

TEAPANY T. HODGE, Appellant, v. REPUBLIC  
OF LIBERIA, Appellee.

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

Decided February 3, 1928.

To convict a defendant of the crime of embezzlement, it is not sufficient to show that there was a shortage in his account; the evidence must prove that the defendant fraudulently and feloniously converted the goods and the monies laid in the indictment to his own use.

Appellant, defendant below, was indicted and tried for embezzlement in the Circuit Court of the Fourth Judicial Circuit of Maryland County at its November term, 1926. Judgment confirming the jury verdict was entered, sentencing defendant to pay a fine of seventy-five dollars with one dollar tax fee; to make restitution of £46:5:1 embezzled and to be imprisoned for three months in the county jail in chains with hard labor. On appeal to this Court by bill of exceptions, *reversed*.

*N. H. Sie Brownell* for appellant. *The Solicitor General* for appellee.

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

In October, 1924, appellant was employed by W. D. Woodin & Co., Ltd., a mercantile business in the County of Maryland and elsewhere in the Republic, and was placed in charge of their factory at the township of Philadelphia in said County. The appellant remained in the employ of said company for a period of one year, during which time the stock of the said appellant was regularly taken with satisfactory results, but when on the fourth day of November said stock was taken, the company de-

clared that there was a shortage of £46:5:1 in appellant's account, which statement was challenged by appellant. The said firm therefore instituted a criminal prosecution against the appellant, claiming that he had been supplied with £83:16:9 in cash, and leaf tobacco to the value of £16:2:3, of which articles he had embezzled the sum of £46:5:1 as laid in the indictment. It was argued by counsel for defendant that the judgment of the court below should be reversed. The bill of exceptions contains five points which are stated in substance as follows:

- (1) Because the prosecution should have proven the charge as laid beyond a reasonable doubt.
- (2) Because the refusal of the court to receive evidence for the defense to establish his innocence was an inroad upon and invasion of the Constitution of the Republic of Liberia.
- (3) Because the court below erred when it refused to allow witness John, then agent of the company, to answer the question: "Did the defendant acknowledge this deficit as being correct and thereby sign the said stock sheet, when in fact the said account was never submitted to said defendant?"
- (4) Because the trial below was a mock trial in that it proceeded *ab initio* with the assumption that the defendant was guilty of the charge alleged against him, which should be the reverse in a criminal prosecution.
- (5) Because the company fraudulently made a certificate on a stock sheet importing a shortage of the defendant, when in truth and in fact he never executed or signed such an instrument in that sense.

In reviewing the case we find grave errors committed by the court below on the trial. It was admitted by the Solicitor General that the appellant was deprived of a fair opportunity of defending himself. He therefore suggested that in view of the importance of the case, and the apparent chances of the prosecution legally establish-

ing the guilt of the appellant, this Court should remand the case with instructions that it be tried *de novo*.

We will, however, consider the evidence in the case, and first we will premise that the fourth point in appellant's brief is correctly stated. It was presumed that because witness for the prosecution stated that there was a shortage in defendant's account, defendant had embezzled a portion of the goods and monies entrusted to him; there was no evidence to support the charge of embezzlement as stated in the indictment. Embezzlement is defined in the Criminal Code of Liberia as follows:

"Any person whilst employed by another who shall by virtue of such employment receive and take into his custody money or other articles of value, and intentionally, fraudulently and feloniously convert them to his own use, or who whether for reward or not, shall receive money or other articles of value to deliver to another during the continuance of the bailment shall intentionally and feloniously convert the whole or any part thereof, to his own use, shall be guilty of embezzlement."

To convict a defendant of the crime of embezzlement it is not sufficient to show that there was a shortage in his account. The evidence must prove that the defendant feloniously and fraudulently converted the goods or monies laid in the indictment to his own use.

Now in the case at bar the evidence clearly showed that the witnesses for the prosecution drew their conclusion as to prisoner's guilt from the mere fact that there was a shortage in his account, but the amount of such shortage was not clearly proved. Witness John, who was agent for the company in 1926, was not a competent witness to prove that the defendant committed the embezzlement of the goods and cash mentioned in the indictment, as the indictment charges that the offense was committed in the year 1925. See evidence of said witness on the cross-examination by defense: Ques: "Mr. Witness, you

having taken over the business of the said firm for only a few months, what do you know of the firm's transactions of last year 1925 as stated in the bill of indictment?"

Ans: "As an agent for W. D. Woodin whilst taking over, an agent is to know of all transactions, of all connections, all debts, and reserved debts and the account of Mr. T. T. Hodge was gone through at the time I was taking over."

The evidence of witness Alison brought forward by the prosecution had a tendency to raise a doubt in favor of defendant. See evidence:

"I believe that if Mr. Hodge's account had been gone into carefully, properly checked by proper vouchers, he would not have been short."

Ques: "Mr. Witness, were there any special items in the said account of Mr. Hodge with said firm that you could not find vouchers for?" Ans: "Yes, two items of Mr. Hodge that he did not receive. He said that they debited him with £30:0:0 coin, one case tobacco value £13:15:0."

If there was a shortage in defendant's account, the firm had and in fact still has a remedy in an action against said defendant; but the charge of embezzlement not having been proved against appellant, the judgment of the court below should be reversed; and it is hereby so ordered.

*Reversed.*