JACOB CUMMINGS, Appellant, *v.* REPUBLIC OF LIBERIA, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT, MARYLAND COUNTY.

Argued January 4, 1934. Decided January 19, 1934.

1. The party who produces a witness has a right to elicit by questions any fact which the witness omitted to mention in his general statement before the cross-examination by the other party commences.
2. The cross-examination of a witness is not, under the Statutes of Liberia, limited to facts brought out in the direct examination, but may extend to any fact touching the cause or likely to discredit the witness.
3. It is not error in a court to admit in evidence articles shown to be the fruit of a crime when they have been recovered from accused who admitted having feloniously taken them, and they have been otherwise identified as part of the goods stolen.
4. The plea of former jeopardy by *autrefois acquit* must be made, if at all, before the defendant joins issue by pleading to the indictment.
5. The Statute of 1924–25 defining petit offenses does not increase the amount in cases of petit larceny to one hundred dollars, but was intended to bring all offenses punishable only by a fine of one hundred dollars within the category of petit offenses.
6. In larceny, under our statute as under the principles of law in all jurisdictions where larceny is divided into grades, the value of the property taken must be alleged and proven as a constituent element of the offense.
7. Mere allegations of value do not constitute sufficient proof to support a conviction of larceny.

Appellant was convicted of grand larceny in the Circuit Court of the Fourth Judicial Circuit, Maryland County. On appeal to this Court, *judgment reversed.*

William V. S. Tubman for appellant. *The Acting Attorney General* and *Anthony Barclay* for appellee.

MR. JUSTICE DIXON delivered the opinion of the Court.

This cause comes up from the Circuit Court, Fourth Judicial Circuit, Maryland County, upon a bill of exceptions containing fourteen counts for the review of this Court.

Count one of the bill of exceptions having been withdrawn by appellant's counsel, we shall proceed to consider the other counts according to their respective merits. In counts two and eight the appellant contends that the trial judge committed an error when he overruled on the ground of cross-examining one's witness objections interposed to the prosecution's putting questions to witnesses W. U. Cummings and James K. Nimley respectively in order to elicit facts not brought out in their respective general statements; the defense contending that in the event a witness had inadvertently, or otherwise, omitted an important fact in his examination in chief, even then the prosecution was bound to rest, give defense an opportunity to cross-examine, and then seek an opportunity to bring out on re-examination the testimony omitted in the direct examination. This Court will observe that in the trial of a criminal cause, it is but right and just, and it is required by the principle of granting a fair and impartial trial, that the trial court should procure all the facts relevant to the issue. It is also a settled rule of procedure that the trial judge or court controls and directs the examination of witnesses according to his discretion; therefore the over-ruling of defendant's objections as raised in these instances is not reversible error. 26 R.C.L. 1025, § 25.

It is contended further in counts 3, 4, 5, 7, and 9 of the bill of exceptions that the trial court erred in disallowing the questions put to witnesses W. U. Cummings, J. S. Baker and James K. Nimley by the defense on the cross-examination, on the ground that the prosecution claimed that such questions were travelling beyond the theory outlined at the opening of the case and beyond his general statement. This Court will remark that in some jurisdictions, a witness can be cross-examined only on his direct testimony; but under our statute a witness may be cross-examined on any facts touching the cause or likely to discredit himself, but he shall not be asked irrelevant and

hypothetical questions; wherefore it was erroneous on the part of the judge to sustain the objection of the prosecution. 1 Rev. Stat. § 371. *Yancy and Delaney* v. *Republic*, 4 L.L.R. 3, (1933).

It was not error on the part of the trial court to overrule the objection of defendant to the prosecution's question put to witness W. U. Cummings on the redirect examination: "Mr. Witness, can you or can you not remember the month and year you recommended the defendant at bar to be employed in the firm of Messrs. G. F. Overbeck, Limited, and the time he was discontinued as mentioned in your statement in chief?" Said question was not (a) irrelevant, but it was pertinent to the issue, since the charge of theft was not committed on one day only but was shown to have been committed during the interval between the employment and dismissal of the defendant by the firm; (b) nor entrapping or hypothetical as witness Cummings was competent to know when the defendant was employed and when dismissed, he having testified that he it was who recommended him to the firm. A question can only be entrapping when it is impracticable for the witness to give a direct answer to it.

It appearing from the records that the articles, the fruit of the crime, were surrendered by defendant, now appellant, to the owner thereof in the presence of witnesses Wilson and Cummings, and that he, defendant, confessed that he had committed the theft, and the said witnesses Wilson and Cummings having testified on the stand that these were the articles confessed to have been stolen by him, and witness Heinrich Renken having testified to the goods being the property of the firm of Overbeck, private prosecutor in the case, the identification was sufficient and the court below was justified in admitting them as evidence in the trial, and such admission was no error on part of the court as contended in count ten of the bill of exceptions. 17 R.C.L. 65, § 70.

We further observe that defendant, now appellant, in

count eleven of the bill of exceptions contends that the right was denied him of having Messrs. J. D. Williams, Matadi Wreh, and William P. Wilson qualified to testify on his behalf. This position of the trial court is legally supported, said witnesses having been offered to testify to the fact of the defendant's having been formerly acquitted on the charge of petit larceny for having stolen the selfsame articles. The defendant, now appellant, having failed to plead *autrefois acquit* at the proper time, that is before pleading to the charge, and having submitted to the jurisdiction of the court by joining issue to the charge of grand larceny, was guilty of a waiver and could not at this stage of the proceedings offer proof in support of said plea. 2 Wharton, Criminal Procedure (2d ed. 1918), §§ 1413–14; B.L.D., "Waiver."

In count thirteen of the bill of exceptions the defendant contends that his motion to the jurisdiction of the court over the cause was overruled contrary to the principle of law governing larceny in that the amount, the subject of this prosecution, was fifty-nine dollars and sixty cents, which falls under the subject of petit larceny and not grand larceny, and therefore was not within the jurisdiction of the Circuit Court, but of the Court of the Justice of the Peace, and cites the Act of the Legislature of Liberia, 1924–25, ch. XVI, § 3; Criminal Code of Liberia 16, § 73.

This Court is of opinion that the Act of 1924–25 defining petit offenses and extending the jurisdiction of justices of the peace over these offenses, was not intended to increase the amount in petit larceny to one hundred dollars as was contended by the counsel for appellant, but simply brings within the category of petit offenses such offenses in which the penalty is a fine of not more than one hundred dollars. The court was therefore justified in overruling said motion. Act of Legislature of Liberia, 1924–25, ch. XVI, §§ 1, 3.

Having traversed the issues of law raised by defendant,

now appellant, in the trial of this cause, this Court will now proceed to review the evidence adduced at the trial.

Witness Heinrich Renken on the stand stated that defendant had been employed in the service of the firm as a storeboy. The following questions were propounded to him to which he made the answers as they follow to the questions respectively:

"The Republic of Liberia charges him (defendant) of having committed grand larceny. Do you or do you not know anything about said charge? If you do, please tell us what you know. Ans. Yes, I know about it. Jacob Cummings was dismissed in June 1931. A few days after this our yard clerk, Mr. W. U. Cummings, reported to us that the same boy had stolen some of Overbeck's goods which he, Mr. Cummings, could and did present at our office the next day. These goods are now in the possession of Sheriff Stevens, for which we have a receipt.

"Ques. Mr. Witness, if you were to see the goods referred to, would you be able to identify them? Ans. Yes.

"Ques. (Here the goods, fruit of the crime, were passed to the witness.) Mr. Witness, whose goods do you identify the goods before you to be? Ans. G. F. Overbeck's, Limited, Cape Palmas.

"Ques. Are they the goods that you referred to in your statement in chief, said to have been taken to you by defendant? Ans. Yes, these are some of the goods about a third."

Witness Dash. Wilson took the stand and testified that he knew the defendant, and replied to the following question:

"Ques. The Republic of Liberia charges him (defendant) with having committed grand larceny. Do you or do you not know anything about said charge? If you do, please tell us what you know. Ans. Yes, I do. It was on the 7th July when the agent of Over-

beck, Mr. Renken, sent for me and requested me to call at his bungalow in company with Mr. Joseph Baker in the evening after the business hours. His reasons for requesting our presence grew out of an approach that the defendant had made that day to him. Accordingly at about 6:30 o'clock that evening, Baker and I called there. About half an hour after our arrival, a rap was heard at the door and the agent on enquiring discovered that it was the defendant, Jacob Cummings. He asked him into the house and gave him a seat. There were present the agent, Mr. Eggers, one of their European clerks, Mr. Baker, the defendant, and myself. He then suggested to the agent that he would like to be re-employed as their storeboy. The agent then said to him that he could not consider said application especially when he had gone to the justice of the peace's court and identified the firm's property which was apprehended in the defendant's possession, yet said property had been returned to the defendant by the justice of the peace court. The defendant Jacob Cummings then said that some of the property was his, and some was the firm's. Then the agent asked him to enumerate such articles that were his and such as was the firm's. He then began naming the very articles that had been stolen. The agent then asked him if he could get these articles and the defendant responded 'yes' and requested the agent to give him a steward boy to follow him. The cook was then called for who brought a lantern and handed it to the steward boy, after which the defendant, Jacob Cummings, came to Latrobe and within less than half an hour they returned with a parcel containing the identical articles as enumerated in the indictment etc."

Witness W. U. Cummings, Sr., the foster brother and quasi-guardian of Jacob Cummings, the defendant, as was shown by the said Jacob Cummings's having been

reared by the father of W. U. Cummings, Sr., and the latter W. U. Cummings, Sr., who had recommended the said defendant to the firm and had stood as a guarantor for him, took the stand and corroborated the statements of Mr. Baker and of Dash. Wilson in answering the question propounded to him thus:

"The defendant, a boy having stopped with my father sometime, upon my recommendation, I got him employed as storeboy in the firm of Messrs. G. F. Overbeck. In the year 1930 during the course of his employment, the then clerk in charge, Mr. Eggers, would oft-time allege complaints to me of his suspecting the defendant in question. He complained of losing wares which his cash sales did not account for, nor could any account otherwise be made, attaching the complaint to the defendant as being responsible, as he thought, for the missing goods. I would at all times defend the interest of the defendant. His complaints grew somewhat numerous until I advised him if it is his will he shall get rid of the defendant and employ whatever storeboy he would like to have. This he seemed not to be inclined to do at the time; following, he complained again of losing some earrings which they styled 'golden earrings.' It was then that he decided to do as I advised.. During the defendant's dismissal I got the information that he was somewhat faulty of having taken away, as it was proven, certain wares from the store of said G. F. Overbeck. Upon this information I interrogated the defendant to point out the correctness or otherwise; he denied. I then asked in order to further satisfy myself would he form any objection to my going along with himself to examine his belongings. To this he agreed. Following him to the place where he kept these belongings during the time, he claimed not to have the key of his trunk on him, and said that he had sent off to Krootown to obtain it from one of his coats.

During this time of waiting, my brother Samuel came in, and in course of relating the circumstances to him, I observed that the defendant in question had disappeared from our company. I then thought that he was up to some tricks. Then I rushed to the attic where he kept his belongings. There I found him; he had opened the trunk and was in the act of throwing certain things in the corner. I reproached him in the following terms! 'How is it that you said that you did not have the key for your trunk on you?' To this he made no answer. Finding that he had opened the trunk, as I was standing at the head of the stair case, I shouted out for my brother Samuel to come and bring a light, which he did. I asked him to look in that direction to where I had observed he had thrown some things. Doing this, he discovered three feet of shoes. Then we approached the trunk, i.e., the three of us. The defendant himself lifting the top of the trunk, we began the examination, when several articles were discovered including a goodly number of pairs of the very golden earrings that the clerk in charge had accused him of having taken, together with other things claimed to have been lost. It was then I was led to presume the goods to be stolen. I told him that I would return the goods, when he said to me, 'You alone have seen these things. The white man has not seen them. Why is it that you expose me?' In reply to this I said: 'I cannot support a thing of this kind and hence if you did it, I would not stand behind you. Further you saw sometime ago in the very store the manner in which Mr. Eggers addressed me touching some transaction on your part which caused me, in turn, to say some very hard words to him. Now then, I am sorry to say I cannot injure my good self for your nonsense.' "

The foregoing statements supported by other corroborating facts not having been impeached by any other

statement except the uncorroborated testimony of the defendant, established a very strong *prima facie* case of larceny against the defendant.

Thus in such essential elements of the proof of larceny, such as the unlawful taking and asportation of the goods by defendant with the intent feloniously to convert them to his own use and make them his own property without the knowledge and consent of the owner, the case was satisfactorily proven. But there was still lacking proof of an essential element, and that was the proof of the value of the goods. For although in our opinion the value of the goods alleged to have been stolen was adequately set out in the indictment, yet not a witness on the stand gave any testimony as to the value of the goods stolen or recovered, and under our statute, as under the common law where larceny is divided into two grades, grand and petit, proof of value becomes an essential element in the proof for conviction of the crime. Appellant taking advantage of this omission strongly contended before this Court that in that respect the proof failed, and cited with success the principle laid down by this Court in the case *Houston Bros. & Company* v. *Fischer & Lemcke,* 1 L.L.R. 434 (1904), that no matter how clearly the facts are alleged, mere allegations do not amount to proof and that failure of proof will defeat the best laid action. 17 R.C.L. 59, § 65; *Id.* 65, § 71; 2 Wharton, Criminal Procedure (2nd ed., 1918), § 854.

Inasmuch as there is no evidence in the records to prove the value of the goods charged in the indictment or of the goods offered in evidence as the fruit of the crime, this Court regrets that it cannot but reverse the judgment of the court below on this single point, and award a new trial in said cause, to be held at the next ensuing term of the court; and it is so ordered.

Reversed.