CASES ADJUDGED

IN THE

SUPREME COURT OF THE REPUBLIC OF LIBERIA

AT THE

OCTOBER TERM, 1970.

SPENCER O. EDRIS, Appellant, *v.* REPUBLIC OF LIBERIA, Appellee.

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

Argued December 16, 1970. Decided January 21, 1971.

1. Applications for postponement and continuance of a proceeding lie within the sound discretion of the trial judge.
2. A husband is always liable for the support of minor children whether they live with him or with their mother.

Appellant was charged with the crime of abandonment by his former wife for failure to support their minor children who were in her custody. He was indicted, tried before a jury, and found guilty. The trial court fined him $200.00, and provided an alternative sentence in the event the fine was not paid. The husband appealed from the judgment. *Judgment affirmed.*

Samuel B. Cole for appellant. *Solicitor General Henries* for appellee.

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

Appellant in these proceedings and Hilda Yancy, private prosecutrix, were married on December 17, 1960, and lived and cohabited together as husband and wife, but were later divorced. During the course of this marriage two children were born. Appellant, according to the record, denied fathering the children because, according to him, he was sterile, although potent, and had regular intercourse with his wife.

After the dissolution of the marriage, it would appear that appellant refused and neglected to provide for his minor children who were in the custody of his former wife. The record discloses that Miss Yancy made several attempts to compel the appellant to provide support for his children, even to the extent of employing the aid of the Department of Justice in the hope that Mr. Edris might be influenced to assume his obligation without resort to litigation. That having apparently failed in its endeavor, the matter was referred to the grand jury for Montserrado County, sitting during the February Term, 1969, which, after hearing the prosecution's witness, made a presentment to the court charging the appellant with committing the crime of abandonment, and indicted him therefor.

The case was called during the May Term, 1969, of the First Judicial Circuit Court, Hon. MacDonald J. Krakue presiding. At the arraignment appellant pleaded not guilty, whereupon the jury was selected and sworn. The trial proceeded and the defendant found guilty as charged. The defense excepted and filed a motion for a new trial which was denied, and judgment was entered by the court affirming the verdict and fining defendant $200.00 or, if the fine was not paid, to be imprisoned for its equivalency, at the rate of $12.00 per month.

From this judgment appellant has perfected an appeal to this Court on a bill of exceptions containing six counts.

Count one complains that the trial judge erred in granting a postponement at the request of the prosecution over

the objections of the defendant. The record on this point reveals that on May 30, 1969, the day on which the case was first called for hearing, the prosecution stated that two material witnesses were in Maryland County and, therefore, requested that the case be placed at the foot of the docket. The defense objected, on the ground that under the Constitution, the defendant was entitled to a speedy trial and that it was incumbent upon the prosecution to always stand ready. The trial judge conceded the soundness of defendant's contention and held that to grant the request of the prosecution and place the case at the foot of the docket would be tantamount to a continuance. However, exercising his discretion, a one-week postponement was granted. Under our law, applications for postponement and continuance are directed to the court and the granting or denial thereof are in his sound discretion. More than this, we fail to see what injury the appellant suffered by this one-week postponement, especially so when he was at liberty on bail. Count one is, therefore, overruled.

Count two complains that the trial judge erred in overruling defendant's objections to a certain question put by the prosecution to a witness on direct examination.

> "I pass you again the document marked by court P. 1 to P. 7, please pay special attention to the document marked by court P. 3 and see whether you have not made a mistake in your previous answer?"

The defense objected on the ground that the question was unduly cumulative and an attempt on the part of the prosecution to cross-examine and impeach the credibility of its own witness. This Court has held that: "A party who produces a witness has the right to elicit by question any fact which the witness omitted to mention in his general statement before the cross-examination of the other party commences." A look at the previous answer referred to by prosecution, reveals that, in answering, the witness stated that the document marked "P. 3" was signed

by Spencer O. Edris, whereas an inspection of that document shows that it was signed by George E. Henries. An attempt to correct this statement cannot be characterized as cumulative nor an attempt to cross-examine or impeach. More than this, the common law writers are agreed that a witness may be recalled even after the conclusion of his testimony after being excused, for correction of any error in his testimony. We are of the opinion that the trial judge did not err in allowing the question to be answered. Count two is, therefore, not sustained.

Counts three and four complain against the overruling of objections of the defendant to questions put by the prosecution to the defendant, on the grounds of irrelevancy. The questions sought to elicit from the defendant the date of the birth of a child to his wife at the time of these proceedings, its whereabouts and the source of its support.

It will be remembered that the defendant had denied being the father of the children involved in these proceedings, which obviously gave rise to his refusal to support them. To the mind of the court it was relevant for the prosecution to inquire as to whether or not the child of appellant's present wife was born during their marriage, the issue herein involving his alleged sterility. We find no error committed and must, therefore, also overrule counts three and four.

The evidence presented at the trial, though conflicting, cannot be held insufficient, as a matter of law, so as to move this Court to set aside the verdict of the jury against the appellant. One count relates to denial of a motion for a new trial in that the verdict was contrary to the weight of evidence presented and the instructions of the court.

In his argument, appellant's principal contention was that the State had instituted the wrong action in that the proper action should have been for failure to support and not a charge of abandonment. This position is inconsistent with appellant's contention that the children are the

result of infidelity on the part of his wife, for this argument, in our opinion, admits parentage by confessing liability for support.

"A husband shall be responsible for the maintenance and support of his family and for the education of his children and wards.

"If he neglects or refuses to maintain or support his dependents, he shall, upon complaint, be compelled by any court having jurisdiction over matrimonial causes to provide such maintenance and support; if he fails or refuses to comply with the judgment of the court, execution shall be issued against any of his non-exempt property or credits, which shall be sold and the proceeds applied to the support and maintenance of his dependents." Domestic Relations Law, 1956 Code, 10:40.

"Every legitimate, illegitimate, or adopted child under the age of twenty-one years, or over twenty-one if he is mentally or physically incapacitated, shall be maintained, supported, and educated by his father as provided in sections 40, 41, and 66 of this Title." *Id.*, § 61.

"A parent, guardian or other persons having the care or custody for nurture of children under eighteen years of age, who refuses or neglects to provide food and clothing for them, or a husband who abandons or deserts his wife leaving her in destitute circumstances, is guilty of a misdemeanor." Penal Law, 1956 Code, 27:280.

The appellant in his argument stressed the word "custody" as employed in the statute just quoted, contending that abandonment will not lie because he did not have custody of the children.

This Court in interpreting the statute relied on by the appellant, held in *Nimley et al.* v. *Nimley et al.*, 14 LLR 82 (1960), that a husband is always liable for the support of his minor children, whether they live with him or