

JALLAH LONE, Appellant, v. REPUBLIC OF LIBERIA, Appellee.

APPEAL FROM THE CIRCUIT COURT, FIFTH JUDICIAL CIRCUIT,

GRAND CAPE MOUNT COUNTY.

Argued May 17, 1978. Decided June 29, 1978.

1 To convict of embezzlement it must be proved that the owner of the property entrusted it to the custody of the accused for some specific purpose, and that as bailee he had converted it to his own use.

2 An accused has the right to be informed of the nature and cause of the accusation against him, and cannot be convicted of embezzling an amount of money which he was not charged with taking in the indictment.

3 The name of a person written at his request by someone else is to be regarded as his own act and is a valid signature.

The defendant, a Paramount Chief, was indicted for embezzlement of \$15,000 which it was alleged he had received for his people in two amounts, \$10,000 and \$5,000, from two logging companies and had converted to his own use. The defendant was convicted of embezzlement of the amount of \$5,000 and sentenced by the trial judge to one year's imprisonment, a fine of \$200 and payment of restitution in the amount of \$5,200.

On appeal from that judgment, the Supreme Court, on reviewing the record, found uncontroverted the Chief's testimony that he had turned over the money to the people of his clan, who had expended it on a school and other public projects, and that he had delivered the balance to the tribal treasurer. The testimony was in fact confirmed by a receipt for the \$5,000 given the Chief by members of his tribe. The Court concluded that there was insufficient evidence to support the verdict. It also held that the trial judge had committed error in requiring as part of his judgment that defendant make restitution of an extra \$200, which the indictment had not charged defendant with embezzling. The *judgment* of conviction was *reversed*.

*J. D. Gordon and Moses Yangbe* for appellant. *Jesse Banks and Jangjaba Johnson* for appellee.

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

Former Commissioner James D. Hubbard of Bopolu District was indicted with Paramount Chief Jallah Lone, and charged with having misappropriated portions of tribal funds amounting to \$15,000. The indictment was prepared in two counts: one charged the Paramount Chief, Jallah Lone, with having misappropriated \$7,976 of the total sum of \$15,000 received by him; and the other charged the Commissioner with \$2,740 of the \$15,000 which the indictment claims was received by him from the Chief. It is striking that these two amounts together, \$7,976 and \$2,740 do not add up to \$15,000 which according to the indictment the Paramount Chief received in two amounts—\$5,000 from one source, and \$10,000 from another. In fact, the two amounts total only \$10,716, which is \$4,284 short of the \$15,000. The significance of these figures will be seen later in this opinion; but the implication one would gather from the figures

is that, of the \$15,000 received, the accused were only able to account for \$4,284 of the amount. We shall say more about this later.

The crime is supposed to have been committed in Bopolu, Lofa County. The alleged misappropriation of the money was reported to the President, and he suspended the Chief and the Commissioner, and ordered special audit of their accounts to determine whether or not any portion of the \$15,000 received by the Chief as tribal funds paid by two concessions was indeed short. The two were indicted as aforesaid, and the count of the indictment charging appellant Jallah Lone reads as follows:

"The grand jurors aforesaid upon their oaths do say

that sometime between the months of December 1973 and June 22, 1975, the exact dates and days presently unknown to the grand jurors, James D. Hubbard, former Commissioner of Bopolu District and Chief Jallah Lone, former . . . Paramount Chief of Bopolu Chiefdom, Bopolu District, Lofa County, and Republic of Liberia, defendants aforesaid whilst in the service of the Government of the Republic of Liberia as County Commissioner and Paramount Chief respectively, by virtue of their respective positions and portfolios aforesaid, did jointly and severally receive and take into their respective custodies the following amounts, to wit:

t. Defendant Jallah Lone the amount of \$10,000 from a logging company known as MIC Timber Company and \$5,000 by check in the sum of \$4,400 and \$600 cash from the Brazilian Afro Logging Company for and on behalf of the citizens and people of Bopolu Chiefdom, but defendant Jallah Lone aforesaid without any legal justification or excuse, did intentionally, fraudulently and feloniously convert \$7,976 of the amount of \$15,000 received to his own use and benefit, said amount of \$7,976 being part of the amount received from the logging companies aforesaid and belonging to the people and citizens of Bopolu Chiefdom, Bopolu District, Lofa County, Republic of Liberia, and which amount of \$7,976 defendant Jallah Lone could not give account of upon request of the people and citizens of Bopolu aforesaid as well as when he was audited between the 22nd of June to the 10th of July, 1975, by the special audit conducted by the General Auditing Office, Republic of Liberia. . . . Then and thereby Defendant Jallah Lone, former . . . Paramount Chief of Bopolu Chiefdom, Bopolu District, Lofa County, Republic of Liberia, . . . the crime of embezzlement [he] the defendant aforesaid did . . . do and commit, contrary

to the form, force and effect of the statute laws of the Republic of Liberia." The second count of the indictment charging the Commissioner, James D. Hubbard, with responsibility for \$2,740 is not quoted herein, for the reason stated later in this opinion. The indictment is dated August 19, 1977; the appellant was arrested and filed a bond pending trial.

According to the indictment, it was more than two years previous to his arrest that the appellant had received and allegedly misused the money given to him for his chiefdom, yet no steps had been taken against him except to report the matter to the President, who had ordered him prosecuted. In the record is found correspondence between the President's office and the County Attorney for Lofa County concerning the alleged shortage of this money. The President's letter reads:

"December 31, 1976.

"Mr. County Attorney:

"By directive of the President, I am to inquire from you the status of the case: *Republic of Liberia*, Plaintiff, versus *Jallah Lone* of Bopolu District, Defendant: Crime, Embezzlement. The President would have you make an immediate report to him concerning this matter, as he feels it is not right to charge a citizen, have him arrested and place him under bond without a speedy trial as the Constitution provides ; also that this matter has been outstanding for quite some time now. The President feels that if the State has a case, same must be prosecuted, and if not, defendant should be discharged.

"We expect that this matter will be handled as speedily as possible as the President directs.

"With kindest regards, "Very truly yours, "[Sgd.] RICHARD DIGGS,

*Assistant Minister of State.*"

The Lofa County Attorney's reply to the President's letter, dated January 7, 1977, reads as follows: "Dear Mr. President:

"I am in receipt of a letter reference AM /318 r r76 dated December 31, 1976, by your direction over the signature of Honorable Richard Diggs, Assistant Minister for Presidential Affairs, inquiring into the status of the embezzlement complaint against former Paramount Chief Jallah Lone of Bopolu District.

"In answer thereto I have the honor to most respectfully inform you, Mr. President that three persons appeared in my office as principal witnesses in the matter for interrogation. After a careful scrutiny of their evidence, I was disappointed to observe that the essential ingredients or elements were not available. Consequently, I would not risk prosecution with no evidence to support an indictment.

"I therefore venture to frankly state, Mr. President, that I have no evidence or case at present against the said former Paramount Chief.

"During my illness the Minister of Local Government, Honorable Samuel D. Hill, also wrote inquiring into the status of this matter. A copy of my reply to him is hereto attached for your information."

The letter is signed by C. Benedict Kennedy, County Attorney for Lofa County. As we have delved into the certified trial record of this case, we have wondered and have not been able to understand why this professional finding of the County Attorney for Lof a County, the county in which the crime is alleged to have been committed, was disregarded and prosecution for embezzlement of the former chief insisted upon. Lawyers were sent from Monrovia to Lofa County where they drew up this indictment against the chief, and he was thereupon arrested for the alleged commission of the crime.

Before trial of the case two motions were filed, one for

change of venue and the other for severance; both were granted, and venue was changed to the Fifth Judicial Circuit, Grand Cape Mount County, where trial of codefendant Jallah Lone was held in the November Term of Court, with His Honor Johnnie Lewis presiding. A jury was selected, sworn, and empaneled, after the defendant had been arraigned and had pled not guilty to the indictment. After the jury heard the testimony of witnesses for both sides, they deliberated and returned a verdict of guilty against the defendant, who appealed from the judgment and has brought his case up for our review.

The defendant filed a bill of exceptions containing eight counts, a few of which we intend to review to see if there is merit in the appeal. But before doing so we would like to refer to the trial court's judgment which imposed a penalty on the defendant/appellant found guilty of embezzlement by the jury. The relevant portion of the judge's final judgment is as follows:

"It is hereby adjudged that the verdict of the empaneled jury finding the defendant guilty is hereby affirmed and that the defendant Jallah Lone is guilty of the crime of embezzlement. In consonance of the aforesaid adjudication, it is the final judgment of this court that: (1 ) the defendant is hereby fined the sum of \$200; (2) the defendant is sentenced to one year imprisonment; (3) the defendant is required to make restitution in the amount of \$5,200. And it is hereby so ordered."

In the judge's charge to the jury he designated the two sums of money which together make up the amount of restitution which he adjudged should be refunded to the Government. His words follow:

"\$200 which the defendant borrowed from Mr. W. P. Johnson, Collector of Internal Revenues, Bopolu District . . . out of an amount of \$2,240 which had

been deposited with the aforesaid Collector in the name of the Tribal Authorities."

Now this \$200 was in excess of the amount charged against defendant in the indictment, yet by the judge's charge to the jury he was being made responsible to account for it in his defense against the charge of embezzlement. We shall say more about this later. On the second amount of money, the judge charged: "\$5,000, the proceeds of a check from the Brazilian Logging Company in the amount of \$4,400 and \$600 cash for the Chiefdom. The auditors' report, prosecution exhibit marked TR' and confirmed, reports defendant when being audited reported he used the amount to build a schoolhouse on his farm, but did not avail himself to take the auditors to the locale although an appointment was made. Before the court and while testifying, the defendant said that immediately upon his return to Bopolu with the \$5,000 he called a meeting of all the chiefs and citizens, informed them of the receipt of the amount, and upon their unanimous decision the amount was turned over to them and a receipt issued in his favor. The receipt is included in the file and marked 'D/1.' "

We shall come back later to these two points in the judge's charge and relate them to the particular portions of the certified trial record. Of the eight counts of the bill of exceptions, four of them refer to the two points of the judge's charge and

judgment; these four counts read as follows: "4. That with respect to the \$200 the auditor's report as well as witnesses for the defendant proved that said amount was a loan which was borrowed upon the instructions and orders of the tribal people, and that the amount was used to obtain a deed for the entire Chiefdom. Which deed was also admitted into evidence without objection from the state."s. That with reference to the \$5,000 it was testified

to and also proved by receipt admitted into evidence without any objection, that the amount was delivered to the tribal people by the defendant.

"6. It was also proved by witnesses for the defendant as well as for the State that the \$5,000 was delivered to the tribal people and was never converted to the defendant's own *use* as falsely charged in the indictment.

"7. With further reference to the \$5,000, no evidence was introduced at the trial that the defendant was ever audited at the time of the alleged audit; therefore the judgment confirming the verdict of the trial jury in this respect is erroneous and reversible error.

Of the \$15,000 received by the appellant from the two logging companies and for which he was held to account, according to the auditors \$10,000 of the amount was properly accounted for, as can be seen from Appendix II of the auditor's report. Hence only the \$5,000 of the total amount charged in the indictment against the Chief should now be considered. Therefore, let us look at the testimony of the appellant, to see how he accounted for the money, if indeed he did.

After testifying to having called the people together and delivering the \$5,000 to them, and after giving him a receipt, they had decided that the money should be used for development of the area, as will be seen later in this opinion. The Chief testified as follows:

"I was present when they made the Clan Chief Ngobeh Dannah chairman, treasurer Momo Kamara, and made John B. Morris secretary. The school which they referred to which they say I built on my farm, I never built any school on my farm, but rather the school was built in Dogba Town, and was named after me, 'Jallah Lone's Public School,' #I20. In the construction of the road they gave the road builders \$333 for the purchase of fuel and food. One Amadu built a concrete school building and he needed glasses for the windows and benches; this school was given \$600. Right now if you go there you will find about 200 students in the school. Upon that the missionaries in our Chiefdom came and said that they had no church at Bomboma. This they told the people and they said that they should give them some money so that they can build a church where they will be praying for them. The Chiefdom people gave them \$500 and the church which I made mention of is presently there. The Muslims who are residing in the Chiefdom also requested that they be given some money to build a mosque, so the people gave them \$300. The treasurer that is there has a very large town but has no guest house, meeting hall in his town; he therefore requested the people to give him some money in order for him to build a meeting hall. The people said to him, 'Yes, you are right, you cannot be keeping the money without using any,' so the people gave him \$440. It was at this meeting that we held that before the elder people returned the people gave them \$85 for transportation. It was at that same time that the people gave \$25 to the car that brought us from Monrovia on the day we carried up the money." (See minutes for Saturday, November 26, 1977, sheets 8/9.)

This positive statement of account as to how some of the \$5,000 was used for development projects was not impeached ; no effort was made to ascertain whether or not the various amounts claimed to have been spent for the various projects were really spent; no one tried to find out if these various buildings were really built. The auditors claim not to have been able to go to see these alleged buildings because the Chief was not available. But the missionaries were there, and the Muslims were there, and they could have said if they received any of the money; the treasurer who got some of the money was

there and could have been called. Anyone in the area should have been able to say whether or not it was true that a school had been built at Dogba Town and called "Jallah Lone's Public School"; in fact a witness did testify at the trial to this effect. These figures were also testified to by witness John Morris in the record for December 1, 1977, and witness Amadu Sannoh, according to the record made at the trial on Thursday, December 1, 1977 (see sheet 12). The balance of the \$5,000, according to the record, was turned over to the tribal treasurer for safekeeping, according to sheet 1 of the record for November 28, 1977. There has been no conclusive denial that these amounts were spent for the within-named projects, and the balance turned over to the treasurer. The treasurer himself has not denied this.

With this record made at the trial, it is difficult to understand how the jury could have arrived at the verdict they did. According to this record, the tribal people did give a receipt to the Chief for the \$5,000, as we shall see later herein, and they did also spend the money for projects named in the record and referred to hereinabove, with balance placed in the treasury. We hold therefore that the amount has been properly accounted for, and the appellant cannot be said to have misappropriated money used by the people themselves, and for which they had given the appellant the receipt quoted later in this opinion, marked by the court and made a part of the record. We have no difficulty therefore in declaring this part of the judgment erroneous and reversible.

In the judgment rendered against the defendant in the court below, he was adjudged to make restitution of \$200 not included in the amount named in the indictment as we have said earlier in this opinion; and the judge, in his charge to the jury, giving as his reason for asking for a verdict to this effect, said as follows: "\$200 which the defendant borrowed from Mr. W. P. Johnson, Collector of Internal Revenues, Bopolu District, [was] out of an

amount of \$2,240 which had been deposited with the aforesaid collector in the name of the Tribal Authorities."

Questions which arise out of such a situation are: (1) did the Collector of Internal Revenues have authority to lend out tribal money given to him for safekeeping? (2) If he did lend the money to the Chief—no matter for what purpose—could the amount lent be recovered by prosecution for embezzlement? (3) Could the Tribal Authorities make the Chief responsible for refunding the money, given by them to the Collector for safekeeping? Suffice it to say that in embezzlement it must be proved that the owner of the property had entrusted it to the custody of the accused for some specific purpose, and that as bailee he had converted the property to his own use. Moreover, "the accused has a right 'to be informed of the nature and cause of the accusation against him; or ... to have the offense 'fully and plainly, substantially and formally, described to him' 3 Greenleaf, *Evidence*, § 10 (16<sup>th</sup> ed, 1899)," cited in *John v. Republic*, 7 LLR 261, 271 (1941), in order that he might be able to defend himself against the charge of misappropriation of property, the subject of the case. In other words, the indictment must charge him with having been given custody of the property by the owner in a prosecution for the crime of embezzlement. This is not the case here, because the indictment did not charge the defendant with this amount of \$200.

But let us look at the history of this \$200 as revealed in the record. According to the testimony of the Chief found in the record for Monday, November 28, 1977, sheet r, and which was corroborated by the testimony of other witnesses, which evidence was not denied by the prosecution, the people of the Kongbaya Clan needed a copy of the deed for the forest where the Brazilian Logging Company intended to operate, and for which

they had given the \$5,000. The Chief took with him the following members of the clan to Honorable Capert Barclay, who had demanded that the clan pay him \$3,000 for a copy of the deed, Commissioner Hubbard, Commissioner Mends-Cole, one Emmett Scott, and Amadu Sannor. We would like to observe that \$3,000 seems an unusual sum to pay for copy of a single document from the archives!

However, when Honorable Barclay upon entreaty of the people reduced his charge for securing a copy of the deed to \$z,000, the Chief Jallah Lone drew from his account with a local garage the sum of \$1,600 and lent it to the clan to pay for the deed. The Commissioner gave \$zoo toward the balance of \$400, to complete the sum charged by Honorable Barclay, and the other \$2oo the Chief borrowed from the revenue collector, Mr. W. P. Johnson. This is the sum not charged in the indictment, and which the judgment ordered the appellant to refund to the Government, even though the clan still owes this \$200 which he borrowed on their behalf. What ingratitude to charge the Chief with crime because he borrowed money for the benefit of his people! It is our opinion that this portion of the judgment is erroneous and unfair and should be reversed.

Coming now to the \$5,000 also adjudged to have been misappropriated and ordered to be refunded to the Government, the record shows that this amount was completely accounted for by the Chief. According to testimony of the appellant found on page 8 of the 12th day's session, November 26, 1977, we find the following: "The Logging Company went to the Kongbaya Clan and asked them for the forest and upon that the people told the Company that they could not turn the forest over to them unless they call their Paramount Chief. I was called there and I said "That is good my hand under it. If you can give anything good for this

piece of forest, you go ahead!' They agreed and the Chief (Clan), myself and the white man went to town to make the agreement. That is in Monrovia. The Chiefdom people agreed that the people should give them \$5,000 and the Company agreed and asked in whose name was the check to be made. The people said 'In the name of the Paramount Chief.' The check was prepared in the amount of \$4,400 and \$600 in cash, because we were plenty that went. When we returned, I cash the check and called all the people and showed them the money, saying the money was for them. I gave them the money and a receipt to the effect was issued me. I asked them what was to be done with the money, and they said the money was to be used for development. Forever there has been no schoolhouse built in our Chiefdom. All the money we received we used to build schoolhouse, church, and council hall. Some of them wanted to use some of the money to build road to go to the Clan Headquarters Tumquelle. They even built the road as far as to one big river near one big town called Dogba Town."

Just at this point we would like to refer to that portion of this testimony which alleges that a receipt was issued to the Chief for the \$5,000 which he claims he turned over to the people. Found in the record and marked and confirmed as court's exhibit "D/1" is the following Document:

*`\$5000 Receipt Dated*

*8th June, 1973*

"Received from Chief Jallah Lone the sum of \$5,000 (Five Thousand Dollars) given by the Afro Brazilian Logging Company wishing to do lumber business in Kongbaya Clan, Bopolu Chiefdom, Bopolu District, Lofa County, R.L., being compensation to us tribal people Kongbaya Clan according

to our tribal certificate which gives us right to our

Clan. "Issued this 8th day of June, '973, under our hands and signatures. "[Sgd.] DEVELOPMENT COMMITTEE OF MEMBERS OF KONGBAYA CLAN: [followed by the signatures of 12 officers and members of the Clan]"

This portion of the Chief's testimony would seem to have been borne out by this document put in evidence, marked, and confirmed by the court. But the judge in his judgment refused to give the Chief credit for this receipt, and stated as his reason that the name of one of the signatories —Ngobeh Dannah, the Chairman of the Development Committee whose name appears along with the eleven others who signed the receipt—was not also written in Vai script. He told the jury in his charge:

"The only signatory to that document called to the stand was Ngobeh Dannah who informed the court and the jury that he can sign his name neither in English nor the Vai script, but that when he instructs his clerk to write his name in English, he also instructs him to include it in the Vai script, by which he will be able to identify his signature and know that it is not forged. His signature on 'DR ' does not have his name also written in the Vai script."

For that reason the judge disregarded the other eleven signatories, implying that the document was invalid. But since this particular signatory testified and was examined on this point, we quote that part of his testimony on cross-examination from the record. It is as follows:

"Q. You have just told the court and jury that you are illiterate. Does that mean that you cannot sign your name whether in English or Vai script?"

"A. I cannot sign my name in neither English nor Vai script, but I can ask someone to do it for me.

"Q. Then will you kindly explain to the court and jury how come your name is written on this receipt which you have just identified and it does not carry your cross X which would indicate that you cannot write your own name and that it was written by someone else who obviously sign opposite your name as witness. Would you then tell the court and jury who prepared this document and wrote all of these names on it?

"A. I asked someone to sign my name in Vai script on that paper, so that I can be excused from someone telling false on me in that when I see my name written there in Vai script I can know that I requested someone to do it for me. So that is why my name is written in Vai script."

We are of the opinion that this examination of the witness shows that his name appearing on the receipt given to the Chief for the \$5,000 was upon his request, and therefore must be regarded as his own act. There can be no doubt, therefore, that the twelve signatories to the receipt for the \$5,000 represent the Clan, owners of the money paid by the Logging Company. We feel that this was sufficient to clear the Chief of any further responsibility insofar as accounting for the \$5,000 was concerned.

Before concluding this opinion we would like to comment, that from all that appears in this record, there seems to have been some powerful influence at work to get the Paramount Chief convicted of crime, even without evidence of the truthfulness of the fact; and this influence seems to have been from outside the territory over which he was Paramount Chief. For instance, although the County Attorney for Lofa County expressed in a letter to the President his professional opinion as to

the lack of evidence to prosecute the Chief, lawyers were sent from Monrovia to draw up an indictment against him. The record of the trial has shown conclusively that County Attorney Kennedy was correct in his professional assessment of the facts of the case.

Then, there is the testimony of a witness in the record who told how the Chief was arrested by lawyers sent from Monrovia who accused him of misuse of tribal funds; he denied that he had misused any of his people's money. He was handcuffed, stripped of his clothes, and humiliated before his people, and he was put in jail. The testimony of County Commissioner Mends-Cole, found in the record for November 30th, 1977, follows:

"While he was in jail, about 750 citizens came to the District Compound and some of them asked the Justice of the Peace to stand for him; he refused on the ground that they must have property. So that afternoon some of them left and went down to Monrovia and according to them, they slept there. The next morning they arranged the property business; they chartered a plane, went to Voinjama, the judge okayed the bond and they came that very day by the same plane and Jallah Lone was released. A few months after, the Commissioner was dismissed and I was called upon to act. While I was appointed Commissioner, former Paramount Chief Jallah Lone and about 300 citizens came to me and explained to me that they were not fairly treated, and that they would like to see the President. According to them, they wrote a petition to the President explaining to him how they used their own money. The President referred them back to the court. . . •

"The President advised through our Ministry to go through with the election issue which we did, and we recommended to the President that a new election be held in Bopolu Chiefdom, which election was conducted June 8, 1977, and brought Chief Jallah Lone

back in power. [See sheets i6 and 17.] This testimony was not denied." It is strange that in spite of the fact that Jallah Lone was charged with having misappropriated the Chiefdom's money, yet while under charge for the crime, and in spite of his arrest, humiliation, and imprisonment, the same people whose money he is supposed to have stolen would go to so much trouble and expense on his behalf, and then re-elect him to office. As has been said earlier, the forces against the appellant seem to have been outside of the Bopolu Chiefdom, where he had been elected Paramount Chief.

Moreover, the auditors' handling of the examination of the Chief's accounts shows such abnormal procedure that one must wonder why was neutrality so wanting in their conduct of the audit. For instance, (1) it was argued before us that when the auditors arrived in Bopolu, a large number of citizens gathered at the Bopolu Headquarters, only to be told that their assistance was not needed. Who knows but that if the auditors had allowed information from citizens of the Chiefdom, who were the owners of the money alleged to have been misappropriated, a lot of valuable information might not have been obtained? (2) The auditors themselves admitted at the trial that an amount of \$4 per person was collected from the citizens of the Chiefdom, and receipts for these amounts were issued by the Chief; yet these several amounts were never included in their audit report. (3) The several projects alleged by the appellants to have been undertaken, and for the execution of which various sums were used from the \$5,000 belonging to the Chiefdom, were never investigated. The auditors claim that the appellant was not available, and so they wrote a report ignoring any mention of these projects and without verifying the correctness of the story he told as to how the money was used. (4) Normally the party under investigation or audit is usually asked to sign the report

of the auditors, expressing agreement with the findings or challenging the correctness of the figures. In this case, there is no evidence to this effect, but it was argued that the appellant was audited in his absence and that he was never confronted with the report of his shortage. This is unusual and prejudicial. The question is, why was this audit conducted in this unusual manner? (5) Could an audit claim to have been fair if in the examination of the account, the receipt for the amount involved is completely ignored? The audit of the Chief's account leaves much to be desired.

In view of the foregoing, we are of the opinion that the judgment of the lower court should be, and the same is hereby reversed and the appellant excused without day from further answering the charge laid in the indictment; and it is our order that his bond should be returned.

*Judgment reversed.*