T. L. WARNER, Appellant, vs. THE REPUBLIC OF LIBERIA, Appellee.

LRSC 4; 1 LLR 525

Conspiracy.

[January Term, A. D. 1892.]

Before His Honor C. L. Parsons, Chief Justice, and the Honorable Associate Justices.

MOTION TO DISMISS APPEAL.

The Republic of Liberia, appellee in the above entitled cause, by Henry W. Grimes, Attorney General of said Republic, respectfully motions this honorable court to dismiss this case for the following reasons: First, because there is a provision made by the laws of said Republic for criminal cases to be brought to this honorable court by appeal. Second, and also because T. L. Warner, the appellee in this case, does not appear, from the record filed in this case, to have tendered a bill of exceptions and prayed an appeal in the court below. Third, and also because the bond filed in this case as appellee's bond is not such a bond as the law requires, as it does not bind appellant to indemnify the appellee from all injuries arising from the appeal and to comply with the judgment of this honorable court, or any other to which said case may be, removed. Fourth, and also because the record in this case is imperfect, as no writ of arrest or other process appears in said record. Respectfully submitted,

THE REPUBLIC OF LIBERIA, Appellee, By HY. W. GRIMES, Atty. Genl. R. L.

COURT'S RULING

The court here says, that the question raised in the motion of the Attorney General to dismiss the case has had its consideration, and the court takes pleasure in further saying that there are involved in the motion questions which have been frequently before it, and which were the subjects of discussion twenty-five years ago. Coming directly to the merits of the motion, however, in regard to the right to appeal upon a bill of exceptions in criminal cases, we do not hesitate to say that it is our duty to consider what was the intention of the framers of the Constitution, by incorporating those acts of the Commonwealth with the laws of the Republic of Liberia. In noticing these, together with the Constitution of the Republic of Liberia, we find in the idea of the Constitution that the right of appeal in civil and criminal cases is one of the fundamental prerogatives upon which the liberty of the people stands. To do away with this idea would be to set aside the dearest provision of the fathers, made in the bulwark of our national fabric, which serves as a preventive against

oppression and a security to the enjoyment of civil liberty; without which, the people must become dwarfed in manhood and enterprise, and as a consequence energy, thrift, enterprise and noble aspirations will cease to exist and flourish under our national flag, and will seek some other land for encouragement and protection. The framers of the Constitution, knowing this, and considering our situation, disadvantages, and our limited knowledge of law and of political government at that time, sought to make our national road to greatness plain and easy, and to be understood by the whole people; hence, by the Constitution, they clothed the Supreme Court with appellate jurisdiction in all cases of appeal.

The language by which the right of appeal to the Supreme Court is secured may not be mistaken by the simplest mind, if it be free from prejudice, hatred or influence of bribery. And it is also very clear that the fathers, in making the Statute of Appeals, intended it as the proper step by which both civil and criminal cases of appeal should find their way to the Supreme Court. This conclusion we come to from the fact that from the earliest existence of Liberia, both lawmakers under the authority of the Commonwealth and lawmakers under the Constitution of the Republic of Liberia, who knew best their intention in constructing the law, in their practice as lawyers before the courts, in both civil and criminal cases of appeal, followed the direction of the Statute of Appeal, to which we alluded. It is therefore the opinion of this court that appeals in criminal cases lie to the Supreme Court upon bills of exceptions, and a denial of the right would be gross injustice.

It is scarcely necessary for us to say that when several parties are indicted in one indictment they may make common defense, or elect to be tried separately; and if the trial be joint, all should join in the plea or defense, and in case an appeal be prayed, the bill of exceptions should embrace the names of all the parties appealing, however many there may be. On inspecting the record in this case we find a bill of exceptions purporting to be tendered by one F. J. Payne alone, thereby creating a non-joinder of the appellants in this case. This irregularity is not cured by the signature of the judge to said bill of exceptions. Regularly a bill of exceptions should be so construed as to come within the purview of the statute, and therefore should in all of its parts set forth with certainty the names of the parties thereto. This court is therefore of opinion that this point raised in the motion is of legal foundation.

This court therefore adjudges that the appeal be dismissed, and hereby directs that the clerk of this court make known the same to the court from which the appeal was taken.

Key Description: Appeal and Error (Certificate as to grounds; Effect of subsequent proceeding in court below; Effect of taking appeal or other proceeding; joinder of proceedings, and double appeals or

other proceedings; Presentation and reservation of grounds for review; Statutory provisions and remedies)