

NATHANIEL FORD BRUCE, Appellant, v. **REPUBLIC OF LIBERIA**,
Appellee.

APPEAL FROM JUDGMENT OF CONVICTION OF FORGERY.

Argued November 8, 9, 1954. Decided December 10, 1954.

The gravamen of the crime of forgery is the manufacture, rather than the utterance, of a false instrument.

On appeal from judgment of conviction of forgery, judgment *reversed* as contrary to the evidence.

J. Dossen Richards for appellant. *The Solicitor General* for appellees.

MR. JUSTICE HARRIS delivered the opinion of the Court.

Nathaniel Ford Bruce, the appellant in the above entitled cause, was indicted by the Grand Jury for the County of Maryland on November 22, 1949 for the crime of forgery by unlawfully, wilfully and feloniously making three false radiograms and one letter and forging the names of the National Standard Bearer of Liberia, the National Chairman, and the National Secretary of the True Whig Party, which radiograms and letter he uttered and offered to one Joseph G. Kai of the Settlement of Pleebo, Maryland County, as being good and genuine, thereby inducing and influencing the said Joseph G. Kai to pay to him, the defendant, the amount of two hundred dollars as party tax upon the representation that payment of said amount would make him, the aforesaid Joseph E. Kai, eligible for election to the Honorable House of Representatives; forty-eight dollars as plane fare to Monrovia for the purpose of canvassing for him; and twenty-five dollars as radiogram expenses, aggregating the amount of two hundred and seventy-three dollars.

The defendant, now appellant, was arraigned and entered a plea of not guilty. A jury was selected and empanelled to try the issue thus joined between the defendant and the Republic of Liberia. Evidence on both sides was heard and rested, and the case argued and submitted to the jury, who, after being instructed by the trial Judge, retired to their room of deliberation, and finally returned a verdict of guilty against the defendant. A motion for new trial was filed, heard, denied ; and final judgment was entered sentencing defendant to three months' imprisonment. From the several adverse rulings of the trial Judge, the verdict of the petty jury and final judgment, the

appellant has appealed for hearing and determination upon a bill of exceptions containing four counts. Count "1" of the bill of exceptions reads as follows :

"Because defendant-appellant submitted within the period of two days a motion for new trial, setting forth substantially the following:

"(a) that the said verdict was against the weight of evidence ;

"(b) that every issue of fact laid and contained in indictment having been put into issue by the plea of the defendant, which was not guilty, was not substantially proved beyond a reasonable doubt ; the fact that the indictment having charged defendant with having forged the said radiograms and letter on October 11, 1949, and the evidence adduced at the trial although being contradictory, referred to a dissimilar one to the one named in the indictment which, as of record, is October 11, 1949 ;

"(c) that the alleged amount, as laid and contained in the indictment which, is two hundred and seventy-three dollars (\$273.00) was not testified to or corroboratively proved by witnesses Joseph E. Kai and Solomon Kai, who testified in behalf of the prosecution, which creates a material variance as to the date and amount, that the evidence having tended to substantially prove that the defendant was engaged as campaign leader for the said Joseph E. Kai who was ambitious as a candidate for the Honorable House of Representatives, to succeed Honorable John G. Howe whose term had expired. The fact that the said defendant was engaged in a mission involving contingent events, expectations, probabilities under the binding principles of law in such cases, defendant could not be held culpable in the exercise of such trust with a fraudulent design even if the end prove abortive; that witnesses for the prosecution, Joseph E. Kai and Solomon Kai, being parties in interest, because of the temptation to falsify due to interest, could not resist the same, and they having contradicted themselves on material elements or points of the crime of forgery, their testimonies create a doubt which should operate obviously in favor of defendant."

The Judge of the lower court in his charge to the jury on the identical points contained in the Count "1" of the bill of exceptions, said, *inter alia*, that, the evidence of the prosecution having failed to show in any way that the defendant did make the letter, and, further, from the evidence, a variance was shown in its description as against that laid in the indictment; hence, because of this outstanding variance, the letter could not be included as evidence to convict the defendant and should therefore be disregarded ; which portion of the instructions the jurors ignored. This instruction of the trial Judge, we say, is correct, for besides the variance, the letter

being over the signature of Charlie B. Thomas, nowhere in the indictment has the defendant been charged with forging the name of the said Charlie B. Thomas. But we cannot agree that, should the jury credit prosecution's witnesses to the effect that there was seen in the possession of defendant radiograms with the names of the National Secretary of the True Whig Party, and the President of the Republic, who is Standard Bearer of the True Whig Party, and that said radiograms were on forms used by the Liberian Government Radio Station, Cape Palmas, and that the messages were typewritten thereon, and that neither the defendant nor Joseph G. Kai received any such radiograms from those said persons, and that the defendant did exhibit the said radiograms to the prosecution's witness, and that Joseph G. Kai parted with his property because of having been impressed by the genuineness of the radiograms, *as against defendant's corroborated denial of these facts*, then, in that case, the essential elements of proof of forgery were established. And our reason for so saying is that, according to criminal practice and procedure, if the prosecution's witnesses testify affirmatively to the facts laid in the indictment, and evidence is rested on the part of the prosecution, and the defendant fails to rebut the testimony of the prosecution's witness, then, in that case, the State has made a prima facie case against the defendant. But, on the other hand, if the defendant produces witnesses who corroboratively rebut the testimony of the prosecution's witnesses, there arises a doubt which, unless rebutted by the prosecution, must operate in favor of the defendant.

From the records certified to this Court we find that the prosecution did produce witnesses to rebut the statement of defendant Bruce that he knew nothing of the preliminary investigation having taken place on the 13th and 14th days of October, 1949. This we cannot regard as rebutting any material portion of defendant's evidence. The court observes that the purported forged radiograms were never produced at the trial of the case, identified and admitted, neither was their non-production accounted for; but oral testimony was received to explain their contents, a procedure directly contrary to the rules governing written evidence. Even the alleged forged instruments were not laid in the indictment, as the law directs, so as to give the defendant notice of what the plaintiff intended to prove, in keeping with law. We are of the opinion that the grounds contained in Count "1" of the bill of exceptions are sufficient and cogent enough to topple the case. We will therefore not consider the remaining three exceptions which are not very material and cogent.

Before passing on to our final conclusion we would like to quote the trial Judge's ruling on Count "2" of the motion for new trial, as follows:

"In respect to Count '2' (that is the motion for new trial), it is conceded that the

burden of proof remains upon the prosecution in criminal causes and that the facts laid in the indictment must be proved at the trial. Defendant contends that, whilst the indictment charges the false making of radiograms on the 11th, yet the evidence of the prosecution is contradictory in that respect. The evidence of the prosecution does not specifically show that the defendant did make the radiograms on a particular day, but rather it shows that the radiograms had been seen by prosecution's witnesses on the 10th and 11th of October, 1949. In criminal prosecutions where time is not an essential element, the proof of the commission of the crime, if it differs from the allegations, would not be sufficient ground for a retrial so long as the evidence shows the commission of the offense before the finding of the indictment. On that point, therefore, the court is of the opinion that the contention contained in Count '2' cannot warrant a new trial."

Since the Judge admits that the evidence of the prosecution did not specifically show that the defendant made the radiograms on a particular day, but rather proves that the radiograms were seen by prosecution's witnesses on the 10th and 11th of October, 1949, we fail to see why he did not sustain the said count in the motion for a new trial ; for it is the making of the false instrument which constitutes forgery by the defendant, and not the uttering. A document may be forged by one person and uttered by another. Nowhere was it proved that the defendant forged and uttered the documents mentioned in the indictment. On the whole, this case was very badly conducted in the court below, and we are of the opinion that the verdict was against the weight of evidence. The verdict of the petty jury in this case and the judgment predicated thereupon are therefore set aside, vacated and made null and void, and the defendant discharged without day; and it is so ordered.

R eversed.