

In re A. B. RICKS, Counsellor-at-Law, F. JAMES BULL, Justice of the Peace and Counsellor-at-Law, and JAMES C. PHILLIPS, Respondents.

CONTEMPT PROCEEDING.

Argued January 3, 1934. Decided January 26, 1934.

1. Information having reached a party that an order for the issuance of process against him has been made, he may voluntarily appear, submit to the jurisdiction of the court, and thereby waive the issuance and service of the process ordered.
2. An attorney who clandestinely secures employment for himself in a case which another attorney had submitted to the judgment of the court declaring it to be fatally defective in its management in the lower court, and who impugns the legal ability and professional integrity of the former attorney, is guilty of contempt.
3. A party to an action who joins a conspiracy which is formed against the attorney who formerly represented him in the action and which will cast unfavorable reflections on the court, is guilty of contempt.
4. A justice of the peace who certifies a paper which purports to be the affidavit of a party to an action but which has actually not been sworn to by such party, is guilty of contempt.

Respondents have been cited for contempt because of their conduct on an appeal from a conviction of one of them, James C. Phillips, of extortion. Respondents adjudged *guilty of contempt*.

A. B. Ricks, F. James Bull, and James C. Phillips for respondents.

MR. JUSTICE RUSSELL delivered the opinion of the Court.

The brief history of the case in point is as follows: On the 21st day of December, 1933, the case *Phillips v. Republic*, 4 L.L.R. 11, was called for hearing; whereupon Counsellor Arthur Barclay announced himself as representing the appellant, and Counsellor Anthony Barclay, as representing the appellee. The Court then ordered the bill of exceptions read.

After the reading of the bill of exceptions and after sundry questions had been propounded from the bench thereon, the counsel for the appellant gave notice to the Court that he had discovered from the reading of the records that the points set forth in the bill of exceptions were not supported by the records of the case; and, that being so, in his opinion of the practice they could not, and would not, be entertained nor considered by the Court, because appellate courts are only to review cases from the lower courts upon points of law and facts set forth in the bill of exceptions and supported by the records of the case. *Varne, Vombo, Ginda and Momora Singby, v. Republic*, 1 L.L.R. 242 (1893). Consequently, he gave the Court to understand that, in his opinion, it would only be a needless waste of the Court's time and a cause of unnecessary delay and exertion for him to attempt to argue said case, although he had previously given notice to the Court that he would predicate the prosecution of his appeal on four points of law which he now found the records did not support. This act on the part of Counsellor Arthur Barclay the Court highly appreciates, and strongly recommends to the emulation of the entire bar, because the Court realizes the fact that it is just such fair-minded and conscientious cooperation between the bench and bar of this Honorable Supreme Court of Liberia that will regain for it the high reputation which it undeniably enjoyed in the days of our fathers, and thereby renew the confidence of parties litigant in its administration of justice, whether such litigants be citizens of Liberia or foreigners.

Acting upon the announcement of counsel for the appellant, as aforesaid, the Court suspended the case, reserving its opinion and judgment in the premises, to be handed down at some subsequent time convenient to the Court.

Regardless of everything that had transpired in the case as outlined above and in flagrant violation of all pro-

fessional propriety and fraternal comity, Counsellor A. B. Ricks who was present in Court the whole while and was aware of everything that had transpired and every action taken, announcement made, and conclusion arrived at in the premises, held a conference with James C. Phillips, the appellant in the case, in which he impugned the actions of Counsellor Barclay and among other things charged him with an abandonment of the case, and thereby induced him, the appellant, to engage him, the said Counsellor Ricks, without any reference to the previous professional relationship established between him, the said appellant, and the said Counsellor Arthur Barclay in this identical case, which had been suspended and was only awaiting final determination by the Court.

In pursuance of this unprofessional engagement with the appellant, as stated above, on the 26th day of December, 1933, he, the said Counsellor A. B. Ricks, filed a motion for the *hearing* of said case, in which motion he also charged appellant's former counsel with neglect of duty and abandonment, and also charged this Honorable Supreme Court of Liberia with having deprived the appellant of his constitutional rights and privileges of hearing him in person, or by counsel, or both; and to which motion he attached a document purporting to be an affidavit sworn to before one F. James Bull, a Justice of the Peace for Montserrado County, who is also a member of the bar of this Court.

On the reading of the said motion in this Court, which was called for by Counsellor Ricks when the Court met on the second day of January, 1934, after having recessed for the Christmas holidays, the minutes of the Court were read to him, showing that the Court had spent a whole day on the consideration of this case interrogating counsel on both sides as the trial had proceeded, and that it was due to the questions put from the bench and the answers made from the records of the case that counsel on both sides decided to forego their arguments and submit the

case upon the briefs for the adjudication of this Court, and that Counsellor Arthur Barclay had not even then abandoned the case as Mr. Ricks, in his motion, had falsely alleged.

In due course, the Court ordered a writ to issue commanding Counsellor Ricks and Mr. James C. Phillips to appear before the Court at 3 o'clock in the afternoon of the following day to show cause why they should not be attached for contempt; or alternatively, to put upon record a declaration that they, being present and having heard the order, waived the service of process and submitted themselves to the jurisdiction of the Court. Counsellor Ricks and his newly found client chose the latter alternative, and made the necessary declaration. Subpoenas were then ordered issued for Counsellor W. V. S. Tubman, whom Counsellor Ricks had endeavored to draw into the conspiracy, and Counsellor F. James Bull, who, in his capacity as a Justice of the Peace, had been the officer before whom the affidavit was supposed to have been sworn. Counsellor Anthony Barclay, the Deputy Attorney General at this term of the Court, was, in accordance with rule XIII, sub-section 1 of this Court, cited to be present.

During the trial Counsellor Ricks, giving evidence in his own behalf, averred that although present in Court from time to time during the trial, he did not know that the trial had regularly proceeded and the case had been duly submitted as the record shows he did; but he nevertheless admitted that he had neither had the courtesy to consult Counsellor Arthur Barclay, the lawyer for Mr. Phillips, nor had he shown that deference to the Court of consulting the records in order to discover whether or not the counsel had in fact abandoned the case of appellant, and the Court was still waiting for Mr. Phillips to obtain another counsel, as he falsely impressed Counsellor Tubman had been the case.

Counsellor Tubman on the stand testified *inter alia*

that he had just landed from Cape Palmas when Counsellor Ricks approached him representing that Counsellor Arthur Barclay having abandoned the case of Mr. Phillips, the latter was without counsel; and asked him, the witness, to assist him, Counsellor Ricks, to represent the case for Mr. Phillips before the Supreme Court. Mr. Tubman testified that he had consented to assist Counsellor Ricks in the said case, and that he had told his colleague that if he would prepare the motion and send it, he would sign it. But on receiving and reading the motion, it struck him as being too serious an attack upon the character and reputation of a colleague, and as containing an imputation upon the Court; and that in general the motion was also unprofessional. He therefore replied by letter that he was too busy to sign the motion, but that if the motion were filed and allowed, he would assist Mr. Ricks to argue the case. He testified that had he been in the city long enough to know the actual facts he would have advised Mr. Ricks against filing the motion at all; but that up to the time of his refusal to sign, he had believed the representations made by Counsellor Ricks to be true.

In the year 1888, during the trial of the case *McAuley v. Republic*, 1 L.L.R. 225, which case originated in the Court of Quarter Sessions and Common Pleas, Sinoe County, whilst the records were being read in this Court, Attorney General Davis, then representing the appellee, asked the permission of the Court to address the bench, which he did in the following words: "The Attorney General declines to defend this case because the indictment charges that the appellant committed forgery by altering the figures on a duebill for \$6.75 given him by one Gussfeld; but all the evidence goes to prove that the figures altered were no part of the original duebill. I think the evidence does not sustain the allegations in the indictment sufficiently for me to make a defense in the

case." Such an announcement as that of the foregoing declaration of the Attorney General, is what this Court considers to be a formal abandonment of a case. *Mc-Auley v. Republic, supra.*

Applying now the principles of law relevant to the facts hereinbefore succinctly recapitulated, we find that:

"While it may seem somewhat incongruous to speak, as the courts often do, of enforcing respect for the law and for the means it has provided in civilized communities for establishing justice, since true respect never comes in that way, it is apparent nevertheless that the power to enforce decorum in the courts and obedience to their orders and just measures is so essentially a part of the life of the courts that it would be difficult to conceive of their usefulness or efficiency as existing without it. Therefore it may be said generally that where due respect for the courts as ministers of the law is wanting, a necessity arises for the use of compulsion, not, however, so much to excite individual respect as to compel obedience or to remove an unlawful or unwarranted interference with the administration of justice. As will be apparent, questions of contempt may be linked with an unlimited number of subjects, such as the duties and privileges of attorneys and officers of the court generally, witnesses, and others." 6 R.C.L. 487, § 1.

"The power to punish for contempt is as old as the law itself, and has been exercised from the earliest times. In England it has been exerted when the contempt consisted of scandalizing the sovereign or his ministers, the law-making power, or the courts. In the American states the power to punish for contempt, so far as the executive department and the ministers of state are concerned, and in some degree so far as the legislative department is concerned, is obsolete, but it has been almost universally preserved so far as re-

gards the judicial department. The power which the courts have of vindicating their own authority is a necessary incident to every court of justice, whether of record or not; and the authority for issuing attachments in a proper case for contempts out of court, it has been declared, stands upon the same immemorial usage as supports the whole fabric of the common law." *Id.*, at 489, § 2.

"It is peculiarly the duty of an attorney to maintain the respect due to courts and judicial officers, and any breach of this duty is contempt. Where an attorney during a trial of a cause is guilty of such misconduct as tends to embarrass the administration of justice, this may be a contempt; as is also a wilful neglect of his duty to attend the trial of a case when it is called, or a disobedience or defiance of the orders of the court generally, as where, after and during the operation of an order of disbarment or suspension, an attorney persists in doing legal work, and this though the work is of a character which might have been done by a layman." *Id.*, at 493, § 7, citing 35 L.R.A. (N.S.) 794.

This present Bench regrets exceedingly, that it should be forced by circumstances at this, its first sitting since its induction into office as the Supreme Court of the Republic of Liberia, to be called upon to discharge the painful duty of passing upon the misconduct and unprofessional actions of counsellors of this bar; but as we are sworn to protect the Constitution and laws of this Republic, we can only do so with our eyes blinded to sympathy and only wide awake to justice, with a firm determination of beginning our career just as we hope to end it.

It cannot be successfully gainsaid that the legal profession is an honorable career; hence in England, besides insisting upon mental qualifications or knowledge of the law, the conduct and general deportment of applicants

must also be taken into account before they can be "called to the bar."

The actions of Counsellor A. B. Ricks in adroitly and clandestinely securing employment for himself in the case which had been openly declared by his brother counsellor to be fatally defective in its management in the lower court, and for which reason said brother counsellor of his had given notice that he would submit to the judgment of this Court; and by which means moreover, in his desire to secure employment for himself, he undertook to impugn the legal ability, and unfavorably to reflect upon the professional integrity and reputation of said brother counsellor of his, even to the disadvantage of his own legal ability which must of necessity be thrown in the shade by the position he elects to assume in such a case, such actions on the part of Counsellor A. B. Ricks, this Court considers to be unprofessional and highly reprehensible, a violation of legal ethics, and a direct and positive contempt of court.

It is the opinion of this Court, therefore, that Counsellor A. B. Ricks has openly violated his professional obligations to this Court and is in consequence thereof hereby suspended from all the rights, privileges, dignities and emoluments of a member of the bar of this, and every other, court of this Republic as and from the date of this judgment; and such suspension shall remain in force until eight months shall have elapsed from the date that a Justice of this Court presiding in our chambers shall have inspected a receipt showing that the cost has been paid, and had a record made of same.

The legal profession is so delicate and sacred a profession that confidence becomes one of its most indispensable qualities upon which it depends for its existence; and when that confidence is betrayed or miscarried, either by the lawyer or his client, the whole foundation upon which the profession rests becomes undermined, so far as those particular parties concerned go. It goes without saying

then that whoever brings about such unfavorable results to the disadvantage and discredit of so honorable a profession must be held accountable.

James C. Phillips, of his own free will and accord, sought the professional services of Counsellor Arthur Barclay because (we take it for granted) he had confidence in his ability and integrity as a lawyer to represent his interest in this case in point. Professional relationship, then, was at once thereby established between him and his counsel predicated and based upon the old foundation of mutual confidence. In the face of this fact, the said James C. Phillips allowed himself to be seduced by Counsellor A. B. Ricks to join in a conspiracy against his former counsel, Arthur Barclay, and this Honorable Court.

It is the opinion of this Court that once a client retains a counsellor to represent his interest in court, the relationship established between the two parties should at once be that of the strictest confidence, accompanied by the highest sense of respect and integrity, where one tells the other all and is assured of the safety and protection of all by the other—mutual confidence.

This seems to have been the relationship between James C. Phillips and his counsel when, without any justification so far as the counsel was concerned, he broke faith with him and lent himself to a conspiracy calculated to cast unfavorable reflections and insinuations upon this Court.

For this contribution of James C. Phillips to this conspiracy, therefore, the Court holds him in contempt and is of opinion that a fine of five dollars should be imposed upon him to be paid within one calendar month from the date of this judgment; and upon failure to pay same within said time he should be imprisoned for ten days; and it so ordered.

The Court will next consider the actions of F. James Bull in the case, who, besides being a counsellor at this

bar where he is expected to lend assistance to, and collaborate with, the other members of this bar in holding up the honor and dignity of the Supreme Court of Liberia, and of holding that objective in the forefront of all other considerations, appears also as a Justice of the Peace for Montserrado County, and in that capacity signs a document which he styles, and expects this Court to accept as, an affidavit in this case under consideration. The document reads, *inter alia*: "James C. Phillips being duly sworn, deposes and says that he is the appellant in the above entitled cause, etc. etc." and is signed "James C. Phillips, appellant and deponent." See the affidavit on file to the motion of Mr. Ricks.

Certainly, F. James Bull as a counsellor-at-law ought to know what constitutes an affidavit; and, as such, when he undertakes to offer such a paper as the one attached to the proceedings in this case, the Court has no alternative but to consider his actions as an attempt to mislead the Court and to subvert the courts of justice to the discredit of the judiciary of this Republic.

Mr. Bouvier defines an affidavit to be: "A statement or declaration reduced to writing, and sworn to or affirmed before some officer who has authority to administer an oath or affirmation." B.L.D. "Affidavit." From the definition just quoted, it would appear that to constitute an affidavit, the declaration must be sworn or affirmed to by the party making it, before an officer of the law competent to administer an oath. Anything short of this makes whatever document is so called devoid of the qualities of an affidavit, and without any force and legal efficacy, and all evidence supported by it defective and objectionable in court.

These facts having been brought out, process was ordered issued commanding the said F. James Bull, counsellor-at-law and Justice of the Peace as aforesaid, to appear, and show cause why he should not also be attached for contempt of court. It having been made clear

to him that he too, however, had the option of waiving the issuance and service of process as his colleague Counsellor Ricks had done, he elected so to do, submitted to the jurisdiction of the Court, and was joined as a co-respondent in these proceedings.

The trial then proceeding, from the evidence given by both Justice Bull, who is also a counsellor of this Court as previously observed, and Counsellor Ricks, it was admitted that the affidavit attached to the motion in question was never sworn to nor affirmed by James C. Phillips who is said to have taken the oath and signed said affidavit; neither did he even appear before the justice of the peace to make this or any other declaration when he signed the *jurat*. This means, then, that all the facts set out in the document called an affidavit here are untrue, misleading, and illegal, and yet they bear the official endorsement of Counsellor, Justice of the Peace, F. James Bull. The Court wishes to observe here that a justice of the peace should always have due regard for his oath of induction into office, and the sanctity of the great responsibility to the courts and to litigants with which he is thereby clothed; and, as such, should always act under all circumstances in strict conformity with said sacred trust. In addition to the obligation and responsibilities of a justice of the peace, F. James Bull is also a counsellor-at-law of the Supreme Court of Liberia; and regardless of these dual obligations and responsibilities, for him to have acted in such a way, and under such circumstances, exposes him to great censure, and his actions were very reprehensible, as they are calculated to cast an aspersion upon the honor and dignity of the Court and drag the standard of justice and fair play in the dust. For this reason this Court considers his said actions, in every phase, as being contemptuous to this Court and dishonorable to the State. In consequence, his license as a Counsellor-at-law is hereby suspended for three calendar

months commencing from the date of this judgment; and it is so ordered.

Counsellor Anthony Barclay, as a representative of the Department of Justice, is hereby ordered to take official notice of this opinion of the Court for and in behalf of the Republic of Liberia, his client, to whose appointment Counsellor Bull owes his office as a justice of the peace.

Guilty of contempt.

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