

J. NATHANIEL SKIPPER, Plaintiff in Error, vs. **REPUBLIC OF LIBERIA**, Defendant
in Error.

[January Term, A. D. 1904.]

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

Murder—Principal in the second degree—Punishment.

The statutes and the common law adopted by the Republic recognize no difference with respect to the punishment to be inflicted upon principals found guilty of murder in the first and second degrees.

This case is before this court upon a writ of error, taken upon a judgment rendered by the Court of Quarter Sessions and Common Pleas, for the County of Grand Bassa. We find from examination of the record in the case, that the accused, J. Nathaniel Skipper, the plaintiff in error, was indicted at the June term and tried at the September term, 1902, of the Court of Quarter Sessions and Common Pleas, for the County aforesaid, for the atrocious crime of murder ; that on being arraigned the prisoner plead "not guilty" to the charge ; that a jury having been empanelled to try the issue raised by said plea, after hearing the evidence and arguments for and against the accused, it returned a verdict in which the said J. Nathaniel Skipper, plaintiff in error, was found "guilty of murder as principal in the second degree." Upon this verdict the court below, on the 7th day of October, 1902, pronounced sentence, whereby the said prisoner was sentenced to the punishment of death. To this judgment the prisoner excepted and has brought the case before this court, upon a writ of error, for review.

Upon the case being called for hearing at the bar of this court, the counsellors for the plaintiff and the defendant in error, waived arguments and jointly submitted for the consideration and determination of this tribunal one point only, namely, "Did or did not the court below err in pronouncing the sentence of death upon a verdict of murder as principal in the second degree?"

We would remark before proceeding further, that this is a case involving the life of a human being, and that therefore we feel it our solemn duty, as the court of last resort, to thoroughly investigate the whole case, so far as it has been brought within the grasp and purview of this court, in order that we may justly and impartially ascertain

whether or not substantial justice has been done in the premises by the court below. And in doing this, we have not confined ourselves to the point submitted for our consideration by the counsellors, with respect to the legality or illegality of the judgment of the lower court, but we have extended our investigations to the facts surrounding the case, in order that we may ascertain, in the first place, whether the judgment which is now sought to be reversed, is founded upon a verdict substantially supported by the testimony of witnesses in the case; for if the verdict is unsupported by the evidence, the judgment, which is simply the conclusion of the law upon the facts found or admitted, must crumble. And first let us inquire whom does the law regard as principals in the second degree to a felony, and then applying the law to the facts found by the jury, let us see whether those facts will legally constitute the crime which the jury found the accused guilty of, and if so, what punishment does the law attach thereto.

The Statute of Liberia bearing on this point declares that "All persons actually present, aiding and abetting in any crime or misdemeanor described in the code, shall be amerced in a punishment not exceeding that inflicted upon the principal," etc. (Stat. Lib. appr. Jan. 24, 1900.) Now the crime which the accused was found guilty of committing as "principal in the second degree," or, in the language of the statute, as "an aider and abetter," is murder, the punishment for which, according to the provisions of the above cited act, is death by hanging, unless excusable.

The common law writers of both England and America lay down three requisites by which principals in the second degree are distinguished. The first is, they must be present; the second, they must be aiding and abetting in the felony; the third, there must be a felonious intent to the felony. (1 Arch. Crim. Prac. and Pleadings, pp. 58, 59; 1 Bouv. Law. Dict. pp. 461, 462.)

It should here be observed, that as regards the first requisite the statute requires an actual presence, but the rule of the common law is far more comprehensive and elastic, and admits of a constructive as well as actual presence. Thus, if A and B confederate to commit a certain felony and A approaches the scene, leaving B sufficiently near to render assistance if required, or B is left outside of a dwelling to watch and prevent surprise, while A enters the dwelling, and perpetrates the felony which they both had assembled to perpetrate, though B is not an eye or ear witness to the transaction, the common law would regard him constructively present and hold him responsible as principal in the second degree.

The reason that the law holds persons who aid and abet in the commission of felonies equally responsible as the actual agent, is founded upon the sound principle

of justice and right. If the law held to the contrary, if a man after aiding and abetting in the commission of a crime could afterwards screen himself from punishment upon the ground that his was not the hand that actually did the deed, although he had in a measure participated in its perpetration, there would be a strong inducement, we fear, for men of felonious intentions to influence the weak-minded and reckless to become the actual agents of crimes the perpetration of which they themselves have inspired, without any fear of being visited by the law. And therefore as a check upon such unscrupulous conduct, the law visits upon aiders and abettors to a felony the same punishment as that which it inflicts upon the actual perpetrators. (Stat. of Lib. 1900, p. 6; I Bouv. Law Dict. pp. 460, 461: "Principals in the second degree;" I Arch. Crim. Prac. and Pleadings, p. 62, star p. 13.)

As we have already said, the judgment of a court is the conclusion of law upon facts found or admitted. In the case under consideration the facts found by the jury showed the accused guilty of murder as principal in the second degree. Neither the Statute of Liberia nor the common law adopted by this Republic recognizes any difference with respect to the punishment to be inflicted in such cases and that which is inflicted upon the actual agent or doer. Both are equally guilty and both are visited with the same sentence of the law. And therefore since the law of the land punishes with death by hanging the principal in the first degree in cases of murder, except excusable, and since principals in the second degree, or aiders and abettors, are subjected to the same punishment as their principals, the court below did not err in sentencing J. Nathaniel Skipper, the plaintiff in error, to be hanged.

The judgment of the lower court is therefore hereby affirmed and the clerk of this court is hereby authorized to issue a mandate addressed to the judge of the court below, informing him of this decision.