SWENYOHN KOFFAH, Appellant, *v.* REPUBLIC OF LIBERIA, Appellee.

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

Argued December 13, 14, 1938. Decided January 6, 1939.

1. In this country under the statute an appeal is available as a matter of right to defendants in every case from every judgment of a court.
2. Jurisdiction of the person must be raised before plea; while jurisdiction to the cause may be raised at any time, and a court which renders judgment in a case over which the law gives no jurisdiction acts *ultra vires,* and its judgment is a nullity.
3. A motion to quash alleging a formal defect in an indictment should be raised before issue is joined and jury empanelled.
4. The motion available against an indictment which is not laid in any term of court is a motion to quash, as it alleges a formal defect in the indictment and is not a motion to the jurisdiction of the court.
5. No appeal can be taken or allowed from the verdict of a jury in a question of mere fact except to the court in which the case was tried.
6. The courts of this country refuse to recognize the trial by sassywood and other native ordeals. Such trials are not admissible in evidence; yet circumstances attending this means of trial might create a strong conviction of guilt.

Appellant was convicted of grand larceny in the lower court. On appeal to this Court, *affirmed.*

E. W. Williams for appellant. *The Attorney General* for appellee.

MR. JUSTICE TUBMAN delivered the opinion of the Court.

In this country, under the statute, an appeal is available as a matter of right to defendants in every case, from every judgment of a court, except from the judgments of the Supreme Court; hence appellant has the above entitled cause before us for review, upon a bill of exceptions.

Inspecting the bill of exceptions we find, that although it contains eight exceptions taken to the trial in the court

below, five of them are taken to be the overruling of sundry questions put to witnesses by appellant's counsel, and to the sustaining of certain objections to questions made by appellant's counsel which, from the text of questions and objections thereto, we consider not sufficiently meritorious to claim the consideration of this Court, as they do not legally affect the merits of the case; and we are of the opinion that his honor the trial judge did not err in his ruling on the respective objections to said questions under the law relating to evidence.

The exception contained in count four of the bill of exceptions is one taken against the jurisdiction of the court, by motion filed after issue had been joined, a jury impanelled, and witnesses had begun to depose.

The ground relied on in the motion which appellant filed as a jurisdictional issue is, because the indictment in its caption or venue is not laid in any term of the court.

That we may more intelligently understand the contention of appellant, we quote the said venue, as it is laid in the indictment, which reads as follows:

> "In the Circuit Court for the first judicial circuit, Montserrado County, sitting in its Law Division, in the year of our Lord Nineteen hundred and thirty-eight (A.D. 1938)."

We find from this indictment that it is not laid in any term of the court, as is required by law; but while this is true, we have to consider whether or not such a defect is available on motion to the jurisdiction after issue has been joined and a jury impanelled.

Jurisdiction in law is of three kinds: 1) of the person; 2) of the subject-matter; and 3) territorial jurisdiction.

Jurisdiction of the person must be raised before plea, while jurisdiction of the cause may be raised at any time; and a court which renders judgment in a cause over which the law gives it no jurisdiction acts *ultra vires,* and its judgment is a nullity. *Hill* v. *Republic,* 2 L.L.R. 517

(1925); *King* v. *Williams, King and King,* 2 L.L.R. 523 (1925).

It is a well established principle of law, that the Circuit Courts of this Republic have criminal jurisdiction to hear and determine causes of larceny involving property stolen of more than twenty-five dollars in value, which crime our *Criminal Code* terms grand larceny. The value of the property stolen in this case is one hundred fifty-five dollars and fifty-eight cents, and consequently constitutes grand larceny and brings the cause within the jurisdiction of the court in which the indictment was found.

This being a fact, it is obvious then that the motion cannot be regarded as one going to the jurisdiction of the court over the cause.

Jurisdiction of the person is acquired by actual service of process or personal appearance of the defendant. 2 B.L.D., "Jurisdiction," 1762, and opinions of this Court herein above cited.

The question of territorial jurisdiction in this case for obvious reasons it is unnecessary to consider, as the crime was admittedly prosecuted within the jurisdiction where the offense was committed.

The motion does not allege that process was not served or that service was legally defective. It follows then that the motion does not go against jurisdiction of the person.

We fail to see therefore how the matter pleaded in said motion can be considered as raising the issue of jurisdiction at all, since it does not attack the jurisdiction of the court over the person or over the cause.

The motion, however, does raise a question that would have been available to appellant on a motion to quash, as it alleges a formal defect in the indictment which should have been raised before issue was joined and the jury impanelled.

Archbold in his treatise on *Pleading, Evidence, and*

Practice in Criminal Cases (24th ed., 1910), volume I, page 45, has given us the following:

> "Every objection to any indictment for any formal defect apparent on the face thereof shall be taken, by demurrer or motion to quash such indictment, before the jury shall be sworn and not afterwards: and every court before which any such objection shall be taken for any formal defect may, if it be thought necessary, cause the indictment to be forthwith amended in such particular by some officer of the court or other person; and thereupon the trial shall proceed as if no such defect had appeared."

It is therefore our opinion that the trial judge did not err in ruling out said motion, as it was improperly entitled, and was offered too late to be of benefit to appellant under the law.

The appellant excepted to the verdict of the jury and makes it a point in his bill of exceptions; but failed to file a motion for a new trial setting forth what his exceptions to the verdict consist of. Our Liberian statutes, *Old Blue Book,* chapter XX, page 78, section 2, under "appeals" provide that:

> "There shall be no appeal from any verdict of a jury, in any question of mere fact, except to the court in which the case was tried, for the purpose of setting aside the verdict in the manner herein before provided for."

From the text of the statute in this respect, it is very plainly obvious that no appeal can be taken or allowed from any verdict of a jury in any question of mere fact, except to the court in which the case was tried, that is to say, all exceptions to a jury's verdict on questions of mere fact must be first submitted to the court in which the cause is tried; and an exception taken to a verdict on a question of mere fact and not submitted to the consideration of the trial court by a motion for new trial cannot

be taken advantage of on appeal in the appellate court. Hence after careful consideration we are not in accord with the opinion expressed by this Court on this subject in the case *Minor* v. *Pearson,* 2 L.L.R. 82, 3 Lib. Ann. Ser. 26 (1912), and that point in said case is therefore hereby recalled.

In this cause it is not shown whether the exceptions to the verdict of the jury were on a question of mere fact or on a mixed question of law and fact, as there was no request to charge, nor did the appellant touch this point in his argument; we cannot therefore pass on same in these circumstances.

We have found ourselves left alone to scrutinize the record and study the law and apply it as best we can; for the Republic of Liberia, appellee, although represented by the Honorable Attorney General, who was present in Court when the cause was called for trial, answered for appellee, and sat at the bar as counsel for said appellee during the whole while the records were being read and while appellant made his opening argument, failed to file any brief on appellee's behalf up to that time, and did not do so until four days after the case had been submitted and we had deliberated upon the same in chambers and had come to a decision.

What is more, when the appellant submitted his arguments, the Attorney General was in Court as appellee's counsel and when the Court adjourned that day's sitting to meet on the following day, at which time he was expected to answer said appellant's counsel's argument on behalf of appellee, yet when on the following day the Court met to hear his argument, he failed to appear. Not until we had waited for more than an hour for his advent and had recessed the Court and retired to chambers was he announced from without as wishing to see the Chief Justice, who, being engaged in chambers with the Justices, directed him to wait until he was less engaged; and the Attorney General then left the courtroom, leav-

ing a note for the Chief Justice, asking for an excuse from court for that day as he had urgent engagements with the President and the Judiciary Committee of the Legislature.

The Attorney General seemed to have overlooked the fact that his cause was pending before this Court *en banc,* and that the Chief Justice had no authority to excuse him from court when the Court was so sitting *en banc,* as such excuse could only be given by a majority of the Justices present. He also failed to request a postponement of his argument that was due to be made or to give this notice to the Court before or at the time Court convened on that day.

These actions of the Attorney General, besides being discourteous to the Court, left us to reach a decision in the cause without having any defense on behalf of appellee. Although there is an assistant in the Department of Justice who is permitted to act for him upon his application and by leave of court, this assistant he also failed to send to represent appellee's interests.

Under these conditions we have after much labor been able to reach what is in our opinion a just conclusion as to the fairness and correctness of the verdict and final judgment of the trial court by a thorough study of the evidence set up in the record; from the statements of Yanker Boy, the private prosecutor, Kaizer James, Sebah and Gbe Teah, and Urias Locket, the last mentioned a witness for the defendant, now appellant, whose testimony concludes our opinion when he testified to the following:

> "We went to Mr. Marshall and told him of the loss that Yanker Boy had had at Mrs. Sarah Sanco's place and that we would like for sassywood to be played. So Mr. Marshall told me to go and tell all the people stopping at Mrs. Sancor's place to be on the beach the morning early. The Prisoner in the dock now said 'Oh, yes, I will be there to see things

out, I will be there.' The next morning Mr. John Francis Marshall sent to Mrs. Harris the Government sassywood player to inform him of the ordered sassywood on the beach on the following day. On that day the defendant Swenyohn Koffah who had already shown willingness to attend and witness the playing of the sassywood, did not go on the day set. All the men of the house went to the sassywood playing but the defendant. After we went the sassywood caught one little Bassa boy. The little boy said 'I know nothing about this thing.' We came back in town and went to the Interior Department, and the little boy said that he wanted a new trial of the sassywood; Mr. Marshall told him to bring one pound to call a new sassywood player. Before a new sassywood came prisoner now in the dock, told the private prosecutor 'Your things that got lost I can make you find them; for which I charge you ten shillings.' Yanker Boy advanced him six shillings."

The said Locket, a witness for defendant, continuing his statement, said:

"As I left off about the six shillings he gave the balance of four shillings to make up to ten shillings. The defendant took four shillings to the private prosecutor and they went to the graveyard at night. He took some kind of medicine and gave to Yanker Boy said that he was not afraid, the defendant told him to go and Yanker Boy went. Defendant told Yanker Boy that if he should see anything on the ground he should not take up. When Yanker Boy flashed his torch light he saw his, Yanker Boy's photo on his license and he took his license and put it in his pocket. Defendant asked him have you see anything white, Yanker Boy said no. I have not seen anything white, Yanker Boy came across his trunk broken open and found nothing in it which was taken to the Police Station. The Defendant was about to escape and they arrested him and

was carried to the Station and he was put in Jail. The defendant was keeping his things at Krootown. That is his box. One young man name of Gebah and one Bubber said that they saw defendant one night carrying a box in Krootown to one Kroo woman for safekeeping. They said that when they got there to the Kroo woman she was asked whether the defendant had carried anything there to keep, the woman at first said no, then they told her not to tell a lie but that defendant had stolen some things from uptown and they were there. During the time we were arguing about the box, the defendant stepped in and the lady said 'I am glad.' As soon as the defendant got there the old lady said, 'Here is your box'; defendant denied giving her the box and she said 'What you say?' When the defendant's box was found, the private prosecutor's things were found in the said box of the defendant."

While we refuse to recognize the trial of sassywood and other native ordeals, and although any trials by such are not admissible in evidence, still the circumstances attending this means of trial, which witness Locket testified to, such as defendant's expressed willingness to attend but failing to do so, his taking the private prosecutor to the graveyard and finding the box and the woman in whose possession same was found and explaining to her her possession by stating in defendant's presence that he had given same to her, and his attempt to escape, all these create a strong conviction in our minds of his guilt.

After a mature consideration of the evidence in the case as aforesaid and the law, we are of opinion that the proceedings and final judgment of the court below should not be disturbed but should be affirmed; and it is so ordered.

Affirmed.