CASES ADJUDGED

IN THE

SUPREME COURT OF THE REPUBLIC OF LIBERIA

AT

NOVEMBER TERM, 1933.

ALLEN N. YANCY and JOHN B. DELANEY, Appellants, *v.* REPUBLIC OF LIBERIA, Appellee.

APPEAL FROM CONVICTION OF SLAVE TRADING.

Argued December 18, 1933. Decided December 22, 1933.

1. When a trial judge commits flagrant errors in the trial of a cause, to the prejudice of a party, the Court will reverse the judgment, and award a new trial.
2. Inasmuch as the statute laws of Liberia prescribe that every party against whom a verdict shall have been rendered, and who shall have taken exceptions thereto, shall have two days thereafter within which to file a motion for a new trial if it is claimed that the verdict is contrary to the law, the evidence, or legal instructions of the court, and for any other cause, four days, it is reversible error for the trial judge to enter final judgment within three hours after the return of a verdict to which the party shall have excepted and given the statutory notice that he would move for a new trial.
3. The Supreme Court settles the procedure of the courts below.
4. When an appeal is taken, it is irregular for the trial judge to obliterate any point in the bill of exceptions.
5. In some jurisdictions a witness may be cross-examined only on matters brought out in the direct examination, but in Liberia that rule does not obtain, for our statute provides that a witness may be cross-examined as to all matters touching the cause or likely to discredit him.
6. The court, however, should not permit a cross-examiner to put questions which are patently intended to bring out facts of which it is clear the witness has no knowledge.
7. The admissibility of all evidence is within the province of the court, but, when admitted, its credibility is to be left to the jury.
8. Hence in ordinary cases the trial court has no right to expunge from the records the oral testimony of a witness, but must submit same to the jury who are to judge of its credibility and effect.
9. Nor is the court bound to permit unduly cumulative testimony on any one point in the case on trial.

On appeal from a conviction of slave trading, *judgment reversed* and new trial ordered.

D. C. Caranda and *Nete Sie Brownell* for appellants. *The Acting Attorney General* and *Anthony Barclay* for appellee.

MR. CHIEF JUSTICE GRIMES delivered the opinion of the Court.

Upon the call of the above entitled cause for trial, the Court ordered the bill of exceptions read in order to ascertain what were the salient points therein presented for our consideration, so that it might be better enabled to concentrate its mind on those points in the record which were relevant to the issues brought up for review.

As the clerk progressed with the reading thereof, it began to dawn dimly upon the minds of the Court that too many vital errors had been committed by the trial judge to warrant our proceeding to hear the whole record, or to allow arguments from any one of the counsel appearing in the case. These more or less vague apprehensions became a settled conviction when we reached the twenty-seventh count of the bill of exceptions wherein it is complained that upon the return of the verdict of guilty against the defendants, they excepted to said verdict, and gave notice that they would file a motion for a new trial. The judge of the trial court then ordered that said motion for a new trial should be filed by four o'clock that afternoon. The defendants protested that it was then already midday, and they could not prepare the motion within the time mentioned, the more so as the request tended to deprive them of the statutory period allowed them. The record nevertheless further shows that the trial judge, over the objections of defendants and the exceptions which they had taken, entered final judgment against defendants three hours after verdict, to which defendants also excepted.

According to the statute laws of Liberia every party against whom a verdict is rendered and who shall have taken exceptions thereto, must file a motion for a new trial within two days after the rendition of said verdict if it is claimed that the said verdict is contrary to the evidence, the law, or legal instructions of the court etc. In some other cases, however, the losing party is entitled to four days within which to file his motion for a new trial. See Statutes of Liberia (Old Blue Book), ch. VII, p. 48, § 18. It is the opinion of this Court that no matter how satisfied in his own mind the trial judge may have been of the correctness of the conviction of the defendants, he committed a very grave and reversible error in rendering final judgment three hours after the verdict had been returned, and he thus deprived the defendants of the important right above mentioned.

Hence upon this exception having been reached, the Court carefully queried the Honorable the Attorney General for appellee on this point, and he admitted at the bar that from his examination of the records the exceptions of appellants could not be disputed. The Court therefore has no option but to reverse the judgment of the court below and remand the case for a new trial, following the precedent in the case *Ledlow, Maloney, and Garkpah* v. *Republic,* 2 L.L.R. 529, 4 Ann. Ser. 65 (1925).

Inasmuch as this Court has the twofold function of reviewing cases as well as of settling the procedure of the courts below, there are certain points of procedure submitted for our consideration in the bill of exceptions which the Court feels it to be its duty to settle now, in order to obviate a recurrence at the anticipated new trial of certain gross errors and irregularities that we have discovered in the former trial of this case.

First of all, at least three points in the bill of exceptions as presented by appellants were erased by the trial judge without leaving the appellate court any opportunity of

comparing those points with the record so as to discover whether or not they were correctly taken. It is true that appellants did not pursue what we consider the legal remedy for having those paragraphs in their bill of exceptions that were obliterated by the trial judge reincorporated or otherwise brought to the attention of this Court, but inasmuch as the case has to be remanded we have thought it best to call attention to this irregularity at once.

Another important point is the eighteenth count in the bill of exceptions. In this exception it is complained that when witness Jerro was on the stand he stated *inter alia* that Delaney, one of the defendants, had entered his town with two hundred men tied. Appellants on cross-examination put to said witness this question: "Were the two hundred men caught by co-defendant Delaney on the night you said he entered your town?" The trial court sustained the objection of the prosecution and over-ruled the question, to which the defense excepted.

This ruling is typical of many in the record which we will not take time here to enumerate where the judge either upon objections or *sua sponte* appears to us to have unduly limited the right of cross-examination. For although in some jurisdictions a witness may only be cross-examined on matters brought out in his examination in chief (1 Greenleaf, *Evidence,* § 445, bottom of pp. 571, 572; 8 *Ency. of Pl. and Prac.* 102–104), or upon such points upon which the party producing him gives specific notice that he is called to testify, yet such rule does not obtain in Liberia, since our statute provides that, "A witness may be cross-examined as to all matters touching the case, or likely to discredit himself; but he shall not be asked irrelevant or hypothetical questions for the mere purpose of entrapping him." Rev. Stat. § 371; Statutes of Liberia (Old Blue Book), ch. XII, p. 61, § 34.

The trial court seems to us to have overlooked the fact that one of the objects of a cross-examination is to test the

accuracy of the testimony given by the witness. For by it,

> "the situation of the witness with respect to the parties, and to the subject of litigation, his interest, his motives, his inclination and prejudices, his means of obtaining a correct and certain knowledge of the facts to which he bears testimony, the manner in which he has used those means, his powers of discernment, memory, and description are all fully investigated and ascertained, and submitted to the consideration of the jury, before whom he has testified, and who have thus had an opportunity of observing his demeanor and of determining the just weight and value of his testimony. It is not easy for a witness, who is subjected to this test, to impose on a Court or jury; for however artful the fabrication of falsehood may be, it cannot embrace all the circumstances to which a cross-examination may be extended." 1 Greenleaf, Evidence, § 446.

Great as is the latitude allowed a cross-examiner under the rule just stated, one must be careful not to carry it so far as to make it absurd. Upon the production of a so-called "general" witness, the court should not permit the cross-examiner to put questions which are patently intended to bring out facts of which the witness has no knowledge, as appears to us to have been attempted with witness Jeh, the over-ruling of which is the subject of the fourth and sixth exceptions.

On the other hand this Court is of opinion that the nineteenth count of the bill of exceptions is not well taken. That exception is based upon the refusal of the judge to expunge from the records, upon the application of appellants, the evidence of witness Carpeh on the grounds given by the defense that, (1) his statement had no tendency to prove or disprove the guilt of the parties but was merely a narration of a trip he had made to Fernando Poo some years before; and (2) that the witness shall

testify only to facts in his knowledge. When this point in the bill of exceptions was reached in this Court, the evidence of the witness Carpeh was referred to and read and found to be as follows:

"What I know of the two hundred men is, they caught chiefs from our town. It is John Delaney, co-defendant, who carried soldiers. When I came from Cape, from Yancy, co-defendant, telling him that we have no men to go to Fernando Poo; he told me, 'I've already sent for them.' When I returned home and saw John Delaney, co-defendant in Judukehn, he was then with soldiers, catching our chiefs; but I told him that he shouldn't catch the men. He told me that 'it is too late.' He caught Suku Dorkee, Weddo-Go, Dortu, Pleh-Gofar. Gofar asked why? and John Delaney, co-defendant, said, 'I'm looking for men to go to Fernando Poo.' Gofar told him we have no men to go to Fernando Poo, therefore we are asking your pardon. While Gofar was speaking, John Delaney, co-defendant, fired at a goat and killed it and said that it was for the soldiers. Gofar and Guedow-Byee and Telle-Nyean were tied together. Willie-Go, Dorkee, [*sic*] also were tied. He ordered them to sit down under a tree; then this goat was being cooked while the men were sitting down. When the soldiers had gotten through eating, he ordered them to catch one more goat again, which they did. Then they went. Before they had left, John Delaney told Toklar, the Gborbee, that 'these men whom I'm carrying are not going to return until two hundred men are sent to the Cape; without that, they will have to be put in jail and never return again.' When they left Judukehn, I didn't follow them again; but I am one of the two hundred men who went to Fernando Poo. I was one of the headmen. On my reaching the Cape Superintendent Yancy, the co-defendant, told me,

'You are going to be made one of the headmen.' When I was going to Fernando Poo, Superintendent Yancy, the co-defendant, told me, 'Go there with the men.' I told him that I've been there before; and the place is too bad. But he replied to me, 'You may go. It is only one year that you will have to spend there.' When we landed at Fernando Poo, after a month, Superintendent Yancy sent a letter to Consul-General G. M. Johnson, to tell Carpeh that they are going to spend two years in Fernando Poo and they must not refuse to work for two years. In this letter he told the Consul that he should tell Carpeh to tell his people that, 'According to Spanish law, labourers must spend two years in Fernando Poo before they return. They must then do so.' When I told the men they said that, 'When we were coming we were told to spend only one year.' But I told them that the Superintendent sent a letter that we will have to spend two years and on our failure, the ones who do not spend this time will have to go in jail. Then all of the boys went to the Consul telling him that we are not willing to spend two years here; we are dying, too much trouble. The Consul then told us that a letter sent from your Superintendent, that you spend two years, and you are to do so. Whoever is alive at the end of the two years will return. On our return from Fernando Poo, some of us received only two pounds, three pounds, four pounds, and five pounds for the two years. As a headman I received only six pounds for the two years."

The objection made did not contain a true summary of the evidence on record, for it is clear that witness Carpeh's statement is far more than a mere narration of a trip of his to Fernando Poo.

This Court also calls attention to the fact that:

"It is the right of the Court to decide on the admis-

> sibility of evidence; but when it is admitted, it is the right of the jury to decide upon its credibility and effect." 1 Rev. Stat., § 378.

Hence when a witness shall have been admitted to testify, his oral testimony must be submitted to the jury, except in special cases of which the one the subject of this exception is not included.

Moreover, in the case at bar, the evidence of witness Carpeh appears to us to have been a very strong link in the chain of evidence, both positive and circumstantial, which tended to support a rather strong *prima facie* case against the appellants at bar; and strongly corroborates the testimony of witnesses Zibo and Jerro, the subject of sundry other exceptions.

The twenty-first count of the bill of exceptions is to the exclusion by the trial court of sundry witnesses called to testify to a certain fact, namely whether or not defendant Allen Yancy was on the steamship *Montserrat* when it went to Wedabo—a fact which it would require no more than two competent witnesses to establish. Hence we cannot condemn the trial judge for refusing to permit ten persons to testify to that one fact, in spite of the fact that the judge appears to us to have ruled on this point prematurely. Other witnesses for the defense seem to have been arbitrarily excluded as was done in the case *Ledlow, Maloney and Garkpah* v. *Republic,* 2 L.L.R. 529, 4 Ann. Ser. 65 (1925).

Hence with the aforesaid indications how the trial judge should proceed in the new trial anticipated, it is the opinion of this Court that the judgment of the court below should be reversed and the case remanded for a new trial at the next ensuing term of court; and it is so ordered.

Reversed.