

**JOHN A. STEWART**, Appellant, v. **REPUBLIC OF LIBERIA**, Appellee.

ARGUED NOVEMBER 3, 1915. DECIDED JANUARY 10, 1915.

Dossen, C. J., and Johnson, J.

1. In the cases brought before the Supreme Court for review, whether upon bill of exceptions or by other legal means, it is essential that every exception taken to the proceedings in the lower court, involving a question of law, should be supported by legal citations in the brief filed on behalf of the contending party.
2. Where there has been a failure, in this respect, the court will not feel bound to consider the point.
3. The court will only feel bound to give consideration to such citations in the brief filed, as go to support the contention of the party.
4. An instrument to be the subject of forgery, must be valid for the purpose for which it purports to have been designed.
5. Under the statutes of Liberia, fraud is made an element necessary to constitute forgery, and should not only be laid in the indictment but proved at the trial.
6. If from the evidence, the prisoner, against whom a verdict has been rendered, has not been found guilty of an offense in law, the court is bound to arrest judgment.

Mr. Chief Justice Dossen delivered the opinion of the court :

Forgery—Appeal from Judgment. This case comes up before us upon an appeal from the law division of the Circuit Court for the first judicial circuit, Montserrado County.

The appellant was indicted, tried and convicted of the charge of forgery at the

May term, nineteen hundred and fifteen (1915), of the court aforesaid; from which judgment the appeal is taken.

From inspection of the records filed in the case, we find the facts laid in the indictment intended to constitute the charge, to be in essence as follows, that is to say :—

That "the prisoner, now appellant on the first day of December, 1914, in the City of Monrovia feloniously and fraudulently did make, sign and execute a certain official document known to the Jurors aforesaid as Knight Commander Diploma of the Liberian Humane Order of African Redemption, the tenor of which is as follows: Official Shield and Globe of Liberty surrounded with wreath of leaves; (bearing the words) Republic of Liberia :

"To all to whom these presents shall come Greeting : Know ye that I Daniel E. Howard, President of the Republic of Liberia, taking into consideration the sentiments of humanity which are displayed by you Rev. John A. Stewart, D. D. of Liberia and being aware of your sincere wishes to be a useful helper in the Christian work of civilizing our brethren inhabiting the territory neighbouring to our Republic, desiring to give you a public testimony of our gratitude, using the faculties given us by the laws of our Republic, by these presents do ordain, constitute and appoint you Knight Commander of the Liberian Humane Order of African Redemption, in virtue of which, from this day you will be permitted to use and wear publicly, the ensignia of the Order in the class named. And may the omnipotent God ever guide you in your efforts for the good of our savage brethren. In testimony whereof I have caused the seal of the Republic to be affixed. Given under my hand at the City of Monrovia, the first day of December nineteen hundred and fourteen and of the Republic the sixty-seventh. Daniel E. Howard, President."

The indictment charged that the foregoing writing was done with intent to defraud the said D. E. Howard, President aforesaid, and against the form of the statute in such cases made and provided.

The second count of the indictment charged the prisoner with uttering the forged instrument on the thirteenth day of March of the same year.

Upon arraignment the prisoner pleaded "Not Guilty" to both counts in the indictment; whereupon a jury was empanelled to try the issue who, after hearing the evidence, returned a verdict of "guilty;" to which verdict prisoner thru his counsellor excepted and moved for a new trial on the ground that the verdict "was manifestly contrary to law and evidence in the case." The motion was denied by the lower judge whereupon counsellor for prisoner entered motion in arrest of judgment on account of legal defects which he contended were apparent upon the face of the indictment and which had not been cured by the verdict. This motion was submitted without arguments on either side, and was also denied ; and sentence was pronounced against prisoner. The counsellor for prisoner excepted and appealed to this judicature for a review of the cause. This briefly is a history of the case as appears from the records filed.

We now proceed to consider the points addressed to the consideration of this court as are embodied in the bill of exceptions.

And just here we would observe that in cases brought before this court for review, whether upon bill of exceptions or by other legal means, it is essential that every exception taken to the proceedings in the lower court involving a question of law and properly brought up for our consideration, should be supported by the legal citations in the brief filed on behalf of the contending party; and where there has been a failure in this respect the court will not feel bound to consider the point. On the other hand, we shall only feel bound to give consideration to such citations in the brief filed as go to support the contentions of the party appealing.

It very often occurs—and the case at bar supplies an instance of this fact—that there is material variance between the specific exceptions upon which a case has been brought up for review, and the legal citations submitted in the brief which should support all exceptions addressed to the consideration of this court.

This is not only perplexing to the court in making its application of the law relied upon in support of the points of controversy constituting the foundation

of the appeal, but is also contrary to the practice of appellate courts, and therefore should be disallowed here.

The bill of exceptions in the case at bar contains five separate points : but we deem it necessary to our conclusions to consider only the three last of them which involves the main issues in the case, and, which are taken as follows :

"(a) Because on the 18th day of May, A. D. 1915, the said defendant having filed a motion for a new trial, said motion being on the ground that the verdict was contrary to law and evidence and the legal instruction of the court, Your Honor denied said motion, \* \* \* .

"(b) And also because on the said 21st day of May, said defendant offered a motion in arrest of judgment showing, *inter alia*, that the word *forge* did not appear in the first count of the Indictment and stating other grounds why said judgment should be arrested; which motion on hearing, Your Honor denied, \* \* \* .

"(c) And also because on the 21st day of May, A. D. 1915, Your Honor rendered final judgment in said cause and sentenced said defendant to be imprisoned for three years," etc.

These appear to be the main grounds upon which the contention of the appellant rests involving as they do the legal guilt or innocence of prisoner.

It was contended with great force by the learned counsel for appellant in his arguments, that the instrument alleged to have been forged and which constitutes the foundation of the prosecution, could not be regarded as the subject of forgery, because of its want of legal efficacy. It is on this ground mainly that his contention that the verdict was against legal evidence appears to rest.

In order to decide this point it is necessary that we should revert to the statute creating the Order of which the alleged forged instrument purports to be a diploma.

In the year 1879, the Legislature of Liberia passed an Act entitled "An Act to

create and incorporate a Philanthropic Order to be styled the Liberian Humane Order of African Redemption."

The first section of the Act creates the Order, and constitutes it a body corporate and politic; endowed with the usual powers of such corporate bodies.

The fourth section of the Act provides for the constitution and management of the corporation, and for the granting of diplomas in the following language, to wit:

"The council of the order is to be composed of five individuals, two from Monrovia and one from the leeward counties of Grand Bassa, Sinoe and Maryland, besides a Secretary. It shall be the duty of the council to keep a record of all persons who are members of the order, to administer its funds and to elect its officers.

The President of the Republic will name the members of the council and they shall be entitled to a small annual remuneration from the funds produced by the order. The fees to be paid into the treasury of the Order on becoming a member shall be:

A member of the first class	\$200.
A member of the second class	50.
A member of third class	30.

These amounts are to be paid down on delivery of the diploma of membership. However, representatives of the Republic abroad may be forwarded diplomas on becoming members and be held responsible to remit the amount due the class of which he becomes a member. For valuable, extraordinary services in the behalf of Humanity or in the interest of Africa's Redemption by any person, he or she may be made a member; and the President of the Republic is authorized to exempt such person or persons from paying the fee usually required. Diplomas of membership are to be signed by the President of Liberia and countersigned by the Secretary of State and registered by the President of the Council."

This section in our opinion, embodies as much of the Act of incorporation as is necessary to our determination of the question of legal efficacy of the alleged forged instrument.

Now, it is obvious, from the provisions of the foregoing fourth section that a diploma of the Order under consideration, to be genuine, must bear not only the signature of the President of the Republic, but that of the Secretary of State as well; and must further be registered by the President of the Council. These requisites it would seem, are by the section of the Act just quoted, essential to a valid diploma of the aforesaid Order.

It is not necessary to our conclusion of the case at bar to go extensively into the Act creating the aforesaid Order, nor, to pass upon those clauses which do not come within the purview of this case; although to do so might be exceedingly interesting and informing, and would undoubtedly shed much light upon the real object and purport of an Order about which there seems to exist erroneous conceptions.

Now, let us enquire, was the alleged forged document a valid diploma? That is to say did it bear upon its face all of the essentialities of validity required by the Act providing for the granting of such diplomas ? The evidence shows that it did not. The evidence shows that it only bore the signature of the President of the Republic. This we hold was not sufficient to its validity in view of the law which also makes the signature of the Secretary of State a requirement.

The statute of Liberia on forgery declares that forgery of a written instrument must be to such a degree that if the instrument forged was genuine it would be of legal efficacy. This we hold implies that it should bear the requisites which the law requires of a genuine instrument of its particular character.

The statute is in harmony with the general rule of the common law which declares that an instrument to be the subject of forgery must be valid for the purpose for which it purports to have been designed.

It was held in *Hobbs v. State* (75 Ala. 1) ; and again in *State v. Pierce* (8 Iowa

231) ; and again in *Roode v. State* (5 Neb. 174), and a number of other cases that : "a writing void on its face because of the want of legal requisites to its validity is *not* the subject of indictment for forgery in consequence of its incapacity to effect fraud." (24 L. R. A. 38.) In *State v. Van Hart* it was held that the forging of an instrument which upon the face of the indictment would appear to be void even if genuine is not an indictable offense. (17 N. J. L. 327.)

The indictment charges that the making of the said instrument by the prisoner was done with intent to commit fraud upon the President of the Republic. But there was no evidence given to establish how the alleged forgery was calculated to defraud the President of Liberia. From the instrument itself we can not by any process of legal reasoning discover how a diploma of a corporation protected by law could work a fraud upon the President of Liberia. The State having averred this fact in the indictment was bound to prove it. Under the statute of Liberia fraud is made an element necessary to constitute forgery and should not only be laid in the indictment but proved on the trial.

The State having failed at the trial to establish the charge by legal evidence, the verdict of the jury was manifestly wrong and the court below should have allowed the motion for a new trial, and it was error in refusing to grant same.

The refusal of the trial court to allow the motion in arrest of judgment was also error for if from the evidence the prisoner had not been found guilty of an offense in law the court was bound to arrest judgment and grant an acquittal. We having found the verdict to be unsupported by that quality of evidence necessary to establish the charge of forgery for which appellant was indicted, the judgment predicated on said verdict is therefore void and erroneous and should be vacated and it is hereby so ordered.

*Arthur Barclay*, for appellant.

*Attorney General*, for appellee.