

**JAMES D. FOSTER**, alias Johnson, Appellant, v. **REPUBLIC OF LIBERIA**, Appellee.

ARGUED NOVEMBER 30, 1921. DECIDED FEBRUARY 1, 1922.

Dossen, C. J., and Witherspoon, J.

1. Upon a complaint made by an accused person on trial by a jury in a criminal case that one of the jurors had conversed with some one not on the panel, and an investigation by the court establishes that said conversation did take place, the court may in its discretion disband the jury and award a new trial to which defendant can not successfully plead second jeopardy.
2. An exception should be so taken as upon its face to inform the court of the ground upon which it is based and so as not to necessitate the court's referring to the records in order to discover the ground thereof.
3. The court will not consider any exception in a bill of exceptions if the ground is not distinctly set forth.
4. If stolen property is found in the possession of a person and that possession is recent, said person must show that he came by it lawfully or the law will consider him the thief.
5. Proof that property was stolen from the true owner and was soon after found in the possession of defendant raises a presumption that he is guilty and if he fails to explain the possession the jury may convict.

Mr. Justice Witherspoon delivered the opinion of the court:

Grand Larceny. The appellant, James D. Foster alias Johnson, was indicted by the grand jury at the May term of the Circuit Court, first judicial circuit, Montserrado County, A. D. 1920, for the offense of grand larceny. He was thereafter arraigned at the bar of the court and plead not guilty. A jury was therefore empanelled, and whilst hearing the evidence it was reported to the presiding judge that one of the empanelled jurors was discovered conversing with one of the jurymen not of the panel. An investigation of the charge was held by the judge presiding, and after hearing the evidence of the juryman himself, and others, the court said that it failed to discover anything in the conversation that had a bearing on the case at issue, but as it comes to the knowledge of the court that Attorney Ricks, one of the attorneys for

defendant, was inclined to take advantage of the conversation aforesaid, the court says that though the charge may not have been true it might have the effect of prejudicing the mind of the jury for or against the prisoner. The jury was therefore disbanded and a new trial awarded.

At the August term of the said court this case came on for trial, and at the call of the case counsel offered a motion to dismiss the case upon the ground of former jeopardy, to wit : that he had once been arraigned upon the same charge, which motion the judge overruled. A jury was then empanelled to try the issue of not guilty as raised in the defendant's plea and after hearing the case submitted to them for their consideration, they returned a verdict finding defendant guilty, upon which the judge rendered a final judgment sentencing prisoner to jail.

The defendant excepted to the rulings and final judgment of the court below, and filed a bill of exceptions by which means this case is before us for review.

We shall now consider such of the exceptions as are necessary to our decision of the case. The question of jeopardy has been so well defined by this court covering so widely the grounds as defined by various authorities with which we feel our laws are in perfect harmony, that we can only repeat here that it is our opinion, the judge of the court below was acting strictly in keeping with the law when he, after investigating the charge made against the jurors, and finding the same to some extent true disbanded the jury and awarded a new trial ; and in so doing at the then stage of the case, prisoner could not set up that he had been put in jeopardy the second time. (*See Wood v. Republic of Liberia*, 1 Lib. L. R. 445.)

We are of the opinion that the question propounded to witness Bethel the subject of exception four, whether the goods enumerated in said stock sheet were all the goods stolen from his store, was relevant as it had a bearing on the case, and it should have been answered. In exception five, prisoner is said to have asked witness Gargar to state whether or not the watchman of Messrs. Atlantic Coast Development Company, Limited, who he had said was carried away on the night of the stealing, was so carried away under arrest or not. We are of the opinion that this question was relevant as it was put for the purpose of raising a doubt in his, prisoner's favor. The objection raised by prisoner against the statement made by witness Butler stating that when he arrived at the store of the Atlantic Coast Development Company, Limited, that night, Bissy Loma told him that prisoner wanted to cut a rope which was found hanging from the window of the said store, was well founded, as it was hearsay evidence. The objection raised to the question whether the Atlantic Coast

Development Company, Limited, had a watchman by the name of Willie was in our opinion correctly rejected, the witness not being the best evidence. The court did not err when it overruled the question put to witness Butler whether he had arrested this Willie, it not having been established that any person by that name had been implicated in the larceny. The court did not err in ruling out exceptions eighth, ninth and tenth of the bill of exceptions upon the ground of irrelevancy. The court correctly overruled the question to witness Snyder to wit : "At the time of this occurrence was or was not prisoner employed in the business of the Atlantic Coast Development Company, Limited," it not being relevant to the issue. The court erred when it admitted the headless photograph—it not having a tendency to prove or disprove the charge laid in the indictment, neither was it proven that it was the only photograph of the kind issued or given out by the photographer. Exception thirteenth is not well taken. An exception should be so taken as upon its face to inform the court of the ground upon which it is based and so as not to necessitate the court's referring to the records in order to discover the ground thereof.

We remark here as we have on previous occasions that the court will not consider any exception in a bill of exceptions when the ground is not distinctly set forth. The remaining exceptions having been taken in the same manner as the thirteenth, will not claim our attention and consideration.

Having considered the points raised in the prisoner's bill of exceptions, we shall now proceed to ascertain whether the charge set up in the indictment was proved by the prosecution or whether on the other hand the prisoner has either disproved it or by the evidence adduced created doubts sufficient to warrant an acquittal by the court below. The indictment among other things charges that prisoner, together with others on the night of the 8th day of April, A. D. 1920, entered the store of L. S. Bethel, agent for Atlantic Coast Development Company, Limited, in the City of Monrovia, did steal, take and carry away the personal property of the said L. S. Bethel, amounting to three hundred twenty dollars and nineteen cents. To this charge the defendant plead not guilty. Witnesses were brought, the testimony of whom we shall traverse. Witness Bethel on the stand stated that his goods to the amount of £71.7.1 had been stolen on the day named in the indictment, and that he had received back from the authorities, goods amounting to £49. 1. 0. Witness Gargar stated that he saw prisoner carry away one bag of cloth, and in a short time he came back; that those present at the time of his return, concluded to light a lamp to search around the premises of the Atlantic Coast Development Company, Limited, and prisoner objected. The search was however made, and two other bags of cloth found. Prisoner

insisted he should have them for the reason that his sister was working in the employ of the Atlantic Coast Development Company, Limited.

The prisoner on being asked by the watchman of the Atlantic Coast Development Company, Limited, "where are you going," said he had heard that the store of the Atlantic Coast Development Company, Limited, was broken open and the Chief of Police had sent for him. It was also stated that when the Accra boy made the alarm prisoner started to run, but the bag of cloth got caught in the wire of the clothes' line of the watchman and the bag fell.

Witness Butler stated that he met a bag of cloth in Bissy Loma's possession, this bag of cloth Bissy Loma informed him had been left with him by the prisoner to be divided at five o'clock that morning. That he charged the prisoner two pounds ten shillings for the safe keeping of it, but prisoner did not have the money, that it was therefore agreed that the cloth would be divided at the same time. Bissy Loma also suggested that soldiers should be left there to arrest prisoner when he returned to divide or take over the bag of cloth. It further appears upon record that prisoner himself returned some of the cloth. We observe that in neither of the questions put by prisoner does it appear that it was intended to disprove the allegation set up against him. But to the contrary it appears he intended to implicate others together with himself, and in this he failed. The principle of law involved is that if stolen goods immediately after the theft, are found in the possession of the defendant, the presumption is that he stole them. (2 Archbold Criminal Practice and Pleading, p. 1218.) The same author further says : "If stolen property is found in the possession of a person and that possession is recent, he must show that he came by it lawfully or the law will consider him the thief."

Proof that the property was stolen from the true owner and was soon after found in the possession of the defendant raises a presumption that he is guilty, and if he fails to explain the possession, the jury may convict. (Id., p. 1219.)

The court is of the opinion that the evidence in the case proves beyond a reasonable doubt the charge laid in the indictment. The judgment of the court below is therefore affirmed. And it is so ordered.

*E. J. S. Worrell*, for appellant.

*Attorney General*, for appellee.