

T. T. BREWER, Appellant, vs. **THE REPUBLIC OF LIBERIA**, Appellee.

[January Term, A. D. 1900.]

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

Misdemeanor.

Indictment-Formal requisites of a valid indictment.

1. A motion in arrest of judgment will be sustained where the indictment is defective in material parts.

2. In a trial upon an indictment which was found not to contain a distinct and certain averment as to the place where the offence was committed and the specific title of the offence charged, it was held that the indictment was bad and that a motion in arrest of judgment should have been granted.

This is a case in which the Grand Jury of Maryland County indicted appellant, T. T. Brewer, for making an aggravated assault with attempt to shoot with a loaded revolver one R. T. Ellis, Deputy Sheriff of said County, between the first and thirtieth days of April, A. D. 1899, and who was arrested and tried by the Court of Quarter Sessions and Common Pleas, Maryland County, at its August term, A. D. 1899. The said appellant, being convicted of the offence by the jury, considered that substantial justice had not been meted out to him, whereupon he motioned the court below for arrest of judgment, for the following reasons as laid in said motion: First, "That the indictment is insufficient, vague and uncertain, obscure and indistinct, in that it does not set forth with certainty the place where the crime with which he is charged was committed." Second, "That the indictment should be so framed as to give a certainty as to the nature of the crime or misdemeanor of which he is charged."

The court below not sustaining appellant's motion for arrest of judgment, he, the appellant, then submitted his exceptions to the rulings of the court, embodying the points raised in his motion, together with exceptions to the verdict of the jury, as being contrary to the law and evidence in the case ; also, to the judgment of the court, upon the ground that according to the wording of the judgment, in his opinion, it does not emanate from any court, but simply from the "Judicial Department, August term, A. D. 1899," which does not correspond with the indictment upon which he was arraigned ; and also, that the judgment inflicts a punishment for felony and not for misdemeanor. The case is therefore brought up to this highest Court of Appeal, upon the said exceptions, by the appellant, for review.

The court will now proceed to consider the indictment, ruling, judgment and evidence in the case, and to give its opinion on the same.

Bouvier defines an indictment to be "a written accusation against one or more persons for a crime or misdemeanor, presented to and preferred upon oath or affirmation by a grand jury legally convoked," and he lays down as the essential requisites of a valid indictment, first, that the indictment be presented to some court having jurisdiction of the offence stated therein; secondly, that it appear to have been found by the grand jury of the proper county or district; thirdly, that the indictment be a true bill and signed by the foreman of the grand jury; fourthly, that it be founded with sufficient certainty. For this purpose the charge must contain a description of the crime or misdemeanor of which the defendant is accused, and a statement of the facts by which it is constituted, so as to identify the accusation, etc.

The formal requisites are, first, the venue, which at common law should always be laid in the county where the offence has been committed, although the charge be in its nature transitory, as a battery, etc. (Bouv. Law Dict. Vol. i, p. 789, under the head "Indictment;" Blackstone Corn. Book 4, pp. 306, 307.)

Now, then, on examination of the record in the said case, the court finds that the indictment of the grand jury is defective in two essential points, namely, in that it is not framed with sufficient certainty, and that the charge does not contain a certain description of the misdemeanor of which the defendant, now appellant, is accused and a statement of the facts by which it is constituted, so as to identify the accusation. The general statement, "an aggravated assault with attempt to shoot," is not sufficient to constitute the crime or misdemeanor, since it does not convey to the mind the nature of the offence in law.

It is the opinion of this court, therefore, that the court below erred in refusing defendant, now appellant, an arrest of judgment. "Any want of sufficient certainty in the indictment (as in the statement of place, where material) of the person against whom the offence was committed, or of the facts and circumstances constituting the offence, or otherwise, which is not aided by the verdict, is a ground for arresting the judgment. In criminal cases an arrest of judgment is founded on exceptions to the indictment. (Bouv. Law Dict. Vol. i, p. 185: "Arrest of Judgment.")

And further, there is manifest error in the ruling of the court below, where it assigned as a reason for refusing to sustain the motion of the appellant for arrest of judgment

that "to admit an arrest of judgment would further work corruption in the Judiciary Department;" seeing that in the opinion of this court the motion for arrest of judgment was within the scope of the law and supported by its spirit and meaning. This court is also of the opinion that the judgment of the court below should not be affirmed, for the reason that it inflicts a punishment not compatible with law and justice in such cases made and provided, for the Constitution of Liberia declares that "excessive bail shall not be required, nor excessive fines imposed, nor excessive punishment inflicted." In this instance the punishment was a fine of fifty dollars, disfranchisement, and imprisonment in chains for two weeks with hard labor, which the court says is suitable to crimes and not to a misdemeanor.

The court further says that the court below erred in rendering said judgment, for the reason that the verdict of the jury was manifestly out of accord with the evidence in the case, which evidence shows conclusively that the appellant acted in self-defense against the said R. T. Ellis.

For the above reasons this court adjudges that the judgment of the court below is reversed. The clerk of this court is hereby ordered to issue a mandate to the judge of the court below, to the effect of this judgment.