

JOSEPH CORSSEN, Agent for MESSRS. OVERBECK LTD., a German Firm transacting mercantile business in the City of Harper, County of Maryland in the Republic of Liberia, Plaintiff-in-Error, v. REPUBLIC OF LIBERIA and His Honor JAMES H. DENT, Judge of the Circuit Court, Fourth Judicial Circuit, Maryland County, Defendants-in-Error.

MOTIONS TO DISALLOW APPEARANCE AS COUNSELLOR.

Argued January 10, 1929. Decided January 16, 1929.

A Senator who is engaged to defend a client charged with a violation of the revenue law will be disallowed from appearing as counsellor on an application for a writ of error in such a suit on the ground that his action would be against public policy.

In a proceeding for contravention of customs regulations in the Circuit Court of the Fourth Judicial Circuit, a decree was granted against the libelee, now plaintiff-in-error, who filed a petition for a writ of error. At a hearing on the petition, defendant-in-error filed a motion praying that W. V. S. Tubman be disallowed from appearing as counsellor for plaintiff-in-error. *Motion granted.*

*W. V. S. Tubman* for plaintiff-in-error. The *Attorney General* for defendant-in-error.

MR. JUSTICE PAGE delivered the opinion of the Court.

This is a case brought up to this Court on petition of W. V. S. Tubman, counsellor-at-law for Joseph Corssen, agent for Messrs. Overbeck, Ltd., a German firm transacting mercantile business in the City of Harper, County of Maryland, in the Republic of Liberia, plaintiff-in-error, against the Republic of Liberia, defendant-in-error, praying this Honorable Court to grant unto him the

issuance of a writ of error, with assignments to be heard by this Court in an action of violation of revenue law of the Republic of Liberia by contravention of Customs Regulations upon proceedings had and obtained against the said Joseph Corssen, agent for Messrs. Overbeck, Ltd., a German firm transacting mercantile business in the City of Harper, County of Maryland in the Republic of Liberia, plaintiff-in-error, against interfering with wrecked property; which proceedings are somewhat considered as embodying principles of a quasi-international character. The issue in said case was joined and tried before the Circuit Court of the Fourth Judicial Circuit. His Honor James H. Dent presided.

In this case it appears that the said plaintiff-in-error was found guilty of the charge as laid; and a decree of the court in admiralty was pronounced against him without exceptions being taken; the libelee submitted himself to the decree of the court below and paid the amount with the cost adjudged against him when the case found its terminus.

During the proceedings of the case it appears further that the said Tubman was out of the Republic and was represented by proxy. Having returned after final judgment, execution and compliance therewith, he seeks now to open the proceedings by bringing before this Court a petition for a writ of error for the hearing of the case upon errors assigned.

Upon the filing of the petition, due notice was given to the libelant, defendant-in-error, to show cause why said application should not be granted.

At the hearing, defendant-in-error by and through the Attorney General, filed a motion praying that the Honorable W. V. S. Tubman, Senator of the Republic of Liberia, be disallowed from appearing for or representing plaintiff-in-error as his counsellor-at-law on the grounds that same is against public policy.

This Court says it is a maxim in political science that

in order to attain the due recognition and protection of rights, the powers of government must be classified according to their nature and each class entrusted for exercise to different departments of the government.

This arrangement gives each department a certain independence which operates as a restraint upon such actions of the other as might encroach on the rights and liberties of the people.

In the nature of this classification we find that legislative power deals mainly with the future and the executive with the present, while the judicial is retrospective, dealing only with acts done or threatened, promises made and injuries suffered.

Legislators have their authority measured by the Constitution; they are to do what it permits, and nothing more, and they take solemn oath to obey and support it; when they disregard this, they then usurp authority, abuse their trust, and violate that promise confirmed by an oath.

Judge Bouvier in his treatise defines public policy to mean that "principle of the law which holds that no subject can lawfully do that which has a tendency to be injurious to the public or against the public good." It has been also designated by Mr. Andrews in his treatise on American Law that:

"Public Policy is a compensating principle, checking the excesses of power, relieving against the weakness of dependency, and constantly seeking to preserve the reciprocal balance which must exist between the parts of society in order that the whole may operate smoothly." 1 Andrews, American Law 759.

This Court says that public policy is also based upon experience and observations in the ordinary affairs of life, governed by the logical rules of "cause and effect" of the greatest justice and utility that afford the greatest good to the greatest number.

Andrews, the well-known writer on American jurisprudence, also says that public policy sometimes attempts to

distinguish agreements made in violation of the policy of the law. 1 Andrews, American Law 758, § 556.

Now if indeed public policy could be clearly defined, that is, if all the subjects to which it applies could be enumerated and the scope of its application clearly limited, it would lessen the difficulty of deciding what agreements, contracts, and combinations were permissible and inhibited.

Suffice it to say, however, that it is the touchstone or trisquare by which the legality or illegality of many transactions is to be judged.

Laws are not to be construed by the crooked cord of judicial discretion, but by the golden wand of the common and statute laws, and the truth of the matter is that public policy is ascertainable only by the conception of human mind as to the consensus of opinion and the tendency of acts, and therefore it can never be reduced to exact and stable rules.

Counsellor W. V. S. Tubman, who is Senator from Maryland County of the Republic of Liberia, entered into contract with Joseph Corssen, agent for Messrs. Overbeck, Ltd., a German firm transacting mercantile business in the City of Harper, County of Maryland in the Republic of Liberia, to defend their interest on a charge of open violation of the revenue law of the country, on which charge judgment or decree was entered against him. Said decree was satisfied under execution. Since the said contract treated of issues of international character, this Court could not but regard said contract as void with reference to said counsellor's connection thereto because of his previous engagement to the Republic of Liberia as Senator. A contract which binds the maker to do something opposed to the public policy of the state or nation or which conflicts with the wants, interest, or prevailing sentiment of the people or our obligations to the world or is repugnant to the morals of the times is void, however solemnly the same may be made. The

said Senator cannot in the discharge of his obligations to the Republic of Liberia assist in prescribing by statute and rules, laws and regulations for the collection, preservation and safety of the revenue of the Republic on the one hand, and on the other hand seek to act against the state in bringing to iustice those who demonstrate such a flagrant, wilful violation and disregard of said laws, rules and regulations as to oppose and destroy the revenue of the state and its collection. This would be an attempt to strangle its life blood which is the existence of the country.

The motion therefore of the Republic of Liberia, by and through L. A. Grimes, Attorney General, is sustained and the said W. V. S. Tubman, Senator from Maryland County, is disallowed from appearing as counsel in the case at bar. And the Court so orders.

*Motion granted.*