WILLIAM M. COLEMAN and **ANNA E. COLEMAN**, Appellants, v. **REPUBLIC OF LIBERIA**, Appellee.

ARGUED DEcumma 22, 1913. DECIDED JANUARY 9, 1914.

Dossen, C. J., and McCants-Stewart, J.

There being no statute making uttering a forged instrument a criminal offense, a judgment punishing therefor is a nullity, if the indictment allege that the offense is against the statute law in such case made and provided.

Mr. Justice McCants-Stewart delivered the opinion of the court:

Forgery—Appeal from Judgment. This is an appeal from a final judgment of the Circuit Court of the first judicial circuit imposing upon each of the appellants a fine of one hundred dollars and imprisonment in chains with hard labor in the county jail for three months and requiring them to make restitution to the full value of the actual damage sustained by said forgery, which said judgment was based upon the verdict of a jury finding the appellants guilty of uttering a forged instrument.

The material facts in the case are as follows : An indictment was returned by the grand jury at the June term (A.D. 1912) of the Circuit Court of the first judicial circuit charging one Charles A. Redd with forging the following paper, namely:

"Brewerville, April 28th, 1910.
In my sound mind and good senses after death this forming a part of my Will and Testament that I have this day willed and bequeathed unto one Anna Coleman of the settlement of Brewerville and County of Montserrado and Republic of Liberia, Willietta, her and her heirs one town lot on the corner with two houses thereupon, one (20) twenty-acre block of land in Mango town, Virginia with coffee thereupon this land is on the road leading to Brewerville's waterside and two (2) town lots with no improvement on them whatever excepting a few hills of coffee trees and three (3) heads of cattles, namely, (1) one bull and (2) two heifers and one (1) old treading machine and (1) one small iron cart, that is a wheel cart these lots that I am speaking abut with no improvement one is fronting Mr. Harmon Saunders and the other one is adjoining Dr. Wm. Coleman these lots are in the settlement of Brewerville.

I herewith now set my hand and sign this 28th day of April, 1910.
L. S. W. B. Gant.
Stamp 50 cts.
Witnesses :

J. T. Banks his Henry Richardson X
Mark
Gilbert Dean his X
Mark"

The indictment further charged that the above named appellants did unlawfully and feloniously procure, counsel, command and advise the aforesaid Charles A. Hedd to forge the instrument aforesaid.

The final count of the indictment further charged that the above named appellants did alter and utter the aforesaid instrument for probate well knowing the same to be forged, and concluded with the words, "contrary to the statute law, in such cases made and provided."

The jury after a lengthy trial rendered the following verdict, which was duly recorded :

"Petit Jury Room.
Monrovia, September 13, 1912.

We, the petit jurors, to whom was submitted the case Republic v. Charles A. Hedd, Mr. and Mrs. W. M. Coleman, have unanimously agreed that Mr. C. A. Hedd is not guilty. But Mr. William Coleman and Mrs. Anna Coleman are guilty of uttering the purported will, and are therefore guilty.

J. E. Padmore, Foreman.
W. M. R. Richards, Secretary."

Counsel for appellants gave notice of motion for a new trial, but no such motion was made, appellants confining themselves to a motion in arrest of judgment, which motion was overruled. Whereupon appellants after the rendition of final judgment, presented and were allowed a bill of exceptions in which issues of law alone are raised, and they now come here asking for a reversal of said final judgment, basing their appeal upon certain issues of law, the only one necessary to be considered being the following: That there is no statute making uttering a criminal offense.

In order to punish for a crime, the crime must be distinctly defined. Laws which create crimes ought to be so explicit that all men subject to their penalties may know what acts it is their duty to avoid. *(U. S. v. Brewer,* 139 II. S. 278.)

The doctrine is fundamental in English and American law that before a man can be punished his case must be plainly and unmistakably within the law. It follows, therefore, a *priori,* that where there is no statute making uttering a forged instrument

a criminal offense, a judgment punishing therefor is a nullity, if the indictment alleges that the offense is against the statute *law* in such cases made and provided.

The Legislature at its A. D. 1899-1900 session passed a criminal code defining crimes and misdemeanors and providing the punishment therefor. The preamble to the Code is, as follows:

"It is enacted that from and after the passage of this Act, all crimes and misdemeanors committed in this Republic of which any person is found guilty upon due trial, or who in open court upon arraignment shall confess guilty of commission of said crime or misdemeanor, shall be sentenced and punished as is hereinafter provided.

"It is the sole intent of this Act to name or define, or both name and define, the various crimes and misdemeanors and to prescribe their appropriate punishment."

Counsellor Arthur Barclay, on behalf of the appellants pointed out that said Code, while defining forgery and prescribing the punishment therefor, does not contain any provision with reference to the concatenated common law offense of uttering a forged instrument, and he argued with an earnestness which indicated deep conviction that our Criminal Code excludes all prosecutions for common law offenses. He contended that such was the intention of the Legislature, as under the old practice allowing prosecutions for common law offenses there had grown up a criminal system as to the punishments inflicted which was not based upon constitutional or statutory law but upon the personal ideas and often the personal feelings or whims of the judges, because when convictions were had under prosecution for common law offenses there were no books at hand showing what punishments should be inflicted, and the judges did as they pleased. Counsellor Barclay further argued that public sentiment revolted against a situation of this kind, and the bar taking advantage of it secured the enactment of the present Code with the sole intent to name and define the various crimes and misdemeanors for which prosecutions could be carried on in the Republic, and to prescribe the appropriate punishment therefor. Counsel contended that the language of the preamble to the Code showed that its provisions were intended by the Legislature to exclude all prosecutions for crimes and misdemeanors not therein enumerated.

Interesting as was this argument, it is not necessary for us to pass at this time upon the point involved therein, as the prosecution in the case at bar was not brought under the common law, the indictment distinctly charging appellants with violating the statute made and provided; and as there is no statute defining the common law offense of uttering a forged instrument, this prosecution must fail.

The trial court erred in denying defendants' motion in arrest of judgment, and its final judgment was a nullity, the same being based upon no statute law whatever as the indictment charged.

The responsibility is upon this court to see that justice is done to all whether the Republic comes here with its mighty power or whether it be the humblest and poorest individual in the land; and while we shall not reverse any judgment on the ground of any technicality, yet, where the liberty of the citizen is involved, it is the duty of this court to see that it is not taken away unless by the law of the land. Even if a crime should be committed, the proceedings to punish it should strictly conform to constitutional and statutory requirements; and in a case like the one at bar, this court can not uphold a judgment punishing a party for an act which is not made a criminal offense by any statutory enactment, where the indictment charged the violation of statutes made and provided.

It seems, therefore, perfectly clear that the judgment of the trial court should be reversed and set aside; and it is so ordered.

Arthur Barclay, for appellants.

Thos. W. Haynes, Attorney General, for appellee.

[Mr. Justice Johnson, being disqualified, took no part in the consideration or decision of this case.]