HARRIETTE DENNIS-MITCHELL, Appellant, *v.* REPUBLIC OF LIBERIA, Appellee.

APPEAL FROM CONVICTION OF EMBEZZLEMENT.

Argued January 9, 13, 1941. Decided January 17, 1941.

1. Larceny and embezzlement are cognate offenses where the object is to appropriate and convert to one's own use the goods of another.
2. Malicious mischief is not cognate with larceny and embezzlement because in malicious mischief the intent is not to benefit oneself but to injure another.
3. To attempt for personal reasons to prosecute an innocent person or to hold under suspicion a person charged with a crime for which she must ultimately be acquitted is persecution and not prosecution.

On appeal from conviction of embezzlement, *judgment reversed.*

B. G. Freeman for appellant. C. Abayomi Cassell, *Revenue Solicitor,* for appellee.

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

Towards the close of the second day of the review of this cause in this Court, counsel for appellee suddenly arose and requested permission to enter a nolle prosequi. Said application the Court refused, but intimated that, in view of what had been disclosed by the record so far read, if he chose to enter an abandonment of the prosecution the Court would not be averse to the consideration of same. He thereupon requested permission to retire for further consultation with the head of the Department of Justice and returned within half an hour with a motion which he placed upon record, and which reads as follows:

"Application for Leave of Court to Enter an Abandonment of Said Case.

"Now comes before this Honourable Court, C. Abayomi Cassell, Revenue Solicitor, R.L., by authority of the Attorney General of Liberia and begs leave of court to enter an abandonment of the above entitled case for the following legal reason, to wit:

"Because after a careful review of the evidence in the case the prosecution finds no evidence in the entire record now on review in proof of the conversion of the property in question by the appellant to her own use and benefit; but, rather, there would appear from the evidence strong proof of the commission of the offence of Malicious Mischief.

"Respectfully submitted,
Republic of Liberia, appellee,
By and through her Attorney,
(Sgd.) C. ABAYOMI CASSELL
"Revenue Solicitor, R.L., appearing by appointment of the Attorney General of Liberia."

The Court could with all propriety have had this case immediately struck from the docket without further comment, but there are certain features of the matter which we feel should be left on record as buoy lights for the guidance of the judges of the courts below and as hints to the prosecuting attorneys throughout this Republic, especially since the record discloses that the prosecution commenced three suits against this appellant, all for the same property and each suit either for larceny or for embezzlement.

Larceny and embezzlement are cognate offenses. They agree in that in each the goods alleged to have been stolen must be shown to have been taken *lucri causa* (for the sake of gain or profit) and *animus furandi* (with an intention of stealing). They differ essentially in one respect, namely that in the case of larceny the original taking involves a trespass whereas in embezzlement the defaulter had by virtue of some fiduciary relationship

come legally into possession of the goods by having them entrusted to him by the true owner and at some *subsequent* time has developed the *animus furandi.*

From the time we began to read the records, it struck us as exceedingly strange that here was a case which had been pending for over three years from the time the last of the three prosecutions had been instituted, and that the appellee had waited until the close of the second day of the review at the bar of this Court before putting upon record that the facts did not warrant a prosecution for stealing, but tended to prove the offense of malicious mischief. Malicious mischief, we must here explain, is an offense in which the defendant has, with an intent to injure the aggrieved person, destroyed some property.

In larceny and embezzlement, which as we have aforesaid explained are cognate, the object, of course, is to appropriate and convert to his own use the goods of another. In malicious mischief, on the other hand, disdaining to benefit from another's goods, he nevertheless desires to destroy them so as to inconvenience, injure, or bring about physical or mental suffering to the aggrieved. Hence, as the evidence tends to prove that the goods in question were not appropriated but dumped into the river, we are at a loss to conjecture why the trial judge did not sustain the fifth count of the motion for a new trial and thereby obviate this appeal, the crux of which is contained in the sixteenth count of the bill of exceptions.

This brings us to the second phase of the question we propose considering. If it be true, as the prosecution placed on record, that Harriette Dennis-Mitchell, defendant, now appellant, took the goods of Sarah Norman, her guest, bundled them up and dumped them into the river, what could have been the motive? The record discloses that the two women, Harriette Dennis-Mitchell, appellant, and Sarah Norman, the private prosecutrix, were on terms of the most intimate friendship, so intimate, in fact, that on the arrival of the private prosecutrix in

Monrovia and upon her meeting defendant in the street, the latter said to the former, "I am not going home early tonight but uptown. However, should you get to the house before me, send to Mr. Hazeley's for the key and you take charge of my bedroom." The record further discloses that this intimate friendship had been of long duration and had continued until the occurrence of the events elicited in the direct testimony of Mrs. Rachel Burton Williams when on the stand for the prosecution.

One of the theories in the case for the prosecution was that when Mrs. Norman had moved from Mrs. Dennis-Mitchell's room to another lodging she had wanted her trunk and, although she had sent for it three times, Mrs. Dennis-Mitchell had refused to send it. This fact was exploited by the prosecution to endeavor to show a disposition to convert same to her own use. However, Mrs. Rachel Williams, testifying for the prosecution, stated that a boy had come in and, mistaking the witness for Harriette Dennis-Mitchell, had said that he had come for Mrs. Sarah Norman's trunk. Mrs. Williams said she inquired to whom he had come for the trunk. The boy replied to Mrs. Harriette Dennis-Mitchell. The witness told him that Harriette Dennis-Mitchell had not been there since the day that she and Sarah Norman went out. Another boy had come in, saying that Mrs. Norman was ill at Mr. Coleman's place and could not come herself but that she wanted her trunk. So, finally, one morning Harriette Dennis-Mitchell herself came in and the witness asked her what happened with Sarah's trunk, so many boys having been there demanding it. Harriette Dennis-Mitchell is said to have replied, "Sarah Norman is not sick. You know, Miss Rachel, Sarah Norman and myself went and told Hazeley." Witness said, "Oh, yes?" Mrs. Dennis-Mitchell replied, "Yes, so I sent for her to come herself. When she comes me and her will have it. That is why she is ashamed to come, because she has gone and run her mouth [meaning she has

been tattling]." This was reported to be the genesis of the row.

The witness Rachel Williams had also been on terms of great intimacy with both prosecutrix and defendant, and it would appear from the testimony of Reverend James Boyce and of Samuel Hardy that through her instrumentality the prosecution was twice defeated. However, when Harriette Dennis-Mitchell, defendant, was accused of having become intimate with Mrs. Williams' "best boy," one Padmore, then she, the Rachel Williams who had twice been instrumental in defeating the prosecution, succeeded in making the third effort at such a prosecution effective, even though there seems to be no doubt, from the testimony of other disinterested witnesses, that the property of the private prosecutrix was actually thrown into the river. One cannot carefully read the record without having a suspicion that it was one of the other women, rather than defendant, who was responsible for the destruction of the goods of private prosecutrix when this wholesale interchange of paramours seemed to have become the order of the day. (See the testimony of witnesses Rachel Williams, Reverend James Boyce, and Samuel Hardy.)

The defendant, now appellant, was defended by two counsellors of the same surname, though not related, namely, Counsellor L. G. Freeman, who died two years ago, and Counsellor B. G. Freeman, who has followed the case up to this Court. In the cross-examination of the late Counsellor L. G. Freeman, the County Attorney put this question to him:

> "Q. You were prompted to take the stand and give this evidence of the friendly relationship existing between you and the defendant in the dock because she has had a child for you and you are trying to assist her?"

Listen to the answer of the witness, now deceased:

> "A. The same feelings and friendship that existed

> between you and Mrs. Sarah Norman when you were lovers in this city of Monrovia, if those feelings and that friendship prompted you as county attorney to bring this case three times against defendant, it would logically stand to reason that I would do the same. But [because of] my keen sense of justice and my standing in the community as a young man who is not a coward and who has some money, [I] would not be prompted to kiss the Bible and take the stand before the court and jury and tell a lie to the court and jury."

And it is worthy of note that upon Counsellor Freeman's giving that answer the prosecuting attorney announced that he had no further questions and let the matter rest there.

The Court has but partly lifted the curtain which hides these series of scandals affecting the illicit relations of three groups of individuals because it deems it opportune to put upon record the following:

A court of justice is a sacred place dedicated to the God of Justice. Those who minister at the altar of justice, and especially judges and prosecuting attorneys, should do so with pure hearts and clean hands, viewing all matters purely objectively and endeavoring to mete out justice impartially to friend and foe alike. To attempt to use a court of justice as a vehicle of oppression either to prosecute a person who is innocent or to hold under suspicion and in suspense a person charged with a crime which any student of law cannot but know must ultimately end in his acquittal is persecution, not prosecution, savoring of prostitution of a baser type than that which Lord Lytton in his "Last Days of Pompeii" spoke of with scorn as he described the gladiatorial combats of ancient days.

If justice can be so far perverted in the capital of this Republic under the direct eyes of the central office of the

Department of Justice, we tremble to think what must occasionally occur in places remote from this center where parties litigant may not have the knowledge, courage, or money to bring their cases up here for correction. And it is not improbable that the selfish interests and spite which inspired this prosecution, at such great expense to the public purse, was that which repeatedly prevented the prosecution from applying the correct principles of law to the facts as they existed.

It follows from the foregoing that the judgment of the court below should be reversed and the case remanded with instructions that the trial court should immediately resume jurisdiction and discharge the defendant without day, and cause her bond to be delivered up; and it is hereby so ordered.

Reversed.