EZEKIEL HANCE, Plaintiff-in-Error, *v.* REPUBLIC OF LIBERIA and His Honor, MARTIN N. RUSSELL, Judge presiding over the Fourth Judicial Circuit Court by assignment, Defendants-in-Error.

WRIT OF ERROR TO THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT, MARYLAND COUNTY.

Decided January 14, 1930.

1. It is a well-settled principle in criminal law that everyone is presumed to be innocent until the contrary is proven.
2. The *onus probandi* or burden of proof rests upon him who maintains the affirmative, except under certain circumstances.
3. Where the plea of the defendant is not guilty, the prosecution must prove the defendant guilty of the charge beyond a reasonable doubt before the latter can be called upon for his defense.

Defendant was convicted of forgery in the Circuit Court, and his motion to quash the indictment was denied. On writ of error, this Court *reversed*.

PER CURIAM.

This is a case of forgery, found upon an indictment by the grand jury of Maryland County at its February term, 1929, against Ezekiel Hance, defendant, charging that, with intent to defraud, he did feloniously and falsely make a certain instrument of writing a writ of summons, in an action of debt which if germane would be the foundation of private liability, and which on its face purports to be good and germane.

Count two of the indictment also charged the defendant with uttering the alleged forged writ of summons knowing it to be false. At the trial of the cause, in the court below, defendant raised several issues of law which were overruled by the trial judge, and he was required to plead, which he did, entering a plea of "not guilty." A jury, empanelled to try and determine the cause, returned a

verdict against plaintiff-in-error, defendant in the court below.

In the trial of the cause in point of law and in matter of fact, plaintiff-in-error respectfully submitted that there were manifest and reversible errors and irregularities as follows, to wit: Because the grand jury for the County of Maryland having found an indictment against said plaintiff-in-error, on the fourteenth day of May, 1929, plaintiff-in-error through his attorney-at-law, at the trial of the case, made a motion to quash the indictment preferred against him on the following ground:

> "Because the indictment is indistinct, uncertain and vague, in that the same charges defendant in its title with the crime of forgery, whereas in the body of it, defendant is charged with two separate and distinct offences to wit: Forgery and uttering a forged instrument. Defendant respectfully submits that the title of the offence in the caption of the indictment should have been "Forgery and uttering a forged instrument," if the two offences charged in different counts of the same indictment were to have been charged against him. Although the defendant raised the insufficiency of the indictment and asked for it to be quashed, the judge overruled same and ordered him to trial on the defective indictment, which defendant submits should have been quashed." See indictment on the Record; 1 B.L.D., "Caption"; 1 B.L.D., "Indictment"; *Brewer* v. *Republic,* 1 L.L.R. 363 (1900).

This case was ably contested on both sides by counsel for the appellant and appellee. Now we find the following:

1. After careful inspection of the case, we find that the criminal agency had not been sufficiently established against the defendant, in that it was not proven that Hance forged the signature of Bacon, the Justice of the Peace; and too, that the forgery was not uttered in that the writ was not served and returned, which act alone

would have constituted the uttering of the instrument.

2. That fraud, which is necessary to constitute forgery, was not proven, in that neither Mrs. Sharper, who is supposed to have secured the writ, nor the defendant against whom it was obtained, as defendant, were put on the stand as witnesses to establish the essential allegation of fraud, which is very necessary to a conviction.

3. That the indictment was not framed with sufficient certainty as to time, and so as to identify the accusation.

4. That there is a material variance in the time the forgery is alleged to have been committed, and the date of issuance of the alleged forged instrument, which under the law is fatal to the indictment.

5. That the failure on part of the prosecution to prove the handwriting and the signature of the alleged forged writ to be that of defendant in the court below, and the act of the jury in sending for the file containing the handwriting of the defendant so as to compare it with the alleged forged writ, although it was not used, are evidence that there was a doubt which ought to operate in the behalf of the defendant, under the law of doubt. *Dunn* v. *Republic,* 1 L.L.R. 401, 405 (1903).

We have examined with considerable diligence the evidence produced at the trial in the court below by the prosecution, but have failed to discern such legal evidence as could warrant the jury in arriving at the conclusion of guilt. It is a well-settled principle in criminal law that everyone is presumed to be innocent until the contrary is proven. It is also an established rule that the *onus probandi,* or burden of proof, rests upon him who maintains the affirmative, and although there are instances where the burden of proof shifts, as where the prisoner attempts to justify the case under consideration, this case does not fall within the exception to the general rule. And, says Judge Archbold (1 Archbold, Criminal Procedure * 118), where the plea of the defendant is not guilty, the prosecution must prove the defendant guilty of

the charge before the latter can be called upon for his defense; and the prosecution must prove it beyond a rational doubt. In civil cases, the jury may decide according to the preponderance of evidence; but in criminal cases, cases affecting life or liberty, the evidence must be so conclusive as to exclude every rational doubt of the prisoner's guilt, for if after hearing all the evidence the mind of the jury is in such condition that it cannot say it feels a moral certainty of the truth of the charge, then there arises a doubt which must operate in favor of the accused. *Dunn* v. *Republic,* 1 L.L.R. 401, 405; 1 B.L.D., "Doubt."

Having well examined and sifted the evidence and carefully considered the law bearing on this case, the Court holds that the court below erred in not setting the verdict aside and awarding the prisoner a new trial.

It is the opinion of this Court that said judgment of the court below be reversed; and it is hereby so ordered.

Reversed.