

**JAMES L. BROOKS**, Appellant, vs. **THE REPUBLIC OF LIBERIA**, Appellee.

**LRSC 1; 1 LLR 284**

[January Term, A. D. 1896.]

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

Attempt to Murder.

1. In criminal prosecutions the party upon whom the injury or wrong constituting the offence charged was committed, is not disqualified as a witness on account of interest; he is, on the contrary, the best evidence which the case will generally admit of.
2. A party cannot justify his acts of violence upon another, where it appears that he went beyond the necessary and rational bounds.
3. A verdict and judgment for a greater offence than was proved at the trial is illegal; it is the offence proved at the trial and not the charge preferred that the court has authority to pass upon.

This case was brought to the Supreme Court for review at its January term, A. D. 1895, from the Court of Quarter Sessions and Common Pleas, Sinoe County, by the appellant, on a bill of exceptions, but it was deferred for review until the present term. The court having now carefully considered the record of the case, is prepared to render its decision. But before doing so it may be well to consider and dispose of the several points in the bill of exceptions as they stand in their order.

1. The appellant objects to the ruling of the court below in admitting J. H. Strong as a witness in the case, upon the ground of interest, he being the party injured, and he quotes, to sustain his objection, I Bouvier's Law Dictionary, pp. 54-9 and 738-9 (Interest and Evidence), and Liberia Statutes, Bk. I, Chap. 12, sec. 9. On this point the court takes occasion to say that the judge below did not err in giving said ruling, inasmuch as the case before him was of a criminal nature; and the said J. H. Strong, though he was the party directly injured, yet he was not, in the sight of the law, the interested party, the issue being between James L. Brooks and the Republic of Liberia. Instead of being the party interested, in a legal sense he was to all intents and purposes the best witness that the nature of the case admitted of. The law cited by appellant is not applicable. (Lib. Stat. Bk. 1, p. 52, sec. 8; Bouv. Law Dict. p. 545.)
2. This court further adjudges that appellant's plea of justification is not well founded, because the assault committed by the said J. H. Strong was not sufficient provocation to justify appellant to cut him on the neck or throat, thereby doing him, the said J. H. Strong,

great bodily harm. Such an act on the part of appellant was excessive and bore no proportion to the assault. And further, the law cited by appellant to sustain his plea of justification (II Bouv. Law Dict.: "Son Assault Demesne") in the opinion of this court is not at all applicable, but rather sustains the contrary. (I Arch. Crim. Prac. & Plead. pp. 54 and 55, "Self-defense;" III Blackstone, top p. 619, last clause of sec.1.)

3. The third point in appellant's bill of exceptions does not claim the attention of the court, for the reason that no such paper as referred to in the bill of exceptions appears in the record of the case; and in answer to a mandate of this court to the judge below, the court is informed that no such paper was filed in the office of the clerk of said court below. This court, therefore, has no jurisdiction in the matter.

4. Referring to the fourth point, in which appellant says His Honor erred in not sustaining the motion to arrest final judgment in this cause against him, because it was clearly proven by the witnesses that it was an affray gotten up under a sudden quarrel. This court says, that while it may be considered just and right that the judge below should render final judgment upon the verdict as rendered by the jury in the case, still it appears strange for such a judgment for attempt to murder to have been rendered, based on such a verdict, when the record does not show that there was deposed before the said court below, any evidence to sustain the charge of attempt to murder. And this court further says that the offence committed by the said James L. Brooks, appellant, is not, according to law, as viewed by this court, an attempt to murder, but rather an assault and battery resulting in great bodily harm, and the court below should have so instructed the jury in his charge as to influence them to bring in a verdict more compatible with the law and facts in the case. While the law contemplates that all transgressors shall be punished, still it is not the spirit and intent of the law that the punishment of one offence should be meted out for another of less magnitude.

In view of all circumstances connected with the case, as well as the law and facts, this court will now proceed to render such a judgment in the case as the court below should have rendered. It appearing to this court, from the record of the case, that the said James L. Brooks is guilty of an infraction of the peace by committing an assault and battery upon the person of the said J. H. Strong, which resulted in great bodily harm, therefore this court adjudges that the judgment of the judge below be set aside, and made null and void ; that the said James L. Brooks, appellant, is hereby fined the sum of one hundred dollars, to be paid within sixty days from the date of this judgment, and ruled to pay all costs of this action; and on failure to pay said sum of one hundred dollars, he shall be confined in the

common county jail for the term of twelve calendar months, and to work in irons during said term.

The clerk of this court is hereby ordered to issue a mandate to the judge below, commanding him to carry into effect the decision of this court.

**Key Description: Assault (Provocation)**