

JUAH SANGEE, Appellant, v. REPUBLIC OF  
LIBERIA, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE THIRD JUDICIAL CIRCUIT,  
SINOE COUNTY.

Argued November 12, 13, 18, 1946. Decided January 31, 1947.

1. Finding and taking a lost article does not establish the felonious taking which is necessary to prove larceny.
2. A conviction for larceny will be dismissed where trover has been proved.

On appeal from conviction for petty larceny, *judgment reversed.*

*B. G. Freeman* for appellant. *The Solicitor General* for appellee.

MR. JUSTICE REEVES delivered the opinion of the Court.

This case had its origin in the Justice of the Peace Court, Greenville, Sinoe County, on July 10, 1945, when the prosecuting attorney of said county filed in the court of Justice of the Peace J. C. Kuanneh the following complaint:

"The undersigned Republic of Liberia, plaintiff complains of one Juah Sangee, defendant, that said defendant during the month of April A.D. 1945, between the first (1st) day and the twenty second (22nd) day of the said month, in the township of Murryville, Snoh country, Sinoe County, wilfully, unlawfully and feloniously did take, steal and carry away the certain following property, namely: seven dollars and fifteen cents (\$7.15), silver coin, circulating within the Republic of Liberia, which was then and there tied up in a cloth bag made for the carrying of money around the waist and placed on a stick right on the waterside of a creek adjacent to the farms of Thomas Manning

and one B. S. Sangee, in the township of Murryville, Snoh country, Sinoe County, as aforesaid, the same being the property of Quah Tarbah-yonnoh (a Wedjah woman) and being of the value of seven dollars and fifteen cents (\$7.15) with intent to deprive the said Quah Tarbah-yonnoh of the same and to convert the same to the taker's own use; against the form of the statute in such case made and provided and against the peace and dignity of the Republic of Liberia.

"All of which the Republic of Liberia, plaintiff is ready to prove.

"REPUBLIC OF LIBERIA, *plaintiff*,

By: [Sgd.] LAWRENCE E. MITCHELL  
*County Attorney for Sinoe County.*"

Whereupon said complaint being further supported by the verification of the complainant, Tarbah-yonnoh, the justice of the peace issued a writ of arrest commanding the ministerial officer to arrest Juah Sangee, the defendant, and have her brought before court.

On July 23, the case was called and the hearing lasted two days. The records show that after evidence had been rested by both parties, defendant, now appellant, made the following submission to the court through her attorney:

"That under the Criminal Code of the Republic of Liberia, the facts as proved do not fall under the definition of larceny (petty) but tend to establish a case of trover. Therefore he respectfully contends that the action of trover cannot be tried under the garb of larceny and therefore requests that his client be discharged."

To this submission the prosecuting attorney made the following resistance:

- (1) The Justice of the Peace Code of 1907 which is a guide to the justices of the peace specifically states at what time defendant in any trial may appear in court and demur, and

(2) In criminal prosecutions, especially in larceny, the intent of the taker is what the law punishes. Said prosecuting attorney requested the court to deny the request of defendant and deliver the judgment.

The court sustained the objections and rendered the following judgment:

"After patiently listening to both sides of the evidence adduced at the trial and the arguments pro et con, this court adjudges that the defendant is guilty of the alleged charge against her as proven by plaintiff's witnesses. Therefore we hereby adjudge that defendant refund to plaintiff the sum of seven dollars and fifteen cents (\$7.15) being the amount stolen and receive twenty five lashes on her bare back and be sentenced in the common jail of Sinoe for the space of six months hard labour and she is ruled to all cost as follows:

Justice fees	\$ 4.66
Constable fees	7.75
Witnesses "	10.75
Interpreter fee	.50
Amt. stolen	7.15
	<hr/>
	\$30.81

"And it is so ordered.

"Dated this 24th day of July A.D. 1945

"[Sgd.] J. C. KUANNEH

[ " ] THOMAS W. NYKANH

*Justices of the Peace for Sinoe County.*"

To this judgment defendant excepted and prayed an appeal to the Circuit Court, Third Judicial Circuit, Sinoe County. Defendant having prosecuted her appeal to said circuit court, the case was called for hearing on October 3, 1945 when the demurrers filed were overruled and the case ordered to trial. The resident judge who heard the case made an exhaustive ruling affirming the judgment of the justices of the peace, to which appellant excepted and appealed to the Supreme Court of Liberia.

Having presented a concise history of the case, we find that said case hinges upon the answer to the following legal question, *viz.*:

Whether the evidence adduced by plaintiff proved the charge of petty larceny as set forth in the complaint and supported the ruling of the judge, or whether it tended to prove an action of trover.

In order to be in a position to correctly say which one of the propositions implicit in the question is supported by the evidence, we must necessarily inspect the evidence as found in the records of the court below sent forward to this Court. There were four witnesses who took the stand and deposed on behalf of the plaintiff, the first being Tarbah-yonnoh, the complainant. Let us see how far she supported the complaint of plaintiff and the ruling of the judge.

“Q. The Republic of Liberia charges one Juah Sangee with the crime of petty larceny. All that you know tending to prove the said charge, please state for the benefit of the court.

“A. The Honourable Superintendent of this County sent up to Wedjah for some women to plant rice on his farm, and after the completion of the planting of the rice, he paid the women eleven shillings. After we had been paid, Thomas Manning's wife carried us to plant rice in her farm. I had my money tied around my waist and we went to the waterside. This money was tied in a cloth I had around my waist. I took the cloth from around my waist, and was washing it, after I had placed the money on a stick; meanwhile Juah Sangee had put a piece of tarpaulin in the water, and I forgot the money that I left on the stick while washing the cloth, and I went to the farm. When I got to the farm, I recalled that I had left the money at the waterside.

When I went back to the waterside the money and tarpaulin had been carried away. I then went to Juah Sangee and said to her, 'My people, I thank you,' and I said further after thanking them, 'Whoever put the tarpaulin in the water, has also taken away my money with the tarpaulin.' "

We have only quoted this relevant portion of the complainant's statement showing how defendant is alleged to have gotten possession of the money in question.

We have the following questions and answers concerning the testimony of Weah-yonnoh, the next witness:

"Q. Miss Witness, what is your name and where do you live?

"A. My name is Weah-yonnoh and I live in Flanh's town at Wedjah.

"Q. Are you acquainted with one Tarbah-yonnoh, a Wedjah woman complainant in this case now before court, and one Juah Sangee, appellant? If so, please say.

"A. Yes, I am.

"Q. The Republic of Liberia charges the said Juah Sangee, appellant, with the crime of petty larceny committed in the township of Murryville, Snoh country, Sinoe County. If you have any knowledge of facts tending to prove said charge, state them for the benefit of the court.

"A. We were planting the farm of a woman by name Juah when this woman whose money is said to be lost, was lost. Juah went to wash her baby's tarpaulin and took this money from the waterside and carried it to the farm where we were, and gave it to a woman by name Kpleh. When she had given it to Kpleh, Tarbah-yonnoh came to us in the farm and said, 'Mother, give me my money.' Juah asked her who had her money, and she replied to Juah, 'You have taken it.'

Juah then asked her how she had taken it, and she replied that Juah was the one who went to wash her child's tarpaulin, but she Juah insisted that she did not have the money."

The third witness testified as follows:

"Q. Mr. Witness, what is your name and where do you live?

"A. My name is Booh and I live in Snoh country.

"Q. Are you acquainted with one Tarbah-yonnoh, a Wedjah woman, complainant in this matter now before court and one Juah Sangee, defendant?

"A. I am.

"Q. The said Juah Sangee, defendant, is charged by the Republic of Liberia with the crime of petty larceny committed in Snoh country, Sinoe County. If you have any knowledge of facts tending to prove the said charge, please state same for the benefit of the court.

"Q. One Thomas Manning left me in his town while the President was here and I was in my farm cleaning it up when one woman by name Tarbah-yonnoh came to call me. I then inquired what was the call for, and she replied that she was going to plant rice at Thomas Manning's farm, and when she went to the spring to wash her clothes, she took off her cloth in which was tied some money, and rested same on a stick. After washing the clothes, she returned to the farm, and afterwards discovered that the cloth in which the money was, was not with her. She further said that she immediately went to the spring, and when she looked at the stick on which she left the cloth in which the money was, she could find neither the cloth nor the money. She recalled that when she went to wash her clothes, she saw a tarpaulin in the spring. She went immediately to Sangee's farm, for the farm was not far from that of Mr.

Manning and she enquired of the woman in Sangee's farm, (three of them, Kpleh being the headwoman) as to the fact that she left her cloth in which was tied some money, on a stick at the spring, but that when she returned to the spring, having forgot the cloth on the stick, she could find neither the cloth nor the money, and they replied that neither of them had taken the cloth with the money."

The fourth witness, Mr. D. P. Patten, alias Jupehn, having been asked by Mr. Manning to settle the dispute between the women, only substantiated what the aforesaid witnesses had stated. Therefore, we do not deem it necessary to quote his statement here. The excerpts from statements of witnesses Weah-yonnoh and Booh given above corroborate that of the complainant to the extent that the cloth string which contained the money was left on the stick at the waterside of the spring, and from that stick it is alleged defendant Juah Sangee took same.

The *taking* is therefore under the circumstances the decisive factor, in that if the taking were felonious, then the crime of petty larceny would be established. However, if the taking were not felonious, the crime charged would crumble and the action of trover would have been the proper action.

The Criminal Code of Liberia defines larceny thus:

"1. Any person who with no colour of right shall steal, take and carry away the personal goods of another with intent in so doing feloniously to convert said goods to the taker's own use without and against the will and consent of the owner. . . ." Crim. Code, § 73.

Judge Bouvier gives the following definition:

"The felonious taking of the property of another without his consent and against his will, with the intent to convert it to the use of the taker.

"The felonious taking and carrying away of the personal goods of another. . . .

"The wrongful and fraudulent taking and carrying away by one person of the mere personal goods of another from any place; with a felonious intent to convert them to his . . . use, and make them his property without the consent of the owner." 2 Bouvier, Law Dictionary *Larceny* 1864 (Rawle's 3d rev. 1914).

In order to establish larceny, the taking must be felonious. It is a fact that no one finding a lost article, purse, or any other thing of value could be considered to have taken said article feloniously. Such taking is not wrongful and fraudulent, and therefore since it is devoid of such a principal criminal element it could not be considered larceny. The evidence of the State's witnesses to the effect that appellant found the string containing money in question at the waterside did not support the allegations charged in the complaint or the ruling of the judge in the court below.

The law writers have nevertheless declared that where the taking cannot be considered *felonious* but the party finding any such article denies the same, or detains and converts it to his own use against the owner's will and consent, said party makes himself liable in an action of trover:

"A form of action which lies to recover damages against one who has, without right, converted to his own use goods or personal chattels in which the plaintiff has a general or special property.

"A generic name, applied to those torts, arising from the unlawful conversion of any particular piece of personal property owned by another.

"In form it is a fiction: in substance, a remedy to recover the value of personal chattels *wrongfully* converted by another to his own use.

"The action was originally an action of trespass on



the case where goods were *found* by the defendant and retained against the plaintiff's rightful claim. The manner of gaining possession soon came to be disregarded, as the substantial part of the action is the *conversion* to the defendant's use; so that the action lies whether the goods came into the defendant's possession by *finding* or *otherwise*, if he fails to deliver them upon the rightful claim of the plaintiff. It differs from *detinue* and *replevin* in this, that it is brought for damages and not for the specific articles; and from *trespass* in this, that the injury is not necessarily a forcible one, as trover may be brought in any case where trespass for injury to personal property will lie; but the converse is not true. In case possession was gained by a trespass, the plaintiff by bringing his action in this form waives his right to damages for the taking, and is confined to the injury resulting from the conversion." 3 Bouvier, Law Dictionary *Trover* 3326 (Rawle's 3d rev. 1914).

"The action of trover was, in its origin, an action of trespass on the case for the recovery of damages against a person who had *found* goods and refused to deliver them on demand to the owner, but converted them to his own use, from which word *finding* (trover) the remedy is called an action of trover. By a fiction of law actions of trover were at length permitted to be brought against any person who had in his possession, by any means whatever, the personal property of another, or sold or used the same without the consent of the owner, or refused to deliver the same when demanded. As was said of this action by Lord Mansfield: 'In form it is a fiction; in substance it is a remedy to recover the value of personal chattels wrongfully converted by another to his own use.' The form supposes defendant may have come lawfully by the possession of the goods, and if he did not,

yet by bringing this action plaintiff waives the trespass, and admits the possession to have been lawfully gotten." 65 C. J. *Trover and Conversion* § 85 at 53 (1933). (Emphasis added.) 38 Cyc. of Law & Proc. *Trover and Conversion* 2006 n. 3 (1911).

What travesty of justice would have been perpetrated and what inconveniences, humiliations, and disgrace would defendant have suffered had she not persistently continued appealing from court to court seeking justice. First of all, she would have received twenty-five lashes on her bare back; secondly, she would have had to pay costs and restitution in the amount of \$30.81; and, thirdly, she would have been confined in the common jail for six months at hard labor. We have thought it expedient, in the interest of those who may be subsequently charged and who in consequence of being in indigent circumstances will not be able to have their interests defended as was the defendant in this case, and further, as a warning to our judges to manifest greater interest in the discharge of their judicial responsibilities, to make the following Biblical admonition:

"And he set judges in the land throughout all the fenced cities of Judah, city by city,

"And said to the judges, Take heed what ye do; for ye judge not for man, but for the LORD, who is with you in the judgment.

"Wherefore now let the fear of the LORD be upon you; take heed and do it: for *there is* no iniquity with the LORD our God, nor respect of persons, nor taking of gifts." 2 Chronicles 19:5 (King James).

We regard it an indispensable duty to state here in emphatic terms that this Court has on several occasions handed down opinions declaring that in criminal cases there shall be no costs assessed, for the government neither pays nor receives costs; yet, in utter disregard of said decisions there were costs of \$23.66 assessed against de-

fendant in this action. This Court is compelled to denounce with disfavor and to censure the continuation of such illegal practices.

From the circumstances surrounding this case as well as from the light thrown on it by the prosecution's own witnesses, the Court is of the opinion that the charge of petty larceny alleged against appellant was not proven at the trial. In vain have we searched for the evidence which led the judge below to affirm the judgment of the justices of the peace.

In the year 1906 in the case *McCuley v. Lachman*, 1 L.L.R. 474, this Court reaffirmed its

"[d]octrine well founded in the statute laws of this Republic, that 'every person alleging the existence of a fact is bound to prove it'; that 'where a party charges another with a culpable omission or breach of duty, he shall be bound to prove it'; and further, that the allegations of a party, however logically stated in the court of law, cannot be taken as evidence. Proof to a judge, in the trial of a case, is what a compass is to a mariner on the ocean." *Id.* at 475.

In view of the foregoing this Court is of the opinion that the judgment of the court below should be reversed, and defendant, now appellant, discharged without day; and it is hereby so ordered.

*Reversed.*