# MANNAH, Appellant, *v.* REPUBLIC OF LIBERIA, Appellee.

APPEAL FROM CIRCUIT COURT, FIFTH JUDICIAL CIRCUIT, GRAND CAPE MOUNT COUNTY.

Argued April 3, 1935. Decided April 11, 1935.

When the evidence clearly shows an appropriation by an employee of the goods of his employer entrusted to his care by virtue of such employment, embezzlement is satisfactorily proven.

On appeal on a conviction by default of the crime of embezzlement, *conviction affirmed and sentence increased* in light of aggravating factors not considered by trial judge.

No appearance for appellant. *R. F. D. Smallwood,* County Attorney for Montserrado County, by appointment of the Attorney General, for appellee.

MR. CHIEF JUSTICE GRIMES * delivered the opinion of the Court.

This case came to this Court from the Circuit Court of the Fifth Judicial Circuit, County of Grand Cape Mount, upon a bill of exceptions under the statute laws of the Republic of Liberia governing appeals. At the call of the case before this Court, appellant failed to appear in person or by counsel, whereupon counsel for appellee moved the Court to render judgment by default, dismiss the said appeal, and affirm the judgment of the trial court for the following reasons therein alleged, to wit:

> "1. Because the action was regularly assigned for hearing: and that upon the call of the case appellant failed to appear in person or by counsel to prosecute his appeal.

* The original draft of this opinion was prepared by Mr. Justice Dossen who was taken suddenly ill on April 4th, before its consideration by the Bench, whereupon it was completed and read by Mr. Chief Justice Grimes.

"2. That from the records filed in this case, it would appear that appellee is legally entitled to the affirmation of said judgment."

Appellant having failed to appear at the trial of the case in person or by counsel, appellee has been granted a judgment by default. But, in accordance with the last clause of sub-section one of the XIth rule of our Court, the record has been duly examined, and this now brings us to count two of said motion.

The Court will reiterate the principle laid down in the case *Moulton* v. *Republic,* decided February 24, 1911, when this Court said *inter alia* that: "When the evidence is clear and the trial regular, the judgment will not be disturbed." 2 L.L.R. 47, 1 Lib. Ann. Ser. 29.

By an inspection of the records filed in this case we find that the evidence adduced at the trial by the appellee proves conclusively the guilt of the appellant. The testimoney of C. Johnstone Williams, which was corroborated by that of witnesses Vanjah and Borkai Daine, proved beyond a reasonable doubt the allegations and averments contained in the indictment for the crime of embezzlement in manner following: That the said Mannah, appellant, was employed by Messrs. Kazouh and Abraham, Syrian traders, private prosecutors in this case, to transport for them coffee from the town of Kay-kru to the town of Damara. Before commencing the said transportation he had arranged with one Borkai Ba to keep some of the coffee for himself. When asked how he would manage to avoid detection, he told the said Borkai Ba that after landing the coffee he would capsize the canoe, and no one would entertain any doubt that the upsetting of the canoe at that time of high water was not an accident. "However, should it leak out, my uncle," said he, "Gray at Bendu is a lawyer and I will engage him to defend me." See testimony of Borkai Daine, sheet 7 of the record.

Thereafter, whilst thus employed, said Mannah

stopped his canoe near his rice farm on the banks of the river, and landed therefrom eight bags, containing 100 lbs. each of said coffee, which he left in care of the said Borkai Ba, and reported to his employers that the canoe had been capsized, and all the coffee lost. Here was a clear case of appropriation to his own use and benefit of the goods entrusted to him in the line of his employment, and thus a satisfactory proof of the crime of embezzlement.

It is, moreover, regrettable to have to observe that in spite of such a fraud, when Mr. Kazouh of the firm of Messrs. Kazouh and Abraham, his employers, went to sympathize with him for the accident he alleged he had sustained, and actually gave him a solatium in the form of a pair of trousers, one shirt and one torchlight valued at four dollars, his conscience was not thereby moved, but he accepted same as though he had acted throughout in good faith, and had really had an accident. The trial judge evidently overlooked this fact in delivering his sentence.

We are, therefore, of the opinion that the sentence should be amended by increasing the punishment from a fine of fifty dollars to one of seventy-five dollars; and the imprisonment from six months to nine months; and that the judgment should, in all other respects, be affirmed; and it is hereby so ordered.

*Affirmed.*