JOHN L. FULLER, Appellant, *v.* REPUBLIC OF LIBERIA, Appellee.

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

Decided May 8, 1929.

1. To fabricate by false intention, or to make a false instrument in similitude of an instrument by which one person could be obligated to another, for the purpose of fraud and deceit, shall be deemed forgery.
2. The essence of forgery consists in making an instrument appear to be that which it is not.
3. Except in the actions for perjury, bastardy, divorce, rape, and breach of promise of marriage, corroborative evidence shall not be necessary to convict a person, although the evidence under such circumstances ought to be very jealously watched and sifted.
4. In actions of forgery, the accused may be convicted without the corroboration of the evidence of the principal witness.

Defendant, now appellant, was convicted of forgery in the Circuit Court. On appeal to this Court, *affirmed*.

Barclay & Barclay for appellant. *The Solicitor General* for appellee.

MR. JUSTICE KARNGA delivered the opinion of the Court.

This case is brought up before the Supreme Court upon a bill of exceptions from the Circuit Court of the First Judicial Circuit, Montserrado County, by the appellant. John L. Fuller, the appellant in this case, at the time of the commission of the crime was employed as Chief Clerk to H. H. Kobb, Construction Engineer of the Liberian Government. By the advice of the authorities, Mr. Kobb at stated times drew orders on different firms in the City of Monrovia for supplies for construction purposes. As Chief Clerk, prisoner wrote these orders and presented them to Mr. Kobb who signed them. Prisoner was tempted to use this order system as a means to obtain goods

from the merchants for himself in the name and on account of the Liberian Government. For, during the month of November, 1927, he began to issue orders on said firms to which he forged the signature of H. H. Kobb. These orders were all served and prisoner continued issuing forged orders whilst he was thus employed, and even after he was dismissed up to the month of February, 1928, and received an enormous amount of goods thereby. These forgeries accumulating so fast, Mr. Kobb, the engineer, naturally became suspicious, especially as to the quantity of rice which had been drawn for the laborers; he therefore made inquiries and discovered quite a number of forged orders.

Upon a thorough investigation of said forgeries prisoner was suspected, subsequently arrested, indicted, tried, convicted and sentenced at the May term, 1928, of the Circuit Court, First Judicial Circuit, Montserrado County, for the crime of forgery, from which judgment he appealed to this Honorable Court.

The exceptions taken by the appellant and submitted to this Court for review are as follows:

"1. Because defendant says that your Honour disallowed the question asked witness H. H. Kobb, 'Isn't it true that you always have a special order book in your department?' to which he excepts.

"2. And also because defendant says that your Honour disallowed the question asked witness H. H. Kobb, 'Look at the signature H. H. Kobb as subscribed to the document marked "A" and tell the Court and jury by what means you discern forgery in the execution of same?' to which he excepts.

"3. And also because defendant says that your Honour disallowed the question put to witness H. H. Kobb, 'You say that you remember not having given Messrs. Fuller and Dennis an order for rice in the month of November; is it not true

that at the end of November a certain amount was deducted from Mr. Dennis' salary as against an order given him and Fuller jointly for rice?' to which he excepts.

"4. And also because defendant says that your Honour disallowed the question put to witness H. H. Kobb, 'According to your system of drawing orders on firms, wasn't it possible that an order could have been written from another book and marked "account book No. 10"?' to which he excepts.

"5. And also because defendant says that your Honour disallowed the question put to witness K. J. Boz, 'Do you know when Mr. Fuller was discharged from the service of Mr. Kobb? If so, state.' to which he excepts.

"6. And also because defendant says that your Honour denied his motion that the evidence of witness King be struck from the records on the ground of irrelevancy because the indictment does not charge prisoner with having forged H. H. Kobb's name on Dieden Freundlich and Co., in the month of February; to which he excepts.

"7. And also because defendant says that your Honour overruled his objection to written evidence marked by court exhibits 1, 2 and 3 as being irrelevant; to which he excepts.

"8. And also because defendant says that your Honour overruled his objection to written evidence marked by Court exhibits 'A' and 'C' on the ground of insufficiency of identification, to which he excepts.

"9. And also because defendant says that your Honour would not allow the question put to witness J. L. Fuller to be answered: 'Say whether or not whilst in said employment you had occasion to serve orders issued by Mr. H. H. Kobb on

firms and dispose of the goods procured other than storing them in the store room of the Department?' to which he excepts.

"10. And also because defendant says that your Honour would not allow to be answered the question put to J. L. Fuller; 'Tell the Court and jury what disposition you make of the goods upon Mr. H. H. Kobb's instruction?' to which he excepts.

"11. And also because defendant says that your Honour overruled his objection to the question put to witness J. L. Fuller: 'Your previous statement indicates that the transaction in respect to the forty (40) sheets of zinc was on the 19th of November, 1927; I suggest that on that particular day, Monrovia was in a great commotion, due to the tragedy of the late J. J. Dorson and no work went on by any one of the Public Works Department?' as the question was entrapping, to which he excepts.

"12. And also because defendant says that your Honour overruled his objection to the question put to witness J. L. Fuller: 'Was this subsequent or prior to your issuing the forged instrument charged, and tendered to the firms on which they were drawn, your taking delivery of them in manner you have testified and your giving the cash over to Mr. H. H. Kobb?' as the question was incriminating, to which he excepts.

"13. And also because defendant says that your Honour denied his action in arrest of judgment as filed by him, to which he excepts.

"14. And also because defendant says that your Honour rendered final judgment upon a verdict not supported by law and evidence to which verdict and final judgment he excepts."

With reference to counts 1, 2, 3, 4, 5, 6 and 11 in the bill

of exceptions this Court is of the opinion that the judge in the court below committed no error in disallowing the said questions therein complained of; as said questions had no tendency to establish the innocence of the accused.

Now with reference to counts 9, 10, and 12, the judge in the court below did not err in overruling appellant's question to witness Kobb, because the said H. H. Kobb was the private prosecutor in the case and was not on trial for the acts committed by the defendant in the court below.

With reference to counts 7 and 8, the judge committed no error in overruling the objections of the defendant in the court below to the written evidence submitted by the plaintiff. It was clearly shown by the witnesses who were sworn and testified in the case that the accused, J. L. Fuller, presented the orders to the firms of Messrs. C. F. W. Jantzen, Dieden Freundlich & Co. and the Dutch Store, and received the goods for which the orders were drawn in person.

It was also clearly shown in the evidence that the accused did falsely make the forged orders for the purpose of securing goods for his own private use.

The Criminal Code of Liberia in section 70 declares that:

> "Any person who with intent to defraud shall falsely make or materially alter any writing which if genuine would be the foundation of 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 felony and shall be punished by imprisonment for a term not exceeding five years."

This Court is therefore of the opinion that John L. Fuller, the accused, having deliberately issued the orders on the stores on the waterside, without the knowledge or instructions of H. H. Kobb, the construction engineer in the Department of Public Works, and received and ap-

propriated the same to his private purposes, is guilty of the crime of forgery.

With reference to count 13 in the appellant's bill of exceptions, the judge of the court below, in denying the defendant's motion in arrest of judgment, did not err. It is admitted by eminent jurists that a motion for arrest of judgment must be grounded on some objection arising on the face of the record itself; and that no defect in the evidence or irregularity at the trial can be urged at this stage of the proceedings.

The grounds for which this motion may be allowed are as follows:

1. For defective description of the offense charged in the indictment.
2. Where the indictment does not set forth with clearness the Christian and surname of defendant.
3. Where the case was tried by more or less than twelve petit jurors.
4. Where no issue was joined.
5. Where there is a non-joinder of parties.
6. Where indictment charges one offense, but the jury finds defendant guilty of another not included in indictment.
7. Where the verdict was senseless.
8. Where the offense charged is barred by statute of limitation.
9. For want of sufficient certainty, as in the statement of time or place where it is material, or of the person or the circumstances and facts constituting the offense, which is not aided by the verdict.
10. Where a judgment rendered has been reversed and a new trial granted, which is had upon the same indictment in the same court. *Prince Popo* v. *Republic,* 1 L.L.R. 305 (1897); *Dunbar* v. *Republic,* 1 L.L.R. 269 (1895); *Johns* v. *Republic,* 1 L.L.R. 240 (1892); B.L.D., "Arrest of judgment." It is the opinion of this Court that where the verdict is

against law and contrary to the weight of evidence, the motion should be made for a new trial, and not in an arrest of judgment. *Birch* v. *Quinn,* 1 L.L.R. 309 (1897).

It has been contended very strongly in the argument of defendant's counsel: (a) That the evidence given by H. H. Kobb, the private prosecutor in this case, has not been corroborated; and (b) That the testimony of a witness to a single fact ought to be corroborated before conviction of the defendant in cases of felony.

It has been held by eminent law writers, that except in the actions for perjury, rape, bastardy, divorce and breach of promise of marriage, corroborative evidence shall not be necessary to convict a person charged with having committed a felony; although the evidence under such circumstances ought to be very jealously watched and sifted. In actions of forgery the accused may be convicted without the corroboration of the evidence of the principal witness.

Chief Justice Best in his treatises on the principles of the law of evidence declares:

"The last subject that offers itself to our attention in this part of the work is the *quantity* of legitimate evidence required for judicial decision. This is governed by a rule of a negative kind, which, in times past at least, was almost peculiar to the common law of England; namely, that in general no particular number of instruments of evidence is necessary for proof or disproof,—the testimony of a single witness, relevant for proof of the issue in the judgment of the judge, and credible in that of the jury, is a sufficient basis for decision both in civil and criminal cases. And as a corollary from this, when there is conflicting evidence, the jury must determine the degree of credit to be given to each of the witnesses; for the testimony of one witness may, in many cases, be more trustworthy than the opposing testimony of many. The

rule has been expressed, *'ponderantur testes, non numerantur'* . . .

"We have said that this rule is a distinguishing feature in our common-law system. The Mosaic law in some cases, and the civilians and canonists in all, exacted the evidence of more than one witness,—a doctrine adopted by most nations of Europe, and by the ecclesiastical and some other tribunals among us. As might naturally be expected, much has been said and written, and the most opposite views have prevailed, on the merits of the different systems. Those who take the civil-law view contend that it is dangerous to allow a tribunal to act on the testimony of a single witness, since by this means any person, even the most vile, can swear away the liberty, honour, or life of any one else; they insist on the undoubted truth, that the chance of discrepancy between the statements of two false witnesses, when examined apart, is a powerful protection to the party attacked; and some of them endeavour to place the matter on a jure divino foundation, by contending that the rule requiring two witnesses is laid down in Scripture. On this, Sergeant Hawkins very judiciously observes, that the passages in the Old Testament which speak of requiring two witnesses 'concern only the judicial part of the Jewish law, which, being framed for the particular government of the Jewish nation, doth not bind us any more than the ceremonial; and that those in the New Testament contain only prudential rules for the direction of the government of the Church, in matters introduced by the Gospel, and in no way control the civil constitution of countries.'

. . . . . .

"Now we are by no means prepared to deny that under a system where the decision of all questions of law and fact is intrusted to a single judge, or in a country where the standard of truth among the population

is very low, such a rule may be a valuable security against the abuse of power and the risk of perjury; but it is otherwise where a high standard of truth prevails, and facts are tried by a jury directed and assisted by a judge. Add to this, that the anomaly of acting on the testimony of one person is more apparent than real; for the decision does not proceed solely on the story told by the witness, but on moral conviction of its truth, based on its intrinsic probability and his manner of giving his evidence. And there are few cases in which the decision rests even on these circumstances alone: they are usually corroborated by the presumption arising from the absence of counter-proof or explanation, and in criminal cases by the demeanour of the accused while on his trial; for the observation of Beccaria must not be forgotten,—'imperfect proofs, from which the accused might clear himself, and does not, become perfect.'" Best, Evidence 495 *et seq.*

It is therefore the opinion of this Court that the judgment of the court below be affirmed and the sentence be enforced from date thereof. And it is hereby so ordered.

Affirmed.