SAMUEL S. WATTS, Sr., Appellant, v. **REPUBLIC OF LIBERIA**, Appellee.

APPEAL FROM CONVICTION OF EMBEZZLEMENT.

Argued April 3, 1951. Decided May 11, 1951.

1. Service on a grand jury which found an indictment renders the person who so served incompetent to serve as a juror on the trial of the same indictment or, at least, subject to challenge for cause.

2. The general rule that, if a juror is accepted to try a case without objections, the verdict will not be set aside by reason of that juror's disqualification, applies only when the party claiming prejudice had knowledge of the disqualification before the juror was accepted.

Appellant was convicted of embezzlement in the lower court, and his motion for new trial on grounds of the disqualification of a juror was denied. On appeal, *judgment reversed and case remanded.*

Momolu S. Cooper for appellant. *The Attorney General* for appellee.

MR. JUSTICE SHANNON delivered the opinion of the Court.

The volume and character of the records certified to us in this case show that the trial was both tedious and protracted ; that it resulted in the conviction of the appellant; and that he excepted to the verdict, and gave notice that he would avail himself of the privileges afforded him under our statutes. His motion for new trial was overruled and a judgment confirming and sustaining the verdict was entered.

The appellant subsequently tendered a bill of exceptions of nineteen counts, all of which were approved by the trial judge, with a slight limitation on the last count. When the case came up for review before us, and during the opening argument of appellant's counsel, a situation which almost prevented further progress in the hearing was created by the sixth count of the motion for new trial and the nineteenth count of the bill of exceptions, which
read as follows:

"6. And also because defendant has requested a new trial, by reason of a false answer given to a material question propounded by the court to the selected jury empanelled

to try the issue in this case, which was 'whether any of the jurors served on the grand jury at the time a presentment was made against the said defendant,' to which they answered no. From an investigation it is conclusive that one Joseph Sie, who, at the time of the May term, 1948, bore the name, Joseph Sie Williams, did serve as one of the grand jurors in bringing forth a presentment against the said defendant, thus disqualifying said Joseph Sie, as well as rendering his signature to said verdict incompetent to qualify the court to enter a final judgment. The records of the clerk of court's office would satisfy the Court on this point; and if not, defendant can produce witnesses to testify to this essential point."

"19. And also because defendant on March 9, 1950, received a verdict of guilty to which he excepted and gave notice of the filing of a motion for new trial. On March 13, 1950, said motion was called for disposition by Judge Dessaline T. Harris, presiding by assignment. The court denied said motion. Defendant excepted and gave notice of appeal to the Supreme Court of Liberia. Count '6' of said motion refers to one Jacob Sie Williams as having served as a grand juror on the grand jury which brought a presentment against the said defendant during the May, 1948, term of said court, and during the February, 1950, term, as having served as petty juror. The court, prior to the taking of objections to the qualification of said jury, propounded the query as found in Count '6' of said motion. This juror being the same individual, but then named Jacob Sie, is therefore guilty of giving a false answer to a material question propounded by the court."

The motion for a new trial was strongly resisted by the prosecution, and the trial judge denied the motion, rendering final judgment thereafter. The law on the disqualification of a person who has been a grand juror from subsequent service as a petty juror in the same proceeding is as follows :

"One who served as a grand juror on the finding of an indictment is incompetent to serve as a petty juror on the trial of the offense, or on the trial of a civil action based upon the same offense, and in an action of malicious prosecution for causing plaintiff to be indicted he may challenge any juror who was on the grand jury that found the indictment. 24 Cyc. 278, *Juries,* XII, F.I.C.

"It is the settled rule that the grand jury which found the indictment against the accused, and each of the jurors, is disqualified from sitting on the petit jury to try the accused. Objection on such a ground is not removed by statements made by him, upon examination upon the voir dire, to the effect that he had formed no opinion, and had no bias against the prisoner. . . .

"Generally, an objection to a member of the grand jury which found the indictment as a petit juror on the trial thereof must be made before the jury is sworn, although it has been held that the objection may be taken advantage of after the jury has been sworn and even after the verdict has been rendered, provided the defendant was not guilty of negligence in not taking advantage of his right to challenge." 31 Am. Jur. 191, 192, *Jury, §* 228.

"In general the fact that a person served on the grand jury that found the indictment against accused renders such person incompetent to serve as a petit juror on the trial of the indictment or, at least, is ground for challenge for cause.

"In general one who served as a grand juror on the finding of an indictment is incompetent to serve as a petit juror on the trial of the offense, or on the trial of a civil action based on the same offense, and in an action of malicious prosecution for causing plaintiff to be indicted he may challenge any juror who was on the grand jury that found the indictment. In some jurisdictions, however, service on the grand jury does not render the discharge of the juror merely a necessity; it is merely a ground for challenge for cause, which accused may rely on or waive, but the court should sustain a challenge by accused for cause on this ground." 50 C.J.S., 966, *Juries, §* 224.

Of course, such a challenge can be waived. This Court, in *McBurrough v. Republic,* 4 L.L.R. 25 (1934), and *Cummings v. Republic,* 4 L.L.R. 284 (1935), emphasized that, if a juror is admitted to try a case without objections, or after objections have been taken and disallowed, the verdict will not be set aside for any disqualification existing before his acceptance as such, Rev. Stat., sec. 36o. But the verdict can be upheld only where the prejudiced party had knowledge of the fact supporting disqualification before the juror was accepted.

It was incumbent upon defendant to have shown that he knew nothing of the alleged service of this petty juror as a grand juror until after acceptance of said juror as a petit juror. The wisdom, therefore, of permitting the investigation requested by said defendant is seen. Such an investigation saved time and energy.

Even the *venires* upon which the trial judge based his ruling on the motion for new trial have not been sent up with the records so as to have enabled us to fairly pass upon the consistency of said ruling.

To afford a person criminally charged an opportunity for a fair, speedy, and impartial

trial is a cardinal right safeguarded by the Constitution of this Republic, and to conserve it should be the jealous care of all courts of justice especially in face of the fundamental principle of criminal law that it is better for ninety-nine guilty persons to go free than to convict and punish one innocent man.

During the hearing of the case before us, it seemed to us almost impossible to surmount this situation, however anxious we might have been to enter the merits of the case; and therefore we suspended judgment.

We have come to the conclusion that the verdict herein should be vacated, and the case remanded with instructions that the lower court conduct a new trial forthwith, and it is hereby so ordered.

Reversed.