

WILLIAM GOULD and WESLEY S. DUNN, Appellants, vs. REPUBLIC OF LIBERIA, Appellee.

[January Term, A. D. 1903.]

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

Assault and Battery with Intent to Kill.

1. Where in an indictment for felony the prisoner upon arraignment alleged that the offence committed did not amount to a felony, and this objection the inferior court overruled, the ruling was sustained by the appellate court, which held that where there are legal defects in an indictment they should be taken advantage of either before trial upon demurrer or motion to quash, or after verdict upon a motion to arrest judgment.

2. A party is not rendered incompetent as a witness on account of interest, in a criminal prosecution, because his name appears in the special plea of prisoner's defense; where a witness had been admitted and allowed to depose at the trial it was held to be error in the court in not allowing the testimony to go before the jury.

3. The misdirection of the judge to the jury upon the law, where it led to an erroneous and illegal verdict, will be corrected by the appellate court.

4. Where the prosecutrix had assented to an arrangement which acknowledged the right of possession of the prisoner in certain property, and afterwards sought to make a forcible entry upon the property which resulted in injuries to her person, it was held that the prisoner might show the assent of the prosecutrix to his right of possession, and her subsequent forcible entry in justification of his conduct.

This is a case of assault and battery with intent to kill. The appellants, defendants in the court below, were indicted by the grand jurors for the County of Grand Bassa, at the June term of the Court of Quarter Sessions

and Common Pleas, for 1900, for the aforesaid offence, and arraigned, tried, and convicted at the September term of said court for 1900. The appellants, believing that the verdict of the jury was unsupported by the evidence, tendered to the court below a motion for a new trial, which motion, having been heard by the court, was overruled. Upon this verdict the court below, on the 11th day of October, 1900, pronounced sentence, to which judgment, as well as to the other rulings of the court in the cause, the prisoners excepted and have brought the case before this court upon a bill of exceptions, for review.

We shall now proceed to consider the several points of exception set forth in the bill of exceptions. The first exception is to the ruling of the court below upon appellant's plea, and is taken as follows, to wit: "Because when, on the 28th day of September, A. D. 1900, the defendants, being arraigned, pleaded that the offence charged in the indictment was no felony, though being so charged in the indictment, and prayed his honor the judge to dismiss them from such indictment, he overruled the plea; to which defendants excepted," etc. We fail to discover the legal grounds upon which this exception is founded. This court is of opinion that if there were defects upon the face of the indictment the prisoners could only have taken advantage of the privilege afforded them, before the trial, upon a demurrer or motion to quash; or after trial, upon a motion in arrest of judgment, in accordance with the rules of practice. The court below did not err in its ruling on this point.

Passing over the second exception, which this court does not regard material to its decision of the case, we shall next consider the third exception, which reads as follows, to wit : "Because when, on the first day of October, the State called Amanda Gould and Alexander Moore as witnesses in the case of the Republic against William Gould and Wesley S. Dunn, the defendants objected to their being admitted as witnesses against them, because the names of Amanda Gould and Alexander Moore appeared in the special plea filed in this court in this trial, as rioters with others who caused all the evils which occurred on the 8th day of December, A. D. 1899, in Hartford, but his honor the judge overruled the objection," etc.

The statute laws of this country declare that ((every witness shall be considered as competent who cannot clearly be shown to be incompetent; all

objections not absolutely and directly going to competency shall go to credibility only." (Lib. Stat. Bk. 1, Chap. 12, p. 58, sec. 4.) And again (in sec. 9, Chap. 12, of the same book) we have the law with respect to the incompetency of a witness on account of interest in the cause, stated as follows : "No person shall be deemed an incompetent witness on account of an interest in the cause, except he be a party thereto, or bail or otherwise security in the cause, for the party who calls him, or be answerable over to such party, or be responsible for the costs or a part of them, or except the verdict or judgment can be given in evidence against him, or except he has an interest in the plaintiff's claim or the thing in dispute." Examining the record of the case we find no facts which in the opinion of this court would tend to render Amanda Gould and Alexander Moore incompetent witnesses in the case. The grounds relied upon by the counsel for the prisoners are that the said witnesses, being pleaded against in prisoners' special plea, as rioters, they therefore have an interest in the cause. This court is unwilling to give its sanction to such a view of the law governing the competency or admissibility of witnesses, or to lay down a rule which does not seem to it to be in keeping with reason—and certainly is not in agreement with law—whereby material testimony may be barred and the ends of justice defeated. This court holds that the court below did not err in admitting the evidence of witnesses Gould and Moore, as the weight and credibility of their evidence were questions to be weighed and considered by the jury.

The fourth exception is taken to the court's ordering "the evidence of Samuel Gould to be struck from the record in the case," etc. Undoubtedly the court erred in its ruling on this point. It is the duty of the court to decide the admissibility of a witness, but when it is admitted it is with the jury to decide upon the credibility and effect of his testimony. (Lib. Stat. Chap. 12, Bk. 1, sec. 2.)

The fifth exception reads: "Because his honor the judge misdirected the jury, in that he told them that William Gould ought to have left the matter of pulling down the house for his father to settle with those who pulled it down, and that he was not the actual owner of the premises." Obviously the jury was influenced by this direction or instruction of the judge in arriving at their verdict. And upon this point, which also involves the question of ownership and possession of the property in dispute, the case largely hangs. For if

William Gould, the principal defendant in this case, was in legal and rightful possession of the property, the conduct of Amanda Gould, the prosecutrix, in seeking to make a forcible entry upon the said property and to carry it off, was unwarranted by law, and Gould may be justified if in repelling force by force in defense of his habitation, an injury was inflicted upon the assailant.

From an inspection of the record we find that the land, upon which stood the house in dispute, is the property of Samuel Gould, father of Joseph Gould, husband of the prosecutrix; that Joseph Gould, by permission of his father, Samuel Gould, lived upon the premises during his lifetime and that after his death Samuel, the owner of said property, allowed William Gould, the prisoner, to occupy the premises as a tenant at will. It doth also appear from the record, that on the death of Joseph Gould, husband of the prosecutrix, the said house—independent of the land—was entered in the inventory of his estate; that subsequently it was objected to by Samuel Gould, who claimed the house by virtue of ownership of the land, and that upon the matter being brought before the Monthly and Probate Court of said County, said court decided that Samuel Gould might retain the house, but that he pay the prosecutrix dower out of the same ; to which ruling, it appears, both the prosecutrix and Samuel Gould assented, and from the evidence of A. B. Brooks, the administrator of the estate of Joseph Gould, a portion of the amount allotted prosecutrix as dower in said house was paid by Gould and accepted by the prosecutrix.

This court refrains from making any observations as to the legality or illegality of the manner in which the said Monthly and Probate Court disposed of the question of title of Samuel Gould in and to said house, and of prosecutrix's right of dower in the same. It is sufficient to our conclusions of the case to observe that prosecutrix, having acquiesced in the rulings of the Monthly and Probate Court in the premises to the effect that Samuel Gould should retain possession of the house and pay her dower therein, and she having gone further and accepted a part of said dower from Samuel Gould, she is estopped from going behind her own acts, and attempting to make a forcible entry upon the premises to the extent of causing a breach of the public peace, even supposing she had an interest in the same. (II Arch. Crim. Prac. and Pleadings, pp. 1129 to 1133.)

This court further says that having carefully weighed the evidence in the case and the law bearing thereon, it entertains the opinion that the prosecution did not make out a clear and conclusive case against the prisoners; and it further says that in view of the facts surrounding the case the court below ought to have granted prisoners a new trial. The court below committed error in not so doing and also in giving judgment against the prisoners upon a verdict not supported by evidence.

This court therefore reverses the judgment of the court below, and the clerk is hereby authorized to issue a mandate informing the judge of the court below of this decision.