HERBERT E. COOPER, Appellant, vs. **REPUBLIC OF LIBERIA**, Appellee.

[January Term, A. D. 1894.]

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

Murder.

1. A witness called to testify on behalf of the State, if he fail to enter into recognizance for his appearance at the trial, may be imprisoned until said time, which imprisonment will not render him incompetent.

2. Voluntary admissions by a party is evidence against him even where it does not appear that he was warned by the judge of the penalty he might incur ; if they were not made from threats, fear or inducement they will be admissible as evidence of a high grade. So, too, a copy of the record of a court containing admissions of a party made under similar circumstances, though in a different suit, will be admissible.

3. It is a constitutional right of every citizen charged with the commission of a crime to have compulsory process for witness, and where this right is denied it is a stupendous error of the court and a flagrant violation of the organic law.

This case is an appeal from the verdict and judgment of the Court of Common Pleas and Quarter Sessions, Montserrado County, at its March and June terms, A. D. 1893, and is brought up for review upon a bill of exceptions.

The first exception taken by the appellant is, "That one Bye, the first witness called and admitted by the court during the trial below, was incompetent to testify against him, because said witness had been imprisoned at the instance of the State since the month of December, 1892, and his evidence was therefore obtained by duress;" and second, "That if conspiracy existed and the said Bye was one of the conspirators, his evidence was not admissible against his co-conspirators."

On this point the court would say that it is a well settled rule of criminal law that a witness cited to appear to testify on behalf of the State, shall enter into recognizance for his appearance at the proper court, and failing to enter into such recognizance, shall be detained in prison until the session of said court, or until he shall have testified before the same. And this rule appears to be the more necessary when the witness is a suspicious or irresponsible character, or when his absence would be manifestly to the advantage of either of the parties and thus tend to hinder the ends of justice. On an examination of the indictment, we fail to discover that the witness was charged as particeps criminis, or a co-conspirator in the case, and as he was only detained in pursuance of said rule of law, the court below did not err in overruling the objection to the admissibility of said witness.

The next objection appearing on the bill of exceptions is, "That on the 21st of March, A. D. 1893, an extract from the records of the Court of Quarter Sessions and Common Pleas, Montserrado County, December term, A. D. 1892, under seal of said court, in the case Republic of Liberia vs. Benj. Lambert and Farmah, for murder, was admitted and read in said court as evidence against said appellant, notwithstanding his objection "that as he was not a party to that case this extract is not evidence against him."

On this point we would remark that the Statute Laws of this Republic (Chap. X, sec. 13) declare that "All admissions made by a party himself . . . are evidence;" and in the same chapter (sec. 14) that "Whatever has been said by a party himself is evidence against him." "A witness is not compellable," says Mr. Bouvier, "to testify when his answer would have a tendency to expose him to a penal liability, or any kind of punishment, or to a criminal charge." He may answer if he choose, and if he do answer, after having been advised of his privileges, he must answer in full; and his answer may be used in evidence against him for all purposes (II Bouvier Law Dict. p. 831.)

While it is not apparent from the record in this case that the judge below warned the appellant against any risk that he might incur in the premises, neither does it appear that he was compelled to testify, or that the giving of his testimony on said occasion was other than his own voluntary act and deed. The court below did not err in admitting the document in question.

The Constitution of this Republic (Art. 1, sec. 7) expressly declares that every person criminally charged, "Shall have a right to have compulsory process for obtaining witnesses in his favor." There is no qualification whatever expressed in this connection. The language is unequivocal and imperative, clearly indicating the intention of the framers of that instrument to throw around the citizen or subject every conceivable safeguard against the exercise of arbitrary power by those who might be invested with authority. That this right has been denied the appellant is apparent on the face of the record of this case, and the action of the court below in this particular was not only a stupendous error, but also a flagrant violation of the organic law of the land.

After an exhaustive scrutiny of the evidence given by the witnesses in the court below, we are of the opinion that it is trifling, inconsistent and contradictory, that it does not establish in the slightest degree any connection between the appellant and the crime with which he was charged, and that as the judgment of the court below was based upon a verdict against law and evidence, substantial justice has not been done in this case.

The court therefore adjudges that the said verdict be set aside and that the judgment of the court below be hereby reversed, and that the clerk of this court transmit a mandate to the court below, setting forth the effect of this judgment.