KAISER MASSAQUOI, Appellant, *v.* MOMODU SILLAH, Appellee.

APPEAL FROM PROVISIONAL MONTHLY AND PROBATE COURT OF CAREYSBURG DISTRICT.

Argued November 25, 28, 1946. Decided January 31, 1947.

Where one is accused by another of stealing his cow and is acquitted of said charge, an action for slander or for malicious prosecution by the wronged person will not lie against an innocent bystander.

Appellant was acquitted of a charge by a private prosecutor of stealing a cow. He then successfully brought suit in the Bondiway Court, Firestone Plantations Area, against defendant, who is not the private prosecutor, for defamation of character. Defendant, now appellee, appealed to the Provisional Monthly and Probate Court of Careysburg which reversed the judgment on the ground that the complaint was defective. On appeal to this Court, *judgment affirmed* principally on the ground that appellee was not the private prosecutor.

Nete Sie Brownell for appellant. *B. G. Freeman* for appellee.

MR. JUSTICE BARCLAY delivered the opinion of the Court.

This case originated in the Bondiway Court, Firestone Plantations Area, before Stipendiary Magistrate Dukuly, who rendered judgment in favor of plaintiff Kaiser Massaquoi, awarding him one hundred dollars damages. Defendant took exceptions and appealed to the Provisional Monthly and Probate Court of Careysburg, and it is from that latter court that this appeal hails.

Before reviewing and passing upon the points raised in the bill of exceptions we shall state briefly the facts leading thereto.

From the records before us we find that appellant, Kaiser Massaquoi, and others were arrested upon a writ issued by the Stipendiary Magistrate, Bondiway Court, Firestone Plantations Area, for the theft of a cow valued at one hundred and eight dollars, which writ was based upon the complaint and oath of one Allegu Kamara. Upon an examination of the case the evidence adduced failed to in any way connect Kaiser Massaquoi with the crime; hence he was discharged.

Appellant, however, feeling that his character had been defamed by being charged with the others with the larceny of the cow, decided to enter an action of damages against appellee for defamation of character. A writ was accordingly issued charging:

"That defendant Momodu Sillah on the 30th day of July A.D. 1945, did without any justifiable cause defame complainant Kaiser Massaquoi's character by charging him with the larceny of a cow by maliciously swearing to a writ of arrest before the Magistrate Court, Firestone Plantations Area, Montserrado County, R.L., under which writ complainant was arrested, arraigned before his people and a large crowd and was carried before the court aforesaid and there held under bail duly discharged by the Court as not in any way implicated in the charge of larceny. And still complainant's character has been defamed by defendant. Wherefore complainant prays that the court may award him a damage of $300.00 against defendant in the judgment which he asks to be entered in his favour. And to notify him that upon his failure to appear judgment will be rendered by default. And have you there this writ.

"Issued this 27th day of August 1945.

M. DUKULY
Stipendiary Magistrate,
Firestone Plantations Area, Mo. Co."

The court awarded him one hundred dollars damages. Defendant being dissatisfied took exceptions and prayed an appeal to the Provisional Monthly and Probate Court of the District of Careysburg. It is from the ruling of the judge of this last mentioned court who reversed the judgment of the stipendiary magistrate that this review by appeal, in the opinion of appellant, has become necessary.

As to the first count of the bill of exceptions which *inter alia* complains that the trial judge took up the case in the absence of counsel for appellant and disposed of same without affording appellant an opportunity to be represented by counsel, the records show that when the case was called and it was observed that counsel for plaintiff, now appellant, was absent, plaintiff, now appellant, being in court, was called before the court and questioned by the judge as follows:

"Q. Were you and appellant [defendant in lower court] not instructed to have your lawyers here today for the case when in court on Monday the 21st instant, as this case has been on docket for quite a time?

"A. I sent a direct message to my lawyer, Mr. Brownell, that the case was assigned for hearing today and that he should come up. I am looking for him."

In view of this reply of plaintiff Massaquoi, the case was then suspended for thirty minutes and the court took recess to await the arrival of Counsellor Brownell.

Aside from the fact that the trial judge did not approve count one of the bill of exceptions, it is obvious that the records do not support the allegation in said count that appellant Massaquoi was not given an opportunity to be represented by counsel. Nevertheless, we are of the opinion that thirty minutes was too short a time to await arrival of counsel under the circumstances. More time should have been given allowing for unforeseen happen-

ings on the road such as punctures, engine trouble, and the like, although in this case counsel for appellant did not actually arrive until the next afternoon. In addition, we do not find ourselves in accord with the contention that the parties did not have notice of the assignment of the case, for the records show that Kaiser Massaquoi, appellant, himself had notice of the assignment of his case, and by his answer to the court's question already above quoted it is evident that he fully understood that his case had been assigned for January 24, 1946. It should not be expected that the lawyer would have more interest in his case than his client, and if he failed or neglected to see that his lawyer was informed of the assignment the court should not be held responsible for such neglect.

Count one of the bill of exceptions also states that the lawyers had agreed that the case be postponed from the December term, 1945 to the January term, 1946 at a day to be agreed upon by them, and that although Attorney Carney Johnson who represented appellee saw Counsellor Brownell in Monrovia on January 24, 1946, he nevertheless said nothing to him but went to Careysburg and called for the case in the absence of Brownell and raised demurrers which appellant was unable to answer.

The Court seriously deprecates the practice of lawyers agreeing without the knowledge of the court to postpone hearings of cases, or of any lawyer intentionally absenting himself from court so as to delay the hearing of a case. Once a case is docketed and ready for trial, it is the duty of the court to assign same and dispose of it unless a motion for continuance is filed and same granted by the court in the regular way or unless there are some unavoidable circumstances over which counsel has no control and that fact is properly brought to the notice of the court. In the present case the records do not show that the court was informed of any agreement of counsel to postpone the case until the January term 1946, except the reference thereto in count one of said bill of exceptions. However,

the records do show that the case was actually assigned on January 21, 1946 for hearing on January 24; that both parties were present on January 21 and were instructed by the court to notify their lawyers of the assignment of the case; and that appellant stated in open court, on query by the judge, that he had sent a direct message to his lawyer of the assignment, that he should come up, and that he was expecting him.

Count one of said bill of exceptions further states that notwithstanding appellant asked to be allowed until the next day to bring up his counsel from Monrovia, "Your Honour denied said reasonable request and proceeded to give ruling upon the *ex parte* representation of counsel for appellee alone." We have carefully examined the records before us and it does not appear therein that any such request was made by appellant. The judge therefore was fully warranted in not approving count one of the bill of exceptions.

Count two of the bill of exceptions complains that the judge on January 24, 1946 rendered judgment and dismissed the case on the demurrers raised by the attorney for Momodu Sillah in the absence of appellant. We must determine whether the judge was correct in so doing. The record shows that the judge sustained the demurrers, and reversed the judgment of the stipendiary magistrate on the ground that the court found the complaint unintelligible, indistinct, and defective because it charged defendant below with defamation of character for maliciously swearing to a writ of arrest and in the meantime endeavored to establish slander. Plaintiff should have made his complaint clear, distinct, and intelligible and within the scope of the action he desired to bring, whether malicious prosecution or slander, instead of playing between the two and not being definite as to either action.

> "Every complaint must contain a distinct and intelligible statement in writing, of a sufficient cause of action within the scope of the form of action chosen,

otherwise the action may be dismissed." Stat. of Liberia (Old Blue Book) ch. IV, § 3, at 41, 2 Hub. 1536.

Defamation is defined by our statutes as follows:

"Defamation is an injury offered to the reputation of another, by an allegation which is not true. Defamation may be made verbally, or by signs, which is called slander, or by writing or painting which is called libel." Stat. of Liberia (Old Blue Book) tit. I, § 23, at 25, 2 Hub. 1518.

On the other hand our statutes define malicious prosecution as follows:

"A malicious action, suit, prosecution, or other legal proceeding, is one brought against a person for a matter of which he hath been before lawfully acquitted, or finally discharged, or one totally without any reasonable cause or foundation. . . ." Stat. of Liberia (Old Blue Book) tit. I, § 38, at 27, 2 Hub. 1521.

The action for malicious prosecution is not favored in law, and it is regarded with greater disfavor with reference to cases where the suit is brought for the institution of criminal proceedings against the plaintiff since public policy favors the exposure of crime and the recovery against a prosecutor in case of a failure brought about technically or otherwise would tend to discourage private prosecution.

In *Ruling Case Law* the law is thus stated:

"An action for malicious prosecution is an action for damages by one against whom a criminal prosecution or civil suit has been instituted maliciously, and without probable cause, after the termination of such prosecution or suit in favor of the defendant therein. As applied to the original proceedings, a malicious prosecution has been defined as one that is begun in malice, without probable cause to believe it can succeed, and which finally ends in failure. The action for malicious prosecution is not favored in law, and

> hence has been hedged about by limitations more stringent than those in the case of almost any other act causing damage to another, and the courts have allowed recovery only when the requirements limiting it have been fully complied with. The disfavor with which the action is looked upon is especially marked in cases where the suit is being brought for the institution of criminal proceedings against the plaintiff, as public policy favors the exposure of crime, which a recovery against a prosecutor obviously tends to discourage." 18 R.C.L. *Malicious Prosecution* § 2, at 11 (1917).

Even more important, our own statute prescribes unequivocally that:

> "No action can be maintained for defamation on account of anything said or written, whether as judge, party, juryman, witness, or agent for a party, in a court of justice, or in the course of a legal proceeding, or in any investigation or conference preparatory to a legal proceeding; provided, that what is said or written be relevant to the proceeding, investigation, or matter in hand, or preparing for, and is not introduced for the sole purpose of injuring the party to whom it refers." Stat. of Liberia (Old Blue Book) tit. I, § 31, at 26, 2 Hub. 1520.

Under our statutes unless it could be clearly shown that the prosecution was instituted without probable cause, any action for malicious prosecution must eventually fail. And, with reference to defamation, since our statute gives protection, although somewhat limited, to any expression made by judge, party, juryman, witness, or agent for a party in the investigation or trial of a case, an action of damages for slander or libel would also be difficult to maintain successfully.

But even if we were inclined to accede to the request made by appellant to remand the case for a new trial because of the absence of his counsel or in order that his

counsel have another opportunity, whether or not deserved, to answer the demurrers of appellee in the court below, it would be of no material benefit to him, not only because of what has already been mentioned above, but also because as we continue our inspection of the original writ of arrest issued against Kaiser Massaquoi and others for the larceny of a cow we discover that the said writ was issued upon the complaint and oath of one Allegu Kamara and not Momodu Sillah, the appellee against whom the action was brought.

The writ reads as follows:

"REPUBLIC OF LIBERIA

TO MYER, ESQUIRE, CHIEF OF POLICE FOR THE MAGISTRATE COURT

FOR FIRESTONE PLANTATIONS AREA, OR ANY OTHER POLICEMAN FOR SAID COURT,

"GREETING:–

"You are hereby commanded to arrest the body of Aaron, Massaquoi, Varnie, John Wartee and Karsar (Div. No. 45) defendants, and forthwith bring them before me, Stipendiary Magistrate, at the Magistrate Court House for the aforesaid Area, at the hour of 2 o'clock p.m. on the 30th day of July A.D. 1945, to answer the charge of Grand Larceny based upon the complaint of Allegu Kamara, plaintiff, in which said complainant being duly sworn substantially alleged as follows:

"That the defendants on or about the 27th instant at the Firestone Plantations Area, Montserrado County, R.L., then and there being found unlawfully and feloniously did steal, take and carry away one (1) cow valued at $108.00, property of Allegu Kamara, with intent in so doing to convert same to their own use and benefit. Contrary to the form, force and effect of the Statute Law of Liberia in such cases made and

provided, and against the peace and dignity of the Republic of Liberia. And for so doing this shall be your warrant. And have you there this writ.

"Witness: "Issued this 20th day of July A.D. 1945.

ALLEGU [Sgd.] M. DUKULY

KAMARA *Stipendiary Magistrate,* Firestone Plantaet al. tions Area, Montserrado County, R.L."

Where the defendant did not initiate a criminal prosecution against the plaintiff or cause one to be maintained, he cannot be held in an action for malicious prosecution, nor can he be held for slander under the circumstances disclosed by the records in this case.

Hence to remand the case in face of such basic defects to which our attention was directed by appellee would be useless and a waste of time as far as any material or legal benefit which complainant, now appellant, would derive therefrom.

We are therefore affirming the judgment of the Provisional Monthly and Probate Court of the District of Careysburg, with costs against appellant; and it is hereby so ordered.

Affirmed.