

D. J. SMALLWOOD and **ELIJAH SMALLWOOD**, Appellants, vs. **REPUBLIC OF LIBERIA**, Appellee.

[January Term, A. D. 1903.]

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

Assault and Battery with Intent to Kill.

Criminal Law—Penalty.

The penalty of one crime cannot be inflicted for the committing of a different offence.

The above entitled cause was brought up to this court for review, by a bill of exceptions taken to the judgment or sentence of the judge of the Court of Quarter Sessions and Common Pleas, Montserrado County, at its March term, A. D. 1902, in which court the cause was tried and determined. In reviewing the record of the case, this court finds the four following facts laid out :-

1. That D. J. Smallwood and Elijah Smallwood were charged by the Grand Jury of Montserrado County, at the March term of the said Court of Quarter Sessions and Common Pleas, 1902, with committing assault and battery upon the body of one Madison J. Moore, all of the parties being of the 'settlement of Arthington, Montserrado County, with intent to kill.
2. That the evidence proves that the assault and battery was committed with a deadly weapon—a razor— by which, grievous bodily harm was inflicted upon the body of the said Madison J. Moore.
3. That a jury brought in a verdict of guilty of committing assault and battery with no intent to kill.
4. That the judge rendered sentence, not based on the verdict of the jury, but

on the evidence and the criminal code of the Statutes of 1899-1900 (page 4), under the head of "Assault and battery with a deadly weapon, etc., with intent to do grievous bodily harm."

The incongruity of the proceedings in the case has occasioned the court some trouble in arriving at a just and equitable conclusion. In the bill of exceptions filed, the appellants, then prisoners, excepted to the sentence of the judge and prayed an appeal to this supreme jurisdiction. The substance of the sentence is as follows: "That each of the prisoners be fined the sum of fifty dollars and be imprisoned in the common jail in Monrovia for the term of one year, and work in chains."

Now, then, it is the opinion of this court that it is a principle of law that the penalty of one crime cannot be inflicted for the committing of a different offence. The judge below was strictly correct in giving the statutory criminal code precedence over the common law for the punishment of assault and battery; but in the meantime let us remark that there are different grades of assault and battery as defined in the Criminal Code of Liberia—assault and battery, or common assault; assault and battery with a deadly weapon, or stabbing, cutting and wounding with the intent to do grievous bodily harm; assault and battery with intent to kill, etc.; and the penalty of the one cannot be inflicted for another.

The jury in this case brought in a verdict of guilty of assault and battery, notwithstanding the evidence shows the battery was completed by a deadly weapon ; hence it may be held that the judge was right in conforming his sentence to the evidence in the case; but it will be observed that the admissibility of the evidence is with the judge, or court, and the credibility of the same is with the jury, and, that the jury is judge of all mixed questions of law and fact, while the court is judge of the law. And again, while the opinion of the judge of the law, in his charge to the jury is the law to the jury, yet in this case, this court fails to find upon the record any charge whatever to the jury. The jury therefore, exercising their right to judge the mixed questions of law and facts in the case, arrived at a conclusion that the prisoners were guilty of assault and battery with intent to kill, and stopped there, saying nothing about the intent to do grievous bodily harm. And suppose that the verdict was manifestly out of accord with the facts in the case, still the defect is not

remedied by the judge's passing a sentence not in accord with the jury's verdict.

To correct the error in the proceedings, the case should have come up to this court of final jurisdiction by a writ of error, which, no doubt, appellants saw would be to their disadvantage, hence they came upon a bill of exceptions.

In view of all the circumstances of the case and the law governing the same, this court says that appellants' objection to the sentence of the court below is well founded, and that the judge below erred in rendering a decision manifestly incompatible with the law and the verdict. But since it appears in the record of the case that the jury did find prisoners guilty of assault and battery, by which the court is justified in inferring that the battery was completed, and in order that the ends of justice may be met and the law of the land sustained, this court now proceeds to render the judgment which the court below should have rendered.

This court adjudges that the sentence of the court below is hereby reversed, and appellants D. J. Smallwood and Elijah Smallwood are each fined the sum of fifty dollars, to be paid in lawful money of this Republic immediately after they are apprised of this judgment by the court below. This judgment is based on the Criminal Code, page 5, under the head of "Assault and Battery, or Common Assault." The clerk of this court is hereby ordered to issue a mandate to the judge below, informing him of this decision.