

NAIF TALIB, Appellant, v. REPUBLIC OF
LIBERIA, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT,
GRAND CAPE MOUNT COUNTY.

Argued November 12, 1970. Decided January 21, 1971.

1. Throughout the course of a trial, the judge presiding is required to diligently maintain a cool neutrality or lend himself possibly to the charge of bias, which, if properly excepted to, could lead to reversal of judgment.
2. In criminal cases the defendant should be afforded every opportunity to establish his innocence and when deprived of any right to do so by the subterfuge of the prosecution or court, he cannot be said to have had a fair trial. As in the instant case, where the prosecution was required by virtue of a subpoena *duces tecum* to produce documents and failed to do so, without intervention by the court.
3. In criminal cases, when a defendant has pleaded not guilty, he has put in issue every fact the prosecution is bound to prove and is thereby enabled to cross-examine the prosecutions' witnesses on all matters touching the cause, or likely to discredit them.

The private prosecutor admittedly owed defendant money for goods sold and delivered, and was long delinquent in making payment. One day the defendant, in the company of a police officer, went with the complainant to the latter's store, and in his presence, and with his consent, took back those goods not yet paid for, leaving a balance still owing. Subsequently, after court proceedings, during which the private prosecutor spent time in jail, an installment agreement for payment of the balance owing was assumed by the private prosecutor, which was breached by him. Thereafter he initiated a criminal complaint, alleging he had been robbed at the time the defendant took back his goods, in an amount far in excess of the debt owed to the complainant. Defendant was indicted for robbery, tried and convicted. He appealed from the judgment of the court. *Judgment reversed, appellant discharged sine die.*

Richard Diggs for appellant. *Solicitor General George E. Henriès* for appellee.

MR. JUSTICE WARDSWORTH delivered the opinion of the Court.

The defendant was arrested on February 26, 1970, on the charge of robbery, after indictment by the grand jury for Grand Cape Mount County, during the February Term, 1970, of the Fifth Judicial Circuit Court. The defendant was tried during the May Term following and was found guilty. He has appealed from the judgment entered against him.

Having conformed to the statutory requirements in taking the relevant jurisdictional steps within statutory time in perfecting his said appeal, he bases his appeal on a bill of exceptions containing fourteen counts, of which only 1, 3, 4 and 11 raise substantial issues.

"Count 1. Because defendant says that at the call of his case for trial Your Honor used insinuating remarks against the dignity, interest and reputation of defendant and one of his witnesses by asking said witness, 'how much this man pay you to come here and lie for him?' in the hearing of the empanelled jury."

In the trial of a cause the trial judge should exercise due diligence in maintaining cool neutrality throughout.

In *Carr v. Republic of Liberia*, 9 LLR 415 (1946), the Court held that a court can never be the agent or instrument of any government nor can it properly align itself on the side of the prosecution in any case.

"The judge should, during the course of the trial refrain from remarks that are calculated in any way to influence the minds of the jury. This includes remarks to counsel touching the management of the case and reflecting on their conduct, as well as those touching the character of the witnesses and the value of

their testimony; and, if the remarks so made are material and improper, they may be prejudicial. Accordingly, if properly excepted to and brought into the record, they may work a reversal of the case on the ground." 26 R.C.L. 1026, *Trial*, § 27.

Count one of appellant's bill of exceptions is hereby sustained.

Count Three:

"And also because defense applied for a subpoena *duces tecum* to be served on the prosecution to produce into evidence the original writ issued by the Stipendiary Magistrate in the amount of \$850.00 sued for by defendant below, filed in his office; which although granted, issued and returned, and even though the said prosecution was in court from day to day, failed to produce said document, yet gave no reasons why; the court took no measure against said oppressive action of the prosecution."

In *Ledlow et al. v. Republic of Liberia*, 2 LLR 529 (1925), this Court held that in criminal cases, especially capital cases, the prisoner should be afforded every opportunity to establish his innocence and when he is deprived of any right or privilege guaranteed to him by the Constitution or law, by the subterfuge of his opponent or the action of the court, he cannot be said to have had a fair and impartial trial. In a criminal trial everything calculated to elucidate should be received, since the conclusion depends on a number of links which alone are weak, but taken together are strong and able to lead the mind to a conclusion.

It is obvious that the trial judge erred in depriving the defendant of a constitutional right, by condoning the disobedience of the County Attorney, who, after the service of the writ of *duces tecum* on him flagrantly refused to produce the document as commanded by the writ. Count three of the bill of exceptions is hereby sustained.

Count 4:

“And also because Your Honor sustained an objection of the prosecution to a question put by the defense to the witness on direct examination, to wit: You said that you are a poor man and do you make the court and jury to understand that you had \$2,850.00 worth of goods in your store of which the defendant robbed you according to your statement?”

In criminal cases the plea of not guilty puts in issue every fact the prosecution is bound to prove, and enables the defendant to cross-examine the witnesses for the prosecution on all matters touching the cause or likely to discredit them. *Massaquoi v. Loundes*, 4 LLR 260 (1935).

The question, put to the witness on cross-examination and touching the cause, should have been allowed. The sustaining of the objection by the prosecution was error on the part of the court. Therefore, count four of appellant's bill of exceptions is hereby sustained.

The eleventh count complains of gross bias on the part of the trial judge.

“The judge presiding at the trial of an action should at all times maintain an impartial attitude in his conduct and demeanor, and a status of neutrality between the contending parties, and improper conduct on the part of the judge is incompatible with a fair and impartial trial. It is as improper for the judge, by act, conduct, gesture, or demeanor, as by remarks or comments, to indicate any opinion on an issue of fact, the merits of the case, the credibility of a witness, the weight or sufficiency of the evidence, or the extent of the damages sued for, and he should not adopt or exhibit a hostile attitude toward a party or his counsel, or otherwise so treat counsel as to prejudice the interests of his client, or by his manner or conduct show bias or prejudice toward or against either party, or

do anything calculated to influence the jury in reaching its verdict." 64 C.J., *Trial*, § 107.

The attitude of the trial judge was revealed by appellant in the count of his bill of exceptions under review. A judge has certain limitations in conducting a trial. When he transcends his bounds, as alleged by the appellant in his complaint against the trial judge, it subjects him to criticism and censure.

The behavior of the trial judge, as portrayed herein, should be referred to the Chief Executive, at least for his information. Count eleven of the appellant's bill of exceptions is hereby sustained.

We shall now turn to the evidence in determining this case on its merits. The complainant, Momo Dukuly, took the witness stand:

"Q. The Republic of Liberia charges the defendant in the dock for the crime of robbery. You will please state all the facts and circumstances lying within your certain knowledge in connection with said charge.

"A. I have been knowing the defendant for over a period of eight years. He and I have been in business continuously. Defendant would give me goods which I would receive and sell and return the cost price to him. Our last transaction involved an amount of \$500.00, against which I have paid \$300.00 and the balance of \$200.00 remaining. When the time was due for the payment of the \$200.00 I was unable, as business was very slow, notwithstanding, he was not satisfied with the information I furnished him; he walked and came to me and demanded the \$200.00. I told him that business had gone very low. He returned home only to come back to me accompanied with a policeman. On his return he had met me going to sell. I had the goods on my head when he and the policeman

arrived. He instructed the policeman to seize the goods from me, and when I demanded the reason why, he replied me that he would say nothing there excepting he had returned to Mano River. The policeman forced me into the car, he and the defendant had chartered. They drove and brought me to my stopping place where I was operating my business. When we reached to my stopping place, I beg them to stop and see what I was doing. I had intended to convince them that I still have goods sufficient, and that if I have to sell same I would be in the position to settle my indebtedness with him. At this time they were already in my shop taking down the goods I had there. The police officer prevented me from talking, threatening that if I opened my mouth he would handcuff me. Peter Noah, one of my witnesses, happened to have been present. He inquired of the policeman if he had any writ in connection with the act he was performing there; the policeman appeared angry of being inquired of for any precepts. Peter Noah turned to me and advised me to be calm and not to get angry. At this time, they had stripped my shop clear of goods I had there and packed same in the car they had brought. They drove me to Mano, and when we got there, I was ordered to unload the car containing my goods which they had brought to Mano. I refused to unload my goods from the car they had brought, instead, I demanded that they take me to the police station with all my goods, which they refused. They then unloaded and stored my goods in the defendant's store. And thereafter they took me to the police station. At the police station they ordered me to sit with a boy at my back while

the defendant and the police officer had gone to look for one Sonie, the Magistrate's clerk, and while they were doing this I approached the lieutenant to speak to the defendant in my behalf that he kindly return my goods to me and allow me time to pay the balance I owe him. The lieutenant persuaded him to return the goods to me but he refused. At this time the defendant and the policeman were arranging to see that I am put in jail. In the meanwhile, the defendant had returned to his place of business and left me at the police station. The police lieutenant wrote a note to the defendant asking him to reconsider my matter and allow me to take my goods back; in carrying the note, I was told to hand it over to police officer Teateah. Zuna, one of my witnesses there, took the note to the defendant through police officer Teateah. When Zuna handed the note to police officer Teateah, officer Teateah used the expression "nonsense," which made Zuna angry and they passed words. When this was reported by Zuna to the police lieutenant he got angry with the police officer Teateah and had him locked up. Later on they met Associate Magistrate Joseph B. Sando who was acting for the magistrate proper and told him that I was owing the defendant. Magistrate Sando inquired of me whether I was owing the defendant. When I answered in the affirmative he ordered me locked up. I was in jail for four days when I was released on bail after the payment of \$20.00 against the amount owed the defendant. The amount being \$200.00, and after I had paid \$20.00 the balance of \$180.00 was to be paid by installment of \$15.00 fortnightly. My surety who has been paying this amount was given re-

ceipt for each installment payment, some of which I now have in my possession here in court, one being left in the house for the amount of \$15.00. (Receipts demonstrated.) Despite the fact that I had faithfully promised to make settlement of my indebtedness to the defendant, he refused to release my goods to me and would rather see my children and me perish. My house is in close proximity to him; this is the reason why I brought him to court."

Zuana Stuart took the stand for the prosecution. On cross-examination the defense posed a question.

"Q. From the statement made by you, you were present on the scene when the defendant and the policeman, Joseph Teateah, went to Weaymawoi and defendant took the goods from the private prosecutor by force with the police just named and forced him in the car and brought him to the private prosecutor's place and took the goods he had in the store by means of robbery.

"A. I was not present when the private prosecutor was arrested, but lying down home when his wife came and told me that Dukuly was in jail, growing out of the debt that Dukuly owed. But I was not present when the goods were seized.

"Q. So from all indication what you have placed on record with regards particularly to the robbing of the private prosecutor by the defendant, apart from the happening before the magistrate, is hearsay? [Objected to by the prosecution, grounds entrapping. The Court: Objection overruled. With exception from the prosecution.]

"A. Mr. Naief himself confirmed it."

It is to be observed that the private prosecutor, while

on the stand, made no mention that the defendant robbed him of his goods nor did the prosecution witness who followed, Zuana Stuart, testify to it. Consequently, the testimony of this witness may be classified as hearsay and objectionable.

Peter Noah also testified for the prosecution as follows:

“Q. The Republic of Liberia charges the defendant in the dock with the crime of robbery of the aforesaid private prosecutor. Please state all the facts and circumstances within your knowledge pertaining to said matter.

“A. On Friday, the 6th of February this year, in the town of Weaymawoi, I saw a taxi come from the direction of Weafor town and then park in front of Momolu Dukuly’s store. Momolu Dukuly came out of the taxi with a policeman behind him and the defendant in the dock; Momolu Dukuly then opened the store and entered. The policeman and the defendant also entered after him. As a towns mate, I went in the same store but before I could enter the store I saw Momolu Dukuly and the defendant fighting over some cloth. I then asked what was wrong, no one answered me. Seeing a policeman in the store and fighting, I told him to hold on but he would not listen to me. The brawl was becoming so heavy that the policeman got annoyed and he even attempted to handcuff Momolu Dukuly. Because of my interference into the matter the police did not handcuff him. I asked the policeman if he brought any writ of arrest. He told me that it was not my business; I then told him that you, as peace officer, instead of making peace you are making trouble. Having heard this from me, he threatened to charge me for accessory after the fact. I then advised Dukuly to leave the police alone and

let him do whatever he wants to do. I got out of the store and stood by looking at the defendant and the policeman carrying on their action. When this was completed, the policeman and the defendant then joined the taxi together with Momolu Dukuly. They went to what destination I do not know.

“Q. Who else was present besides you at the time the fighting was going on between Dukuly and the defendant?

“A. So many people were present. They are one Napoleon, Samuel Ross and Alfred Johnson, and many others I cannot now recall.”

This witness corroborated the statement of the private prosecutor in all of its essential parts, was cross-examined and discharged by the court.

The prosecution having rested, the defendant and his witnesses were qualified; defendant took the witness stand.

“Q. Are you the defendant in this case and are you acquainted with the private prosecutor in this case?

“A. Yes.

“Q. The Republic of Liberia charged you for feloniously and forcibly taking sundry goods from the private prosecutor, Momolu Dukuly, to the value of \$2,865.50, thereby constituting the crime of robbery. The indictment was read to you to which you pleaded not guilty. You are now called on the stand as a witness on your own behalf to testify to all you know touching said cause in support of your plea of not guilty.

“A. Mohamed Dukuly is indebted to me in the sum of \$232.00. I have requested Momolu Dukuly on more than one occasion to pay me the amount due me and each time he would say that I should wait until the next following morning. When I go to him in keeping with his own time, I

would meet him away and when I inquired about him, I was told that he had taken the goods and gone to another country; then I would return to my place at Mano River. Then finally I went to the Stipendiary Magistrate to enter action against him but did not meet the Magistrate, as the court was closed. Because I did not meet the court open, I went and narrated to the police what happened to me, that is to say, between Momolu Dukuly and me. I told the police officer, Joseph Teateah, what Dukuly had done and Officer Teateah asked me if I had any means of transportation and I told him, yes, I had a taxi ready to serve me. Officer Teateah, after getting some other police officers to substitute for him, went along with me to Dukuly's stopping place. When we got there and he inquired about Dukuly, we were informed that Momolo Dukuly had gone to another country with the goods. Police Officer Teateah told the taxi driver to follow wherever Dukuly had gone. When we went, we met Dukuly to a town called Yarganyar. The police officer on seeing him, Dukuly, ascertained from him whether he knew me and Dukuly told him that I was his customer, and he also found out from Dukuly whether he was indebted to me and Dukuly said that he owed me \$232.00. The police officer thereupon told Dukuly that I had come to collect my money and Dukuly in turn told him that he did not have the money on hand, but if I could accept my goods it would be acceptable to him. Police officer Teateah asked me if I will accept my goods and I told him, yes, because Dukuly had given me so much trouble to get my money. Dukuly put the goods that he had with him when we met him into the

taxi and we came together to the place where he was stopping. When we got there he asked to see his wife before going along with us to Mano River, from where I had come. Dukuly himself went and opened his shop door and told me that he still had some umbrellas which were some of my goods. There was no other person in the shop, neither his wife. He brought the umbrellas and two zinc buckets which he put in the taxi, after which we left for Mano River. When we got to my place, the taxi driver stopped and I also came down along with the police officer, Teateah, and Momolu Dukuly himself. Dukuly asked somebody, one Foday, to assist him in taking the goods down and packed them before my store to be checked in order to determine the quantity. As he was taking the goods to be checked, I discovered that certain goods were not mine, hence, I refused to accept them. I assorted the goods that were mine and placed them in one place valued \$115.00. I told him that the other goods were not mine and that he should have them. Dukuly called one of his brothers who lived at Mano River, who took the goods and carried them away. Then I asked Dukuly to pay me the difference of \$117.00 still due me and he told me that he did not have it. I insisted that he should pay me the difference due me, otherwise I will enter action against him before the Magistrate; and he told me that I should sue because he did not have the money. I went to the Magistrate and met the clerk, named Sonie, and told him that I wanted a writ against Dukuly for the amount due me, and the clerk asked me where was Dukuly. I pointed Dukuly to him, because he was already outside

with the police. As the writ was issued and sent to the Magistrate proper, who was at his home, who had it signed and brought back to court. Dukuly who was already there was asked whether he owes me and he said, yes, and was asked how much was the amount and he said \$117.00. He was begging the Magistrate that I should not sue him, but the Magistrate informed him that the writ was already issued and he was detained until he pays me the money, but he insisted that he did not have any money on hand. The Magistrate also said that he should make payment of whatever he had on hand and bring someone to stand his bond. Magistrate thereupon asked me to return home and that he would detain Dukuly until the amount is paid. Dukuly remained in jail under after four days, when his brother appeared and made payment of \$20.00 and entered into stipulation to make installment payment at the rate of \$15.00 every two weeks. This was the end of the matter so far as I was concerned, but surprisingly to me one day I saw a writ and was told that I was sued for \$850.00. When I appeared in court, I met Dukuly and his lawyer, who said that I had taken his goods by force to the value of \$850.00. The Magistrate asked me whether I was ready to go in to the case and I informed him that I wanted to look for a lawyer. The very day I met attorney Skinner, who accompanied me to the court where we met Dukuly and his lawyer who had been waiting for me there. Sando, the associate magistrate, asked me whether I was ready for the case and I told him, yes. Associate Magistrate Sando informed us that the case was beyond his trial jurisdiction, hence, he was sending same to the

Circuit Court of the Fifth Judicial Circuit Court, here in Robertsport. After one month I saw another writ from the Circuit Court of the Fifth Judicial Circuit that Dukuly had sued me for \$2,865.50. This is all I know. [At this stage, counsel for defense most respectfully requests this Court for a subpoena *duces tecum* to be issued against the prosecuting attorney for the production into evidence of the original writ served on the defendant, Naief Talib, by the stipendiary magistrate. The Court: The application is hereby granted, and the clerk of this court is hereby ordered to serve on the County Attorney a subpoena *duces tecum* to produce in court the original writ issued by the stipendiary magistrate in the matter now at bar.]

- “Q. What was the value of those goods that were received from him, according to you, from the private prosecutor’s store or shop, which you said were voluntarily surrendered to you by the private prosecutor?
- “A. \$115.00.
- “Q. Did Dukuly accompany you and the police officer to his own place, where you met him, then to Mano River of his own volition?
- “A. Himself told the police that he would like to go back and give the goods.
- “Q. When you were loading the taxi, were you present as the goods were brought out by Dukuly and being loaded?
- “A. I saw Dukuly myself when he was loading the taxi.
- “Q. The goods you said that were not yours and you told Dukuly to put aside, would you say that all the goods that Dukuly had to put aside were not yours were only five umbrellas and two buckets?
- “A. No, there were more than five umbrellas and

two zinc buckets, because such goods as were found in the valise that did not belong to you I did not claim same.”

J. B. Sando took the stand for the defendant.

“Q. The Republic of Liberia charges the defendant with feloniously and forcibly taking away sundry goods from one Dukuly, to the value of \$2,865.00, thereby constituting the crime of robbery. The indictment was read to the defendant, to which he pleaded not guilty. As a witness for the defense, you are called to testify to all that lies within your certain knowledge touching said case.

“A. What I do know is that on the 16th of January, 1970, Mr. Naief Talib went to our court and instituted an action against one Momolu Dukuly in the sum of \$117.00. The writ was issued and served on the said defendant; and when he appeared before court, the writ was read to him to which he pleaded himself liable. He was then requested to make payment for the amount involved and he said he did not have a single cent, even though he had admitted the debt. Mr. Naief Talib applied for a writ of execution for the defendant and same was issued and served on the defendant. When the writ was read the defendant failed to produce property covering the amount. He was then committed to jail; there he remained for three days and some relatives of his made part payment in the sum of \$20.00 and he was then granted a payment bond. Few weeks later, he came to court and issued a writ against the defendant, Naief Talib, for the sum of \$850.00, which he said that he robbed him from his goods. Since such case was beyond the trial jurisdiction of our court we then forwarded same to the County Attorney for

prosecution before the Fifth Judicial Court. This is all I can remember.

“Q. When the defendant sued the private prosecutor before you, did the defendant, Dukuly, inform you that the complainant had previously taken some goods from him forcibly or did Dukuly himself admit voluntarily giving Naief the goods in payment of his indebtedness to Naief, the complainant?”

“A. Not to my knowledge.”

Another witness for the defendant, Passawe, gave testimony.

“Q. The Republic of Liberia charges the defendant with feloniously and forcibly taking sundry goods from one Mr. Momolu Dukuly, to the amount of \$2,865.50. The indictment was read to him, to which he pleaded not guilty. In support of same you are now called as a witness for the defendant to testify to all you know connected therewith.

“A. What I know about the matter, one day I was passing before Mr. Naief’s store and met them standing. At this time there was a taxi on the spot. The front of the truck was opened and there was one police officer there also. I was passing the store then Mr. Dukuly saw me and called me, saying, Mr. Taylor, please come help me. I said no. And he asked me, what is wrong? I said, officer is standing by you, I don’t know what you are talking there. I cannot help him. I then said alright. So before I help you now, we took the market from inside the car. One load that was there was very heavy; that was the one I helped him with. He put the balance in the store, Mr. Naief said, pay my money. Mr. Naief, I do not have the money now, you have some of the market, what

must I do. Mr. Naief said, I want my money. The man, Mr. Dukuly, said, I do not have the money, and he said, I can only give you other market back to you. Mr. Naief said, okay. Then Mr. Dukuly started to take Mr. Naief's goods and put them one side. Before he finished it, he said, there is your other market. Mr. Naief said, I see my market. He said, where is my money? The officer asked Mr. Naief, he said, is this your part of goods now? Mr. Naief said, yes. Mr. Naief told the officer to check the goods for him. After he got through checking, Mr. Naief asked him, how much, then the officer said \$115.00 market. So Mr. Naief said, I see my market. He said, where is my money? Now the man said, I do not have the money yet. If you do not pay my money, I will sue you. And that was the time I called Mr. Naief's wife and said, I came to buy something, so come and sell it to me. Then the woman brought the thing, I bought it. Now I got out. That is all I know.

"Q. Please refresh your memory and say for the benefit of the court and jury as to whether the checking of the goods were done in the presence of the private prosecutor, Momolu Dukuly?

"A. Yes.

"Q. Please refresh your mind and say further if you know as to whether the private prosecutor was forced by anyone to deliver goods or to check same? [Objected to by the prosecution, grounds, cross-examining his own witness. The Court: Objection sustained, but the question may be answered for what it is worth; no exception from the prosecution.]

"A. Nobody forced him to take the goods and check them.

"Q. Who told you that \$115.00 worth of goods were delivered by the private prosecutor, Mr. Dukuly, to the defendant, Naief?

"A. Mr. Naief asked the officer and the officer told him that it was \$115.00 goods.

"Q. Where was this checking done?

"A. At Mr. Naief's store in Mano River."

The court questioned the witness.

"Q. When you helped Mr. Dukuly take the goods, as you said, to defendant's store, what else did you notice Dukuly take from the car to the defendant's store?

"A. I noticed buckets and a bundle of goods, but as to what was in the bundle, I do not know.

"Q. When, according to you, Dukuly requested you to assist him to carry some goods from the car to the defendant's store, what was the defendant doing, if anything, while you were assisting Dukuly carry the goods to the defendant's store; were they tossing over any goods?

"A. The defendant was standing idle. He was not tossing over any goods with Dukuly.

"Q. Were you present when Mr. Dukuly took all of the goods from the car to the store?

"A. Yes.

"Q. When, according to you, Mr. Naief said, pay me my money, was this statement made before the checking of the goods or after the checking?

"A. Mr. Naief told Momolu Dukuly to pay him the money due him before the checking of the goods was made.

"Q. On the oath you took, are you saying that Naief had said to Dukuly, pay me my money, before the alleged checking was made and Naief had said that it was \$115.00 market?

"A. Mr. Naief said, pay me my money, and Dukuly

had said, I ain't got money yet, only the market Dukuly gave him, \$115.00 worth of market.

"Q. Did you see all of this, the goods that Dukuly turned over to Mr. Naief to be \$115.00?

"A. I did not see it, I just heard it.

"Q. Since you heard Dukuly turning over to Mr. Naief \$115.00 worth of goods, did you also hear Naief say and name some goods which he claimed not to be his; if so what were such goods?

"A. I heard he named some umbrellas, the quantity of which I do not know, this is all."

The witnesses of the defense having corroborated defendant's defense in all its principal parts, especially in keeping with his plea of not guilty, one striking phenomenon which gives rise to a serious doubt as to the veracity of the charge against the defendant was brought out by the defendant while on the witness stand, "but surprisingly to me one day I saw a writ and was told that I was sued for \$850.00. When I appeared in court I met Dukuly and his lawyer who said that I had taken his goods by force to the value of \$850.00." This statement was corroborated by J. B. Sando, who said, *inter alia*, "few weeks later, he came to court and issued out a writ against the defendant, Naief Talib, for the sum of \$850.00, which he said that he had robbed from his goods. Since such case was beyond the trial jurisdiction of our court we forwarded same to County Attorney for prosecution before the Fifth Judicial Circuit Court."

It is this precept, alleged to be in the possession of the County Attorney, for the production of which the defendant made an application to court for a subpoena *duces tecum*, which was granted. The writ was issued, served and return made accordingly, but the command of the writ was disobeyed by the County Attorney with impunity, with no action taken by the trial judge. The value of the goods allegedly robbed by the defendant

from the private prosecutor, on being transferred by the issuing magistrate to the Fifth Judicial Circuit Court, Grand Cape Mount, had strangely increased from \$850.00 to \$2,865.00.

Having carefully sifted the evidence in this case, we are convinced that the evidence does not support the charge made. Additional support is lent to this belief by the fact that Dukuly, the private prosecutor, was taken to the Magistrate's Court and an action of debt entered against him, for which he was jailed and not then, or even after his release on bail, did he ever say anything to the magistrate about an alleged robbery committed against him by the defendant, supposedly arising from facts surrounding his own imprisonment.

In view of the foregoing and the surrounding circumstances, there being a grave doubt as to the guilt of the accused in this case, the judgment of the lower court is hereby reversed and appellant discharged without day.

Reversed, defendant discharged sine die.