

ROBERT H. DENNIS, Appellant, v. REPUBLIC
OF LIBERIA, Appellee.

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

Decided May 8, 1929.

1. Any person who with intent to defraud shall falsely make or materially alter any writing which if genuine would be the foundation of a private or public liability or which would be prejudicial to public or private right, and which on the face of it shall purport to be good and genuine, shall be guilty of a felony and shall be punished by imprisonment for a term not exceeding five years.
2. Where in the commission of forgery money is obtained by false pretenses, which is a misdemeanor, the latter is merged in the felony. The acquittal of the latter is however no bar to indictment for the former.
3. The crime of forgery is not dependent upon the amount obtained by the person committing the forgery, but consists in the falsifying or altering of a public document or private writing so as to give an appearance of truth to a mere deceit or falsity.

Defendant was convicted of forgery in the Circuit Court below. On appeal to this Court on bill of exceptions, *affirmed*.

R. E. Dixon for appellant. *The Attorney General* and *Solicitor General* for appellee.

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

This is an appeal from the judgment of the Circuit Court of the First Judicial Circuit, Montserrat County, entered at its December term, 1928, Judge R. J. S. Worrell presiding by assignment.

The appellant, having been indicted for the crime of forgery, was convicted of said offense and was sentenced to be imprisoned in the common jail of Montserrat County for the space of nine calendar months. The facts in the case, as far as can be gathered from the records, may be briefly stated as follows:

Robert H. Dennis, appellant in the above entitled cause, held the position of Commissioner of Election in the year 1927 and acted in that capacity during the presidential election of said year. While serving as such official he compiled and published a pamphlet entitled "Election Registration Law passed by the Legislature of the Republic of Liberia, during the session 1899-1900." These pamphlets appellant circulated throughout the country intending for them to be understood and taken as a true and correct copy of the Election Registration Law passed by the National Legislature at its Session 1899-1900.

Based upon certain provisions inserted in said pamphlet, appellant made and presented to the Secretary of Treasury, the Honorable J. J. Harris, a bill for services rendered as such Commissioner of Election amounting to the sum of \$5,045.75, most of which was received with the exception of a small balance, to wit, the sum of \$40.00.

Meanwhile, the said J. J. Harris having retired from office was succeeded in said office by the Honorable S. G. Harmon to whom appellant applied for the balance. Owing to the large amount of the bill, the suspicion of this official was aroused and upon an investigation it was discovered that in compiling said pamphlet, appellant had made certain material alterations in the election law passed by the National Legislature at its Session 1899-1900, whereupon proceedings were instituted against appellant, who was subsequently indicted, tried and convicted of the crime of forgery and sentenced as aforesaid.

Appellant being dissatisfied with the judgment of the said Circuit Court has brought the case up to this Court for review by bill of exceptions.

We will now proceed to consider the bill of exceptions or such portions thereof as will enable us to arrive at a just conclusion of the merits of the case.

With regard to the first, second and third points which relate to the admissibility of exhibits "A" and "B" and the Act of the Legislature 1914, we are of the opinion that

the Judge of the Circuit Court did not err in admitting these documents as evidence, as they had a tendency to prove the allegations laid in the indictment.

As to the identification of the document marked exhibit "C" the evidence of L. A. Grimes who stated that the document marked "C" was either the document admittedly published by appellant or a copy thereof, was in our opinion a sufficient identification. We are now to consider the main point in the case, the exception taken to the final judgment. The exception is thus stated:

"Because your Honour rendered final judgment upon the verdict of the Jury which he submits was manifestly contrary to law and the evidence adduced at the trial, to which he also excepted."

Forgery at common law is the fraudulent making or alteration of a writing to the prejudice of another man's rights or making *malo animo* of any written instruments for the purpose of fraud and deceit, the word "making" in the last definition being considered as including every alteration or addition to a true instrument; it may be committed by altering or falsifying public documents or private writings.

It is said by Hawkins that "the notion of forgery doth not seem so much to consist in the counterfeiting a man's hand and seal, which may often be done innocently, but in the endeavouring to give an appearance of truth to a mere deceit and falsity, and either to impose that upon the world as a solemn act of another, which he is no way privy to, or at least to make a man's own act appear to have been done at a time when it was not done, and by force of such a falsity to give it an operation, which in truth and justice it ought not to have . . ." 1 Hawkins, Pleas of the Crown 264.

In the Criminal Code of the Republic of Liberia "forgery" is defined thus:

"Any person who with intent to defraud shall falsely make or materially alter any writing which if genuine

would be the foundation of a private or public liability or which would be prejudicial to public or private right, and which on the face of it shall purport to be good and genuine, shall be guilty of a felony and shall be punished by imprisonment for a term not exceeding five years."

Now in the case at bar, it was clearly proved at the trial in the court below, that appellant issued the pamphlet marked "C" with the intention to have same understood and taken as a true and correct copy of the Election Registration Law passed by the National Legislature at its Session 1899-1900, which pamphlet contained certain alterations of said law; that is to say, in the said pamphlet marked "C," fees were given to the Commissioner of Election which were not provided for in the Act of 1899-1900.

The Election Registration Law placed the Commissioner of Election in the place occupied by the Judge of the Monthly and Probate Court who received no pay except a salary of five dollars a day; where fees had been prescribed for the clerk and sheriff, the law had been changed to make them payable to the Commissioner. It was also proved that by means of said forged instrument, appellant obtained a large sum of money from the Liberian Government to wit: the sum of five thousand forty-three dollars seventy-five cents.

S. G. Harmon, Secretary of Treasury, testified as follows:

"Sometime after I took over the office as Secretary of the Treasury, Mr. William Dennis, the Chief Clerk, informed me that there was an amount balance due his father Mr. Robert Dennis the accused, on an election bill and asked me if I would pay it. I asked him to bring the bill or voucher for such a claim, and he afterward brought the bill which I have just identified.

"After examining the bill I called the Auditor's at-

tention to the bill and asked him if he had noticed it and what amount had been paid on it. He then brought me a statement showing that several amounts had been paid in cash, and the Secretary of the Treasury at that time had endorsed several amounts for payment to West & Co., Ltd., Mr. G. H. V. Dimmerson and one Walker.

"I took the bill to the President of Liberia and called his attention to the bill; he became much surprised at such a bill and ordered me not to pay any further sums, and not to pay the orders which had been endorsed by the Secretary of the Treasury to those other parties.

"Soon after that the President had Mr. Robert Dennis, the Attorney General and myself in a conference at the Mansion.

"He asked Mr. Dennis did he make out such a bill; he said yes. He further asked him if he had a law giving him the right to make such charges? He said yes; then he hauled a pamphlet out of his pocket and presented it to the President.

"The President asked the Attorney General to send for the law book referable to the Election Law; in comparing the two there appeared to have been a difference."

Mr. Harris, Ex-Secretary of Treasury, testified that he made advances on the bill, as he understood that Dennis was entitled to two cents for every name registered and that the clerk was entitled to a similar sum.

He testified further that at the conference between the President, the Attorney General and Dennis, Dennis said that his bill was based upon the Election Law which he was required to produce. He presented a pamphlet which he said was the Election Law. This pamphlet was compared by the President and the Attorney General with the statute containing the Election Law, which they said was not correct with the original law.

The President said to Mr. Dennis, "You should be punished for falsifying the law." It was earnestly contended by counsel for the appellant that under the circumstances of the case appellant should have been indicted for receiving money under false pretenses and not for "forgery."

We cannot assent to this proposition. While it is undoubtedly true that appellant received a large amount of the bill by false pretenses which is a misdemeanor, the latter offense is merged in the felony. It has been held, however, that the acquittal of the latter is no bar to an indictment for the former. 11 A.D.H. 946; *U.S. v. Rindskopf*, 6 Bissell 259 (W.D. Wis. 1874).

Counsel for appellant also argued that as a part of the money received by appellant was paid out to others, appellant should not have been convicted for "forgery." This proposition in our opinion has no weight because the crime "forgery" is not dependent upon the amount obtained by appellant but consists in the falsifying or altering of a public document or private writing so as to give an appearance of truth to a mere deceit or falsity.

So solemnly are the statute laws regarded by the National Legislature, that the Secretary of State who is by law charged with the duty of publishing the Acts is prohibited from making any alteration in any enrolled bill.

It is difficult to imagine a clearer case, and in all essential particulars it rests upon perfectly established laws. With this view of the case we are of the opinion that the judgment of the court below should be confirmed. And it is hereby so ordered.

Affirmed.