

ABIBU KEBEH, Appellant, v. REPUBLIC OF LIBERIA, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,  
MONTSERRADO COUNTY.

Argued April 21-22 and 24, 1952. Decided June 6, 1952.

The gravamen of the crime of embezzlement is intentional and fraudulent conversion of money or other articles of value.

Defendant was convicted of embezzlement in the Circuit Court. On appeal to this Court, *reversed and remanded*.

*Richard A. Henries* for appellant. *The Solicitor General* for appellee.

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

Appellant, Abibu Kebeh, was indicted for embezzlement of goods of one Hasan, the complaining witness, who had consigned to appellant for sale merchandise valued at five hundred eighty dollars and sixty-eight cents. Appellant had paid Hasan eighty dollars but failed to comply with repeated demands for the value of the remainder of the goods. News reached Hasan that appellant was about to flee the country and he straightway took the necessary action to detain him. The appellant was brought before the Magisterial Court of the Commonwealth District of Monrovia, and, upon preliminary examination, merit was found in the complaint, and the case was sent forward to the Circuit Court of the First Judicial Circuit.

In due course appellant was indicted for embezzling goods to the value of four hundred ninety-four dollars and forty-eight cents.

On the trial in the court below appellant testified that he had received no goods whatsoever from the complainant and that the goods in question had been delivered to him by one Marlah. When Marlah was brought to the stand, however, he denied categorically that he had ever given appellant any goods to be sold.

An examination of the indictment in the case at bar does not disclose the statement of account upon which said indictment is based. This Court feels that, in such cases, a copy of the statement of account should be attached in support of the indictment.

One point which seems to have escaped attention is the variance between the amount alleged in the indictment (four hundred ninety-four dollars and forty-eight cents) and the sum awarded in the judgment of the trial court. This variance, though small, is important, for, inasmuch as the verdict of the jury declared the defendant guilty as charged upon the indictment, it is difficult to see why there should be any difference between the sum stated in the indictment and that awarded in the final judgment. But the errors committed during the trial are of less moment than the error committed by the trial judge in his charge.

When the Solicitor General, representing appellee, was called upon to support, both by argument and law, the position taken by the judge in his charge, he honestly admitted that he was faced by Alps which he considered insurmountable. The instruction given the jury by the trial judge in his charge on the question of what constitutes conversion, which is the gravamen of the crime of embezzlement, was absolutely wrong, and, being wrong, evidently influenced the jury to bring an erroneous verdict. It is our opinion that the judge did commit gross error in his charge to the jury. We refer particularly to that portion of the charge, where, defining embezzlement, the judge said:

“Embezzlement is where A takes the money of B

in his possession for safe keeping, and when B makes demand for return of it A fails to return it. The trust being established, embezzlement is complete. Secondly, if John is given money to be delivered to Henry, or to return the money to the conveyer, embezzlement is complete."

Again we warn our circuit judges to be more careful in the handling of causes before them, nor ever to align themselves on any side in any case, but carefully study the issues presented. Especially do we emphasize this because, according to our statutes, the instruction of the court to the jury is evidence of the law of the land. Because of what has been previously said we are unwilling to affirm the judgment rendered in this case, and hereby reverse same, and remand the case for a new trial in manner not inconsistent with the principles enunciated and settled in this opinion this day rendered. And it is hereby so ordered.

*Reversed and remanded.*