

TOM WALKER, Appellant, vs. THE REPUBLIC OF LIBERIA, Appellee.

LRSC 1; 1 LLR 186

[January Term, A. D. 1885.]

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

Mayhem.

1. A common law definition of mayhem, in the absence of a statutory definition, prevails in this country.
2. Where the verdict is 'at variance with the allegations laid in the indictment, it is good ground for arrest of judgment.
3. Where an injurious act has been committed on the body of any person a bad design and intention on the part of the perpetrator will be presumed. It is for the accused to show that it was otherwise and excusable.

There are several exceptions to the rulings of the court below presented to this tribunal for its consideration. The points in the bill of exceptions have had the careful attention of the court, though there are several therein embraced of little importance to the decision of this case.

We have no statute of this Republic defining the punishment of the offence of mayhem, hence under the authority of an act of the Legislature of the Republic, passed and approved in 1859, we have the common law for our guide; by which mayhem is defined to be the act "whereby one person unlawfully and violently deprives another of the use of such of his members as to render him unable in fighting, such as cutting off his hand, his fingers, breaking his arm, cutting loose leading arteries of his body, or to commit upon him such acts of violence the commission of which lessens his spirit or courage." Such an effect castration produces.

The word "maim" is a technical one, necessary to be introduced in indictment for mayhem. This charge is a crime partaking of a felonious nature; therefore to constitute the same there must be proof positive or presumptive of a bad design on the part of the actor; or the act, in the absence of a felonious intention, is a misdemeanor and not a felony. It being an assault and battery with no intent to castrate (as expressed by the jury's verdict) the verdict, however, being at variance with the issue raised by the allegations in the indictment, the judgment ought to have been arrested and a new trial granted. And just here we deem it proper to say, we have not discovered the means by which the jury ascertained the fact that there was no felonious intention of the appellant to castrate the said Jack Smart. It does not appear from the evidence in the case, for, to enable the jury come to such a conclusion, the testimony of the witness as to the manner or character of the appellant's conduct in making the assault and battery or cutting the said Jack Smart, ought to have been given as evidence. In fact, where an injuri¹⁸⁸ous and dangerous act has been committed on the body of any person, to render the actor excusable particular proof must be given in evidence to show that the design or intention of his was not bad, otherwise the law will raise the presumption that the act was the result of a bad intention. It may be well also to say that in justice to the Republic, when she is a party in a criminal case all exceptions to the sufficiency of an indictment should be decided before the general issue is pleaded, otherwise the Republic oftentimes may be deprived of her right of making new indictments, thereby the guilty may escape just punishment, and the Republic become immersed into costs. But the trial of the sufficiency of indictments is a matter purely of law, therefore it ought to be first disposed of by the court.

Having thus commented, the court says this case should be, and it is hereby, remanded to the Court of Quarter Sessions, Montserrado County, at its March term, 1885, for a new trial, costs to follow.