CASES ADJUDGED

IN THE

SUPREME COURT OF THE REPUBLIC OF LIBERIA

AT

APRIL TERM, 1928.

DANIEL DENNIS and GEORGIA DENNIS, Appellants, *v.* REPUBLIC OF LIBERIA, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Decided April 30, 1928.

1. Voluntary admission made by a party is evidence against such party making same and where it does not appear that said admission was made from threat, fear or inducement, it is evidence of no low grade.
2. Husband and wife are ordinarily not competent or compellable witnesses to testify against each other in criminal prosecutions except under certain circumstances.

On indictment in the Circuit Court for incest, defendants were convicted. On appeal to this Court on bill of exceptions, *affirmed.*

Barclay & Barclay for appellants. *The Solicitor General* for appellee.

MR. JUSTICE PAGE delivered the opinion of the Court.

This case comes up from the Circuit Court of the First Judicial Circuit, Montserrado County, at its May session, 1926, on a bill of exceptions presented in accordance with the statutes regulating appeals. The appellants being dis-

satisfied with the several rulings, the verdict and final judgment of the court below founded upon an indictment of the grand jury of said County, submit said case before this Court for review.

This Court, having inspected the records in the case and carefully considered the exceptions taken by the appellants, has been led to such conclusions as are warranted by law and shall therefore pass upon the points submitted in their order as the grounds upon which the appeal is taken. The salient points in the case are as follows:

Because when on the 25th day of May, 1926, Parnhvor, the wife of the said Daniel Dennis, one of the prisoners, was called to be sworn as a witness in said case to testify on the part of the Republic of Liberia, appellee, defendant's attorney objected to the said Parnhvor testifying on the grounds that, the said Parnhvor being the wife of the said Daniel Dennis, both were considered as one person in law, and therefore she could not be compelled to give testimony against the husband; this objection was overruled by the court, to which exception was duly taken.

To this exception this Court says that the court below did not err in overruling the objection to witness Parnhvor, the wife of the prisoner, for the following reasons:

That according to the law cited by appellant in the court below (Lib. Const., Art. I, sec. 7) it is indeed prohibited for any person to be compelled to furnish or give evidence against himself, and this rule of law is also upheld and supported by our statute. Old Blue Book, ch. XII, p. 58, § 13. This Court is of opinion that no departure should be made from this well-settled principle of law; but when a party of his own volition, without being compelled by the court, voluntarily comes forward and of his or her own free will elects to take the stand and give testimony in a case in which he or she is directly

interested and concerned, he or she is to be regarded as acting in the exercise of that privilege and benefit held out under the law of the Republic in the Act of the Legislature approved 1907.

Now on page six, fourteenth day's session of the records of the case, we find that witness Parnhvor was introduced to testify as a witness. The court having queried her as to whether she desired to give testimony against her husband, she being his wife answered in the affirmative; upon this expressed desire of hers the court admitted her to give testimony. There is nothing in the records to support the contention of the appellants that witness Parnhvor, the wife of Daniel Dennis, one of the defendants in this case, was forced or that she was compelled to give evidence as set up in appellants' bill of exceptions, but on the contrary it appears that she of her own volition made the election. (See records.) The common law rule by which parties are excluded from being witnesses for themselves applies to the case of husband and wife, neither of them being admissible as witness in a cause, civil or criminal, in which the other is interested; and this exclusion is founded on the identity of their legal rights and interests and on principles of public policy which lie at the foundation of civil society, sacredly protecting and cherishing the confidence subsisting between the spouses; hence they cannot be compelled to give evidence for or against each other. But there are exceptions to this common law rule which are allowed from the necessity of the case; partly for the protection of the life and liberty of the wife, and partly for the sake of public justice. Thus a wife is competent witness against her husband indicted for forcible abduction and marriage if the force was continuous upon her till the marriage; and so she is competent witness against him on an indictment for rape, or for assault and battery upon her or for maliciously shooting her or for incest. The wife may also be admitted to testify against her husband to

secret facts which no one but herself could know in the interest of public justice, decency and morality. 1 Greenleaf, Evidence, §§ 334, 335, 343.

This Court is of opinion that the testimony of witness Parnhvor is not in violation of any constitutional rights of appellants but that it was regularly and legally obtained by the court below.

This witness having elected to take the stand and give evidence, commenced her testimony with observations on her part of unusual and improper conduct between her husband and his daughter Georgia in the following manner: first, of their occupying the same room, even up to and after the girl had reached her majority, and her becoming pregnant and giving birth to a child; second, having been caught in the bed with Georgia, he besought witness, his wife, not to tell it, and subsequently forced her to swear that she would not expose the matter. (See statement of witness Parnhvor.)

John Baxter and Momo Carney corroborated witness Parnhvor in her statement to the extent that prisoner Daniel Dennis admitted or confessed to them that he had had sexual intercourse with Georgia, his daughter, and that he had been intimate with her for about ten years and that his wife would not have exposed them but for one William Johnson from whom he, Daniel Dennis, procured medicines to set her crazy so the matter would be dropped. This admission or confession made and given in evidence, the court could not but admit and the jury take into consideration as legal evidence against prisoner. The statute law directs that "all admissions made by a party himself, or by any agent of his, acting within the scope of his authority are evidence." Old Blue Book, ch. X, § 13. "Whatever has been said by a party himself, is evidence against him." *Id.*, § 14. See also *Cooper* v. *Republic,* 1 L.L.R. 256 (1814).

A voluntary admission made by a party is evidence against him even where it does not appear that he was

warned by the judge of the penalty he might incur provided such admission was not made from threats, fear or inducement, and such evidence when admitted will be evidence of no low grade. The record does not show on its face that this admission was made by threat, fear or inducement, but voluntarily. Further, there is no rule or law whereby the husband or wife is precluded from giving testimony against each other's ill treatment and gross injustice and that the giving of such testimony operates as an infringement on that protected right secured to each spouse by the Constitution and laws of this Republic.

As to count 4 of the bill of exceptions, this Court is of opinion that the court below committed no error in refusing or overruling the motion for a new trial, as the grounds set up in said motion are not sufficient to have warranted the court to grant a new trial; such vague and groundless objections raised in issues affecting public justice and morality as in the case at bar should not be tolerated by the courts but looked upon with disfavor.

This Court therefore can find no legal reasons why the judgment of the court below should be disturbed, set aside or made void; rather, after calmly and maturely weighing the evidence, the circumstances surrounding the case, the nature and magnitude of the offense charged, it is firmly of opinion that the judgment of the court below be and the same is hereby affirmed. And the Clerk of this Court is hereby ordered to send down to the court below a mandate for the immediate execution of said judgment; and it is so ordered.

Affirmed.