CASES ADJUDGED

IN THE

SUPREME COURT OF THE REPUBLIC OF LIBERIA

AT

MARCH TERM, 1959.

JAMES MITCHELL, Appellant, *v.* REPUBLIC OF LIBERIA, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, GRAND BASSA COUNTY.

Argued April 1, 1959. Decided April 24, 1959.

The crime of assault and battery with intent to kill, and the crime of killing or wounding a person by means of setting a spring gun, are separate and distinct offenses, and an indictment for the former will not sustain a conviction for the latter.

On appeal from a judgment of conviction upon a verdict of guilty of assault and battery with intent to kill, *judgment reversed.*

Richard A. Henries for appellant. *Solicitor General J. J. Chesson* for appellee.

MR. JUSTICE MITCHELL delivered the opinion of the Court.*

A thorough perusal and review of the records in the case now on appeal shows that, at the May, 1952, term of the Circuit Court of the Second Judicial Circuit, Grand

* Mr. Justice Pierre was absent because of illness and took no part in this case.

Bassa County, James Mitchell was indicted for the crime of assault and battery with intent to kill.

His trial was had at the August, 1952, term of the aforesaid court, with His Honor, D. T. Harris, then Circuit Judge, presiding by assignment. The defendant was convicted and sentenced to four calendar months imprisonment; to which judgment and other rulings made by the court during the trial, he excepted and came on appeal before this Court of last resort.

Before entering upon the grounds of the appeal, we regard it essential to recite herein, word for word, the charge on which the defendant below, now appellant, was tried and convicted:

> "The Grand Jurors for the County of Grand Bassa, Republic of Liberia upon their oath do present: That on the 31st day of August, in the year of our Lord, Nineteen Hundred and Fifty One, near the town known as Peppertown across the Savage River near the beach, south of the Lower Ward of the Municipal District of Buchanan in the County of Grand Bassa, Republic of Liberia, James Mitchell, defendant, wilfully, wrongfully, unlawfully while engaged in a commission less than a felony, namely, the setting of a spring gun without giving notice that said gun was set, known as triple barrel breech loader gun, loaded with a cartridge, charged with gunpowder, percussion cap and bullets, upon private land not owned by him, did discharge with intent to kill, and did then and there injure, one Teka Freeman, on the 31st day of August, 1951, against and upon him, thereby giving him several wounds on his left leg, contrary to the statute law in such case made and provided, and against the peace and dignity of the Republic of Liberia."

The defendant, now appellant, being dissatisfied with the judgment rendered against him the court below, has brought his case on a bill of exceptions containing four counts, to wit:

"1. Because Your Honor overruled defense objection to question put to witness, Teka Freeman, to wit: cross-examination of one's own witness, to which appellant excepted.

"2. Because Your Honor overruled defense objection to the admissibility of evidence marked Exhibit 'A' by the court on the grounds of insufficiency of identification, and admitted same into evidence. To which appellant excepted.

"3. Because Your Honor denied appellant's motion for new trial, which motion succinctly states that the verdict of the petty jury is manifestly against the weight of evidence adduced in said case.

"4. Because Your Honor did, on the 29th day of August, 1952, render final judgment, adjudging that defendant suffer imprisonment for four calendar months."

During the arguments before us, the appellant's counsel emphasized the following points:

1. That the defendant below should have been acquitted because the evidence shows that the defendant gave notice of the setting of a spring-gun by the putting of palm thatch as a sign according to native customary law, and he did so because the said spring gun was set in an area exclusively inhabited by tribal people.
2. That the setting of a spring-gun is a misdemeanor when there is no notice given according to statutes; but otherwise it does not constitute a misdemeanor; and the evidence adduced at the trial clearly established that the required notice had been given; therefore, defendant's motion for new trial, filed in the lower court, should have been granted; moreover, there was no evidence to warrant a conviction on the charge of assault and battery with intent to kill.
3. That it was essential in the establishment of defend-

ant's guilt for the State to have proved that he physically handled a deadly weapon and used it by cutting, stabbing or wounding with intent to kill; otherwise, a conviction would be illegal—and this he claimed the records taken at the trial do not show.

4. That the records fail in the most important element to establish a criminal intent on the part of the appellant, defendant below; and lastly, that it is not apparent that the gun admitted into evidence by the court below was physically used by the defendant to fire at or strike the private prosecutor, nor was it proven that it was set with the intent to kill or wound a human being. Therefore, the motion for new trial should have been granted, *sua sponte,* by the court, granting that the verdict was manifestly contrary to the evidence. Further, the crime of assault and battery with intent to kill, being a felony, there is no legal precedent for it to have emerged out of the setting of a spring-gun, because the law in the respect controlling is specific.

The appellee, in his argument, said that since the verdict of the petty jury was in harmony with the evidence adduced at the trial, the judgment rendered thereon should not be disturbed; and that, the gun being the weapon with which the private prosecutor sustained the wounds, it should have been admitted into evidence; and hence it was not error to have admitted the same; and, lastly, that the intent to kill or wound a human being was the natural sequence of the act of setting the spring-gun, therefore, the defendant below was correctly indicted for assault and battery with intent to kill.

There were the two trends of argument advanced before this bar, which we shall endeavor to pass upon as closely as the legal necessity may require, and in doing so, we shall first refer to the Criminal Code of 1914 which de-

fines the crime of assault and battery with intent to kill as follows:

> "Any person found guilty of committing an assault and battery with a deadly weapon, and cutting, stabbing or wounding with intent to murder, shall suffer imprisonment for not more than five years." Crim. Code, § 48.

In our opinion, the foregoing statutory provision is in complete harmony with Point "3" of appellant's argument, to the extent that it is incumbent upon the prosecution to prove that a deadly weapon was physically used by the person charged with the commission of crime, and that there was an intent, whether expressed or implied from the conduct or surrounding circumstance, to kill or murder.

The private prosecutor, when on the witness stand, said:

> "The night of August 13, 1951, when I came in the town, I met the gun set across the road, which shot me in my left leg. I called to Zeah-Won and he came. He tried to take me up but could hardly manage me. At this time I saw Mitchell coming towards me. I then asked him whether he set the gun, and he began to cry, and I too."

This statement of the private prosecutor does seem to exonerate the defendant of any criminal intent to commit the crime for which he was held answerable; moreover, the statement does not harmonize with the argument of appellee's counsel when he said that the verdict of the jury was in harmony with the evidence adduced at the trial.

Now, considering the question of the notice given, which appellant's counsel argued so strongly, for the benefit of this opinion we will quote the relevant portion of an Act of the Legislature of Liberia approved August 19, 1920:

> "1. Any person who shall set a spring-gun or spring

knives, on any public lands or highways or public roads leading through private owned lands, shall be of a misdemeanor, and shall be fined in a sum not exceeding one hundred dollars ($100.00). One half of the fine to be paid to the informer.

"2. Any person who shall set a spring-gun or spring-knives on his own premises or enclosure, shall be required to give at least twenty days notice previous to so doing, and on failure to give such notice shall be guilty of misdemeanor, and be punished as set forth in Section one of this title.

"3. Should any person or persons be killed or wounded by any such spring-gun or knives, after the offender has complied with the provision of Section two of this title, the said offender shall not be deemed guilty of felony or misdemeanor." L. 1920, p. 4.

The above-quoted statute, in our opinion, is self-explanatory. The argument of the prosecution might have held if the premises on which the said gun was set had been shown to be the bona fide property of the defendant; but the records show that quasi-collateral title was vested in the private prosecutor to the property on which the gun was set. Hence, we do not hesitate to say that the statutes do not harmonize with this argument.

We feel justified in saying that the statutory provision quoted, *supra,* was the law in effect at the time when the defendant in this case was indicted, tried and convicted; and yet our minds have not been sufficiently convinced on the reason which motivated a charge against him for the crime of assault and battery with intent to kill. However, since there were points raised before this Court during the arguments, we shall proceed to consider them.

In reviewing the arguments of the opposite side, we are obliged to express agreement with the principle of our law that, when the trial is regular and the evidence clear, the judgment should not be disturbed. But it seems unreal for that theory to apply to the case in point when the rec-

ords before us substantially prove that the setting of a spring-gun, which is the basis of the charge, is a misdemeanor according to law, and the gun was admitted into evidence as a fruit of a separate and distinct crime.

To convict for assault and battery with intent to kill, there must be an intent, which is one of the most important elements; whereas, on the converse, the setting of a spring-gun or spring-knives, carries with it no intent to commit a crime; and therefore it can be calculated in the category of such offenses for which a penalty is provided, regardless, of the lack of any criminal intent.

Now that we have taken the care to review the many points of argument as far as we recognize their importance in respect to the case, we wish to state, before finalizing this opinion, that, we have purposely omitted to make any reference to the Liberian Code of Laws of 1956 in so far as its definition is concerned, because, when the defendant, now appellant, was indicted, tried, and convicted, the said 1956 Code was not in effect, and necessarily his punishment or sentence could not have been assessed thereunder.

Finally, in our effort to justify our conscience and the law applicable to the case at bar, we have not been able to satisfy ourselves under the laws controlling in harmonizing our views with the trial court. The crime of assault and battery with intent to kill, and the crime of setting a spring-gun and spring-knives, are separate and distinct in themselves—altogether unrelated. The Act of the Legislature of 1920, quoted, *supra,* stands supersedeas to all intents and purposes to Section 48 of the Criminal Code of 1914; moreover, it both alters and amends the said section; and there is no legal color given for one to answer on assault and battery with intent to kill for the violation of the law controlling the setting of a spring-gun or spring-knives; nor have we found the solution in common law authorities.

We are convinced that, throughout the records before us in the case, the crime of assault and battery with intent

to kill has not been established against the defendant below, now appellant; nor is this Court authorized to punish for a crime for which a party has not been held answerable according to law. It is therefore our opinion that the judgment of the court below be, and the same is, hereby reversed. And it is so ordered.

Reversed.