pay on the assessment of a jury, by due course of law. This contract is the political or constitutional contract of every Liberian.

The entire damage, then, is the entire amount given by the jury, within the meaning of the law of the land. For it must be remembered that every party in a suit at law is under a constitutional contract to legally conduct his course, or, in other words, to seek his remedy by due course of law, otherwise he will

deprive himself of his legal advantages. The court doubts not that if this case had been regularly conducted the plaintiff may have had judgment on some of the counts ; but order and regularity do not appear upon the record. Therefore, since no good reason can be assigned for this irregularity, unless it be taken in a bad sense, as to the want of the right influence of the law, it is therefore the duty of this court to arrest the judgment in this case.

It is decreed by this court that the judgment of the Court of Quarter Sessions, Montserrado County, in the case of S. A. Benson, appellant, vs. J. J. Roberts, appellee, be reversed, with costs, and that the clerk of this court issue a mandate to the said court to this effect.