

ELIAS E. MIRZA, Appellant, v. **REPUBLIC OF LIBERIA**, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,
MONTSERRADO COUNTY.

Argued May 16, 1957. Decided June 14, 1957.

An indictment charging the crime of smuggling is triable in a Circuit Court and not in an Admiralty Court.

On appeal from a final judgment of the court below in a prosecution for the crime of smuggling, appellant's *motion* to dismiss the case and vacate the proceedings for want of jurisdiction was *denied*.

K. S. Tamba and *Momolu S. Cooper* for appellant. *Assistant Attorney General J. Dossen Richards* for appellee.

MR. CHIEF JUSTICE SHANNON delivered the opinion of the Court.

When this case was called for hearing, we were confronted with two motions : one from the appellee praying the dismissal of the appeal, and the other from the appellant asking "to dismiss the case and vacate the entire proceedings for want of jurisdiction in the court below of the subject matter." We decided to hear the latter first because it involves a basic jurisdictional issue.

This motion reads as follows in its body :

"Elias G. Mirza, appellant in the above-entitled cause, most humbly prays this Court to dismiss the entire proceedings and/or the case which led to his conviction in the court below for want of said court's jurisdiction over the subject matter of the cause, and to order appellant discharged and his bond returned to him, for the following legal reasons, to wit:

"Because, although the appellant was and is charged with the commission of the crime of smuggling, which under the statute laws of Liberia is cognizable solely in the Admiralty Division, yet, in direct contravention of said statute, the indictment and all the proceedings had in connection with said case were venued in the Law Division of the Circuit Court of the First Judicial Circuit, Montserrado County, as will more fully appear from a copy of the indictment and a copy of the final

judgment entered in said case by His Honor, Roderick N. Lewis, Circuit Judge presiding by assignment over the Circuit Court of the First Judicial Circuit, Montserrado County, sitting in its Law Division, hereto annexed and marked exhibits A and B respectively, and made a part of this motion.

"The appellant most humbly submits and contends that said court, sitting in its Law Division, had no jurisdiction over the subject matter; and hence prays that the entire proceedings be vacated by Your Honors."

Against this, the Republic of Liberia, appellee, filed the following resistance :

"The Republic of Liberia, appellee in the above entitled cause, denies the legal merits and efficacy of appellant's motion to warrant a dismissal of the case and submits the following reasons :

"1. Appellant's motion should not be entertained by this Court for the reason that, prior to the filing of his motion, appellee had filed a motion praying the dismissal of the appeal for want of jurisdiction over the appellee, in that the notice of appeal, by means of which this Court takes jurisdiction over the appellee, was, besides being defective, issued and served without statutory time. Appellee respectfully submits that her motion should first be heard and disposed of before any consideration can be given appellant's motion.

"2. The motion of appellant is legally untenable and unsound, in that, while it might be conceded that violation of the revenue laws is by statute generally cognizable before a court sitting in Admiralty, yet appellee contends that all such cases are of a civil nature, and filed in the Civil Law Court, and are conducted according to civil procedure ; but, where as in this case, the appellant, defendant below, was charged with the commission of an indictable offense—a crime—he was to be tried by a jury, and all indictable criminal cases are tried by a jury in the Law Division of the court, never in the Admiralty Division.

"3. Appellee further submits that the trial court did have jurisdiction over the subject matter of the cause—smuggling, since said offense is indictable, and the trial court was legally competent to try the case of smuggling, and the judgment rendered against appellant should not be disturbed."

The appellant, in the submission of his motion which is now under review, seems to have been influenced by the opinion of this Court in *Lee v. Republic*, 1 L.L.R. 184

(1884) , wherein this Court held :

"Cases of fraud or an attempt to commit fraud upon the revenue, are by statute solely cognizable before the Court of Admiralty."

In that case, it would appear that the appellant therein, Alexander Lee, was indicted by the Grand Jury of Sinoe County and tried before the Law Division of the Court of Common Pleas and Quarter Sessions for "violation of revenue laws" ; and when the case came up for trial, he entered a plea attacking the jurisdiction of the court and motioned it to dismiss the case; but the court ruled that it had jurisdiction, and proceeded to the trial of the case upon its merits, empanelling a jury which returned a verdict of guilty. Upon this verdict the court entered a final judgment.

The fundamental and basic law of the land—the Constitution—has particularly and substantially provided that no person shall be deprived of life, liberty or property but by judgment of his peers or the law of the land ; and further that all prosecutions for criminal offenses of the degree of felonies (in which category smuggling falls) must be upon indictment based upon presentment of a grand jury of the community in which the offence is allegedly committed. Both the criminal codes of 1900 and 1914, even though the former was repealed by provisions of the latter, expressly made smuggling a criminal offense to be tried upon an indictment founded upon a presentment of a grand jury— which offense in Montserrado County would be cognizable before the Circuit Court of the First Judicial Circuit, Montserrado County (Criminal Assizes) , which court has no admiralty jurisdiction as a result of its separation from the Circuit Court of the Sixth Judicial Circuit (Civil Law Court) .

It must not be overlooked that, at the time when *Lee v. Republic* was decided, there was no Criminal Code in existence in Liberia, so that the issue was determined under common law. In 1900 our Legislature enacted the first Criminal Code, which was repealed by the one of 1914; and each of these codes superseded what were known as common law crimes; so that smuggling, having been made a statutory offense under the existing code, and a felony at that, prosecution for it can be had only before the Criminal Assizes of the Circuit Court for the First Judicial Circuit, Montserrado County (Law Division) or before the other Circuit Courts of the Republic sitting in their respective Law Division& The contention, therefore, that the Criminal Assizes of the Circuit Court for the First Judicial Circuit, sitting in its Law Divison, lack jurisdiction to hear and determine prosecutions for smuggling, being an offense against the revenues of the country, cannot but crumble.

As a matter of fact, a Court of Admiralty is ordinarily without a jury, and therefore without jurisdiction in trying criminal cases. In cases involving the dispossession or deprivation of life, liberty and property, which can only be done by judgment of the accused's peers or the law of the land, there has been no showing that criminal prosecution for smuggling can constitutionally be conducted before an Admiralty Court.

Because of what has been said herein, the motion is denied ; and it is hereby so ordered.

Motion denied.