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THE ADMINISTRATION OF LAW IN LIBERIA.[1]

WE have here, obviously from the pen of President Roberts himself, the report of a trial in the courts of Liberia which excited much interest, and, unhappily, much bad feeling in that young republic. The parties concerned give it an interest, having, in succession, held the highest office in the government; but our attention has been chiefly called to it by the insight it gives us into the character of the courts and the administration of the law in Liberia. Omitting the comments of the writer, the report shows us the course of proceedings before the Court of Common Pleas, in the trial of the issues raised by the pleadings, with the rulings and judgment of the Supreme Court upon an appeal and a bill of exceptions from the inferior court. There was a goodly array of counsel upon each side, with an occasional suggestion from the parties themselves, in the prosecution of the suit. We have also quite a full report of the testimony given upon the trial, and the course of examination therein pursued by the counsel. But it is in relation to the rulings of the court, that we are especially interested. To understand these, we must give the pleadings somewhat at length. The action, as above stated, was for an alleged libel upon the plaintiff published in the Liberia Herald in

[1] "Proceedings in an action on the case for libel before the Court of Common Pleas and Quarter Sessions, Montserrado county, March Term 1864, J. J. Roberts *v.* S. A. Benson, taken by appeal to the Supreme Court, January Term 1865, S. A. Benson, appellant, J. J. Roberts, appellee. Monrovia: F. W. Howard, Printer 1865."

November and December 1863, by the defendant, while he was President of the republic. The declaration or complaint contains eight counts or specifications. The words in the first, as set forth, are, "Now Mr. Roberts ought to remember, when he hears at these partisan meetings, unprincipled men arise and abuse and falsely talk of corruption in the present administration, from the beginning to the end, of many things being wrapped in darkness, and must be brought to light, that similar charges were made against him under his administration, whether true or not we leave him and the public to decide." There was no colloquium explaining to what these words related, but there was an *innuendo* that charges of corruption or similar charges were made against the plaintiff under his administration of the government of Liberia, as Governor and President.

The defendant's answer to this simply denied that the words made any charge or declaration against plaintiff's character, but merely expressed advice and caution, and were not sufficient, in law, to maintain this action. 2d. That the words were not actionable without special damage, and none had been stated. And, on these grounds, the prayer of the defendant was that the first count might be quashed. The plaintiff, however, insisted that the whole question ought to be submitted to the jury under the direction of the judge. And such seems to have been the ruling of the court, although the report is very defective in this particular, since the trial proceeded generally upon all the issues raised.

The second count sets forth the following as the libellous words, though without any colloquium: "How often has he been accused with selling public lands himself during the six years he was Governor and President of Liberia, and of being salesman himself, and receiver of the money himself in his office?" Meaning that the plaintiff, during the six years he was Governor and eight President of Liberia, was guilty of official misconduct in selling public lands and receiving the money for the same in his office. To this, as well as to the averment that the words in the first count were false and malicious, the defendant denies that they are so, and avers that they are true.

The third count sets forth the words, without colloquium. They charge a strenuous effort, during the last six years, of a certain political class to get Mr. Roberts into the presidential chair again, he co-operating, openly or covertly, according as success promised.

"The reputation of an innocent and honorable individual is nothing, if it stand in the way of their purpose, and they even countenance and encourage such acts of disorder as tend to disorganization, if contributing to their purpose." "Meaning that the said plaintiff is guilty of countenancing and encouraging such acts of disorder as tend to the disorganization of our government." The defendant's answer to this was that the words are true, and not false and malicious. It will be observed that it is nowhere said in the pleadings, that the plaintiff was a candidate for any office, or that the words were spoken of him in that character.

The fourth count sets forth the objectionable words whereby it is stated, that President Benson had been for years opposed to Mr. Roberts's return to the presidency, and his sentiments have been, that, "until the Liberians were satisfied that it was indispensable to the existence of the country, he had better remain where he is, and not keep this young country in a constant state of political agitation and discord, by his continuous efforts to get back into the presidential chair." "Meaning that the plaintiff is guilty of keeping our country in a constant state of political agitation and discord by his continuous efforts to get back into the presidential chair." To this the defendant answers that the words do not charge the plaintiff with anything wrong, morally or legally, and are, therefore, not actionable without special damages shown, and he prayed that the count should be quashed. He further denied they were false and malicious, because they were true.

The words set forth as libellous in the fifth count were, "Mr. H. W. Dennis, now member elect to the House of Representatives, and who was, as previously stated, one of the auditors of public accounts, in December 1855, when the term of ex-President Roberts was closing, will remember, and if he does not, the treasury-book will show, that, at the close of said term, the ex-President's indebtedness to government was $3041.80, and which was not settled till President Benson came into office, and was forced to purchase the mansion of him at an enormous price." The innuendo laid was that the President was indebted in that sum to the government by overdrawing his accounts or otherwise, and that he was guilty of swindling, by forcing the President of Liberia to purchase of him, his mansion for the use of the government at an enormous price.

The answer to this denies that the words are false and malicious, because they are true.

The sixth count sets forth a statement in the Liberia Herald of a partisan meeting, when "a number of vagabonds" had been hired to stand in the street, and make abusive speeches and "indulge in the most scurrilous language possible to conceive, against the principal officers," &c., alleging that the plaintiff was present, and also at other public meetings, when "the most unprincipled abuse and slander were indulged in," among others, "by two or three vagabonds hired to go there to abuse gentlemen," and that Mr. Roberts was there to give his influence, &c. The innuendo laid was that the words charged the plaintiff with being "guilty of abuse and slander against the chief officers of the government," &c.

The answer to this also denies the words to be false and malicious, because true.

The words set forth as libellous in the seventh count were as follows:—

"And we had hoped that they, meaning the plaintiff and his friends, would have been able either to deny or call for proof in regard to what the Extra said about the fourteen years' mysterious practice of receiving himself, in hand, while President, money from individuals, in lieu of improvements on drawn lands enjoined by law, also the sales of public lands by himself, and the receipt of the money thereof himself, the same length of time. Remember fourteen years are nearly half an age, and if the statement is founded in fact, it tells a long and mysterious tale." The innuendo is "that the plaintiff is guilty of official misconduct, and of dishonest use of public money."

The answer to this was a denial that the words were a false and malicious libel, because, first, the defendant did not say, nor did he mean, that the plaintiff had made a dishonest use of the public money, but only that it was rumored that he had received money from public lands in lieu of the improvements required by law, and that he had received money for the sale of public lands; and second, that the words set forth in the count are true.

The eighth count, being without a colloquium, seems to depend, altogether, upon the innuendo set forth in the declaration, for any meaning which would be offensive or libellous: "Ex-President Roberts was named, who is well known to be sensitive if mis-

represented in a newspaper, and to demand recantation." "Meaning thereby that the said plaintiff is so very sensitive as to demand recantation if misrepresented in a newspaper, and is, therefore, guilty of those charges made against him in newspapers for which he has not demanded recantation."

The answer to this, instead of demurring, was that the words were not false and malicious, because they were true.

There was a general replication to all these answers, denying that the allegations contained therein furnish sufficient defence to the action, and also denying the truth of the allegations.

Upon the issues thus made up, a question arose between the counsel whether the court should first pass upon the questions of law raised by the pleadings, or the whole question of law and fact should be submitted to the jury, both parties relying upon the provisions of the Liberia statutes and Bill of Rights, which appear to embody many of the rules of the common law upon the subject. The counsel also cited Blackstone, Stephens, Coke's Reps., Tomlin's Law Dic., Graham & Wendell's Reps.

The court, Judge B. R. WILSON, directed a jury to be impannelled to try the issues, whereupon a question was made as to the party upon whom the burden of proof should rest, inasmuch as the publication of the words by the defendant was justified and not denied. But the plaintiff, personally interposing, accepted the duty of making out his case in the first place, and proceeded, accordingly, to introduce his testimony. After the evidence had been concluded, one of the defendant's counsel addressed the jury. He was followed by two of the plaintiff's counsel. The defendant's other counsel then followed, and the argument was closed by the plaintiff himself.

The jury found, generally, for the plaintiff, and returned a verdict for $5000 damages. The defendant then moved for a new trial on two grounds, first, that the verdict was "contrary to evidence and law;" second, "that the damages were excessive." The judge ruled that it was a privilege on the part of the jury "to make up their verdict general or not." The defendant filed a bill of exceptions on the ground that, instead of the judge ruling first upon the questions of law, both the law and the fact were submitted to the jury. The defendant asked also for a new trial because the jury did not specify in their verdict upon what counts the same was rendered, and the judge having refused this, it was

made a ground of exception. Between the trial and the hearing upon the exceptions, by the Supreme Court, C. J. DRAYTON was drowned, and Mr. ROYE appointed in his place.

In the election for President in 1855, Mr. Roye was the opposing candidate to Mr. Benson, the defendant, and his election was strongly opposed by Mr. Roberts, the plaintiff. Mr. Roye had also been a witness for the defendant, upon the trial of this action in the court below, and in the course of his testimony, to an inquiry whether after a certain event Mr. Roberts withdrew his friendship, he answered, "There was never no great friendship after that." The case came on for a hearing, as stated, in January 1865, before ROYE, C. J., YATES and PARSONS, JJ., and the argument appears to have occupied six days. The grounds of the argument are not given. It is stated that the chief justice, finding the other justices disagreed in opinion, and not having had "time to examine all the authorities that had been cited," requested each of them to draw up an opinion, and proposed to "adopt the one that seemed to accord with his views."

PARSONS, J., then read an opinion, which the chief justice pronounced to be the opinion of the court. The report professes to give a copy of this opinion, and establishes: First, that the issue of law, raised by the pleadings, should have been first settled by the court who tried the case; "the opinion of the court shall, in all cases, be evidence to the jury of the law of the land, the jury being compelled to bring their verdict accordingly;" "the jury can only determine the law and the facts according to the instruction of the court, or, in other words, according to the prescribed rules laid down by the court, otherwise an appeal lies from the verdict." Second. "The court ought to have decided the law question respecting libellous written words, since it was a question of mere law." Third. "The court is of opinion that two of the counts are bad, from the fact that the defendant has sustained the allegations respecting lands; the defendant is not responsible for the innuendoes written by the plaintiff. The law only holds him for his own acts." Lastly. "The verdict being general, that is, not leaving out the bad counts which appear upon the records, and the entire damages assessed having been given without specifying on which count the jury found for plaintiff, renders the verdict fatal."

It is added, "The court doubts not that if this case had been regularly conducted, the plaintiff may have had judgment on

some of the counts. But order or regularity does not appear upon the record. Therefore, since no good reason can be assigned for this irregularity unless it be taken in a bad sense as to the want of the right influence of the law, it is therefore the duty of this court to arrest the judgment in this case." The order therefore was, that the judgment "be hereby arrested in toto," "and the appellee is hereby ruled to pay all costs in the case."

We have followed out the report of this case with a feeling of profound interest in the manner in which the law is administered in this infant republic of Liberia. And, though we are willing to make all due allowance for obvious imperfections in the report, we are sorry to find so much to regret in the proceedings. In the first place we are pained to find two of the principal men in the republic, both of whom had held the highest place in the government, engaged in a lawsuit growing out of political animadversions in the public press, in which charges are repeatedly made imputing disreputable and dishonest conduct. It is, however, the natural fruits of what seems to be an inordinate political zeal and desire for office which we fear is far too prevalent in that community, in which, for the first time, so many are participants in a free election to civil office.

It is far from creditable to the chief magistrate of the republic to be engaged in writing articles of personal abuse and publishing them in the public newspapers, based upon the actual or assumed opposition of feeling which a citizen may have entertained towards him as a public officer. The writing and publication of the articles were not denied, and so far as the verdict of the jury may be regarded as evidence, the charges made were not only disgraceful, but false and malicious. If the maxim *interest reipublicæ ut sit finis litium* could ever be properly applied, it must be in respect to the republic of Liberia. She stands as an object of marked interest before the world in the success or failure of an experiment of self-government by a free people of color, on their native soil of Africa. And it is painful to see her citizens engaged in personal encounters of partisan zeal and ambitious desire for office, when so much is required to be done to place the government and the state in a stable and respectable condition.

But passing over these which may be regarded political considerations, we regret to find the administration of justice there still so unsatisfactory. We do not propose to engage in a contro-

versy which seems to have excited so much interest in Liberia. We only regard it as a judicial proceeding in which the rights of citizens are involved.

We have already remarked upon the omission in all the counts of any colloquium or explanatory statement giving a key to the subject-matter of the charges alleged to be libellous. But, as neither the counsel nor the court appear to have attended to this circumstance, it would seem to have furnished no ground upon which the decision of the case turned.

In the next place, in five of the eight counts there was a direct issue of fact raised to the jury by affirming the words published to be true, and therefore not false and malicious. Upon two other counts there was a denial that they were actionable without an averment of special damage, and upon one, the issue attempted to be raised depended upon the distinction between charging a dishonest use of public money and a rumor that plaintiff had received money for public lands. But, in respect to all, the defendant relied also upon the truth of the words published as a justification and defence. Now the substance of the opinion of the court seems to be this: The judge who tried the case should have ruled upon these counts in his direction to the jury, and determined, as a question of law, whether the words published were libellous or not. And, the verdict being general, if the judge failed to give this direction it was an erroneous verdict. It is unnecessary to settle how far the ruling of the judge below was erroneous in directing the jury to pass upon the several questions raised by the pleading. If he was wrong, there was a mistrial, and the defendant excepted to his ruling because he was wrong. The matter then stood thus: Upon five of the issues the jury rightfully passed, "and the court doubts not that, if this case had been regularly conducted, the plaintiff may have had judgment on some of the counts." Upon the three counts, the judge who tried the case mistook the law, in the judgment of the whole court, so that, in fact, the defendant's exceptions were sustained. What then would seem to be the obvious course and order to be observed? A new trial should have been ordered, in order to correct the mistake into which the judge had fallen. Five of the issues were for the plaintiff, and non constat that the other three might not have also been, under a proper direction and charge of the court. If it had been otherwise, the jury could

have discriminated between the issues raised and found their ver dict accordingly.

What is, perhaps, most remarkable in this judgment of the court, is that while the exception to the ruling of the court below was that the various issues were submitted to the jury, and they had rendered a general verdict in favor of the plaintiff, the court took it upon themselves to decide *that two of the counts were bad, "from the fact that the defendant has sustained the allegations respecting lands."* In other words, they sustained the exception that the judge who tried the case, should have ruled upon a matter of law, by finding, of their own motion and without the aid of a trial before them, a fact which had been passed upon by the jury who tried the case, and whose verdict was adverse to such finding. It is certainly a novel principle to declare a count bad as a matter of law, because the evidence upon which it is sought to prove the facts therein stated fails to satisfy the judge who reviews the judgment upon a mere bill of exceptions.

There seems to have been, thus far, no fault on the part of the plaintiff, but simply a mistake, if anything, on the part of the court. Upon what ground, therefore, the Supreme Court reached their final judgment and order, is beyond the comprehension of ordinary minds. Upon the hearing of a bill of exceptions to the ruling of the court below in the matter of law upon three out of eight distinct issues, and no objection made to the rulings as to the other five, the "judgment of the court" is "arrested in toto," and the plaintiff is amerced in "all costs in the case." A bill of exceptions in England is the basis of a writ of error, and the judgment upon the hearing of it is either that the former judgment be affirmed or reversed; and, if it be reversed, a venire facias de novo issues: Tidd's Practice 776. Whereas, the only ground of *arresting judgment* at this day, is some matter *intrinsic* appearing on the face of the record, and a judgment cannot be arrested for *extrinsic* or foreign matter not appearing on the face of the record: Id. 808.

If the report in this case, therefore, is to be relied on, and it professes to give the language of the court, it is difficult to escape the conclusion that the majority of the court intentionally or through ignorance denied to the plaintiff in this case the rights and remedies which courts of common law extend to all who seek redress of injuries through their instrumentality. We had much

rather presume the latter than the former alternative, for we feel a deep solicitude in the success of the grand experiment of freedom which is being tried upon the western coast of Africa. It is vain to hope to attract emigrants to its shores if it is understood that justice can be perverted by partisan bitterness or personal favor or disfavor. And though it may be of comparatively little consequence whether Mr. Roberts gain or lose his cause, it is of the highest importance to have the people know that he lost it fairly, and that the scales of justice were held with no unsteady hand. We fear, as we read this report, that justice has received a wound in this case which it will take much time and effort to heal.

Of the merits of the contending parties in the original cause of difference between them, we do not pretend to express any opinion. They have both held the highest office in the republic, and, we have been led to suppose, had filled it with great ability. Mr. Roberts has certainly achieved an enviable reputation as a man of sound judgment, good scholarship, and devoted patriotism in his various offices of Governor, President of the Republic, and President of Liberia College. We hardly know what the infant republic would have done without him. And it is certainly cause of deep regret that one standing as high as Mr. Benson in that community should have thought it wise or expedient to make the character of such a man the object of personal abuse in a newspaper, from any differences there may have arisen between them upon the subject of a party election to office. This party zeal and thirst for office threaten to be the bane of this interesting government. If a man would serve his country to some purpose, he could do so far more effectually by devoting himself to the cultivation of the soil, the introduction of the useful arts, and the diffusion of education and general knowledge, than by winning, by intrigue or demagoguism, place or office, be it the highest in the land. We may hope, however, that, with the growth of the state, there may be a corresponding improvement in the learning, integrity, and independence of its judiciary. With increased advantages of books and means of study, it is to be hoped that a learned profession may be trained, from which the ranks of the judges may be filled.

We say this because we happen to know that one, at least, of the counsel in this case spent a considerable time in this country in the study of the common law, and evinced a good degree of