ROBERT R. JOHNSON, Appellant, vs. THE REPUBLIC OF LIBERIA, Appellee.

LRSC 7; 1 LLR 75 (1874)

[January Term, A. D. 1874.] .

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

A written document offered as evidence is not admissible until its identity is shown; its identity must be shown before and not after its admission.

In a prosecution against an officer of the treasury for default, a witness will not be allowed to give evidence of a collateral character before proof of a default has been established.

The proper remedy against a public officer, who by statute is required to give bond for the faithful discharge of his duties, is an action of contract for the breach of the conditions of the bond.

First. In reviewing this case we find a misstatement of the record in the first point set out in appellant's brief, for the record does not show that a motion was made to dismiss the case for irregularity and for being before the court contrary to law, as it is stated in appellant's brief. It shows that the appellant's counsel moved for a dismissal of the case upon the ground that the appellant had not a correct copy of the account current, and that the copy given him by the clerk, five thousand nine hundred and forty dollars and eighty-five cents, was the amount therein stated; and at the trial the clerk read from the original the amount of seventy-five thousand

nine hundred and forty dollars and eighty-five cents. The merits of this motion having been argued by the counsel on both sides, the court below ruled that the motion to dismiss the case had not been sustained; and ordered the same to trial. And as a reason for its ruling, says the law does not make it the duty of appellee to give the appellant a copy of the account filed: and therefore the appellee cannot be made to suffer on account of the appellant obtaining an incorrect copy from the clerk. The ruling of the court below upon this motion is correct.

We shall now proceed to the second exception under consideration by this court. The question was asked witness John R. Freeman, comptroller, by the appellant's counsel: "Has at any time within the last two years the correctness of your bookkeeping been questioned in the treasury department?" This was objected to by the appellee's counsel, and the objection was sustained by the court below. This ruling was an error of the court, because the witness was comptroller, an officer connected with the treasury department, whose duty it was to examine and to see that correct accounts of all public officers were kept, and that proper and lawful entries were made of the same. For it does not alter the case, whether the comptroller came into that office after the transaction of Robert R. Johnson as treasurer had taken place, or before;

because the law supposes that the records or entries, properly kept, are evidence of all public transactions.

The third exception we have noticed, is that taken to the ruling of the court below upon the objection made by appellee's counsel to the question put to witness H. W. Dennis, secretary of the treasury, by appellant's counsel: "Was this suit brought at your instance?" Upon the objection made to this question, the court ruled that it is sustained, which ruling is correct, because the question is irrelevant and involves an independent issue, which can be entertained only when tendered in a special plea, or upon a motion properly made before the court.

Fourth. The exception taken by appellant's counsel to the admission of written document number one as evidence in the case, before it was identified, is well taken, and the court below erred in thus admitting it: because the identity of the document was essential to the proof of its character and authenticity, which ought to have been first established before it was admitted in evidence against the appellant. For if the position be taken that the document was identified after its admission, it would not alter the fact that the law question first raised as to its admissibility still remains undecided by the court below. And this must be the proper conclusion drawn from the fact,—that the court did after admitting the

document see that it was a legal necessity to have it identified, and thus it was done.

The fifth exception under consideration is the objection made by the appellant's counsel to the account current as evidence to prove the appellant's indebtedness to the Republic, which exception is well grounded; notwithstanding, the court below erred in ruling out the account current upon an issue that was not raised before it. The issue raised is that the account current has not been identified, and has not the date of its identity, therefore the court ought not to have ruled it out upon the ground that it cannot be evidence to prove itself.

The sixth exception is to the ruling of court upon the objection made by appellant's counsel to the reading of the Acts of the Legislature of 1872—1873. Upon this point I say the court had a right to question it as to its legality, but the court's duty was to expound to the jury the character of the same, and the jury decide upon its credibility and its effect.

The seventh exception under consideration is the objection made by appellee's counsel to the question put by appellant's counsel to witness H. W. Dennis, secretary of the treasury, as to whether or not he found the books kept by the comptroller to be reliable. The 78 objection made to this question ought not to have been sustained by the court

below, because the appellant ought to have been allowed to prove, if he could, that the bookkeeping in the treasury department was not reliable, and the statement made by the secretary of the treasury as to the appellant's indebtedness might not have had the same effect upon the jury as it did.

The eighth exception is to the ruling of the court upon the objection made by appellant's counsel to the question put by appellee's counsel, as to whether William A. Johnson, registrar, had seen receipts given by appellant to the collector, Gordon, for more money than he, the appellant, has given the government credit for in his receipts. The court erred in overruling this objection, because it was well founded, the receipts themselves being the best evidence the case admits of, unless upon good proof and for reasonable cause it be shown that the receipts could not be had. Witness Johnson could only know whether he had seen receipts given by appellant for more money than he, the appellant, had given the government credit for in his receipts, from the receipts themselves; even taking the idea advanced by appellee's counsel, the receipts themselves are the best evidence the case admits of.

The ninth exception is to the ruling of the court upon the objection made by appellant's counsel to the question put by appellee to Wm. A. Johnson as to whether appellant did not

tell him, when he was acting as treasurer, that he, the appellant, had an amount of several hundred dollars on hand that he could not account for. The objection made to this question is well founded, and the court erred in overruling the same, because the fact of the appellant having an amount of money on hand is no proof of his indebtedness to the government; for the debt must be first proved, and then the presumption would reasonably follow, that the amount appellant could not account for, was the amount he did not give the government credit for.

This leads us to consider the last exception taken by appellant's counsel to the verdict of the jury, upon the ground that it is against the evidence and the law: and also appellant's motion for a new trial, which the court below refused to grant. And here we must say the verdict of the jury is against the law and ought to be set aside. .

And just here, the court regards it a duty to state that upon direction of the statute, all public officers and all other persons who are bound under a penalty to the Republic of Liberia may be properly and legally held to answer in an action of contract for a breach of the condition of the bond, except in cases otherwise provided fÓr by statute. Having thus expressed an opinion, we now proceed to render the judgment of the court.

The court adjudges that the judgment of the court of Quarter Sessions and Common Pleas of Montserrado County, rendered December term, A. D. 1873, is reversed and made null and void as against the said extreasurer, Robert R. Johnson; and the said Robert R. Johnson is hereby discharged from further obligation of said judgment; and that the appellant recover against the appellee all costs incurred in his appeal.