

JOHN B. DYSON, Appellant, vs. **REPUBLIC OF LIBERIA**, Appellee.

[January Term, A. D. 1906.]

Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado
County.

Embezzlement.

It is proper to refuse an application to continue a criminal trial, because public excitement at the time was so great that the defendant feared he could not obtain an impartial trial; such refusal being within the scope of the discretion of the trial court.

The guilt of a prisoner beyond a rational doubt may be established by unimpeached circumstantial proof, to the exclusion of direct and positive evidence.

This case is brought before this court upon an appeal from the judgment of the Court of Quarter Sessions and Common Pleas, Montserrado County, rendered at its December term, A. D. 1904. From the record in the case we find that the accused was indicted at the aforesaid term of court for feloniously embezzling one General Government order purporting to be drawn on the sub-treasurer, Grand Bassa County, in favor of the East African Company, for the sum of four hundred and eighty dollars on account of special duty funds. To this charge the prisoner plead "not guilty," and his counsel addressed an application to the court, praying a continuance of the trial on the grounds, (1) that public excitement in the community at the time being great, he feared he could not obtain an impartial trial; and (2) that having just been indicted he had not had the opportunity of preparing himself for a proper defence. The court refused the application and proceeded to empanel a jury to try the issue.

The case was submitted without arguments and the jury, after hearing the evidence, returned a verdict of "guilty" against the prisoner. Upon this verdict the court below, on the 23d day of December, 1904, pronounced the following sentence: "The sentence of this court is that you forfeit and pay the sum of

nine hundred and sixty dollars, and you shall be imprisoned for twelve months, with hard labor."

To this judgment as well as to the other rulings of the court below in the premises the prisoner excepted, and addressed the following points in his bill of exceptions for the consideration of this court: (1) The ruling of the court below on his motion for continuance; (2) the admission of a page from the account book of the subtreasurer's office as evidence against the accused; (3) ruling of the lower court upon prisoner's motion for a new trial, and (4) to the final judgment.

The law governing continuance has frequently been expounded by this court and we have uniformly held that where it is made apparent that to proceed with the trial of a case substantial justice would not be meted out to all parties concerned, the application should not be refused, provided it is founded upon legal grounds. Among the grounds commonly admitted as good grounds for granting a continuance may be mentioned the following: (1) Absence of material witness. (2) Inability to obtain the evidence of a witness out of the State, in season for trial. (3) Illness of counsel, etc.

We have carefully considered the grounds upon which the motion was founded as well as the circumstances which surrounded the case at the time of the trial, and we are of opinion that the lower judge acted within the scope of sound discretion in refusing the application. From the record, it does not appear to the satisfaction of this court that the accused made the least effort towards setting up a defence ; nor is there any intimation that the machinery of the court was put in motion to obtain witnesses on his behalf, and that for want of time this could not be done. There is therefore nothing in the record in favor of the accused to have influenced the lower judge to believe that the application was not made solely for the purpose of delaying the trial; and therefore we do not regard the ruling on this motion an abuse of discretion, which we should correct.

The second exception is taken to the court admitting as evidence a page from the account book of the subtreasurer's office. We have not been able to discover the legal ground upon which the learned counsel for the accused predicated this exception. It is a well established rule that entries made in

books are admissible as evidence. In the present case the entry contained in the page offered as evidence was pertinent to the case and tended to throw such light upon it as was necessary to support the *res gesta*. Its admission, therefore, was not error.

We shall now proceed to consider the objections to the verdict and final judgment.

In all trials upon indictments the State, to convict, must prove the guilt of the accused with such legal certainty as will exclude every reasonable hypothesis of his innocence ; the material facts essential to constitute the crime charged, must be proved beyond a rational doubt or the accused will be entitled to a discharge. But we do not mean by this statement to convey the idea that before a conviction can be made there must necessarily be submitted to the jury direct and positive evidence of the crime charged. There are a great many human actions in which such evidence would be absolutely impossible to obtain, and so we have what is known in law as circumstantial and presumptive proof. This species of evidence was exhaustively treated by this court in the case of Armstead Wood against Republic of Liberia.

Reviewing the facts in this case it appears to us that the guilt of the accused has been established beyond a reasonable doubt by a chain of unimpeached circumstantial and presumptive proof. The evidence of witness Carter, the sub-treasurer, shows that the accused was employed in his office as clerk and was frequently left in charge of the office. That in this capacity it was customary for him to receive orders and cheques drawn by the proper Government authorities, from persons having transactions with said office. He further stated that the order which prisoner is charged with embezzling never came into his possession, and further, that the entry made in the account book of the office, which shows that the order was actually received in said office, is made in the handwriting of the accused. Witness Howard, in his capacity as Secretary of the Treasury, testified that the said order had not been transmitted to his department among the vouchers sent forward by the sub-treasurer. These statements taken together raise a very cogent presumption against the prisoner, which is nowhere in the evidence explained or attempted to be rebutted by the accused. On the contrary, we find that presumption is supported and the crime traced directly to prisoner by his own

voluntary confession, made to witness Carter in the presence of one McCritty, in which he confessed selling the said bill to one West, but alleged that it was given him by one Andrews. It is remarkable that the prisoner made not the slightest attempt to prove that the order was actually given him by Andrews. His own voluntary confession, taken together with the presumptions proven at the trial, prove conclusively the guilt of the prisoner.

It is the opinion of this court that a crime of this nature, which is so very pernicious in its example and so damaging and injurious to the public revenues of this Republic, should be punished rigorously. And therefore, as the judgment of the lower court is strictly within the purview of the statute controlling this case, we refrain from disturbing it in the least measure.

The judgment below is affirmed, and the clerk of this court is directed and authorized to issue a mandate under his signature and seal of office, informing the lower judge of this decision.