

PRINCE R. FLOWERS and **ALBERT HEAD**, Plaintiffs in Error, vs. **REPUBLIC OF LIBERIA**, Defendant in Error.

LRSC 2; 1 LLR 334

[January Term, A. D. 1899.]

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

1. It is part of the jurisdiction of a court to pronounce sentence in cases which by laws are made cognizable before it.
2. Upon the trial of an indictment for an offence at the common law it was held to be unnecessary that there should exist statutes relating to the offence and the punishment attached, in order to make it cognizable before the criminal courts of Liberia; the rules of American and English common law prevail and are enforceable in Liberia unless where repugnant to the provisions of some statute or unsuited to the form of government.
3. A judgment inflicting excessive fines and punishments is repugnant to the provisions of the Constitution.

This case is before this court upon a writ of error. The plaintiffs in error before this court were jointly indicted and tried at the March term of the Court of Quarter Sessions and Common Pleas of Montserrado County, for committing an "assault and battery with intent to do grievous bodily harm," to which charge, they having plead guilty, judgment was pronounced against them by the court below, in which they were severally sentenced to fine and imprisonment. The counsel for the defendants, now plaintiffs in error, believing that the court below erred in its judgment rendered in the case, applied to this court for a writ of error and removed the case before this court for review.

Upon a careful examination of the record before us in the case, we find that the errors assigned in plaintiff's assignment of errors, raised the question with respect to the legal right and authority of the court below to sentence the defendants, now plaintiffs in error, to the punishment of fine and imprisonment, as is set forth in the said sentence. This point, in fact, appears to be the only one raised in plaintiff's assignment of errors, and therefore is the only error in the proceedings of the court below to which the attention of this court has been called.

We shall now proceed to consider the point submitted for our consideration. To question the right of the court below to inflict punishment in offences tried before it and over which it has legal jurisdiction, would seem to us to be questioning the most essential office of such a court, for if after hearing a cause brought before it for trial, over which it has been given jurisdiction by law, there should remain an inability or want of authority to pronounce the conclusions of law in the premises, it is then devoid of that essential feature which is absolutely necessary to make it a court in the true meaning of the word.

The Statute of Liberia establishing the Courts of Quarter Sessions and Common Pleas in the several counties of the Republic have conferred upon these courts original jurisdiction in cases of crimes and misdemeanors above the degree of petit larceny. (Rev. Stat. of Liberia, Bk. 1, p. 121, sec. I.) It was urged by the learned counsellor for the plaintiffs in error, that in the absence of statutory enactments defining certain crimes and misdemeanors and attaching to them specific penalties, the criminal courts of Liberia have no legal authority to punish such offences. And this position is also assumed in the error assigned for the consideration of this court. That the Legislature of Liberia has adopted a criminal code which comprehends and embraces the various crimes and misdemeanors known to the common law, we feel no hesitancy in asserting as a fact. In an act to amend an act entitled "An act defining certain crimes and relating to the punishment of crimes," we have the provision for the code just referred to, set forth at large : "It is enacted by the Senate and House of Representatives in Legislature assembled, (Section 1) That so much of the seventh section of an act entitled, An act defining certain crimes and relating to the punishment of crimes as reads, 'Such parts of the common law set forth in Blackstone Commentaries as may be applicable to the situation of the people, except as changed by the laws now in force, and such as may be hereafter enacted, shall be the civil code of laws of the Republic,' be so altered and amended as to read that Blackstone Commentaries as revised and modified by Chitty or Wendell, and the works referred to as the sources of the municipal or common law in Kent's Commentaries on American Law, volume first, shall be the civil and criminal code of laws of the Republic of Liberia, except such parts as may be changed by the laws now in force and such as may hereafter be enacted; and all laws or parts of laws conflicting with the provisions of this act be and the same are hereby repealed." (Act of Legislature of Liberia, 1860, p. 73.)

Here is an adoption not only of the Commentaries expressly mentioned in the above cited act, but the numerous works referred to by Kent in his treaties as constituting the sources of the municipal and common law of America are also, by virtue of the above cited act, made the civil and criminal code of Liberia, excepting where they are changed by the

Statutes of Liberia or are not adapted to our form of government. Therefore, while the Statutes of Liberia are silent and do not declare what punishment the court should inflict in such cases as the one now under consideration, yet by the adoption of the laws referred to in the Statute of 1860, the courts of this Republic have a wide and almost boundless field in which to seek for all legal light and authority that they may require in the adjudication of cases as well as in the punishment of offences.

It appears to us very clearly that ordinarily the object of all trials in criminal courts is to relieve the innocent and to punish the guilty; and we feel warranted by law in enunciating this rule: that where the right to try a cause is conferred upon a court, the court also acquires thereby the power and authority—if not expressed, then implied—to declare what are the conclusions of law upon facts found or admitted in the premises.

Having shown that the court below did not err by taking jurisdiction of the offence charged against the defendants, now plaintiffs in error, and that it was its duty and fully within its purview to pronounce sentence or judgment showing the conclusion of law upon the facts admitted by the defendants, now plaintiffs in error, we shall next proceed to ascertain whether or not the sentence delivered in the case by the court below was warranted by law. By reference to the record in the case we find that the defendants, now plaintiffs in error, were charged in the court below with committing an assault and battery with intent to do grievous bodily harm, which offence, under the common law of Liberia, is a misdemeanor.

"A grievous bodily harm," says Mr. Archbold, "is a generic term and may comprehend severe wounds or hurts of various kinds; but they are not required to be such as are likely to produce permanent injury." (1st Archbold's Criminal Practice and Pleading, p. 872.) The punishment attached to this offence by the common law adopted by this Republic is fine or imprisonment, or both; and in all cases of assault occasioning actual bodily harm, the court, if it order imprisonment, may order the offender to be kept at hard labor during the whole or any part of the term. (1st Archbold's Criminal Practice and Pleading, top p. 927.) The sentence pronounced in the case by the court below, so far as it appertains to the nature of the punishment in such cases, will be found to be strongly upheld and supported by the authorities adopted by Liberia. This court entertains no doubt in its mind whatever on this point. Another point, however, presents itself very forcibly to the mind of this court, and it is one which we opine is essential to the determination of the cause. We refer to the degree of punishment pronounced against the defendants, now plaintiffs in error, by the court below. The Constitution of Liberia declares that "excessive bail shall not be required, nor excessive fines imposed, nor excessive punishment inflicted." (Const. Lib. sec. to.) This section of our Constitution seems to have been introduced for the purpose

of relaxing in a measure the rigor of the law, as well as to shield and protect the person, liberty and property of the people of Liberia from excessive punishment and fines.

This court, in calmly and maturely weighing all of the circumstances surrounding this case and the nature and magnitude of the offence charged, is firmly of the opinion that while it was legal and undoubtedly within the purview of the court below to fine and imprison the defendants, now plaintiffs in error, as the penalty for the offence committed by them, yet this court is of the opinion that the sentence pronounced in the case by the court below is excessive with respect to both the fine and the term of imprisonment. Therefore, in order that substantial justice may be had in the premises, this court will proceed to give the sentence which, in its opinion, the court below ought to have given.

This court adjudges that P. R. Flowers be imprisoned in the county jail of Montserrado County for the space of three calendar months, and that he forfeit and pay to the Republic of Liberia a fine of one hundred dollars lawful money of this Republic; and that Albert Head be imprisoned in the county jail of said county for the space of one and a half calendar month, and that he forfeit and pay unto the Republic of Liberia a fine of fifty dollars lawful money of the Republic. The clerk of this court is hereby authorized to issue a mandate directed to the judge of the court below informing him of this decision.

Key Description: Assault and Battery (Evidence in general)