

In re H. LAFAYETTE HARMON, Respondent.

CONTEMPT PROCEEDING.

Decided December 22, 1936.

1. One charged with the commission of an offense which implies stealth and secretiveness, may not be convicted if the evidence tends to show the use of violence and that the defendant felt he was thus justified in entering property in dispute, he being one of the claimants thereof.
2. When a duty is imposed upon a member of the bar, and he entrusts that duty to another with results adverse to his expectations, the responsibility is his.
3. If that duty was in order to purge himself of a contempt committed, any miscarriage or apparent miscarriage of justice which he claims grew thereout aggravates rather than mitigates said contempt.

Respondent appeared before the Supreme Court for disciplinary action as to contempt committed earlier, and the Circuit Judge of the Second Judicial Circuit was allowed to intervene. Respondent *adjudged guilty* of aggravating contempt and *punished* accordingly.

*H. Lafayette Harmon* for respondent, assisted by *P. Gbe Wolo* and *W. V. S. Tubman*. *The Attorney General, R. F. D. Smallwood, T. G. Collins, and M. Dukuly*, members of the Bar Committee of Montserrado County, appeared as *amici curiae*.

MR. JUSTICE RUSSELL delivered the opinion of the Court.

This case had its beginning in the chambers of His Honor the Chief Justice in the year 1934; and the facts are set out in his opinion printed in 4 L.L.R. 161 and in appendix II, part I of our New Annual Series No. 2, pages 260 to 273 inclusive.

The Chief Justice having, as therein expressed, directed that Mr. Harmon should be cited to appear before the Court *en banc*, writs of summons were issued and returned, and the case was heard before the full Bench on

the 15th, 16th and 21st days of January, 1935, after which the Court unanimously held that the said respondent, H. Lafayette Harmon, was guilty of contempt of court. See opinion of Mr. Justice Dixon printed in 4 L.L.R. 314 and on pages 153-161 of said New Annual Series No. 2, the conclusion of which reads:

“This Court cannot find words sufficiently strong in which to condemn the actions of Counsellor Harmon in writing a letter dated June 17, 1932, to the late ex-Chief Justice Johnson, by virtue of which he induced him to issue a writ of possession against A. D. J. King, and which in turn led to the said A. D. J. King’s writing a letter to the late Chief Justice which was manifestly improper; but which nevertheless was induced by the improper conduct of Mr. Harmon.

“Nevertheless, inasmuch as the matter of A. D. J. King’s remains in the Department of Justice, this Court will not now sentence Mr. Harmon for the contempt committed, but will give him an opportunity to redeem himself by the assistance he will give the Department of Justice in straightening up this matter and properly prosecuting the said A. D. J. King for the crime he is charged with having committed. The respondent in these proceedings should be ruled to pay all costs of these proceedings; and it is hereby so ordered.”

The judgment of this Court immediately thereafter pronounced reads:

“This cause having been called for hearing, Counsellor H. Lafayette Harmon appeared for himself, and the Deputy Solicitor General, attached to Cape Palmas, appeared for the State. After arguments *pro et con*, it is hereby adjudged:

“That he is guilty of contempt of court: but that the judgment punishing him therefor be suspended until, at least, the April term next ensuing in order to give him, the said respondent, an opportunity:

“(1) To present a receipt from Messrs. the Cavalla River Company, Ltd., showing that he, the said respondent, shall have complied with the order of this Court to pay, or cause to be paid unto the said Cavalla River Company, Ltd., the \$450.00 received from Jacob H. Logan in limited powers of attorney, and all costs which he neglected to include in either of the two bills of costs he signed as correct;

“(2) To present a report showing in detail that assistance he shall have rendered the Department of Justice in collecting the evidence against, and assisting in the prosecution of, Alfred D. J. King for the offense alleged to have been committed by the said Alfred D. J. King in breaking open the factory of Messrs. W. D. Woodin & Co., Ltd., and removing the goods of said company from their factory in Little Bassa as complained of.

“(3) To present a letter of apology to this Court for his letter to the late ex-Chief Justice Johnson, dated June 17, 1932, by which the said Chief Justice Johnson was misled and caused to give and retract an order for writ of possession, by virtue of a letter of protest offensively worded from Alfred D. J. King, to the late Chief Justice, dated 18th July, 1932; thereby making his orders appear ridiculous and ineffective.

“(4) To present a letter of apology for his misrepresentation which caused our Supreme Court to appear impotent to enforce a judgment due to his neglect to return to Logan the \$450.00 in limited powers of attorney, the greater portion of the amount of the judgment involved in the case; and for misrepresenting that a judgment had been rendered against Alfred D. J. King in another case, although no such case had ever been filed. The costs of these proceedings to be held pending our final judgment.”

With items 1, 3 and 4 Mr. Harmon complied during succeeding terms of court by (a) filing on the 3rd of October, 1935, a letter from W. S. Murdock, agent of the Cavalla River Company, Ltd., that he had received the limited powers of attorney in settlement of their claim against Jacob H. Logan, which letter was orally confirmed by the said W. S. Murdock, testifying on oath before this Court on the 5th day of December, 1935; (b) in compliance with item 3 he filed, on the 2nd of March, a written letter of apology to the memory of the late ex-Chief Justice Johnson for his false and misleading representations to the said late ex-Chief Justice upon which false and misleading statements the late Chief Justice Johnson had acted, and from which actions thereon he had had to recede, resulting in his orders having been made to appear ineffective and absurd; (c) complying with item 4 of said judgment he, on March 2, 1935, filed the requisite letter of apology for misrepresenting that a judgment had been rendered against Alfred D. J. King in a case which had never been entered.

There then, until the 9th day of September, 1936, still remained outstanding only his compliance with item 2 of the aforesaid judgment, viz.: To present a report showing in detail what assistance he had rendered the Department of Justice in collecting the evidence against, and assisting in the prosecution of, Alfred D. J. King for the offense alleged to have been committed by the said Alfred D. J. King, in breaking open the factory of W. D. Woodin & Co., Ltd., and removing the goods of said company from their factory in Little Bassa as complained of.

It is his return to this last mentioned item, the second item in our judgment of February 1, 1935, that we have been considering at this term of Court, and upon which we have now to express an opinion.

The returns were first read in open court on Monday, November 23rd, and are substantially as follow:

“MONROVIA, LIBERIA  
*September 9, 1936*”

“THE HONOURABLE  
THE SUPREME COURT OF LIBERIA,  
NOVEMBER TERM A. D. 1936,  
MONROVIA.

“YOUR HONOURS:

“I beg to submit to you herewith, copies of correspondence received from my assistant at Grand Bassa containing report on the trial of and determination of the case Republic of Liberia, plaintiff vs. Alfred D. J. King, defendant, Crime: ‘Grand Larceny’ which was tried and decided at the last August term of court at Grand Bassa.

“You will observe that the prosecution lost the verdict and judgment in said case and although the defendant admitted committing the act complained of, he disputed title deed to the land. In the face of the defendant’s admission that he did break open the factory of the Cavalla River Company, limited, at Little Bassa and took away the goods, cash, produce etc. therefrom, property of the Company, the court seems to have held the view that although the said Company was in possession and trading on premises which Mr. King the defendant claimed title to, he had a right to do what he did without any responsibility being attached.

“I have no doubt you will agree, that if the court took this position, whether right or wrong, the prosecution would be powerless. The attached copies explain in fuller detail.

“With assurance of my profound respects. I have the honour to remain,

“Your obedient servant,  
[Sgd.] H. LAFAYETTE HARMON,  
*Solicitor and Counselor-at-law.*”

Upon the reading thereof His Honor Judge Summerville, the trial Judge, then being present, applied to this Court for permission to file an application to intervene so as to show that Mr. Harmon had grossly misrepresented the facts elicited during the trial; and the reasons why, in view of the evidence adduced, he, the said Judge, took full responsibility for the instructions he gave the trial jury which had brought a verdict of acquittal in favor of the said Alfred D. J. King.

The leave prayed for was granted, the motion filed, and when the cause came on for hearing on December 14th, His Honor the Judge appeared in person in support of his said motion; the Honorable the Attorney General, and Counsellors Smallwood, Collins, and Dukuly, members of the Bar Committee of Montserrado County, upon the invitation of the Court appeared as *amici curiae*, and the said H. Lafayette Harmon, respondent, appeared in person, and was assisted by Counsellors William V. S. Tubman and P. Gbe Wolo.

Most of the evidence was documentary, consisting principally of certified copies of the record of the trial of Alfred D. J. King for grand larceny, in the Circuit Court of the Second Judicial Circuit over which His Honor Judge Summerville had presided, supplemented by the oral testimony of William B. Murdock who during the course of his testimony produced a letter from the said respondent which reads as follows:

“H. LAFAYETTE HARMON  
Solicitor & Counsellor-at-law.

“LAW OFFICES:  
MONROVIA-GRAND BASSA  
CABLE ADDRESS:  
Harmony  
“Ref. No. 334/36 L.

“MONROVIA, LIBERIA  
*September 8, 1936.*”

“THE AGENT,  
MESSRS. THE CAVALLA RIVER COMPANY, LTD.,  
MONROVIA.

“DEAR MR. MURDOCK,

“I am sorry to have to inform you, that the State Prosecution lost the case against A. D. J. King at Grand Bassa at the recent August term of the Circuit Court, in the charge of Grand Larceny brought against him for feloniously breaking open your factory at Little Bassa and taking your stocks and property therefrom.

“I attach hereto copy of the detail report which I received from my Assistant, Attorney Benson at Grand Bassa, who assisted in the prosecution of the criminal case against this man, in the interest of the Company and on my behalf, I having been requested to do so by the Supreme Court of the Republic; from it you will see the flimsy points on which the verdict and judgment was lost, the main point of the defendant's defence being that although your factor was in possession of the premises he had title to it and therefore had a right to enter and do what he did, and the court seemed to have sustained this defence against the commission of a criminal act. ‘I rather not make any further comments on the way foreigners' interest is handled by our courts now-a-days, I leave it to you to make your own decision in the premises.’

“You will note also, that Mr. King is threatening your former Factor Mr. Deshields with an action simply because he went before the court and testified the truth against him; how far this will go I cannot tell.

“Yours faithfully,  
[Sgd.] H. LAFAYETTE HARMON.”

From the records it seems to us clear that said respondent Harmon disobeyed the orders of the Court, to himself personally assist in the collection of evidence, and prosecution of said Alfred D. J. King, but entrusted the duty imposed upon him to a junior assistant, Attorney J. A. Benson, of far less legal experience. The result of this was that King was prosecuted for grand larceny, an offense which implies stealth, secretiveness, fraud or cunning when the facts adduced tended to prove that King committed a violent offense by forcibly breaking open the factory in broad daylight, with the assistance of a band of armed men, claiming that the factory had been illegally built upon his land, the title to which Henry DeShields, landlord of W. D. Woodin & Co., Ltd., had contested, and who had based his claim to the premises in dispute upon a deed, the boundaries of which had been by said H. Lafayette Harmon, the respondent, fraudulently copied from that of Alfred D. J. King's, and that DeShields had thereupon taken possession of the land, and the Cavalla River Company, as successors of Woodin & Co., Ltd., had upon the advice of said Harmon refused to negotiate for the lease of the premises with Alfred D. J. King, the owner of the premises thus in dispute.

Moreover, as was shown in an investigation held here on the 30th day of December, 1935, Mr. Harmon stated in the presence of His Honor Judge Shannon and others, that his clients preferred to lose the money rather than allow Murdock to go to Bassa; and the investigation further showed that although the said Murdock was several times subpoenaed as a witness to testify in said case, yet upon the advice, or connivance, of said respondent he never went to Bassa to give the required testimony.

Whatever irregularities the trial judge may have committed, as contended here by respondents, in permitting the disputed title to the premises to be drawn into the case of larceny, on one point at least the trial judge would



seem to have followed the opinion of this Court in the case *Yancy v. Republic*, decided by us on February 1, 1935, printed in 4 L.L.R. 68 and on pages 105 to 117 of our New Annual Series No. 2, the relevant portion of which reads:

"Hence this Supreme Court cannot be expected to affirm a judgment of conviction against any person charged, unless the evidence adduced is sufficient to satisfy our minds and consciences that the accused is correctly charged, and the evidence satisfactorily proves him guilty of the offense as charged.

"For the object of evidence is juridical conviction.

"The evidence adduced having tended to prove defendant guilty of a violent offense, upon an indictment charging him with a secretive offense, we cannot but reverse the judgment of the court below, and remand the case for a new trial."

The case was thus, apparently, lost by Mr. Harmon's disobedience of our orders of February 1, 1935, to assist the prosecution, which act of disobedience itself merits our severe censure; and his disobedience has been further aggravated by the letter above quoted, tending to impugn the justice of our courts nowadays in its administration of justice to foreigners.

Our opinion, therefore, is that the offense of the said H. Lafayette Harmon, respondent, has been considerably aggravated by the actions hereinbefore mentioned; and that the mildest punishment appropriate to the misconduct should be his suspension from the legal profession for five calendar years from the date of the judgment presently to be pronounced; and after said period of five years he will be permitted to apply to this Court to be reinstated, provided that within said interval no further demerit mark shall have been recorded against him; and it is hereby so ordered.

*Respondent adjudged guilty.*